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San Bernardino Associated Governments

1170 W. 3rd St., 2nd Fl., San Bernardino, CA 92410-1715
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Web: www.sanbag.ca.gov

TRANSPORTATION MEASURE I

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

CORRECTED AGENDA

Commuter Rail and Transit Committee Meeting

June 20, 2013

10:00 a.m.

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

Commuter Rail and Transit Committee Membership

Chair
Mayor Patrick Morris
City of San Bernardino

Vice Chair
Mayor Paul Eaton
City of Montclair

Mayor Peter Aguilar
City of Redlands

Council Member Bill Jahn
City of Big Bear Lake

Council Member Mike Leonard
City of Hesperia

Mayor Larry McCallon
City of Highland

Mayor L. Dennis Michael
City of Rancho Cucamonga

Mayor Ray Musser
City of Upland

Council Member Richard Riddell
City of Yucaipa

Council Member Alan Wapner
City of Ontario

Supervisor James Ramos
County of San Bernardino

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

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

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

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

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

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

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

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

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

CORRECTED AGENDA

Commuter Rail and Transit Committee Meeting

June 20, 2013
10:00 a.m.

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

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

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

Notes/Actions

1. Possible Conflict of Interest Issues for the Commuter Rail and Transit Committee Meeting of June 20, 2013 Pg. 11

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

Consent Calendar

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

2. Attendance Register Pg. 13

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

Discussion Items

Transit/Commuter Rail

3. Election of Committee Chair and Vice Chair Pg. 15

Conduct elections for members to serve as Chair and Vice Chair of the SANBAG Commuter Rail and Transit Committee for terms to end June 30, 2014. **Mitch Alderman**

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

4. SANBAG Contract No. 04-024, Amendment No. 3 to Gold Line Joint Powers Agreement to include the City of Montclair Pg. 22

That the Committee recommend the Board approve Amendment No. 3 to the Metro Gold Line Foothill Extension Construction Authority, San Bernardino Associated Governments Contract No. 04-024 to include the City of Montclair. **Mitch Alderman**

This item is not scheduled for review by any other policy committee or technical advisory committee. SANBAG General Counsel and Contract Administrator have approved this item and Contract as to form.

5. Fiscal Year 2013/2014 Transportation Development Act (TDA) Unmet Transit Needs Public Hearings Pg. 31

That the Committee recommend the Board:

1. Adopt Definitions of "Unmet Transit Needs" and "Reasonable to Meet" as identified in Attachment A.
2. Set Times, Dates and Locations for TDA Unmet Transit Needs Public Hearings. **Nancy Strickert**

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

6. Unmet Transit Needs Public Hearings and Findings Pg. 35

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

1. Review the testimony from the September 2012 Unmet Transit Needs Public Hearings.
2. Adopt Resolution No. 13-043 making Unmet Transit Needs Findings. **Nancy Strickert**

This item is not scheduled for review by any other policy committee or technical advisory committee. SANBAG General Counsel has reviewed this item and a draft of the Resolution.

Discussion Items Continued...
Transit/Commuter Rail

7. **License Agreements to cross San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission railroad right-of-way with Joshua Grading and Charter Communications** Pg. 51

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

1. Approve Contract No. R13162 with Joshua Grading granting a license agreement on the San Gabriel Subdivision railroad right-of-way, City of Upland mile post 101.77;
2. Approve Contract No. R13163 with the Charter Communications granting a license agreement on the San Gabriel Subdivision railroad right-of-way, City of Rancho Cucamonga mile post 97.72;
3. Approve Contract No. R13164 with Omnitrans granting a license agreement on the Redlands Subdivision railroad right-of-way, City of San Bernardino mile post 1.0;
4. Rescind Contract No. R13113 with Griffith/Comet JV (Joint Venture) granting a right-of-entry onto Redlands Subdivision railroad right-of-way, City of San Bernardino mile post 1.0;
5. Approve Contract No. R13166 with Griffith/Comet JV (Joint Venture) granting a right-of-entry onto Redlands Subdivision railroad right-of-way, City of San Bernardino mile post 1.0;
6. Rescind Contract No. R13112 with the City of San Bernardino granting a license agreement on the Redlands Subdivision railroad right-of-way, City of San Bernardino mile post 1.0;
7. Approve Contract No. R13165 with the City of San Bernardino granting a license agreement on the Redlands Subdivision railroad right-of-way, City of San Bernardino mile post 1.0;
8. Approve Contract No. R13167 with the City of Rialto granting a license agreement on the San Gabriel Subdivision railroad right-of-way, City of Rialto mile post 86.4 east; and
9. Approve Contract No. R13161 with the City of Rialto granting a license agreement on the San Gabriel Subdivision railroad right-of-way, City of Rialto mile post 86.4 west. **Monica Morales**

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

Discussion Items Continued...
Transit/Commuter Rail

8. Request for Proposal No. 14003, On-call Transit and Rail Services Pg. 219

That the Committee recommend the Board, acting as the San Bernardino County Transportation Commission, authorize and approve release of Request for Proposal No. 14003 for qualified firms to provide On-call Transit and Rail Services. **Mitch Alderman**

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

9. Release of Invitation for Bid (IFB) No. 14001 for Construction of the Downtown San Bernardino Passenger Rail Project (DSBPRP) Pg. 225

That the Committee recommend the Board, acting as the San Bernardino County Transportation Commission, authorize the release of Invitation for Bid No. 14001 to obtain bids for construction of the Downtown San Bernardino Passenger Rail Project (DSBPRP) pending final review and approval of San Bernardino Associated Governments General Counsel and Contract Administrator. **Casey Dailey**

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

10. Release Invitation for Bid (IFB) No. 14002 for Construction of the San Bernardino Transit Center (SBTC) Pg. 227

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

1. Authorize the release of Invitation for Bid No. 14002 to obtain bids for construction of the San Bernardino Transit Center Project pending final review and approval of San Bernardino Associated Governments General Counsel, Contract Administrator and a funding agreement with Omnitrans.
2. Authorize staff to proceed directly to Board for approval of the Omnitrans funding agreement. **Casey Dailey**

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

Discussion Items Continued...
Transit/Commuter Rail

11. Award Professional Services Contract to HDR Engineering, Inc. to complete a Rail Access Study to the Ontario Airport Pg. 229

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

1. Award Contract No. C13048 to HDR Engineering, Inc. for Professional Planning and Engineering Services for a two (2) year contract term for an amount not-to-exceed $584,035.

2. Approve Fiscal Year 2013/14 budget amendment to increase Task No. 0352 General Commuter Rail by $584,035 of State Transit Assistance Fund County Population (PUC99313) for a new task total of $3,644,842. **Justin Fornelli**

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

12. Amendment No. 7 to Contract C10079, Redlands Rail Extension, to HDR Engineering, Inc. for Design Services Pg. 273

That the Committee recommend the Board approve Amendment No. 7 to Contract No. C10079 with HDR Engineering, Inc. for design and environmental clearance services increasing the contract amount by $2,183,924 for a new not-to-exceed amount of $33,568,276; exercise a second one-year option to extend HDR's contract duration through February 8, 2015. **Mitch Alderman**

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

13. Reimburse the Orange County Transportation Authority for purchase of Southern California Regional Rail Authority rolling stock, Rotem passenger cars Pg. 354

That the Committee recommend the Board reimburse the Orange County Transportation Authority (OCTA) $6,041,376 for Rotem cars purchased by the Southern California Regional Rail Authority (SCRRA) by assuming responsibility for approximately $2 million of OCTA's annual member share of the SCRRA capital budget from Fiscal Year 2013/14 through 2015/2016. **Justin Fornelli**

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

Discussion Items Continued...
Transit/Commuter Rail

14. Financial Commitment to the Southern California Regional Rail Authority for Fiscal Year 2013/2014 Pg. 368

That the Committee recommend the Board approve the following:

1. Approve Fiscal Year 2013/2014 operating assistance allocation of $11,442,000 in Valley Local Transportation Funds to Southern California Regional Rail Authority.
2. Approve Fiscal Year 2013/2014 capital assistance allocation of $3,634,500 in Federal Transit Administration 5309 and 5337 funds with local match to be funded from Toll Credits.
3. Approve Fiscal Year 2013/2014 capital assistance allocation of $2,000,000 in Federal Transportation Administration 5337 funds to Southern California Regional Rail Authority for the reimbursement of cost associated with the purchased of Rotem cars originally funded by Orange County Transportation Authority, provided the overall reimbursement plan was approved in the preceding agenda item.

Monica Morales

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

15. Review Financial Audits for Transit Operators Pg. 371

That the Committee recommend the Board receive:

1. Omnitrans Comprehensive Annual Financial Report (CAFR) on the Annual Financial Audit for Fiscal Year 2011/2012
2. Mountain Area Regional Transit Authority (MARTA) Basic Financial Statements for Fiscal Year 2011/2012
3. Valley Transportation Services (Vtrans) Basic Financial Statements for Fiscal Year 2011/2012. **Monica Morales**

This item was scheduled for reviewed by the General Policy Committee on June 12, 2013. The finance department has reviewed and approved this item.

16. Fiscal Year 2013/2014 Transit Operator Funding Allocations Pg. 404

That the Committee recommend the Board approve Fiscal Year 2013/2014 Transit Operator Funding Allocations, as indicated in Table 1, to the City of Barstow, City of Needles, Morongo Basin Transit Authority, Mountain Area Regional Transit Authority, Omnitrans, Victor Valley Transit Authority and Valley Transportation Services. **Vanessa Jezik**

This item is not scheduled for review by any other policy committee or technical advisory committee. The individual funding allocation plans have been reviewed by each transit operator.

Notes/Actions

17. Advancement of Fiscal Year 2013/2014 Local Transportation Funds to Omnitrans Pg. 407

That the Committee recommend the Board authorize advanced disbursement of Fiscal Year 2013/2014 Local Transportation Funds allocated to Omnitrans to assist with an unforeseen cash flow disruption, contingent upon the availability of funding and removal of the indirect cost allocation of 3.27% currently being charged to the San Bernardino Transit Center. **Casey Dailey**

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

Comments from Committee Members

Public Comment

ADJOURNMENT

Additional Information

Acronym List Pg. 410

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

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

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

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

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

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

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

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

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

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

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

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

Basic Agenda Item Discussion.

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

The Vote as specified in the SANBAG Bylaws.

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

Amendment or Substitute Motion.

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

Call for the Question.

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

The Chair.

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

Courtesy and Decorum.

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

Adopted By SANBAG Board of Directors January 2008

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 1

Date: June 20, 2012

Subject: Information Relative to Possible Conflict of Interest

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

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

Item No.	Contract No.	Contractor/Agents	Subcontractors
12	C10079-7	HDR Engineering, Inc. *Rob Klovsky*	Base + Birge Engineering David Evans & Assoc., Inc. Epic Land Services, Inc. Delta Group Gruen Hatch Mott Macdonald

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA		SAFE		CMA	

Check all that apply.

CRTC1306z-maa

12 (Cont.)	C10079-7		HTC ICF Iteris, Inc. Project Design Consultants Pacific Rail Engineers Westbound Communications Cambridge PAC Rail Project Management (RPM) Atwell Consulting Group, LLC
11	C13048	HDR Engineering, Inc. *Rob Klovsky*	Fehr & Peers RSE, Inc. Pacific Railway Enterprises, Inc. Joanna Capelle
7	R13162	Joshua Grading & Excavation, Inc Tom Craft	None
7	R13163	Charter Communications Beth Thompson	None
7	R13166	Griffith/Comet JV Joe Meidl	None

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

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

COMMUTER RAIL AND TRANSIT POLICY COMMITTEE ATTENDANCE RECORD – 2013

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

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

COMMUTER RAIL AND TRANSIT POLICY COMMITTEE ATTENDANCE RECORD – 2012

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

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

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 3

Date: June 20, 2013

Subject: Election of Committee Chair and Vice Chair

Recommendation:* Conduct elections for members to serve as Chair and Vice Chair of the SANBAG Commuter Rail and Transit Committee for terms to end June 30, 2014.

Background: Terms for the Chair and Vice Chair of each of the SANBAG policy committees expire on June 30, 2013. Election of Chair and Vice Chair for each of the policy committees is scheduled to immediately follow the annual election of SANBAG Officers, which occurred at the June Board of Directors meeting.

The duties of the Chair include serving on the General Policy Committees, participation in legislative advocacy efforts; representing SANBAG at public events; and representing policy committee recommendations at SANBAG Board meetings.

This item provides for an election to be conducted, which will identify the Chair and Vice Chair of the Committee to serve until June 30, 2014. A complete listing of SANBAG policy committees, membership, and chairs is attached to this item for reference.

Financial Impact: Staff support for this activity is consistent with the adopted budget. There is no additional financial impact upon the SANBAG budget.

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

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

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

X	COG	X	CTC	X	CTA	X	SAFE	X	CMA

Check all that apply
CRTC1306a-maa
Attachment: http://portal.sanbag.ca.gov/mgmt/Intranet/Shared%20Documents/SANBAG%20Policy%20Committee%20Membership.docx

May 1, 2013

ATTACHMENT A

SANBAG Policy Committee Membership

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
General Policy Committee Membership consists of the following: SANBAG President, Vice President, and Immediate Past President 4 East Valley (3 City, 1 County) 4 West Valley (3 City, 1 County) 4 Mt/Desert (3 City, 1 County) City members shall be SANBAG Board Members elected by caucus of city SANBAG Board Members within the subarea. All Policy Committee and Board Study Session Chairs are included in this policy committee. All City members serving as Board officers, Committee chairs, or Board Study Session Chair, are counted toward their subareas City membership. Supervisors collectively select their representatives. The SANBAG Vice President shall serve as Chair of the General Policy Committee.	Makes recommendations to Board of Directors and: (1) Provides general policy oversight which spans the multiple program responsibilities of the organization and maintains the comprehensive organization integrity; (2) Provides policy direction with respect to administrative issues, policies, budget, finance, audit, and personnel issues for the organization; (3) Serves as policy review committee for any program area that lacks active policy committee oversight. Committee has authority to approve contracts in excess of $25,000 with notification to the Board of Directors.	Mike Leonard, Hesperia, Vice President (Chair) Janice Rutherford, Supervisor, President (Vice Chair) Larry McCallon, Highland, Past President <u>West Valley</u> L. Dennis Michael, Rancho Cucamonga Ed Graham, Chino Hills Dennis Yates, Chino Gary Ovitt, Supervisor <u>East Valley</u> Pat Morris, San Bernardino (Chair - CRTC) Richard Riddell, Yucaipa (Chair – MPC) James Ramos, Supervisor <u>Mountain/Desert</u> Julie McIntyre, Barstow (Chair - MDC) Jim Harris, Twentynine Palms Robert Lovingood, Supervisor	6/30/2013 6/30/2013 6/30/2013 6/30/2013 6/30/2013 6/30/2013 6/30/2013 6/30/2013 6/30/2013 6/30/2013 6/30/2013 6/30/2013 6/30/2013
Commuter Rail & Transit Committee Membership consists of 11 SANBAG Board Members: 9 Valley-members, two being Southern California Regional Rail Authority (SCRRA) primary (*) and two being SCRRA alternate (**) members. 2 Mountain/Desert Board Members who serve on the Board of a Mountain/Desert transit agency. SCRRA members and alternates serve concurrent with their term on the SCRRA Board of Directors as appointed by the SANBAG Board. Other members are appointed by the SANBAG President for 2-year terms.	Provides policy guidance and recommendations to the SANBAG Board of Directors and Southern California Regional Rail Authority (SCRRA) delegates with respect to commuter rail and transit service. * SCRRA Primary Member ** SCRRA Alternate Member	Pat Morris, San Bernardino* (Chair) Paul Eaton, Montclair* (Vice Chair) Pete Aguilar, Redlands Bill Jahn, Big Bear Lake Mike Leonard, Hesperia Larry McCallon, Highland** L. Dennis Michael, Rancho Cucamonga Ray Musser, Upland James Ramos, Supervisor Richard Riddell, Yucaipa Alan Wapner, Ontario**	Indeterminate (6/30/2013) Indeterminate (6/30/2013) 12/31/2014 12/31/2013 12/31/2013 Indeterminate 12/31/2013 12/31/2013 12/31/2014 12/31/2014 Indeterminate

SANBAG Policy Committee Membership

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
Mountain/Desert Committee Membership consists of 11 SANBAG Board Members from each Mountain/Desert jurisdiction and County Supervisors representing the First, Second, and Third Districts.	Provides ongoing policy level oversight related to the full array of SANBAG responsibilities as they pertain specifically to the Mountain/Desert subregion. The Committee also meets as the Mountain/Desert Measure I Committee as it carries out responsibilities for Measure I Mountain/Desert Expenditure Plan.	Julie McIntyre, Barstow (Chair) Edward Paget, Needles (Vice Chair) Curt Emick, Apple Valley Jim Harris, Twentynine Palms George Huntington, Yucca Valley Bill Jahn, Big Bear Lake Mike Leonard, Hesperia Robert Lovingood, Supervisor Ryan McEachron, Victorville James Ramos, Supervisor Janice Rutherford, Supervisor Cari Thomas, Adelanto	Indeterminate (6/30/2013) Indeterminate (6/30/2013) Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate

Policy Committee Meeting Times

General Policy Committee	Second Wednesday, 9:00 a.m., SANBAG Office
Commuter Rail & Transit Committee	Third Thursday, 12:00 noon, SANBAG Office
Mountain/Desert Committee	Third Friday, 9:30 a.m., Apple Valley

NOTE: Policy Committee meetings will not be held in July of each year (effective 9/5/12).

Board of Directors Study Sessions for Metro Valley Issues

STUDY SESSION	PURPOSE	MEMBERSHIP	TERMS
Board of Directors Study Sessions for Metro Valley Issues Refer to SANBAG Policy 10007.	To review, discuss, and make recommendations for actions to be taken at regular meetings of the Board on issues relating to Measure I Projects in the Valley.	Board of Directors Dick Riddell, Yucapa (Chair) Michael Tahan, Fontana (Vice Chair)	 6/30/2013 6/30/2013

Meeting Time: Second Thursday, 9:00 a.m., SANBAG Office

Independent Taxpayer Oversight Committee (ITOC) Review of Measure I Expenditure Plan

COMMITTE	PURPOSE	MEMBERSHIP	TERMS
Independent Taxpayer Oversight Committee (ITOC) Review of Measure I Expenditure Plan The ITOC shall provide citizen review to ensure that all Measure I funds are spent by the San Bernardino County Transportation Authority (hereby referred to as the Authority) in accordance with provison of the Expenditure Plan and Ordinance No. 04-01.	The ITOC shall review the annual audits of the Authority; report findings based on the audits to the Authority; and recommend any additional auditfs for consideration which the ITOC believes may improve the financial operation and integrity of program implementation. The Authority shall hold a publicly noticed meeting, which may or may not be included on the agenda of a regularly scheduled Board meeting, with the participation of the ITOC to consider the findings and recommendations of the audits.	Richard Haller Rod Johnson Norman Orfall Craig Scott Larry Sharp Ray Wolfe, Ex-Officio In addition to the appointed members, the SANBAG Executive Director will serve as an ex officio member.	12/31/12 12/31/12 12/31/14 12/31/14 12/31/14

May 1, 2013

SANBAG Ad Hoc Committees

COMMITTEE	PURPOSE	MEMBERSHIP
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.	The responsibilities of the Audit Subcommittee shall be to: • 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.	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 Stanckiewitz, Grand Terrace
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.	Review and provide guidance on litigation with San Bernardino County Flood Control District regarding the Colonies Development and the Cactus Basin in Rialto.	Pat Morris, San Bernardino, Chair Richard Riddell, Yucaipa Larry McCallon, Highland
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	Review SANBAG's bylaws and make recommendations to the Board on any necessary changes.	Rhodes "Dusty" Rigsby, Loma Linda - Chair Pat Morris, San Bernardino Mike Leonard, Hesperia Larry McCallon, Highland
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.	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.	Bill Jahn, City of Big Bear Lake - 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
Contracting Process In July 2012, the SANBAG Board President appointed this ad hoc committee to strengthen SANBAG's procurement policies and procedures.	Review SANBAG's contracting policies and procedures and make recommendations to improve them.	Michael Tahan, Fontana - Chair Robert Lovingood, Supervisor Julie McIntyre, Barstow Walt Stanckiewicz, Grand Terrace Dennis Yates, Chino Alan Wapner, Ontario

May 1, 2013

SANBAG Ad Hoc Committees

COMMITTEE	PURPOSE	MEMBERSHIP
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.	Review the Comprehensive Operational Analysis of Omnitrans and make recommendations to address projected fiscal shortfalls associated with Omnitrans operations and capital projects.	Janice Rutherford Supervisor Dick Riddell, Yucaipa Alan Wapner, Ontario Pat Morris, San Bernardino Deborah Robertson, Rialto Penny Lilburn , Omnitrans
Right of Way In February 2013, the SANBAG Board President appointed this ad hoc committee	Review Right of Way policies and make recommendations on changes and signature authority limits.	Curt Emick, Apple Valley James Ramos, Supervisor Deborah Robertson, Rialto Michael Tahan, Fontana
Legislative In March 2013, the SANBAG Board President appointed this ad hoc committee. This committee will consist of the SANBAG Board Officers.	Review proposed legislation at the state and federal level. Provide direction to staff on positions consistent with the Board-adopted legislative platform.	SANBAG President – Janice Rutherford, Supervisor SANBAG Vice President – Mike Leonard, Hesperia SANBAG Immediate Past President – Larry McCallon, Highland

May 1, 2013

SANBAG Technical Advisory Committees

COMMITTEE	PURPOSE	MEETING SCHEDULE
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.	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.	Generally meets on the first Monday of each month at 1:30 PM, at SANBAG.
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.	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.	Meets on the first Thursday of each month at 10:00 AM, at SANBAG.
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 1 representing the Consolidated Transportation Services Agency 5 representing Social Service Providers	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 I 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.	Meets the second Tuesday every other even month at 10:00 AM, at SANBAG.
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.	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.	Meets the 4th Wednesday of each month at 2:00 p.m. at the Depot (in the SCAG Office).

SANBAG Technical Advisory Committees

COMMITTEE	PURPOSE	MEETING SCHEDULE
Project Development Teams	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.	Varies with the PDT, at SANBAG.

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 4

Date: June 20, 2013

Subject: SANBAG Contract No. 04-024, Amendment No. 3 to Gold Line Joint Powers Agreement to include the City of Montclair

Recommendation:* That the Committee recommend the Board approve Amendment No. 3 to the Metro Gold Line Foothill Extension Construction Authority, San Bernardino Associated Governments Contract No. 04-024 to include the City of Montclair.

Background: The Metro Gold Line Foothill Extension Construction Authority (Construction Authority) is an independent transportation planning, design and, construction agency created in 1998 by the California State Legislature, SB 1847 (later updated in 2011-AB706 and 2012-AB1600).

The Construction Authority is governed by a nine-member board of directors. Five (5) members are voting members, while four (4) are non-voting. Each member is appointed by a city or other government entity, as directed in the legislation that created the agency, SB 1847 (later updated in 2011-AB706 and 2012-AB1600). Below is the text regarding governance from AB 1600.

132415. (a) The authority shall be governed by a board consisting of five (voting members and four nonvoting members who shall be appointed as follows:

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

CRTC1306d-maa
http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/04024-03.pdf

(1) Three members shall be appointed by the City Councils of the Cities of Los Angeles, Pasadena, and South Pasadena, with each city council appointing one member by a majority vote of the membership of that city council.

(2) One member shall be appointed by the President of the Governing Board of the San Gabriel Valley Council of Governments, subject to confirmation by that board.

(3) One member shall be appointed by the LACMTA.

(4) One nonvoting member shall be appointed by the Governor.

(5) Two nonvoting members shall be appointed by the City Councils of the Cities of Pasadena and South Pasadena, with each city appointing one nonvoting member.

(6) One nonvoting member shall be appointed by the president of the board of directors of the San Bernardino Associated Governments, subject to confirmation by that board.

The city councils of Pasadena and South Pasadena appoint members from the corridor cities. The City of Pasadena appointed Glendora City Councilman Doug Tessitor and the City of South Pasadena appointed Ontario Mayor Paul Leon.

In addition, cities from South Pasadena to Ontario are represented on two additional boards to the Construction Authority--the Joint Powers Authority (comprised of elected official representatives appointed by each corridor cities) and Technical Advisory Committee (comprised of city managers or their staff appointees). The JPA has added members to the original board membership via Amendments to its Joint Powers Authority Agreement (Amendment One - SANBAG; Amendment Two - Ontario). Currently, Amendment No. 3 seeks to add Montclair as a member to the JPA. All members of the JPA must approve the Amendment in order to add a member. SANBAG is the only agency that has not taken action to approve the amendment. The City of Montclair wants to appoint council member Bill Rue to the JPA.

The Joint Powers Authority (JPA) also votes to make recommendations to three appointing entities for the Construction Authority Board. Those entities are the Cities of South Pasadena and Pasadena as well as the SGVCOG. Claremont City Councilmember Sam Pedroza was appointed by the SGVCOG.

Lastly, SANBAG approved Memorandum of Understanding (MOU) 04-023 with the Los Angeles to Pasadena Metro Blue Line Construction Authority in September 2003. This MOU facilitated the inclusion of the extension of Gold Line to Montclair for both Draft and Final Environmental Impacts Statement/Environmental Impact Report (EIS/EIR), Preliminary Engineering and

financial assistance for conduction the Phase II project L.A./Ontario International Airport Strategic Planning Study.

SANBAG staff is recommending the approval of Amendment No. 3.

Financial Impact: Amendment No. 3 to Contract 04024 is currently consistent with the Fiscal Year 2013/14 budget. If by September a budget amendment is needed for the JPA annual dues, it will be processed in an agency wide budget amendment lead by the finance department in September 2013.

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

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

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CONTRACT SUMMARY SHEET

Contract No. C 04024 Amendment No. 3

By and Between

San Bernardino Associated Governments and Gold Line Phase II Joint Powers Authority

Contract Description Gold Line Joint Powers Agreement: To include City of Montclair

Board of Director's Meeting Date: July 10, 2013

Overview of BOD Action: That the Committee recommend the Board approve Amendment No. 3 to the Metro Gold Line Foothill Extension Construction Authority, San Bernardino Associated Governments Contract No. 04-024 to include the City of Montclair

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

CONTRACT OVERVIEW

Original Contract Amount	**$**	31,445.00 (Inital Dues)	**Original Contingency Amount**	**$**	
Revised Contract Amount *Inclusive of prior amendments*	**$**	00.00	**Revised Contingency Amount** *Inclusive of prior amendments*	**$**	
Current Amendment Amount	**$**	00.00	**Contingency Amendment**	**$**	
TOTAL CONTRACT VALUE	**$**	31,445 plus annual dues	**TOTAL CONTINGENCY VALUE**	**$**	
TOTAL BUDGET AUTHORITY *(contract value + contingency)*				**$**	31,445 plus annual dues

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
9/3/03	N/A	

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

FINANCIAL INFORMATION

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

☒ A Budget Amendment is required.

How are we funding current FY? Local Transportation Funds - Planning

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

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

Local Transportation Funds - Planning

☒ Payable ☐ Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes: ☐ Retention? If yes, indicate % _____.

☐ Disadvantaged Business Enterprise (DBE) Goal _____ %

Monica Morales Project Manager (Print Name)	Monica Morales 6/11/13 Signature	Date
MITCHELL A. ALDERMAN Task Manager (Print Name)	M. A. Alderman Signature	6/11/13 Date
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
Contract Administrator (Print Name)	Signature	Date
Chief Financial Officer (Print Name)	Signature	Date

AMENDMENT THREE

Joint Exercise of Powers Agreement

Gold Line Phase II Joint Powers Authority

This Amendment Three to the Joint Exercise of Powers Agreement for the Gold Line Phase II Joint Powers Authority ("Amendment Three") is approved and executed by the current members of the Metro Gold Line Phase II Joint Powers Authority ("Joint Powers Authority") as set forth in Exhibit 1-B, attached hereto, and each of which must approve and execute this Amendment Three in order for Amendment Three to be effective.

WITNESSETH:

The Parties hereto agree as follows:

Section 1. Recitals. This Amendment Three is made and entered into with respect to the following facts:

a. The Joint Powers Authority was formed pursuant to Section 6500 *et seq.* of the Government Code with the goal and intent to cooperate among members in support of the funding, planning, design and construction of the Metro Gold Line Phase II light rail project ("the Gold Line Phase II"); and

b. The City of Montclair has demonstrated an interest to join the Joint Powers Authority in order to work cooperatively with the Joint Powers Authority and its member cities and agencies to complete the Gold Line Phase II including a possible extension to the City of Ontario; and

c. The City of Montclair has agreed to pay initial dues and assume other required financial responsibilities as a condition of its membership in the Joint Powers Authority.

d. The City of Pasadena was a founding member of the Joint Powers Authority and by an administrative error was removed and is at this time re-inserted and not subject to any other provisions stated below; and

Section 2. Initial Dues. The Initial Dues in the amount of Thirty-One Thousand Four Hundred Forty Five Dollars ($31,455.00) for the City of Montclair shall be due and payable thirty-days (30) after the effective date of membership in the Joint Powers Authority.

Section 3. Terms Remain in Effect. All terms of the Joint Exercise of Powers Agreement for the Gold Line Phase II Joint Powers Authority ("Agreement") that are not deleted or amended by this Amendment Three remain fully in effect and the execution of this Amendment Three by each of the parties hereto signifies approval and acceptance of the Agreement as modified by this Amendment Two.

Section 4. Annual Dues. Section 29c (Annual Dues) of the Agreement is hereby reinstated and after a three-fourths majority vote of the JPA Board Members at its April 14, 2011 Board

Meeting. Annual Dues will be billed at the beginning of the fiscal year commencing fiscal year 2014 (July 1, 2013).

With the increase of activities along the project, it remains integral to the project planning and implementation to keep information and engagement with constituent cities. The forecast budget which includes administrative expenses, fees, legal support, etc. are expected to be approximately $45,000 annually ($3,000 per member city) as follows:

Revenues:	
15 Member Cities X $3,000	$45,000
Total	$45,000
Expenses:	
Board Meetings Per Diem	$18,000
Meetings	$ 5,000
Legal, Administrative, & Other	$22,000
Total	$45,000

Section 5. Effective Dates. The Effective date of this Amendment Three shall be the first date on which each of the current members of the JPA, as listed in Exhibit 1-B, shall have approved and signed this Amendment Three. The effective date of Montclair's membership in the JPA shall be the first date on which each of the current members of the Joint Powers Authority as well as the respective candidate city shall have approved and signed this Amendment Three.

Section 6. Counterparts. This Amendment Three may be executed in several counterparts, and all counterparts so executed shall constitute one Amendment Three, binding on all the parties hereto, notwithstanding that all of the parties are not signatory to the original or same counterpart.

---------- signature pages to follow ----------

The current members of the JPA have caused this Amendment Three to be executed on their behalf, respectively, as follows:

City of Arcadia

By: Robert C. Harbicht, Mayor *Dated*

City of Azusa

By: Joseph R. Rocha, Mayor *Dated*

City of Claremont

By: Larry Schroeder, Mayor *Dated*

City of Duarte

By: John Fasana, Mayor *Dated*

City of Glendora

By: Gene Murabito, Mayor *Dated*

City of Irwindale

By: David Fuentes, Mayor *Dated*

City of La Verne

By: Don Kendrick, Mayor *Dated*

City of Monrovia

By: Mary Ann Lutz, Mayor *Dated*

City of Ontario

By: Paul Leon, Mayor *Dated*

City of Pasadena

By: Bill Bogaard, Mayor *Dated*

City of Pomona

By: Elliott Rothman, Mayor *Dated*

San Bernardino Associated Governments

By: Brad Mitzelfelt, President *Dated*

City of San Dimas

By: Curtis W. Morris, Mayor *Dated*

City of South Pasadena

By: Michael Cacciotti, Mayor *Dated*

ATTEST

By: Chris Lowe, Clerk of the Board

The authorized representative of the City of Montclair has caused this Amendment Three to be executed on the City of Montclair's behalf, respectively, as follows:

City of Montclair

Paul M. Eaton

By: Paul M. Eaton, Mayor *Dated*

ATTEST:

Yvonne L Smith

By: Yvonne Smith, Deputy City Clerk

Exhibit 1-B

Current Members of the Gold Line Phase II Joint Powers Authority

Arcadia

Azusa

Claremont

Duarte

Glendora

Irwindale

La Verne

Monrovia

Ontario

Pasadena

Pomona

San Bernardino Associated Governments (SANBag)

San Dimas

South Pasadena

Governments SANBAG Working Together

San Bernardino Associated Governments

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 5

Date: June 20, 2013

Subject: Fiscal Year 2013/2014 Transportation Development Act (TDA) Unmet Transit Needs Public Hearings

Recommendation:* That the Committee recommend the Board:

1. Adopt Definitions of "Unmet Transit Needs" and "Reasonable to Meet" as identified in Attachment A.

2. Set Times, Dates and Locations for TDA Unmet Transit Needs Public Hearings.

Background: Each year the San Bernardino County Transportation Commission is required by Public Utilities Code Sections 99238.5 and 99401.5 to hold public hearings for obtaining testimony regarding unmet transit needs that can be reasonably met and must adopt findings prior to making an allocation of Local Transportation Funds (LTF) for street purposes. Per the Board action of 1993, a public hearing will not be held in the Valley as all LTF revenues are committed to transit. The information obtained at these hearings will be used in the planning and budget development of the affected transit operators for the subsequent Fiscal Year, as recommend in the transit operators' performance audit.

In January 2003, the Board approved the definitions of "Unmet Transit Needs" and "Reasonable to Meet". An amendment to Section C – Equity, under the definition of "reasonable to meet", was approved by the Board in

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA		SAFE		CMA	

Check all that apply.

CRTC1306a-ns

Attachment: http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2013/crtc1306/AgendaItems/CRCT1306a1-ns.docx

September 2004. These definitions were the result of an extensive effort to update them, with input from organizations representing the transit dependent and the affected transit operators during 2002. The California Department of Transportation has suggested that the definitions be reviewed and adopted on a periodic basis. The definitions were again approved by the Board on July 2008. Attachment A contains the current definitions and no change is being proposed at this time. These definitions will be used to respond to the testimony received.

Two public hearings are proposed for this year with the locations being the Morongo Basin and Victor Valley. The Boards of the Morongo Basin Transit Authority (MBTA) and the Victor Valley Transit Authority (VVTA) will serve as the hearing boards at their respective locations.

The schedules for the proposed hearings are as follows:

Upper Desert Region
Monday, September 16, 2013 at 9:30am
Victor Valley Transit Authority
17150 Smoketree Street
Hesperia, California 92345

Lower Desert Region
Thursday, September 26, 2013 at 5:00 pm
HELEN GRAY CENTER
6601 White Feather Road
Joshua Tree, California 92252

Financial Impact: This item is consistent with the adopted Fiscal Year 2013/2014 Budget. Funding for the public hearings is provided under Task No. 0309 the funding source is LTF Planning

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

Responsible Staff: Nancy Strickert, Transit Analyst

Attachment A

Definitions of "Unmet Transit Needs" and "Reasonable to Meet" adopted by the San Bernardino County Transportation Commission Board of Directors in January 2008

Unmet Transit Needs: Unmet transit needs are any deficiency in the provision of public transit services, specialized transit service or private for-profit and non-profit transportation.

Reasonable to Meet: Reasonable to meet is a determination to be made based upon the following guidelines, performance and financial standards:

A. **Community acceptance** – The proposed service has community acceptance and support as determined by the Unmet Transit Needs public hearing record, the inclusion of adopted programs and plans, the adoption of governing board positions and other existing information.

B. **Timing**

1. The proposed service shall be in response to an existing rather than future need.

2. The proposed service shall be implemented consistent with the timing for federal and state grant approval if such a grant is the most appropriate primary method of funding.

C. **Equity** – the proposed service shall:

1. Not unreasonably discriminate against or in favor of any particular segment of the community.

2. Not result in reduced service levels for other parts of the transit system that have equal or higher priority.

3. Require a subsidy per passenger generally equivalent to a 120% of similar services being operated within the first two full Fiscal Years of operation unless overriding reasons so justify.

D. **Cost effectiveness** – the proposed service shall:

1. Not duplicate other existing transportation services or resources.

2. Consider opportunities for coordinating amount adjoining public entities or with private transportation providers and/or funding agencies in order to maximize existing resources (including financial) as well as legal or customary responsibilities of other entities such as social service agencies, religious organizations and schools.

3. Not adversely affect the operator's ability to meet the required ratio of fare revenue to operating cost after two full Fiscal Years of operations.

4. Meet a productivity level of 80% of the average number of passengers per hour for similar services being operated within the first two full Fiscal Years of operation unless overriding reasons so justify.

E. Operational feasibility – The proposed service must be safe to operate, including the operation of vehicles on adequately maintained roadways.

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TRANSPORTATION MEABURE I

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

Minute Action

AGENDA ITEM: 6

Date: June 20, 2013

Subject: Unmet Transit Needs Public Hearings and Findings

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

1. Review the testimony from the September 2012 Unmet Transit Needs Public Hearings.

2. Adopt Resolution No. 13-043 making Unmet Transit Needs Findings.

Background: This item was reviewed and approved by San Bernardino Associated Governments Board of Directors meeting on April 11, 2013. However, Resolution No. 13-043 was not included in the Board agenda packet. Therefore, this item is again presented to the Board, so the resolution may be properly adopted.

During September 2012, SANBAG, acting as the County Transportation Commission, held two public hearings for the Mountain/Desert Region in the San Bernardino County in response to the Transportation Development Act (TDA) requirement to obtain testimony regarding unmet transit needs that can be reasonably met (PUC Sections 99238.5 and 99401.5). The first meeting was held on September 17, 2012, in Hesperia, covering the upper desert and the second

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA		SAFE		CMA	

Check all that apply.
CRTC1306b-ns
Attachment: http://portal.sanbag.ca.gov/mgmt/APR-Mgmnt/Shared%20Documents/Res%2013043.docx
http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2013/crtc1306/AgendaItems/CRCT1306b1-ns.pdf
http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2013/crtc1306/AgendaItems/CRCT1306b2-ns.pdf

meeting was held on September 27, 2012, in Joshua Tree covering the lower desert region. The governing bodies of the Victor Valley Transit Authority (VVTA) and the Morongo Basin Transit Authority (MBTA) served as the hearing boards.

Attachment A provides the definitions of "unmet transit needs" and "reasonable to meet" that were adopted by the Commission on August 1, 2012. The definitions have been used to determine the recommended formal findings contained in Resolution No. 13-043. Attachment B is Resolution No. 13-043 that contains the formal findings from the public hearing process. Attachment C provides a summary of the testimony received and recommended staff response.

Upper Desert Region

Victor Valley Transit Authority Service Area:

- Service expansion requests, to increase service frequency and coverage;
- Service connectivity and fare structure;
- Additional bus stop requests at the Juvenile Detention Center, Santiago mobile home estates and on Route 43 as well as a general request shelters and benches through the service area;
- Adding Sunday Service;
- Service expansion for Lucerne Valley and Outlying Area;
- Service Performance;
- Down-the-Hill Transportation Service;
- Service Animal Policy;
- Driver Stop Announcement; and
- North Desert/Barstow Area would like to see a subsidized fare for the low-income population.

Lower Desert

Morongo Basin Transit Authority Service Area:

- Service expansion requests to Banning/Beaumont, to Johnson Valley and Wonder Valley and Landers Loop;
- Preventative Maintenance concerns related to seatbelts, signals and general maintenance of the bus;
- Ready Ride concerns related to wheel-chair position in a vehicle, waiting time, missed pick-ups, and carry-on package policy;
- On-Time Performance;
- Adding Sunday Service;
- Bus Stop Improvements, including shelters, for stops on existing routes; and
- Rider compliments.

During this hearing process, it was determined and is recommended that a finding of unmet needs can reasonably be met and that VVTA be directed to implement Sunday Service potentially in conjunction with other service modifications. In accordance with the TDA farebox exemption statute which allows for up to three years to test new services before applying minimum farebox standards, it is also recommended that VVTA use at least a two-year trial period to operate and market this new service. It is important to note that during the past seven (7) unmet needs hearings adding Sunday service was a major request. During previous hearings, VVTA was not able to reasonably meet this request due to the expenses to revenue and the ability to generate sufficient ridership. At this time VVTA has the ability to implement this service without a major impact to their budget and is looking towards implementing Sunday service that will best generate the most ridership.

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

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

Responsible Staff: Nancy Strickert, Transit Analyst

RESOLUTION NO. 13-043

RESOLUTION OF THE SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION ADOPTING UNMET TRANSIT NEEDS FINDINGS BASED ON HEARINGS HELD IN SEPTEMBER 2012

WHEREAS, the San Bernardino County Transportation Commission (SANBAG) is the designated transportation planning agency for San Bernardino County, and is therefore, responsible for the administration of funds under the Transportation Development Act (TDA), as amended; and

WHEREAS, SANBAG adopted definitions of "unmet transit needs" and "reasonable to meet" during its regular meeting of July 6, 2011; and

WHEREAS, SANBAG conducted two public hearings in September, 2012, to obtain testimony regarding unmet transit needs in the Mountain/Desert area of San Bernardino County; and

WHEREAS, SANBAG has given consideration to: the testimony received during the public hearing process pursuant to California Public Utilities Code (PUC) Sections 99238 and 99401.5; input from the Public and Specialized Transportation Advisory and Coordinating Council (PASTACC), the advisory council established pursuant to PUC Section 99238; the adequacy of public and specialized transportation contained in the most recently adopted Regional Transportation Plan; and the analysis of potential alternative public and specialized transportation services that would meet all or part of the transit demand.

NOW, THEREFORE BE IT RESOLVED, that the San Bernardino County Transportation Commission hereby finds:

1. There is one (1) unmet transit need that can be reasonably met within the Victor Valley Region of San Bernardino County provided that:

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

Victor Valley Transit Authority (VVTA) be directed to implement Sunday service, potentially in conjunction with other service modifications that are recommended through the *Comprehensive Operational Analysis* process. In accordance with the TDA fare box exemption statute which allows for up to three years to test new services before applying minimum fare box standards, SANBAG recommends at least a two-year trial period to operate and market this new service. It is further recommended that the specific operational design be focused on serving work and work-related trips, such as retail jobs where employees have Sunday shifts.

2. There are no unmet transit needs that can be reasonably met within the Morongo Basin, Lower Desert Region of San Bernardino County provided that Morongo Basin Transit Authority:

   Refer to MBTA's *Comprehensive Operational Analysis* needs' testimony received in this year's cycle for consideration in the context of analysis of the overall MBTA system.

Approved by the San Bernardino County Transportation Commission at a regular meeting thereof held _____.

ATTACHMENT A

Definitions of "Unmet Transit Needs" and "Reasonable to Meet" adopted by the San Bernardino County Transportation Commission Board of Directors in January 2008

Unmet Transit Needs: Unmet transit needs are any deficiency in the provision of public transit services, specialized transit service or private for-profit and non-profit transportation.

Reasonable to Meet: Reasonable to meet is a determination to be made based upon the following guidelines, performance and financial standards:

A. **Community acceptance** – The proposed service has community acceptance and support as determined by the Unmet Transit Needs public hearing record, the inclusion of adopted programs and plans, the adoption of governing board positions and other existing information.

B. **Timing**

1. The proposed service shall be in response to an existing rather than future need

2. The proposed service shall be implemented consistent with the timing for federal andstate grant approval if such a grant is the most appropriate primary method of funding.

C. **Equity** – the proposed service shall:

1. Not unreasonably discriminate against or in favor of any particular segment of the community.

2. Not result in reduced service levels for other parts of the transit system that have equal or higher priority.

3. Require a subsidy per passenger generally equivalent to a 120% of similar services being operated within the first two full fiscal years of operation unless overriding reasons so justify.

D. **Cost effectiveness** – the proposed service shall:

1. Not duplicate other existing transportation services or resources.

2. Consider opportunities for coordinating amount adjoining public entities or with private transportation providers and/or funding agencies in order to maximize existing

resources (including financial) as well as legal or customary responsibilities of other entities such as social service agencies, religious organizations and schools.

3. Not adversely affect the operator's ability to meet the required ratio of fare revenue to operating cost after two full fiscal years of operations.

4. Meet a productivity level of 80% of the average number of passengers per hour for similar services being operated within the first two full fiscal years of operation unless overriding reasons so justify.

E. **Operational feasibility** – The proposed service must be safe to operate, including the operation of vehicles on adequately maintained roadways.

ATTACHMENT B

San Bernardino Associated Governments
Transportation Development Act – Unmet Transit Needs Public Hearing
Upper Desert Region – September 17, 2012

Testimony	Response
Note: Comments include both testimony given at the VVTA public hearing on September 17, 2012 or otherwise provided in writing to SANBAG.	
SERVICE EXPANSION REQUESTS **Service Frequency and Coverage** • Need to extend the ½ hour frequency to 5:30 a.m. on Route 31 and Route 45. *Terry Martini, Adelanto* *Peggy Funk, via email* • Increased frequency to every ½ hour is needed on Routes 41 and 52. *Terry Martini, Adelanto* • Connections from Route 23 to Routes 40, 41, or 47 are difficult because of the 1 hour headway. Need to shorten route 23 and create a bus that stays in the area. *Robert Hanna, Lucerne Valley* • Need for NTC route to add Barstow Jr. High School as a drop-off and p/u location *Donette Kendall, Apple Valley* *Debra Petrillo, Barstow* • Need for earlier and later buses and more frequent routes, especially on routes that service schools *Hasan Hasan, Adelanto* *Alyssa Hackett, Apple Valley* • Suggests that a small circulator be created for residents of Just Ranch and Spring Valley to travel to the Apple Valley shopping areas. *Teresa Olivo, Dept. of Aging and Adult Services* • No service to Brewster Park or the trailer park at Waterloo and Dale Evans. Nearest stop is a mile away *Lia Hamilton, Apple Valley* • Need a bus that can deviate and service the medical facilities on Corwin *Lia Hamilton, Apple Valley*	These recommendations for ***increased service frequency, greater coverage*** and ***more days of operation*** are being assessed and addressed through the Comprehensive Operational Analysis (COA) that VVTA is currently conducting. An in-depth analysis of most aspects of VVTA's services, its recommendations provides a long-term plan for VVTA for the next five to seven years. The COA recommendations will be available for public comment early in 2013.

Testimony	Response
Note: Comments include both testimony given at the VVTA public hearing on September 17, 2012 or otherwise provided in writing to SANBAG.	
Service Connections and Fares • Need for improved connectivity between buses. Currently missing transfers during peak hours • Deviation route to Hesperia Lake is too expensive *Lee Ann Mercer, Hesperia*	These issues of ***service connectivity*** and fare ***structure*** are being assessed and addressed through the Comprehensive Operational Analysis (COA) that VVTA is currently conducting. An in-depth analysis of most aspects of VVTA's services, its recommendations will provide for a long-term plan for VVTA for the next five to seven years. The COA recommendations will be available for public comment early in 2013.
Juvenile Detention Center Service Request • A stop is needed at the High Desert Juvenile Detention Center- 21101 Dale Evans Parkway, Apple Valley. Visitors, largely parents and many dependent upon public transit, travel here on Monday through Thursday for visiting hours from 4:30 p.m. to 9 p.m. There are 110 minors housed at the facility and 30 to 40 family members visit weekly. *Peter Bockman* *High Desert Juvenile Detention and Assessment Center*	This facility is approximately 6 miles beyond Route 40's Wanaque/ Serrano and Carlisle stops, at its northernmost locations. At present, it is not feasible to serve the Detention Center. However, VVTA is encouraged to consider future year tripper-type services that might provide periodic service, perhaps just several nights a week, if other northward Apple Valley destinations can also be served. Further, facility administrators may wish to pursue vehicle donation opportunities – through VVTA – where visiting parents could conceivably be met at the Route 40 stops. The Detention Center would become responsible for maintaining and operating the vehicle, to assist family members in making connections to or from available public transit. If no such vehicle was anticipated from the VVTA vehicle replacement program, the Detention Center may be eligible for a capital project through the March 2013 High Desert JARC/ New Freedom grant cycle.
Sunday Service • Riders need [restoration of] Sunday service in order do shopping, go to the mall, pharmacy to get medicine, go to church and go to work and maintain independence. *Laura Mancha, Rolling Start* *Terry Martini, Adelanto* *Robert Hanna, Lucerne Valley* *Cruz Vizcaino, Victorville* *Hasan Hasan, Adelanto* *Alyssa Hackett, Apple Valley*	Recommend that this is a finding of unmet need that can reasonably be met and that the VVTA be directed to implement Sunday service, potentially in conjunction with other service modifications that are recommended through the COA process. In accordance with the TDA fare box exemption statute which allows for up to three years to test new services before applying minimum fare box standards, SANBAG recommends at least a two-year trial period to operate and market this new service. It is further recommended that the specific operational design be focused on serving work and work-related trips, such as retail jobs where employees have Sunday shifts. Addition of Sunday service often creates increased weekday ridership as well.

Testimony	Response
Note: Comments include both testimony given at the VVTA public hearing on September 17, 2012 or otherwise provided in writing to SANBAG.	
Lucerne Valley and Outlying Area Service Request • Need extended late night service in Lucerne Valley after 7pm especially during the minor league baseball season in Adelanto for the Mavericks games. • Route 23 only services Foothill and Mesa on return from Apple Valley and makes for a 1½ hour trip. • Currently no return trip from Lucerne to Foothill, Mesa, Esmeralda and Crystal Creek roads. *Robert Hanna, Lucerne Valley*	These recommendations for additional service to ***Lucerne Valley and outlying area services*** are being assessed and addressed through the Comprehensive Operational Analysis (COA) that VVTA is currently conducting. COA recommendations will be available for public comment early in 2013.
Service Performance • Missed connections with deviated route from route 40. Stranded after missing deviation pick-up on last bus of the evening, put to voice mail. No one was manning the phone after hours. *Lia Hamilton, Apple Valley*	VVTA's COA will address service performance matters and will make specific recommendations to improve service reliability. Additionally, VVTA is directed to review any safe-ride-home practices, including procedures and timing of dispatch at the end of the day and in communication protocols between paratransit and fixed-route dispatch. Such procedures, and any last run procedural clarifications, should be communicated to the ridership in a variety of ways.
Down-the-Hill Transportation Service • Lifeline service is helpful, but down-the-hill services is needed more than three times per week *Lee Ann Mercer, Hesperia* B-V Link services is very helpful in getting low-income people from Barstow to Apple Valley [and now on to the San Bernardino Valley]. *Sheri Randolph, Desert Manna*	The new service between Barstow, Victorville and San Bernardino, called the B-V Link was initiated in January 2011 and expanded Oct. 1st, 2012 to originate in Fort Irwin National Training Center. Three days a week, there are two daily roundtrips from Fort Irwin and four daily round trips between Victorville and the San Bernardino Valley Operating grants to make this possible only fund the Lifeline service at its current three-day-a-week schedule. This service was a recommendation of the ***2009 Victor Valley Long Distance Commuter Needs Assessment.*** That study concluded that there was insufficient demand to support a VVTA fixed-route commuter service. VVTA's new van pool service commenced this fall to address down-the-hill trip needs for work and other commute purposes and is proving highly successful. This also was a recommendation of the ***2009 Commuter Needs Assessment.*** The program provides up to $400 monthly to each vanpool riders' commuting expense. Early indications suggest this is being well utilized. The program will is now open to general public. For more information, send an email to: vanpool@vvta.org Or visit www.vvta.org/vanpool

Testimony	Response
Note: Comments include both testimony given at the VVTA public hearing on September 17, 2012 or otherwise provided in writing to SANBAG.	
North Desert/ Barstow Area • B-V Link services is very helpful in getting low-income people from Barstow to various destinations. However there is still a need for free transportation – Desert Manna was initially provided with 50 free round trip tickets that were helpful but the organization has no funds with which to purchase more. • Need more subsidized fares for the low-income population that uses the BV-Link. These fares, while low for the general public, are still difficult for those of lowest income who need to use health care services in the San Bernardino Valley. *Sheri Randolph, Desert Manna*	With regard to B-V Link fares, public transit programs cannot routinely provide free fare tickets – initial promotion was a time-limited exception. And unfortunately the grant funding supporting the BV Link explicitly disallows providing ongoing funds for fare subsidy or fare card purchasing with transit funding. The human service agency is encouraged to seek philanthropic funding for this. VVTA is encouraged to review the B-V Link fare structure within its COA analysis, given that the B-V Link ridership has been solid and actual operating experience exists, to report on its fare box recovery rate. Current fares approximate 20 cents per mile for these long trip legs. The fare structure should be reviewed at the fiscal year end, in the context of the high ridership levels the service has attracted. Unfortunately, it is not feasible to comply with state law regarding minimum fare box requirements and offer fare reductions or discount group ridership rates. Finally, Desert Manna administrators may wish to pursue grant funding to secure a vehicle to provide trips that cannot be served by public transportation. The agency could pursue procuring a donated vehicle from VVTA to meet some of its consumers' trip needs. Also it is eligible for the March 2013 vehicle grant program, FTA 5310 state-level competition that Caltrans manages.
BUS STOP AMENITIES – Benches/ New Stops/ Wheelchair Pads • More shelters and benches to aid the travel of persons with disabilities *Laura Mancha, Rolling Start* • A stop is needed at the Santiago Mobile Home Estates. Clear cemented area near High School *Florence Macy, Apple Valley* • Stop on Route 43 past Nisqually is just dirt and when it rains someone will get stuck in the mud. *Florence Macy, Apple Valley*	VVTA Administrators should undertake improvements that may be possible to existing stops within currently budgeted funds. The COA is expected to provide recommendations by which to prioritize bus stop improvements. Additionally, for stop improvements that cannot otherwise be funded, VVTA should continue to work with the Cities to make application for JARC/ New Freedom funding during the next funding cycle and to SANBAG's Title III call for projects. Both grant programs will be making funds available during 2013. Such stop improvements are eligible projects for both funding sources.

Testimony	Response
Note: Comments include both testimony given at the VVTA public hearing on September 17, 2012 or otherwise provided in writing to SANBAG.	
Driver Stop Announcement • Drivers are sometimes reluctant to announce the next stop which is difficult for those that are visually impaired. *Laura Mancha, Rolling Start*	VVTA is directed to ensure its contractor undertakes additional driver training to address and review existing policy with regard to federal Americans with Disabilities Act (ADA) stop announcement requirements and with respect to service animal regulations. Resources to facilitate this include excellent training tools available through Easter Seal's Project Action and regulatory summaries from FTA and the US Dept. of Civil Rights: **Project Action -** ***ADA Stop Announcement Program: Training Transit Operators and Supervisors on Calling Out Stops*** http://bussafety.fta.dot.gov/uploads/resource/3174_filename **Federal Transit Administration -** ***ADA Regulatory Changes – Fact Sheet (Updated May 2011)*** http://www.ada.gov/regs2010/factsheets/title2_factsheet.html **US Dept. Civil Rights Division -** ***ADA 2010 Revised Service Animal Requirements*** http://www.ada.gov/service_animals_2010.htm
Service Animal Policy • Operators must recognize that service animals are not pets and play a vital role in the life of the person who relies upon them. *Laura Mancha, Rolling Start*	

San Bernardino Associated Governments
Transportation Development Act – Unmet Transit Needs Public Hearing
Morongo Basin/Lower Desert Region – September 27, 2012

Morongo Basin/ Lower Desert Region	
Testimony	**Response**
Note: Comments include both testimony given at the MBTA public hearing on September 17, 2012 or otherwise provided in writing to SANBAG.	
Concerned about vehicle preventative maintenance on the bus; bus signal for stopping may not be working; wants to ensure that bus driver is not responsible for everything. Concerned about safety and seat belts, needing better seat belts for persons in wheel chairs which use two spaces but only one wheelchair seatbelt seems to be available. Concerned this will not be enough to stop a wheelchair [in the event of a bus accident]. *Debra Sands, Yucca Valley*	MBTA vehicle maintenance follows all Federal Transit Administration and California Highway Patrol prescribed requirements. MBTA maintenance practices are inspected annually by the California Highway Patrol under its terminal inspection program. MBTA currently holds a "satisfactory" inspection certificate indicating no concerns. Additionally, all vehicles are subject to a mandatory internal Preventative Maintenance Schedules and daily preventative maintenance checks.
SERVICE TO OUTLYING AREAS – Wonder Valley and Johnson Valley Reach-Out 29 is concerned about unmet transportation needs due to cuts in the budget of San Bernardino County DAAS [Dept. of Aging and Adult Services]. We are seeing significant needs in Wonder Valley, among other areas outside of Morongo Basin communities along 29 Palms Highway: • Along dirt roads in three miles from nearest paved roads • To destinations that include medical apts. / doctors' offices. *Robin Schlosser, Reach-Out Morongo* Johnson Valley, even service once daily to and from the Johnson Valley Improvement Association would be extremely helpful. *Atia Baig, DAAS for Betty Munson, Gloria Williams, John Withrow and Marilyn Kuder of Johnson Valley* Desiring Johnson Valley service beyond the existing terminus of Rt. 21 at Linn Rd. and Highway 24. *William Jenson, Landers*	MBTA is still working to implement and improve its core services, ensuring on-time performance and moving towards more frequent service and so cannot provide additional or expanded services to Johnson Valley or Wonder Valley at this time. Resources for these outlying areas include: 1. MBTA's Route 34 on Tuesday and Wednesday mornings, for service within 17 miles to the east of Adobe Road on Amboy Rd.- 7 miles to the east on Hwy 62 near Godwin Rd. for trips to the north and south of those roads up to approx. two to three miles. 2. The V-Trans and DAAS-administered volunteer driver mileage reimbursement program which recently received a grant from MBTA's TAG program for expanded service. SANBAG encourages the MBTA to track trip requests and demand levels from these areas over the next year to determine whether additional service could have a reasonable prospect of meeting the agency's minimum productivity requirements and therefore be considered for implementation.

Morongo Basin/ Lower Desert Region	
Testimony	**Response**
Note: Comments include both testimony given at the MBTA public hearing on September 17, 2012 or otherwise provided in writing to SANBAG.	
READY RIDE –Service Issues and Guidelines Ready Ride appears to have gone from a two-wheelchair position vehicle to a one-wheelchair position vehicle. Debra Sands, • ReadyRide – insufficient room for two persons in wheelchairs but Ready Ride will only accept a single wheelchair rider at a time. The second person has to wait for a return vehicle; need larger vehicles or more wheelchair capacity. • ReadyRide – each month on the first and third of the month when SSI and SSC checks come out; the two Ready Ride buses in Joshua Tree are often at capacity during these first days of the month. *Phyllis Kimes, Joshua Tree, as reported by Atia Baig, DAAS* Ready Ride did not pick up an individual on three separate occasions in Yucca Valley. *Atia Baig, DAAS* DAR requires waiting at both ends of the trip; takes a big portion of the day to use DAR. *Kari Grimes, Morongo Basin Senior Support Center* DAR rider picked up with other riders who live in the north 40, far out of town. She is late because they are picked up first. Need an additional van so that people in town can be picked up together and those on outskirts picked up by themselves. *Kathi Schmidt [via telephone]*	**Wheelchair Positions and Capacity Problems on Ready Ride** - The mid-term changes include some service modifications which will introduce some modifications to service provision. However, the COA recommends no changes to the vehicle type which would have increased the number of wheel chair positions on MBTA vehicles. Dispatch staff will monitor passenger reservations and note when vehicle wheelchair boarding capacity is exceeded and invite riders to take a later trip. Similarly, riders are encouraged to travel in the mid-day, off-peak periods during these high use times to increase the likelihood of sufficient space on-board the vehicles. All MBTA Ready Ride vehicles are equipped with two mobility device securement locations. However, on rare occasions, the driver has encountered a situation where only one person in a wheelchair can be loaded at a time, due to the length of the mobility device. When this occurs, dispatch does its best to make arrangements for a rider that is inconvenienced. **Ready Ride Trip Scheduling** – MBTA dispatch will review and consider the ride-times of individual riders and if possible modify the size of the batched trips, if it seems that ride-times are becoming excessive. Passengers are encouraged to remember, however, that Ready Ride is a shared-ride service and cannot provide direct point-to-point transportation for individuals.

Morongo Basin/ Lower Desert Region	
Testimony	**Response**
Note: Comments include both testimony given at the MBTA public hearing on September 17, 2012 or otherwise provided in writing to SANBAG.	
Ready Ride - Carry-on Package Policy Ready Ride – it would be helpful to increase the number of carry-on items; allowing six grocery bags would be helpful. *Phyllis Kimes, Joshua Tree, as reported by Atia Baig, DAAS*	**Rider Policies Regarding Packages** – MBTA policy currently allows six (6) grocery bags per rider. This is a generous policy and in light of the capacity issues for Ready Ride, it is not feasible to increase the number of allowable carry-on items. Existing policy should be reviewed, in terms of how clearly it is communicated to rider, in print, on-line, and posted on the buses.
ON TIME PERFORMANCE Sometimes buses are running early and they don't stop to wait. If one is not at the stop the MBTA buses won't wait at the stop until the scheduled departure time. *Atia Baig, DAAS*	MBTA's recent COA did identify challenges experienced by the operator with regard to on-time performance, noting a system-wide level of performance of 78 percent on-time. Sometimes when drivers realize they will be running late, they may leave stops early to off-set later eroding schedules. The MBTA is in the process of implementing COA recommendations with regard to improving on-time performance at the earliest possible timeframes and the schedules are being revised accordingly with appropriate advance notice of these changes to be provided the ridership public.
LANDERS LOOP and WEEKEND SERVICE Saturday and Sunday service would be very helpful to residents. *Atia Baig, DAAS* Need more dial-a-ride service on Saturdays and Sundays. *Mary Lou Almond, Joshua Tree*	MBTA's COA provided for recommendations for adding Sunday service and plans to do so effective July 1st, 2013. Some increase in fares is expected to accompany this, the first fare increase to the system since the late 1990's.
ROUTE 30 STEP STOOL It would be helpful if Route 30 could have a stepstool like Route 31 does. *Regina Wagner, as reported by Teresa (MBTA)*	This Route is normally served by a low-floor bus which most riders can readily step into, negating the need for a stool.

Morongo Basin/ Lower Desert Region	
Testimony	**Response**
Note: Comments include both testimony given at the MBTA public hearing on September 17, 2012 or otherwise provided in writing to SANBAG.	
BUS STOP/ TURN-OUT LANE Need a bus near Sunburst and Highway 62, near the anticipated Dollar Tree Store. We need a safe turn-out lane making it safer for passengers to get on or disembark the bus. *Mary Lou Almond, Joshua Tree* Need a shelter at Avalon and Paxton as it is a very busy stop. *Janice Simes as reported by Teresa (MBTA)*	A request has been made to County Land Use Planning that the Dollar General project provide this amenity. Such improvements are outside of the authority of the MBTA. The Avalon and Paxton stop was evaluated by MBTA staff and stop improvements are not scheduled for this location.
SERVICE ROUTING AND FREQUENCY • Need more direct route between Joshua Tree FROM Twenty-nine Palms. • Dial-a-Ride service takes a long time; riders have to wait a long time. • There is no stop near facility at all; seniors are walking a distance. • Increase the number of routes. *Kari Grimes, Morongo Basin Senior Support Center, Yucca Valley*	As noted, MBTA's Ready Ride program is a shared-ride service. While not as convenient as driving one's own vehicle, it does provide some level of transportation assistance. Dispatch is directed to review passenger wait times to this facility to determine if there are any extended waits longer than the existing policy of pick-up window within 45 minutes of rider's scheduled pick-up times. The MBSCC is located along the current Route 7A. MBTA has installed a stop and bench at this location.
COMPLIMENTS - Many seniors use Dial-a-Ride; it is a wonderful service. - Thank you for the rides and the great service. - Thank you for the drivers and dispatch. - Residents of Morongo Basin appreciate the TREP mileage reimbursement program. *Atia Baig, DAAS // Regina Wagner // Janice Simes*	Service compliments are always nice to receive and reflect the appreciation of the MBTA program and its drivers by its riders.

Governments SANBAG Working Together

San Bernardino Associated Governments

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 7

Date: June 20, 2013

Subject: License Agreements to cross San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission railroad right-of-way with Joshua Grading and Charter Communications

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

1. Approve Contract No. R13162 with Joshua Grading granting a license agreement on the San Gabriel Subdivision railroad right-of-way, City of Upland mile post 101.77;
2. Approve Contract No. R13163 with the Charter Communications granting a license agreement on the San Gabriel Subdivision railroad right-of-way, City of Rancho Cucamonga mile post 97.72;

*

Approved
Commuter Rail and Transit Committees

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

CRTC1306a-mmm
http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/R13162.docx
http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/R13163.docx
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http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/R13167.docx
http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/R13161.docx

3. Approve Contract No. R13164 with Omnitrans granting a license agreement on the Redlands Subdivision railroad right-of-way, City of San Bernardino mile post 1.0;
4. Rescind Contract No. R13113 with Griffith/Comet JV (Joint Venture) granting a right-of-entry onto Redlands Subdivision railroad right-of-way, City of San Bernardino mile post 1.0;
5. Approve Contract No. R13166 with Griffith/Comet JV (Joint Venture) granting a right-of-entry onto Redlands Subdivision railroad right-of-way, City of San Bernardino mile post 1.0;
6. Rescind Contract No. R13112 with the City of San Bernardino granting a license agreement on the Redlands Subdivision railroad right-of-way, City of San Bernardino mile post 1.0;
7. Approve Contract No. R13165 with the City of San Bernardino granting a license agreement on the Redlands Subdivision railroad right-of-way, City of San Bernardino mile post 1.0;
8. Approve Contract No. R13167 with the City of Rialto granting a license agreement on the San Gabriel Subdivision railroad right-of-way, City of Rialto mile post 86.4 east;
9. Approve Contract No. R13161 with the City of Rialto granting a license agreement on the San Gabriel Subdivision railroad right-of-way, City of Rialto mile post 86.4 west.

Background:

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

Historically, the management services provided to SANBAG by LACMTA 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 Joshua Grading & Excavation license agreement R13162 to be granted will be for storage and parking on SANBAG's rail right-of-way property in the City of Upland, approximately 20,000 Sq. Ft.

Charter Communications R13163 is requesting a license agreement for an overhead crossing on SANBAG's rail right-of-way in the City of Rancho Cucamonga, approximately 1,000 Sq. Ft.

Omnitrans R13164 is seeking a license agreement for an underground and street level crossing on SANBAG's rail right-of-way in the City of San Bernardino, approximately 5,520 Sq. Ft. This work will be for the sbX project currently under construction.

The Griffith/Comet JV R13166 needs a right-of-entry agreement on SANBAG's rail right-of-way to perform the work needed for the Omnitrans license agreement described above.

The license agreement with the City of San Bernardino R13165 is the same location as the Omnitrans license agreement. This license agreement will need to be approved by the City Council when they approve the sbX project as a whole.

Lastly, the City of Rialto R13167 is requesting a license agreement for an underground crossing on the SANBAG rail right-of-way in the City of Rialto, approximately 1,000 Sq. Ft on the east side of the tracks.

A second license agreement with the City of Rialto R13161 is also for an underground crossing on the SANBAG rail right-of-way in the City of Rialto, approximately 1,000 Sq. Ft but is on the west side of the tracks.

Each license does allow SANBAG to terminate the license with thirty (30) days prior written notice. Additionally, in some instances an administrative fee is applicable and will be given 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 one-time (1) administration fee to Epic Land Solutions, Inc. for the following agreements; Charter Communications, Omnitrans, Griffith/Comet JV, City of San Bernardino (paid by Omnitrans under R13164), and both agreements with the City of Rialto. Additionally Charter Communications will be charged an annual license fee of $2,000. Joshua Grading & Excavation, Inc will not be charged an administration fee. SANBAG will incur these charges; the license agreement is to the betterment of SANBAG and will reduce other charges that would have occurred without the license agreement. There will be a $2,000 annual license fee for Joshua Grading & Excavation, Inc. these fee's will be offset by a $1,500 a month reduction for property maintenance. The net payment for the license will be $500 monthly.

All fees will be collected by Epic on behalf of SANBAG and retained in the SANBAG rail assets trust account until the funds are transmitted to SANBAG's finance department. The revenue may be budgeted in subsequent Fiscal Years for projects that benefit SANBAG's rail systems/assets.

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

Responsible Staff: Monica Morales, Transit Specialist

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. R 13162 Amendment No. _____

By and Between

San Bernardino Associated Governments acting as the San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission and Joshua Gradeing & Excavation,Inc

Contract Description License Agreement on the San Gabriel Subdivision Mile Post 101.77

Board of Director's Meeting Date: June 5, 2013

Overview of BOD Action: Approve Contract No. R13162 with Joshua Grading granting a license agreement on the San Gabriel Subdivision railroad right-of-way, City of Upland mile post 101.77

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

CONTRACT OVERVIEW

Original Contract Amount	$	500.00	**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	$	500.00	**TOTAL CONTINGENCY VALUE**	$	
TOTAL BUDGET AUTHORITY *(contract value + contingency)*				$	500.00

Contract Start Date	Current Contract Expiration Date	Revised Contract Expiration Date
7/5/13	6/30/18	

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

FINANCIAL INFORMATION

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

☐ A Budget Amendment is required. How are we funding current FY? N/A

☐ 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 _____ %

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

CONTRACT NO: R13162

By and Between

SAN BERNARDINO ASSOICATED GOVERNMENTS acting as the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY and the SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

And

JOSHUA GRADING & EXCAVATION, INC.

For

License Agreement on the San Gabriel Subdivision Mile Post 101.77

File: RSSB003759

LICENSE AGREEMENT

This LICENSE AGREEMENT ("Agreement") is made and entered into as of July 10, 2013 by and between the **SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY AND THE SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION**, a public agency existing under the authority of the laws of the State of California (jointly referred to as "SANBAG"), and **JOSHUA GRADING & EXCAVATION, INC.** a corporation of the state of California, ("LICENSEE"), upon and in consideration of the agreements, covenants, terms and conditions below:

PART I

BASIC LICENSE PROVISIONS

1. Description of License Property:
The easterly portion (License Property) of a parcel of land (Entire Parcel) located on SANBAG property on the San Gabriel Subdivision in the City of Upland, County of San Bernardino at Mile Post 101.77 (SCRRA Mile Post 37), said Entire Parcel being bounded by Euclid Avenue on the west, Stowell Avenue on the south and 2nd Street on the east and railroad corridor on the north, with the License Property measuring Ninety Feet (90') by Two Hundred Twenty-two Feet (222') measured westerly from 2nd Street
Approximate area:
Twenty Thousand Square Feet (20,000 Sq. Ft.) (§1.1)

2. Use of License Property:
Licensee may use the License Property only for: Storage and parking of equipment and vehicles only, and no other uses (§1.1, §10)

3. Commencement Date:
July 10, 2013, or upon execution of the SANBAG Board of Directors, whichever comes first (§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. $_____per year, payable annually in advance

☒ b. $2,000.00* per month, payable monthly in advance (§2.1)

*As an offset to the monthly rental amount, for the License Property, Joshua shall provide all labor and material necessary to provide maintenance to the Entire Parcel in a clean and orderly manner at all times. Maintenance duties at the Entire Parcel shall include but are not limited to: Providing and maintaining fencing, conduct graffiti abatement, remove trash and debris from property, perform tree trimming, streetscapes mowing, weed abatement when needed and comply with any City ordinance, subject to review and approval of Epic Land Solutions, Inc. at all times; and subject to the terms and conditions of the existing subcontract maintenance agreement between Joshua and Epic. The estimated costs to maintain the Entire Parcel of 57,000 Square Feet is $1,500.00 a month and the net rental for the License Area shall be $500.00 per month as long as Licensee satisfactorily maintains the Entire Parcel.

B. Additional License Fee:

☐ a. One-time Administrative fee: $0.00

☐ b. Other fees: $N/A (§2.1)

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 (§2.2)

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

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

8. Licensee's Address:
JOSHUA GRADING & EXCAVATING, INC.
P.O. Box 292329
Phelan, California 92329-2329 (§24.1)
Attn: Tom Craft
760-949-5867

9. Facility:
Storage and parking of equipment and vehicles (§1.1)

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.

JOSHUA GRADING & EXCAVATION, INC.

By: _____

Tom Craft
Secretary

Date: _____

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

By: _____

Janice Rutherford
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____

Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____

Jeffery Hill
Contract Administrator

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.

JOSHUA GRADING & EXCAVATION, INC.

By: _____

Name:
Title:

Date: _____

SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

By: _____

Janice Rutherford
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____

Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____

Jeffery Hill
Contract Administrator

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"B" Insurance Requirements
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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 supersede all prior verbal or written agreements and understandings between the Parties with respect to the items set forth herein. This Agreement may be amended at any time by the written agreement of SANBAG and Licensee. No amendments, changes, revisions or discharges of this Agreement in whole or in part, or at any time, shall be binding upon the parties unless the same shall be in writing and executed by both parties hereto.

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

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

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

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

24.15 Termination for Public Use. In addition to any and all other termination rights of SANBAG and regardless of the Term set forth in the Basic License Provisions, Licensee hereby expressly recognizes and agrees that the License Property is located on SANBAG property that may be developed for public projects and programs which may be implemented by SANBAG or other public agencies, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects and/or other public uses (collectively and individually "Public Use"), and that Licensee's use of the License Property under this License is a temporary interim use as to which Licensee has no right to nor expectation of use for any particular length of time. Accordingly, as a condition to entering into this License, SANBAG expressly reserves the right to terminate the License for any of such Public Use by thirty (30) days written notice to Licensee. Licensee expressly acknowledges and agrees that:

Licensee

SANBAG

(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"

License Property

[To Be Inserted]

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

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by SANBAG. At the option of SANBAG, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SANBAG, its officials, 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. **Paving and Fencing.** If required, Licensee will pave License area with asphalt or concrete, and Licensee will construct a chain link fence (or better quality) measuring a minimum of six (6) feet high around the entire perimeter of Premises described in Exhibit "A". Licensee shall be responsible for the total expense of fencing and asphalt.

2. **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.

3. **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.

4. **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.

5. **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.

6. **Utilities.** Licensee shall pay for any and all utilities for its benefit, security and use.

7. **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.

8. **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.

10. **Tanks.** No fuel tanks shall be allowed either above or below the ground at any time.

11. **Maintenance.** No major maintenance of vehicles shall be allowed at any time.

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. R 13163 Amendment No. _____

By and Between

San Bernardino Associated Governments acting as the San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission and Charter Communications

Contract Description License Agreement on the San Gabriel Subdivision Mile Post 97.72

Board of Director's Meeting Date: June 5, 2013

Overview of BOD Action: Approve Contract No. R13163 with the Charter Communications granting a license agreement on the San Gabriel Subdivision railroad right-of-way, City of Rancho Cucamonga mile post 97.72;

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

CONTRACT OVERVIEW

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

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
6/5/13	6/30/18	

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

FINANCIAL INFORMATION

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

☐ A Budget Amendment is required. How are we funding current FY? N/A

☐ 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 _____ %

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

CONTRACT NO: R13163

By and Between

SAN BERNARDINO ASSOICATED GOVERNMENTS acting as the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY and the SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

And

CHARTER COMMUNICATIONS

For

License Agreement on the San Gabriel Subdivision Mile Post 97.72

File: RSSB003760

LICENSE AGREEMENT

This LICENSE AGREEMENT ("Agreement") is made and entered into as of July 10, 2013 by and between the **SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY AND THE SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION**, a public agency existing under the authority of the laws of the State of California (jointly referred to as "SANBAG"), and **CHARTER COMMUNICATIONS** a corporation of the State of California, ("LICENSEE"), upon and in consideration of the agreements, covenants, terms and conditions below:

PART I

BASIC LICENSE PROVISIONS

1. Description of License Property:
An overhead crossing of SANBAG's property commonly known as the San Gabriel Subdivision at Etiwanda Avenue approximately thirty nine feet (39') easterly from the center line of said street and southerly of Whittram Avenue in the City of Rancho Cucamonga, County of San Bernardino, and Mile Post 97.72 (SCRRA Mile Post 44.1)
Approximate area:
One Thousand Square Feet (1,000 Sq. Ft.) (§1.1)

2. Use of License Property:
Licensee may use the License Property only for:
Installation, operation, maintenance and repair of one (1) overhead coaxial cable only, and no other uses (§1.1, §10)

3. Commencement Date:
July 10, 2013 or upon execution of the SANBAG Board of Directors, whichever comes first. (§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. $2,000.00 per year, payable annually in advance
     - ☐ b. $00.00__ per month, payable monthly in advance (§2.1)
   - B. Additional License Fee:

☒ a. One-time Administrative fee: $1,500.00
☐ b. Other fees: $0.00 (§2.1)

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 (§2.2)

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

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

8. Licensee's Address:
CHARTER COMMUNICATIONS
4781 Irwindale Avenue
Irwindale, California 91706 (§24.1)
Attn: Anthony K. Wright
Construction Tech Lead
(951) 343-8411 x 5161
Anthony.Wright@chartercom.com

9. Facility:
One (1) overhead coaxial cable (§1.1)

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.

CHARTER COMMUNICATION

By: _____

Beth Thompson
Finance Business Planning

Date: _____

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

By: _____

Janice Rutherford
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____

Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____

Jeffery Hill
Contract Administrator

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.

CHARTER COMMUNICATIONS

By: _____

Beth Thompson
Finance Business Planning

Date: _____

SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

By: _____

Janice Rutherford
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____

Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____

Jeffery Hill
Contract Administrator

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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 supersede all prior verbal or written agreements and understandings between the Parties with respect to the items set forth herein. This Agreement may be amended at any time by the written agreement of SANBAG and Licensee. No amendments, changes, revisions or discharges of this Agreement in whole or in part, or at any time, shall be binding upon the parties unless the same shall be in writing and executed by both parties hereto.

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

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

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

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

24.15 Termination for Public Use. In addition to any and all other termination rights of SANBAG and regardless of the Term set forth in the Basic License Provisions, Licensee hereby expressly recognizes and agrees that the License Property is located on SANBAG property that may be developed for public projects and programs which may be implemented by SANBAG or other public agencies, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects and/or other public uses (collectively and individually "Public Use"), and that Licensee's use of the License Property under this License is a temporary interim use as to which Licensee has no right to nor expectation of use for any particular length of time. Accordingly, as a condition to entering into this License, SANBAG expressly reserves the right to terminate the License for any of such Public Use by thirty (30) days written notice to Licensee. Licensee expressly acknowledges and agrees that:

Licensee

SANBAG

(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.

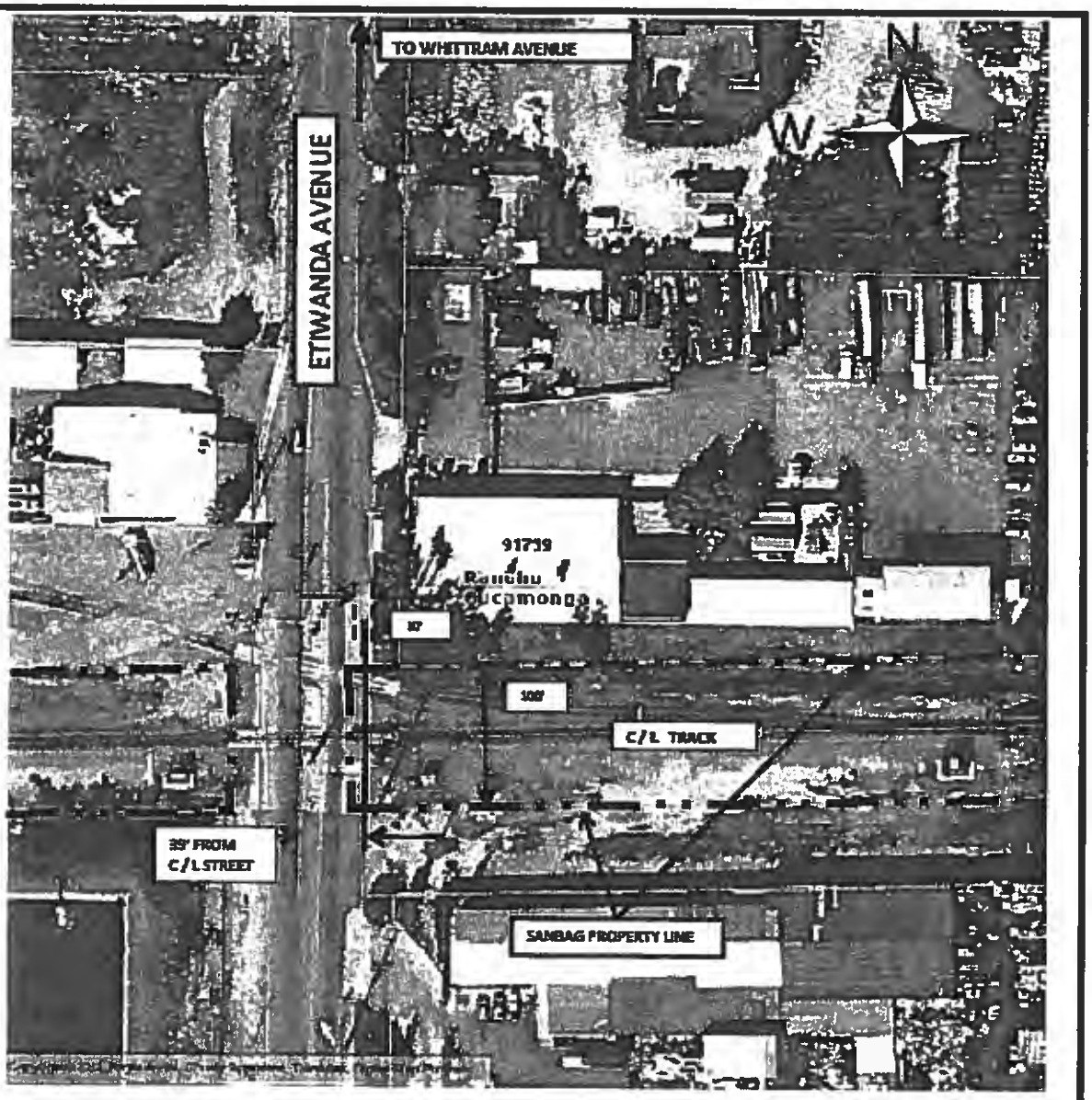
24.17 Time of Essence. Time is of the essence of this Agreement.

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"
License Property



ONE OVERHEAD COAXIAL CABLE FOR COMMUNICATIONS

APN: 0229-162-16,17			
Date 04/23/2013			
Branch/Line SAN GABRIEL SUB	Mile Post SCRRA 44.1 SANBAG 37.72	Lessee/Licensee CHARTER COMMUNIC.	Governments SANBAG Working Together
County SAN BERNARDINO	Nearest Cross Street ETIWANDA AVE.	Contract Number RSSB003760	SAN BERNARDINO ASSOCIATED GOVERNMENTS
Area 1,000 SQ.FT.	City RANCHO CUCAMONGA	Scale 1"=100'	1170 W. 3rd Street, 2nd Floor
Map Reference SSB5A	Use OH COAX CABLE	Thomas Guide Grid 601 H3	San Bernardino, CA 92410-1715

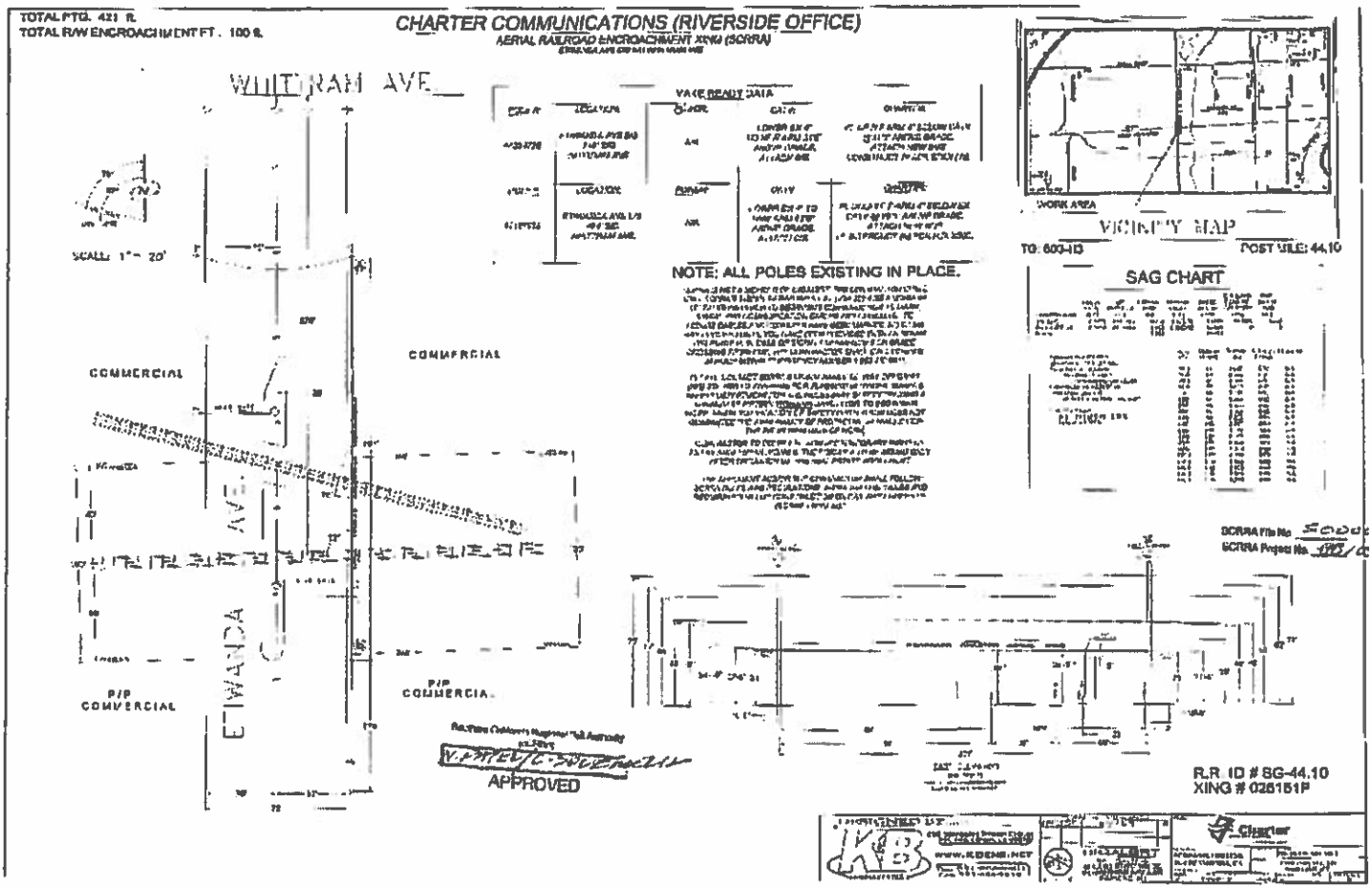

TOTAL PTG. 421 ft.
TOTAL R/W ENCROACHMENT FT. 100 ft.
CHARTER COMMUNICATIONS (RIVERSIDE OFFICE)
AERIAL RAILROAD ENCROACHMENT XING (SCRRA)
WILTRAM AVE
SCALE: 1" = 20'
COMMERCIAL
COMMERCIAL
ETIWANDA AVE.
P/P
COMMERCIAL
P/P
COMMERCIAL
NOTE: ALL POLES EXISTING IN PLACE.
VICINITY MAP
WORK AREA
SAG CHART
APPROVED
R.R. ID # SG-44.10
XING # 025151P

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"

ADDITIONAL REQUIREMENTS
SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (SCRRA)

1. Licensee agrees to execute and deliver to SCRRA, prior to commencing any work within the rail right-of-way, SCRRA Right of Entry Agreement (Form Number 6) and deliver and secure approval of the insurance required by the two exhibits attached to Form Number 6. If the Licensee retains a contractor to perform any work within the rail right-of-way, the Licensee shall incorporate in its contract documents SCRRA Form Number 6 and SCRRA Rules and Requirements for Construction on Railway Property (Form Number 37). SCRRA's Right of Way Engineers Office can be reached at 1-213-452-0353.

2. The Licensee agrees to comply and to ensure that its contractor complies with instructions of SCRRA's Employee-In-Charge (EIC) and representatives, in relation to the proper manner of protection of the tracks and the traffic moving theron, pole lines, signals and other property of SCRRA or its member agency tenants or licensees at or in the vicinity of the work, and shall perform the work at such times as not to endanger or interfere with safe and timely operation of SCRRA's track and other facilities.

3. Licensee's contractor, at its sole cost and expense, shall obtain and maintain, in full force and effect, insurance as required by SCRRA/ SANBAG during the entire construction period. The Contractor shall furnish copies of the insurance certificates to all affected operating railroads and agencies.

4. Third Party Safety Training is required for all work near or within the railroad right-of-way. Licensee's contractor shall schedule safety training by calling 1-877-452-0205. The contractor will need a valid SCRRA project number, located in the upper right hand corner of the Right-of-Entry. No work may commence on the railroad right-of-way until this training has been completed.

5. Licensee's contractor will call 1-877-452-0205 to arrange for flagging services a minimum of five (5) working days prior to beginning work. Although every effort is made to accommodate your schedule, prior notification does not guarantee the availability of protective services for the proposed date of work.

6. Licensee or Licensee's contractor shall be responsible for the location and protection of any and all surface, sub-surface, and overhead lines and structures. Licensee shall not damage, destroy or interfere with any existing encumbrances, licenses and rights (whether public or private), granted upon or relating to the railroad right-of-way.

7. The contractor shall call SCRRA's signal department at 1-909-592-1346 to mark signal and communication cables and conduits. In case of signal emergencies or grade crossing problems, the contractor shall call SCRRA's 24-hour signal emergency number 1-888-446-9721.

8. The Licensee shall obtain permission from the owners of any fiber optic, gas, or oil lines that may located along or across the right-of-way.

9. Licensee shall prepare and submit traffic control plan for SCRRA approval for projects that will affect vehicular traffic at an existing highway-rail grade crossing.

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

Licensee	SANBAG

Initials

EXHIBIT "D-3"

SANBAG General Notes

1. All personnel entering the railroad right-of-way shall comply with SANBAG and SCRRA requirements. Failure to comply will be grounds for termination of work and revocation of the Right-of-Entry (ROE) permit.

2. Prior to the start of construction and at the contractor's expense, all personnel including subcontractors and third parties shall complete SCRRA's Contractor Safety Training course.

3. The ROE permittee shall pay for all flagging, inspections, and review costs as required in the ROE permit. Work beyond the hours of 7 am to 5 pm, Monday through Friday, will be charged at 1.5 times the standard hourly rate.

4. The contractor shall adhere to all requirements set forth by SANBAG, SCRRA, the ROE permit, project plans and specifications, and the job site SCRRA flagman/Employee-in-Charge (EIC). The SCRRA flagman/EIC has sole responsibility to protect the railroad infrastructure and operations. At all times, the Contractor shall follow the flagman/EIC's direction.

5. All persons entering the railroad right-of-way shall have taken the SCRRA safety training course.

6. The contractor shall comply with all environmental and third party permits as required by the work.

7. 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 SCRRA flagman/EIC.

8. 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.

9. 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.

10. 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.

11. No personnel shall cross any track without the approval from the SCRRA flagman/EIC.

12. Only the SCRRA flagman/EIC is permitted to perform flagging operations within the railroad right-of-way.

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. R 13164 Amendment No. _____

By and Between

San Bernardino Associated Governments acting as the San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission and Omnitrans

Contract Description License Agreement on the Redlands Subdivision Mile Post 1.0

Board of Director's Meeting Date: June 5, 2013

Overview of BOD Action: Approve Contract No. R13164 with Omnitrans granting a license agreement on the Redlands Subdivision railroad right-of-way, City of San Bernardino mile post 1.0;

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

CONTRACT OVERVIEW

Original Contract Amount	$	3,000	**Original Contingency Amount**	$	
Revised Contract Amount *Inclusive of prior amendments*	$		**Revised Contingency Amount** *Inclusive of prior amendments*	$	
Current Amendment Amount	$		**Contingency Amendment**	$	
TOTAL CONTRACT VALUE	$	3,000	**TOTAL CONTINGENCY VALUE**	$	
TOTAL BUDGET AUTHORITY *(contract value + contingency)*				$	3,000

Contract Start Date	Current Contract Expiration Date	Revised Contract Expiration Date
6/5/13	6/30/18	

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

FINANCIAL INFORMATION

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

☐ A Budget Amendment is required. How are we funding current FY? N/A

☐ 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 _____ %

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

CONTRACT NO: R13164

By and Between

SAN BERNARDINO ASSOCIATED GOVERNMENTS acting as the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY and the SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

And

OMNITRANS

For

License Agreement on the Redlands Subdivision Mile Post 1.0

LICENSE AGREEMENT

This LICENSE AGREEMENT ("Agreement") is made and entered into as of July 10, 2013 by and between the **SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY AND THE SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION**, a public agency existing under the authority of the laws of the State of California (jointly referred to as "SANBAG"), and **OMNITRANS** a joint powers agency established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, ("LICENSEE"), upon and in consideration of the agreements, covenants, terms and conditions below:

PART I

BASIC LICENSE PROVISIONS

1. Description of License Property:
An underground and street level portion of the intersection of SANBAG's Redlands Subdivision Right-of-Way at N. "E" Street and an adjacent parcel, APN 0136-021-12, also owned by SANBAG just north easterly of the Right-of-Way in the City of San Bernardino, County of San Bernardino at Mile Post 1.0
Approximate area:
Street Pads 520 Sq. Ft
Pre-Emption Cable 5,000 Sq. Ft
Five Thousand Five Hundred Twenty Square Feet (5,520 Sq. Ft) total (§1.1)

2. Use of License Property:
Licensee may use the License Property only for:
Installation, operation, maintenance and repair of one (1) two inch (2") conduit contained within a four inch (4") steel casing under the rail to function as a pre-emption cable from an intersection controller cabinet to the railway control cabinet. (§1.1, §10)

3. Commencement Date:
July 10, 2013, or upon execution by SANBAG's Board of Directors, whichever comes first. (§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. $__N/A_per year, payable annually in advance
☐ b. $__N/A_ per month, payable monthly in advance (§2.1)

B. Additional License Fee:

☒ a. One-time Administrative fee: $3,000.00

☐ b. Other fees: $N/A (§2.1)

Said Administrative fee to cover $1,500.00 for Omnitrans fee for agreement RRND007677, and $1,500.00 for City of San Bernardino fee in advance of signing agreement RRND007670. Upon completion of the construction phase of the SBX project, the operations and maintenance portion of the project, and these facilities, will be transferred to the City of San Bernardino. See associated agreement RRND007670

C. Base License Fee Adjustment Dates (Not 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 (§2.2)

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

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

8. Licensee's Address:
OMNITRANS
1170 West Fifth Street
San Bernardino, California 92411 (§24.1)
Attn: Teck Loh, PE, LEED AP
Engineering Services Manager
909-383-9200

9. Facility:
One (1) two inch (2") conduit contained within a four inch (4") steel casing under the rail to function as a pre-emption cable and reinforced concrete pads for bus lanes. (§1.1)

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.

OMNITRANS

By: _____

Scott Graham
Acting CEO /General Manager

Date: _____

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

By: _____

Janice Rutherford
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____

Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____

Jeffery Hill
Contract Administrator

OMNITRANS

By: _____

Scott Graham
Acting CEO / General Manager

Date: _____

SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

By: _____

Janice Rutherford
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____

Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____

Jeffery Hill
Contract Administrator

INDEX TO LICENSE AGREEMENT - PART II

Section — Page

1. GRANT OF LICENSE/TERM 1
2. PAYMENTS 1
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4. CONSTRUCTION 2
5. CONTRACTORS; APPROVAL AND INSURANCE 2
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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 supersede all prior verbal or written agreements and understandings between the Parties with respect to the items set forth herein. This Agreement may be amended at any time by the written agreement of SANBAG and Licensee. No amendments, changes, revisions or discharges of this Agreement in whole or in part, or at any time, shall be binding upon the parties unless the same shall be in writing and executed by both parties hereto.

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

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

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

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

24.15 Termination for Public Use. In addition to any and all other termination rights of SANBAG and regardless of the Term set forth in the Basic License Provisions, Licensee hereby expressly recognizes and agrees that the License Property is located on SANBAG property that may be developed for public projects and programs which may be implemented by SANBAG or other public agencies, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects and/or other public uses (collectively and individually "Public Use"), and that Licensee's use of the License Property under this License is a temporary interim use as to which Licensee has no right to nor expectation of use for any particular length of time. Accordingly, as a condition to entering into this License, SANBAG expressly reserves the right to terminate the License for any of such Public Use by thirty (30) days written notice to Licensee. Licensee expressly acknowledges and agrees that:

Licensee
SANBAG

(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.

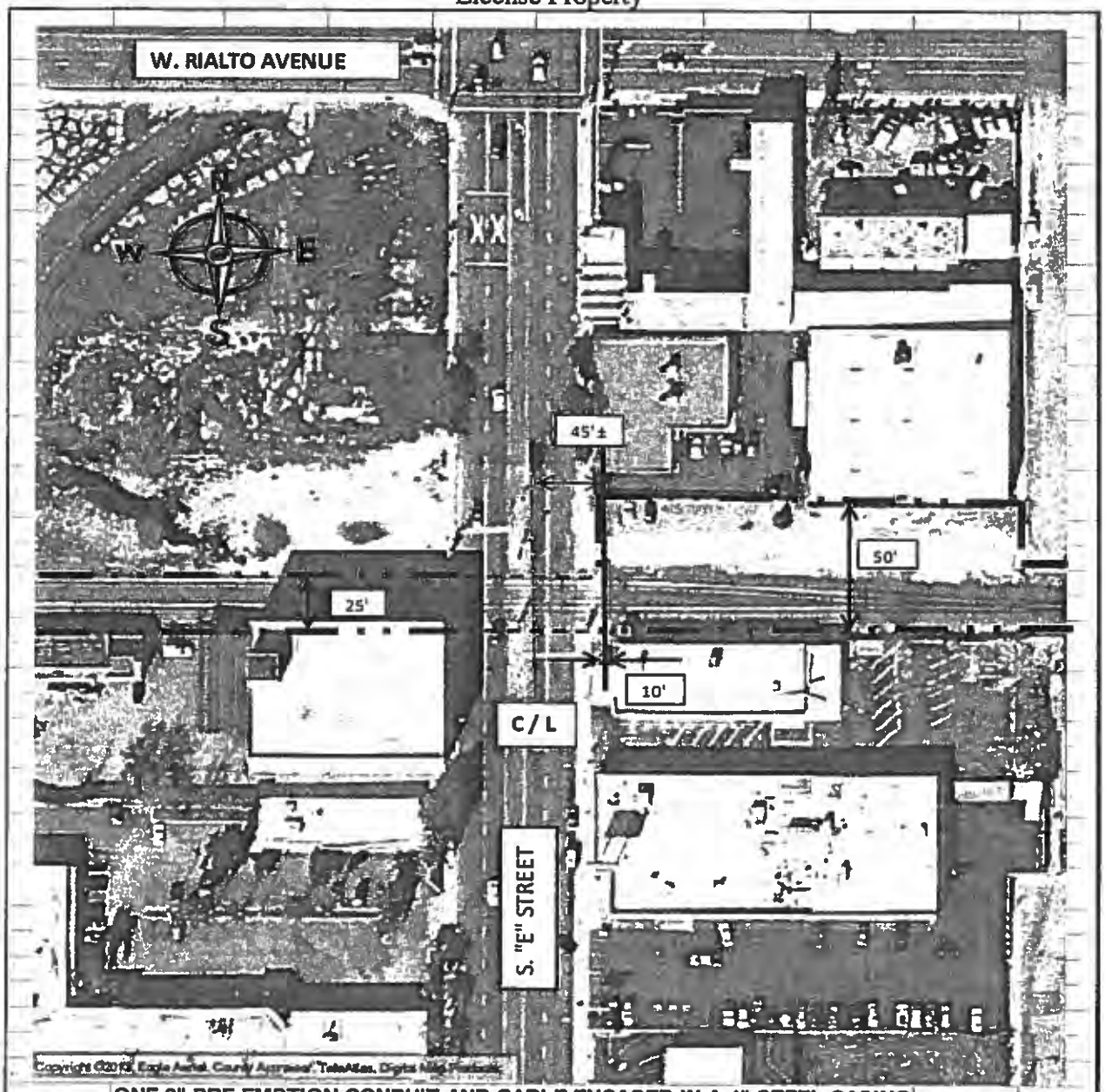
24.18 No Recording. Licensee shall not record or permit to be recorded in the official records of the county where the License Property is located, this Agreement, any memorandum of this Agreement or any other document giving notice of the existence of this Agreement or the license granted hereby.

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"

License Property

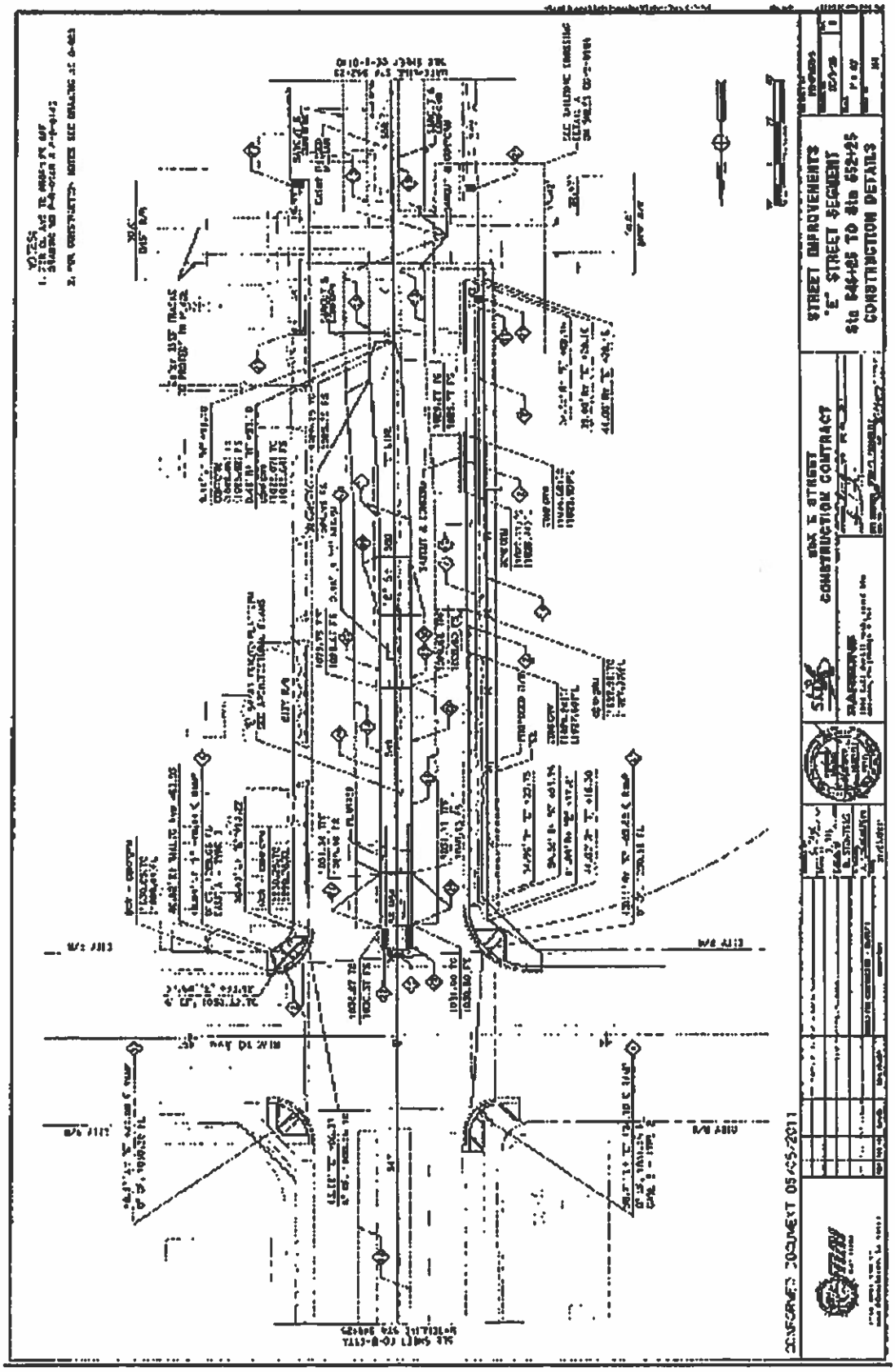


ONE 2" PRE-EMPTION CONDUIT AND CABLE ENCASED IN A 4" STEEL CASING

APN: 0136-031-01, 1036-032-20		
Date 06/11/2013		
Branch/Line	Mile Post	Lessee/Licensee
REDLANDS	SANBAG	OMNITRANS
County	Nearest Cross Street	SANBAG File Number
SAN BERNARDINO	S. "E" STREET	RRND007670
Area	City	Scale
500 SQ. FT.	SAN BERNARDINO	1"=100'
Map Reference	Use	Thomas Guide Grid
RND 1B	SEE ABOVE	606 G2

Governments
SANBAG
Working Together

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


STREET IMPROVEMENTS
"E" STREET SEGMENT
Sta 646+25 TO Sta 652+25
CONSTRUCTION DETAILS
CONSTRUCTION CONTRACT
CONFORMED DOCUMENT 05/05/2011

POLE AND EQUIPMENT SCHEDULE
PROPOSED PHASE DIAGRAM
CONDUCTOR SCHEDULE
EXISTING PHASE DIAGRAM
GENERAL NOTES:
CONSTRUCTION NOTES:
DETAIL A
DETAIL B
DETAIL C
LEFT TURN YIELD ON GREEN
BUS SIGNAL
R3-4
STREET IMPROVEMENTS
E STREET SEGMENT
TRAFFIC SIGNAL PLAN
CONFORMED DOCUMENT 05/05/2011

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

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by SANBAG. At the option of SANBAG, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SANBAG, its officials, 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"

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.

14. 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.

15. 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.

16. 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.

17. 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.

Licensee	SANBAG

Initials

Exhibit "D-2"

SANBAG JACK AND BORE GENERAL NOTES (Redlands Branch Line)

1. See SANBAG General Notes for addition requirements.
2. The Contractor shall layout the proposed jack and bore pits prior to the commencement of work. Only after the SANBAG inspector has approved the layout will the Contractor be allowed to begin work.
3. Jacking and receiving pits shall be constructed outside of the railroad right-of-way unless otherwise shown on the SANBAG approved plans.
4. At no time shall any contractor be permitted to cross any track without the permission from the railroad flagman.
5. All jack and bore operations within the railroad right-of-way shall be performed continuously on a 24-hour basis until work is completed with a SANBAG or BNSF flagman and SANBAG inspector present at all times. Should work begin without the flagman and inspector present, the work will be halted and any casing installed will be abandoned in place, pressure grouted full, and capped to the satisfaction of the SANBAG.
6. The contractor shall construct a temporary fence along the railroad right-of-way, or along the edge of pits closest to the track, extending 50-feet in both directions from the pit. Fences are not required for work at grade crossings.
7. Pits shall be fenced on sides.
8. The Contractor/permitee shall provide SANBAG with as-built drawings prior to the release of any deposited fund balance.
9. The Contractor shall submit to SANBAG for review, drawings and calculations for any shoring that may be influenced by the railroad tracks. All drawings and calculations shall be signed and stamped by a California licensed Civil or Structural Professional Engineer.
10. Prior to commencement of work, the Contractor shall submit to SANBAG for review, load calculations for the proposed jacking casing with applied load as defined by Cooper E-80 with a 50% added impact load. The calculations shall be signed and stamped by a California licensed Civil or Structural Professional Engineer.
11. It shall be the Contractor's responsibility to contact Underground Alert prior to the commencement of construction. At the same time, the contractor shall notify BNSF for railroad signal mark-outs.
12. All backfilling shall be at 90% relative dry compaction. For areas within or that affect the railroad right-of-way, the contractor shall submit a compaction report prepared by a California licensed Geotechnical Professional Engineer prior to release of any deposited fund balance.
13. Prior to the commencement of work, the Contractor shall submit to SANBAG for review, a description of the work process including scheduled activities.
14. The Contractor shall remove all temporary facilities constructed on the railroad right-of-way, debris, and other items not originally at the site prior to construction and shall notify SANBAG that all construction has been completed. After as-builts have been received, SANBAG inspects the construction site and signs-off the work, SANBAG will release any unused deposit funds.
15. The Contractor or contracting party shall obtain all permits necessary for the proposed project including but not limited to encroachment, SWPPP, and environmental permits, and third-party utility permits.

Exhibit "D-3"

SANBAG JACK AND BORE PIPELINE NOTES (Redlands Branch Line)

1. Unless otherwise shown on the plan view or plan and profile and approved by SANBAG, the Contractor shall adhere to the following requirements.
2. Boring of carrier or direct burial utilities by directional boring methods is prohibited.
3. For pipelines carrying flammable or hazardous materials, the Contractor shall adhere to special conditions stated in the Right-of-Entry (ROE) permit.
4. All underground utilities under railroad tracks shall be encased in a larger pipe or conduit called the "casing pipe."
5. Casing pipe shall be installed across the entire width of the railroad right-of-way and shall extend beyond the right-of-way a minimum of 10-feet.
6. Should ground water or other loose and unstable soils conditions be encountered during construction, the Contractor shall immediately stop work, notify the railroad flagman, provide necessary support to track and other railroad structures, and notify SANBAG. It shall be the responsibility of the contractor to make necessary corrections to construction process to allow for said conditions.
7. Prior to commencement of construction, the Contractor shall submit to SANBAG a plan showing the proposed method of casing installation, construction access, stockpile locations, SWPPP control measures, fencing type and location, and a milestone schedule.
8. All abandoned pipes shall be removed from their casing pipes. The empty casing pipe shall be pressure grouted full the entire length. Should there be no casing pipe, the abandoned pipe shall be pressure grouted full the entire length. A SANBAG inspector must be present during the grouting process.
9. The Contractor shall install permanent signs identifying the location of the pipe at the edge of the railroad right-of-way unless within a public grade crossing.
10. All ends of the casing pipe shall be sealed unless otherwise authorized by SANBAG.
11. The top of casing shall have a minimum depth of 6-feet below the top of tie and a minimum depth of 5-feet below ground surface including bottom of ditches and other low points within the railroad right-of-way.
12. Casing and carrier pipes shall be constructed to prevent leakage of any substance. When casing pipes are sealed at each end, vent pipes shall be installed.
13. All casing pipes shall be installed with a minimum slope of 1%.
14. Installation of casing pipes by open trench is prohibited.
15. Casing jacking shall adhere to the following requirements.
    a. This method shall be in accordance with the American Railway Engineering and Maintenance of Way Association recommended practices, Volume 1, Chapter 1, Part 4, "Earth Boring and Jacking Culvert Pipe Through Fills." This operation shall be conducted without hand-mining ahead of the pipe and without the use of any type of boring, auguring, or drilling equipment.
    b. Bracing and backstops shall be designed and jacks with sufficient rating used so that the jacking can progress without stoppage (except for adding lengths of pipe) until the leading edge of the pipe reaches the receiving pit.
    c. During jacking, an earth plug 1.5 times the diameter of the casing shall be maintained at all times. Jacking operations shall be continuous on a 24-hour per day basis until the jacking operation is completed.
16. Casing boring shall adhere to the following requirements.
    a. This method consists of pushing the pipe into the fill with a boring auger rotating within the pipe to remove the spoil. When augers or similar devices are used for casing placement, the front of the pipe shall be provided with mechanical arrangements or devices that will positively prevent the auger from leading the casing so that the there will be no unsupported

excavation ahead of the casing. The augur and cutting head arrangement shall be removable from within the pipe in the event an obstruction is encountered. The over-cut by the cutting head shall not exceed the outside diameter of the pipe by more than one-half inch. The face of the cutting head shall be arranged to provide reasonable obstruction to the free flow of soft or poor material.

b. The use of water or other liquids to facilitate casing placement and/or spoil removal is prohibited.
c. Plans and descriptions of the auger stop arrangement to be used shall be submitted to SANBAG for approval prior to commencement of work.
d. Any method which employs simultaneous boring and jacking or drilling and jacking for pipes over 8-inches in diameter that does not adhere to the above requirements will not be permitted. For casings 8-inches and smaller in diameter, augering, or boring without the same requirements may be considered if approved by SANBAG.

17. If an obstruction is encountered during installation of the casing pipe that will stop the forward action of the pipe, and it becomes evident that it is impossible to advance the pipe, operations will cease and the pipe shall be abandoned in-place and pressure grouted full before continuing with work. Location, length, and depth of abandoned casing pipes and carrier pipes shall be shown on the as-built drawings.
18. Bored or jacked installations shall have a bored-hole diameter essentially the same as the outside diameter of the casing plus the thickness of the protective coating. If voids should develop or if the bored-hole diameter is greater than the outside diameter of the casing pipe, plus coating, by more than approximately 1 inch, grouting or other methods as approved by SANBAG shall be employed to fill such voids.
19. Pressure grouting of the soils before or during jacking or boring may be required to stabilize the soil, control water, prevent loss of material, and prevent settlement or displacement of the ground and/or tracks. Grout shall be cement, chemical, or other special injection material selected to accomplish the necessary stabilization. The grouting contractor shall be a specialist in the field with a minimum of 5-years continuous experience of successfully grouting soil. Materials to be used and the method of injection shall be prepared by a California licensed Geotechnical Engineer, or by an experienced and qualified company specializing in this work and submitted for approval by SANBAG prior to the commencement of work. Proof of experience and competency shall accompany the submission.
20. When water is know or expected to be encountered, pumps of sufficient capacity to handle the flow shall be maintained at the site and be constantly attended operationally on a 24-hour per day basis until the SANBAG inspector determines their operation can be safely halted. When dewatering, close observation shall be maintained to detect any settlement or displacement of track, ground, or facilities.
21. The dewatering system shall lower and maintain the ground water level a minimum of 2 feet below the invert at all times during construction by utilizing will points, vacuum well points, or deep wells to prevent the inflow of water or water and soil into the heading. Ground water observation wells may be required to demonstrate that the dewatering requirements are being complied with.
22. The proposed methods of dewatering shall be submitted to SANBAG prior to the commencement of work. The discharge from the dewatering operations in the vicinity of the railroad shall be carefully monitored. Should excessive fine soils particles at any time during the dewatering process be observed, the dewatering shall be halted immediately and cannot resume until the unsatisfactory condition is remedied to the satisfaction of the SANBAG inspector.

Licensee	SANBAG

Initials

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. R 13166 Amendment No. _____

By and Between

San Bernardino Associated Governments acting as the San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission and Griffith/Comet JV

Contract Description Right-of-Entry Agreement on the Redlands Subdivision Mile Post 1.0

Board of Director's Meeting Date: June 5, 2013

Overview of BOD Action: Approve Contract No. R13166 with Griffith/Comet JV (Joint Venture) granting a right-of-entry onto Redlands Subdivision railroad right-of-way, City of San Bernardino mile post 1.0;

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

CONTRACT OVERVIEW

Original Contract Amount	$	1,500	**Original Contingency Amount**	$	
Revised Contract Amount *Inclusive of prior amendments*	$		**Revised Contingency Amount** *Inclusive of prior amendments*	$	
Current Amendment Amount	$		**Contingency Amendment**	$	
TOTAL CONTRACT VALUE	$	1,500	**TOTAL CONTINGENCY VALUE**	$	
TOTAL BUDGET AUTHORITY *(contract value + contingency)*				$	1,500

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
6/5/13	6/30/18	

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

FINANCIAL INFORMATION

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

☐ A Budget Amendment is required. How are we funding current FY? N/A

☐ 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 _____ %

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

CONTRACT NO: R13166

By and Between

SAN BERNARDINO ASSSOCIATED GOVERNMENTS acting as the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY and the SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

AND

GRIFFITH / COMET JV

For

Right of Entry Permit on the Redlands Subdivision Mile Post 1.0

CONTRACTOR RIGHT-OF-ENTRY PERMIT

THIS PERMIT ("Permit") is made and entered into as of July 10, 2013, by and between the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY AND THE SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION, public agencies existing under the authority of the laws of the State of California, (jointly referred to as "SANBAG"), and **GRIFFITH/COMET JV**, a, hereinafter referred to as "Permittee".

PART I

BASIC PERMIT PROVISIONS

1. Description of Premises:
   An underground and street level portion of the intersection of SANBAG's Redlands Subdivision Right-of-Way at N. "E" Street and a adjacent parcel also owned by SANBAG just northeasterly of the Right–of-Way in the City of San Bernardino, County of San Bernardino at Mile Post 1.0
   Approximate area:
   Five Thousand Five Hundred Twenty Square Feet (5,520 Sq. Ft.) (§1)

2. Premises Address:
   No Address (§1)

3. Commencement Date:
   July 10, 2013, or upon execution by SANBAG's Board of Directors, whichever comes first. (§2)

4. Term:
   90 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 September 3, 2013 (§2)

5. Use of Premises:
   Installation of one (1) two inch (2") conduit to be encased in a four inch (4") steel casing under the rail to function as a pre-emption cable from an intersection controller cabinet to the railway control cabinet.

   For reference, see Agreement RRND007677 between OMNITRANS and SANBAG dated July 10, 2013.

   Permitted Hours of Use:

7 AM – 6 PM

(§3)

6. Payments: (circle one or both)

(A.) $1,500.00 One-time administrative fee, payable in advance (§4)

B. N/A percent (N/A) of the gross revenues from the use of the Premises during the term of this Permit (§4)

7. Security Deposit: $N/A (§5)

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

9. SANBAG's Address:

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

10. Permittee's Address:

GRIFFITH / COMET JV
12200 Bloomfield Avenue
Santa Fe Springs, California 90670
Attn: Joe Meidl (§15.1)

Permittee's Contact Information:

Business: 562-929-1128
Cell: 818-518-0948
Fax: 562-864-8970
E-Mail: JoeMeidl@Cometelectric.com

11. Contractor's State License Number: 88 (§15.17)
Expiration Date: 9/30/2014

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 Contract on the day and year below written, but effective as of the day and year first set forth above.

Receipt of the foregoing agreement and certification of insurance furnished by the Contractor are hereby acknowledged on this _____ day of _____2013___

GRIFFITH / COMET JV

By: _____

Name: Joe Meidl
Title

Date: _____

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

By: _____

Janice Rutherford
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____

Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____

Jeffery Hill
Contracts Administrator

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

Receipt of the foregoing agreement and certification of insurance furnished by the Contractor are hereby acknowledged on this _____ day of _____2013___ ___

GRIFFITH / COMET JV

By: _____

Name: Joe Meidl
Title

Date: _____

SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

By: _____

Janice Rutherford
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____

Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____

Jeffery Hill
Contracts Administrator

INDEX TO PERMIT - PART II

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Exhibits:

"A" Site Plan of Premises
"B" Insurance Requirements
"C" Permitted Hazardous Materials
"D" Additional Provisions

PART II - GENERAL PERMIT PROVISIONS

The parties hereto agree as follows:

1. PERMIT TO USE

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

2. TERM

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

3. USE; CONDITION OF PREMISES

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

4. PAYMENTS

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

4.2 Late Charge. Permittee acknowledges that late payment by Permittee of any Payment owed to SANBAG under this Permit will cause SANBAG to incur costs not contemplated by this Permit, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, if any Payment due from Permittee is not received by SANBAG within five (5) days of when due, Permittee shall pay to SANBAG an additional sum of ten percent (10%) of the overdue Payment as a late charge, up to a maximum amount of $500 for each late payment. The parties agree that this late charge represents a fair and reasonable estimate of the administrative costs that SANBAG will incur by reason of a late payment by Permittee. Acceptance of any late payment charge shall not constitute a waiver of Permittee's default with respect to the overdue payment, nor prevent SANBAG from exercising any of the other rights and remedies available to SANBAG under this Permit, at law or in equity, including, but not limited to, the interest charge imposed pursuant to Section 15.4.

5. SECURITY DEPOSIT

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

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

6. COMPLIANCE WITH LAWS

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

7. TAXES

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

8. MAINTENANCE AND REPAIR

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

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

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 Indemnities (as defined in Section 9) from and against all loss, liability, claim, damage, cost or expense (including without limitation, any fines, penalties, judgments, litigation expenses, attorneys' fees, and consulting, engineering, and construction fees and expenses) incurred by Indemnitees as a result of (a) Permittee's breach of any prohibition or provision of this section, or (b) any release of Hazardous Materials upon or from the Premises or contamination of the Premises or adjacent property (i) which occurs due to the use and occupancy of the Premises by Permittee or Permittee's employees, agents, customers, visitors, invitees, licensees or contractors, or (ii) which is made worse due to the act or failure to act of Permittee or Permittee's employees, agents, customers, visitors, invitees, licensees or contractors.

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

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

14. PERMITTEE'S COVENANTS

Permittee shall:

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

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

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

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

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

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

15. GENERAL PROVISIONS

15.1 Notices. All notices and demands which either party is required to or desires to give to the other shall be made in writing by personal delivery, by express courier service or by certified mail postage prepaid, and addressed to such party at its address set forth in Items 9 or 10 of the Basic Permit Provisions, as the case may be. Either party may change its address for the receipt of notice by giving written notice thereof to the other party in the manner herein provided. Notices shall be effective only upon receipt by the party to whom notice or demand is given.

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

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

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

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

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

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

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

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

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

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

15.12 Further Acts. Permittee agrees to perform any further acts and to execute and deliver in recordable form any documents which may be reasonably necessary to carry out the provisions of this Permit.

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

Permittee

SANBAG

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

15.15 Time of Essence. Time is of the essence.

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

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

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

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

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

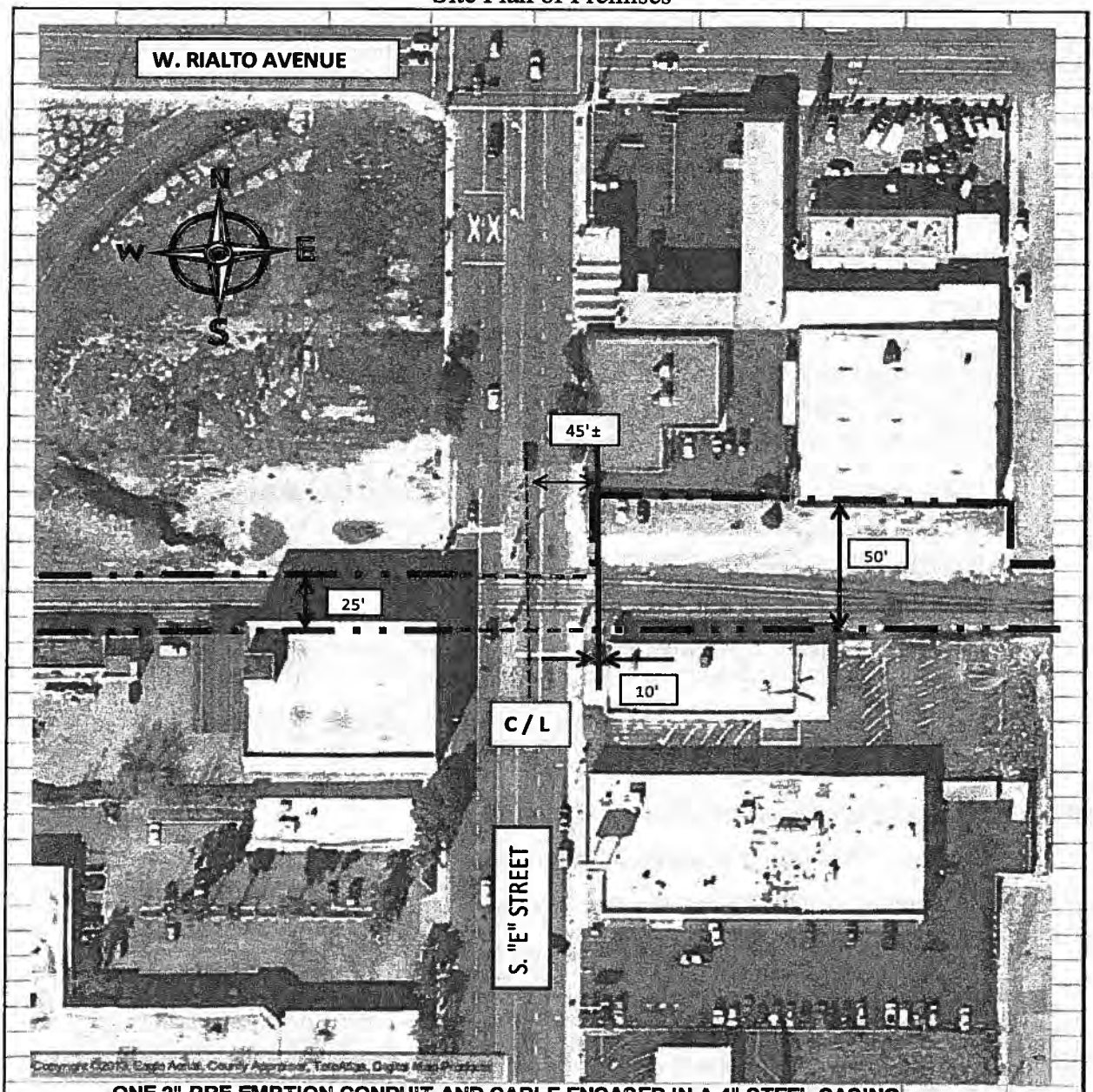
15.21 Subordinate Rights. This Agreement is subject and subordinate to the prior and continuing right and obligation of SANBAG, its successors and assigns, to use the SANBAG Property or any portion thereof in the exercise of its powers and in the performance of its duties, including those as a public transportation body. Accordingly, there is reserved and retained unto SANBAG, its successors, assigns and permittees, the right to construct, reconstruct, operate, maintain, use and/or relocate existing and future rail tracks, facilities and appurtenances and existing and future transportation, communication, pipeline and other facilities and appurtenances in, upon, over, under, across and along the SANBAG Property or any portion thereof, and in connection therewith the right to grant and convey to others,

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

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

Exhibit "A"

Site Plan of Premises



ONE 2" PRE-EMPTION CONDUIT AND CABLE ENCASED IN A 4" STEEL CASING

APN: 0136-031-01, 1036-032-20			
Date 06/11/2013			
Branch/Line	Mile Post	Lessee/Licensee	Governments SANBAG Working Together
REDLANDS	SANBAG	OMNITRANS	
County	Nearest Cross Street	SANBAG File Number	
SAN BERNARDINO	S. "E" STREET	RRND007670	
Area	City	Scale	SAN BERNARDINO ASSOCIATED GOVERNMENTS
500 SQ. FT.	SAN BERNARDINO	1"=100'	
Map Reference	Use	Thomas Guide Grid	1170 W. 3rd Street, 2nd Floor
RND 1B	SEE ABOVE	606 G2	San Bernardino, CA 92410-1715

Exhibit "B-1"

INSURANCE REQUIREMENTS FOR LEASES, LICENSES, AND PERMITS

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

Minimum Scope of Insurance (Check all applicable boxes)

Coverage shall be at least as broad as:

- ☒ Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- ☒ Insurance Services Office Form No. CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- ☒ Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.
- ☒ Course of Construction insurance form providing coverage for "all risks" of loss.
- ☐ Property insurance against all risks of loss to any tenant improvements or betterments.
- ☒ Insurance Services Office Railroad Protective Liability
- ☐ Contractor's Pollution Liability with coverage for:

  a. bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;

  b. property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;

  c. defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; and

  d. losses caused by pollution conditions that arise from the operations of the contractor described under the scope of services of this contract.

Minimum Limits of Insurance (Check all applicable boxes)

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

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

Deductibles and Self-Insured Retentions

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

Exhibit "B-2"

Other Insurance Provisions

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

1. SANBAG, its subsidiaries, officials and employees are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Lessee, Licensee, or Permittee; products and completed operations of the Lessee, Licensee, or Permittee; premises owned, occupied or used by the Lessee, Licensee, or Permittee; and automobiles owned, leased, hired or borrowed by the Lessee, Licensee, or Permittee. The coverage shall contain no special limitations on the scope of protection afforded to SANBAG, its subsidiaries, officials and employees.

2. For any claims related to this project, the Lessee, Licensee, or Permittee's insurance coverage shall be primary insurance as respects SANBAG, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by SANBAG, its subsidiaries, officials and employees shall be excess of the contractor's insurance and shall not contribute with it.

3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to SANBAG, its subsidiaries, officials and employees.

4. The Lessee, Licensee, or Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either a party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to SANBAG.

6. Workers' Compensation and Employer's Liability policies shall contain the inclusion of the SANBAG, its Subsidiaries, officials and employees as additional insured, or provide a waiver of subrogation.

Course of construction policies shall contain the following provisions:

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

Acceptability of Insurers

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

Verification of Coverage

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

Contractors and Subcontractors

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

Exhibit "C"

Permitted Hazardous Materials

No hazardous materials are permitted to be used or stored on Premises

Exhibit "D-1"

Additional Provisions

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

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

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

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

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

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

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

Epic Land Solutions	**951-321-1800**
BNSF Railroad	**909-386-4061**

Permittee	SANBAG

Initials

EXHIBIT "D-2"

SANBAG JACK AND BORE GENERAL NOTES (Redlands Branchline)

1. See SANBAG General Notes for addition requirements.
2. The Contractor shall layout the proposed jack and bore pits prior to the commencement of work. Only after the SANBAG inspector has approved the layout will the Contractor be allowed to begin work.
3. Jacking and receiving pits shall be constructed outside of the railroad right-of-way unless otherwise shown on the SANBAG approved plans.
4. At no time shall any contractor be permitted to cross any track without the permission from the railroad flagman.
5. All jack and bore operations within the railroad right-of-way shall be performed continuously on a 24-hour basis until work is completed with a SANBAG or BNSF flagman and SANBAG inspector present at all times. Should work begin without the flagman and inspector present, the work will be halted and any casing installed will be abandoned in place, pressure grouted full, and capped to the satisfaction of the SANBAG.
6. The contractor shall construct a temporary fence along the railroad right-of-way, or along the edge of pits closest to the track, extending 50-feet in both directions from the pit. Fences are not required for work at grade crossings.
7. Pits shall be fenced on sides.
8. The Contractor/permitee shall provide SANBAG with as-built drawings prior to the release of any deposited fund balance.
9. The Contractor shall submit to SANBAG for review, drawings and calculations for any shoring that may be influenced by the railroad tracks. All drawings and calculations shall be signed and stamped by a California licensed Civil or Structural Professional Engineer.
10. Prior to commencement of work, the Contractor shall submit to SANBAG for review, load calculations for the proposed jacking casing with applied load as defined by Cooper E-80 with a 50% added impact load. The calculations shall be signed and stamped by a California licensed Civil or Structural Professional Engineer.
11. It shall be the Contractor's responsibility to contact Underground Alert prior to the commencement of construction. At the same time, the contractor shall notify BNSF for railroad signal mark-outs.
12. All backfilling shall be at 90% relative dry compaction. For areas within or that affect the railroad right-of-way, the contractor shall submit a compaction report prepared by a California licensed Geotechnical Professional Engineer prior to release of any deposited fund balance.
13. Prior to the commencement of work, the Contractor shall submit to SANBAG for review, a description of the work process including scheduled activities.
14. The Contractor shall remove all temporary facilities constructed on the railroad right-of-way, debris, and other items not originally at the site prior to construction and shall notify SANBAG that all construction has been completed. After as-builts have been received, SANBAG inspects the construction site and signs-off the work, SANBAG will release any unused deposit funds.
15. The Contractor or contracting party, shall obtain all permits necessary for the proposed project including but not limited to encroachment, SWPPP, and environmental permits, and third-party utility permits.

EXHIBIT "D-3"
SANBAG JACK AND BORE PIPELINE NOTES (Redlands Branch Line)

1. Unless otherwise shown on the plan view or plan and profile and approved by SANBAG, the Contractor shall adhere to the following requirements.
2. Boring of carrier or direct burial utilities by directional boring methods is prohibited.
3. For pipelines carrying flammable or hazardous materials, the Contractor shall adhere to special conditions stated in the Right-of-Entry (ROE) permit.
4. All underground utilities under railroad tracks shall be encased in a larger pipe or conduit called the "casing pipe."
5. Casing pipe shall be installed across the entire width of the railroad right-of-way and shall extend beyond the right-of-way a minimum of 10-feet.
6. Should ground water or other loose and unstable soils conditions be encountered during construction, the Contractor shall immediately stop work, notify the railroad flagman, provide necessary support to track and other railroad structures, and notify SANBAG. It shall be the responsibility of the contractor to make necessary corrections to construction process to allow for said conditions.
7. Prior to commencement of construction, the Contractor shall submit to SANBAG a plan showing the proposed method of casing installation, construction access, stockpile locations, SWPPP control measures, fencing type and location, and a milestone schedule.
8. All abandoned pipes shall be removed from their casing pipes. The empty casing pipe shall be pressure grouted full the entire length. Should there be no casing pipe, the abandoned pipe shall be pressure grouted full the entire length. A SANBAG inspector must be present during the grouting process.
9. The Contractor shall install permanent signs identifying the location of the pipe at the edge of the railroad right-of-way unless within a public grade crossing.
10. All ends of the casing pipe shall be sealed unless otherwise authorized by SANBAG.
11. The top of casing shall have a minimum depth of 6-feet below the top of tie and a minimum depth of 5-feet below ground surface including bottom of ditches and other low points within the railroad right-of-way.
12. Casing and carrier pipes shall be constructed to prevent leakage of any substance. When casing pipes are sealed at each end, vent pipes shall be installed.
13. All casing pipes shall be installed with a minimum slope of 1%.
14. Installation of casing pipes by open trench is prohibited.
15. Casing jacking shall adherer to the following requirements.
    a. This method shall be in accordance with the American Railway Engineering and Maintenance of Way Association recommended practices, Volume 1, Chapter 1, Part 4, "Earth Boring and Jacking Culvert Pipe Through Fills." This operation shall be conducted without hand-mining ahead of the pipe and without the use of any type of boring, auguring, or drilling equipment.
    b. Bracing and backstops shall be designed and jacks with sufficient rating used so that the jacking can progress without stoppage (except for adding lengths of pipe) until the leading edge of the pipe reaches the receiving pit.
    c. During jacking, an earth plug 1.5 times the diameter of the casing shall be maintained at all times. Jacking operations shall be continuous on a 24-hour per day basis until the jacking operation is completed.
16. Casing boring shall adher to the following requirements.
    a. This method consists of pushing the pipe into the fill with a boring auger rotating within the pipe to remove the spoil. When augers or similar devices are used for casing placement, the front of the pipe shall be provided with mechanical arrangements or devices that will positively prevent the auger from leading the casing so that the there will be no unsupported excavation ahead of the casing. The augur and cutting head arrangement shall be removable from within the pipe in the event an obstruction is encountered. The over-cut by the cutting

head shall not exceed the outside diameter of the pipe by more than one-half inch. The face of the cutting head shall be arranged to provide reasonable obstruction to the free flow of soft or poor material.

b. The use of water or other liquids to facilitate casing placement and/or spoil removal is prohibited.
c. Plans and descriptions of the auger stop arrangement to be used shall be submitted to SANBAG for approval prior to commencement of work.
d. Any method which employs simultaneous boring and jacking or drilling and jacking for pipes over 8-inches in diameter that does not adhere to the above requirements will not be permitted. For casings 8-inches and smaller in diameter, augering, or boring without the same requirements may be considered if approved by SANBAG.

17. If an obstruction is encountered during installation of the casing pipe that will stop the forward action of the pipe, and it becomes evident that it is impossible to advance the pipe, operations will cease and the pipe shall be abandoned in-place and pressure grouted full before continuing with work. Location, length, and depth of abandoned casing pipes and carrier pipes shall be shown on the as-built drawings.
18. Bored or jacked installations shall have a bored-hole diameter essentially the same as the outside diameter of the casing plus the thickness of the protective coating. If voids should develop or if the bored-hole diameter is greater than the outside diameter of the casing pipe, plus coating, by more than approximately 1 inch, grouting or other methods as approved by SANBAG shall be employed to fill such voids.
19. Pressure grouting of the soils before or during jacking or boring may be required to stabilize the soil, control water, prevent loss of material, and prevent settlement or displacement of the ground and/or tracks. Grout shall be cement, chemical, or other special injection material selected to accomplish the necessary stabilization. The grouting contractor shall be a specialist in the field with a minimum of 5-years continuous experience of successfully grouting soil. Materials to be used and the method of injection shall be prepared by a California licensed Geotechnical Engineer, or by an experienced and qualified company specializing in this work and submitted for approval by SANBAG prior to the commencement of work. Proof of experience and competency shall accompany the submission.
20. When water is know or expected to be encountered, pumps of sufficient capacity to handle the flow shall be maintained at the site and be constantly attended operationally on a 24-hour per day basis until the SANBAG inspector determines their operation can be safely halted. When dewatering, close observation shall be maintained to detect any settlement or displacement of track, ground, or facilities.
21. The dewatering system shall lower and maintain the ground water level a minimum of 2 feet below the invert at all times during construction by utilizing will points, vacuum well points, or deep wells to prevent the inflow of water or water and soil into the heading. Ground water observation wells may be required to demonstrate that the dewatering requirements are being complied with.
22. The proposed methods of dewatering shall be submitted to SANBAG prior to the commencement of work. The discharge from the dewatering operations in the vicinity of the railroad shall be carefully monitored. Should excessive fine soils particles at any time during the dewatering process be observed, the dewatering shall be halted immediately and cannot resume until the unsatisfactory condition is remedied to the satisfaction of the SANBAG inspector.

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. R 13165 Amendment No. _____

By and Between

San Bernardino Associated Governments acting as the San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission and City of San Bernardino

Contract Description License Agreement on the Redlands Subdivision Mile Post 1.0

Board of Director's Meeting Date: June 5, 2013

Overview of BOD Action: Approve Contract No. R13165 with the City of San Bernardino granting a license agreement on the Redlands Subdivision railroad right-of-way, City of San Bernardino mile post 1.0;

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

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

Contract Start Date	Current Contract Expiration Date	Revised Contract Expiration Date
6/5/13	6/30/18	

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

FINANCIAL INFORMATION

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

☐ A Budget Amendment is required. How are we funding current FY? N/A

☐ 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 _____ %

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

CONTRACT NO: R13165

By and Between

SAN BERNARDINO ASSOCIATED GOVERNMENTS acting as the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY and the SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

and

CITY OF SAN BERNARDINO

For

License Agreement on the Redlands Subdivision Mile Post 1.0

LICENSE AGREEMENT

This LICENSE AGREEMENT ("Agreement") is made and entered into as of July 10, 2013 by and between the **SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY AND THE SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION**, a public agency existing under the authority of the laws of the State of California (jointly referred to as "SANBAG"), and **CITY OF SAN BERNARDINO** a corporate municipality, ("LICENSEE"), upon and in consideration of the agreements, covenants, terms and conditions below:

PART I

BASIC LICENSE PROVISIONS

1. Description of License Property:
An underground and street level portion of the intersection of SANBAG's Redlands Subdivision Right-of-Way at N. "E" Street and an adjacent parcel also owned by SANBAG just northeasterly of the Right-of-Way in the City of San Bernardino, County Of San Bernardino at Mile Post 1.0
Approximate area:
Street Pads 520 Sq. Ft
Pre-Emption Cable 5,000 Sq. Ft.
Five Thousand Five Hundred Twenty Square Feet (5,520 Sq. Ft.) total
(§1.1)

2. Use of License Property:
Installation, operation, maintenance and repair of one (1) two inch (2") conduit in a four inch (4") steel casing under the rail to function as a pre-emption cable from an intersection controller cabinet to the railway control cabinet. (§1.1, §10)

3. Commencement Date:
Upon termination of SBX construction project and assumption and acceptance of responsibilities by the City of San Bernardino. (§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:
   A. Base License Fee:
   - ☐ a. $__N/A_per year, payable annually in advance
   - ☐ b. $__N/A_per month, payable monthly in advance (§2.1)

B. Additional License Fee:

☒ a. One time administrative fee: Paid previously by OMNITRANS in the amount of $1,500.00, see Agreement RRND007677

☐ b. Other fees: $N/A (§2.1)

C. Base License Fee Adjustment Dates (Not applicable)

☐ a. Annually based on CPI

☐ b. At intervals of not less than three (3) years, based on the then current fair market rental value of the license property (§2.2)

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

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

8. Licensee's Address:
CITY OF SAN BERNARDINO
300 N. "D" Street
San Bernardino, CA 92418 (§24.1)
Attn: Mark Raab
909-384-5166

9. Facility:
One pre-emption cable from an intersection controller cabinet to the railway control cabinet and reinforced concrete pads for bus lanes. (§1.1)

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

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

CITY OF SAN BERNARDINO

By: _____

Andrea Travis-Miller
Acting City Manager

Date: _____

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

By: _____

Janice Rutherford
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____

Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____

Jeffery Hill
Contract Administrator

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

CITY OF SAN BERNARDINO

By: _____

Andrea Travis-Miller
Acting City Manager

Date: _____

SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

By: _____

Janice Rutherford
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____

Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____

Jeffery Hill
Contract Administrator

INDEX TO LICENSE AGREEMENT - PART II

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"A" License Property
"B" Insurance Requirements
"C" Permitted Hazardous Materials
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PART II - GENERAL LICENSE PROVISIONS

1. GRANT OF LICENSE/TERM

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

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

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

2. PAYMENTS

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

2.2 License Fee Adjustment.

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

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

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

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

3. TAXES

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

4. CONSTRUCTION

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

5. CONTRACTORS; APPROVAL AND INSURANCE

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

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

6. REIMBURSEMENT

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

7. LIENS

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

8. MAINTENANCE AND REPAIR

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

9. LANDSCAPING

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

10. USE

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

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

11. ABANDONMENT

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

12. BREACH

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

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

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

13. SURRENDER

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

14. INDEMNIFICATION

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

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

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

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

15. ASSUMPTION OF RISK AND WAIVER

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

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

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

16. INSURANCE

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

17. TESTS AND INSPECTIONS

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

18. HAZARDOUS/TOXIC MATERIALS USE AND INDEMNITY

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

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

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

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

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

19. UNDERGROUND STORAGE TANKS

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

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

20. SUBORDINATE RIGHTS

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

21. COMPLIANCE WITH LAWS

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

22. CONDEMNATION

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

23. MARKERS

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

24. GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Licensee
SANBAG

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

24.17 Time of Essence. Time is of the essence.

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

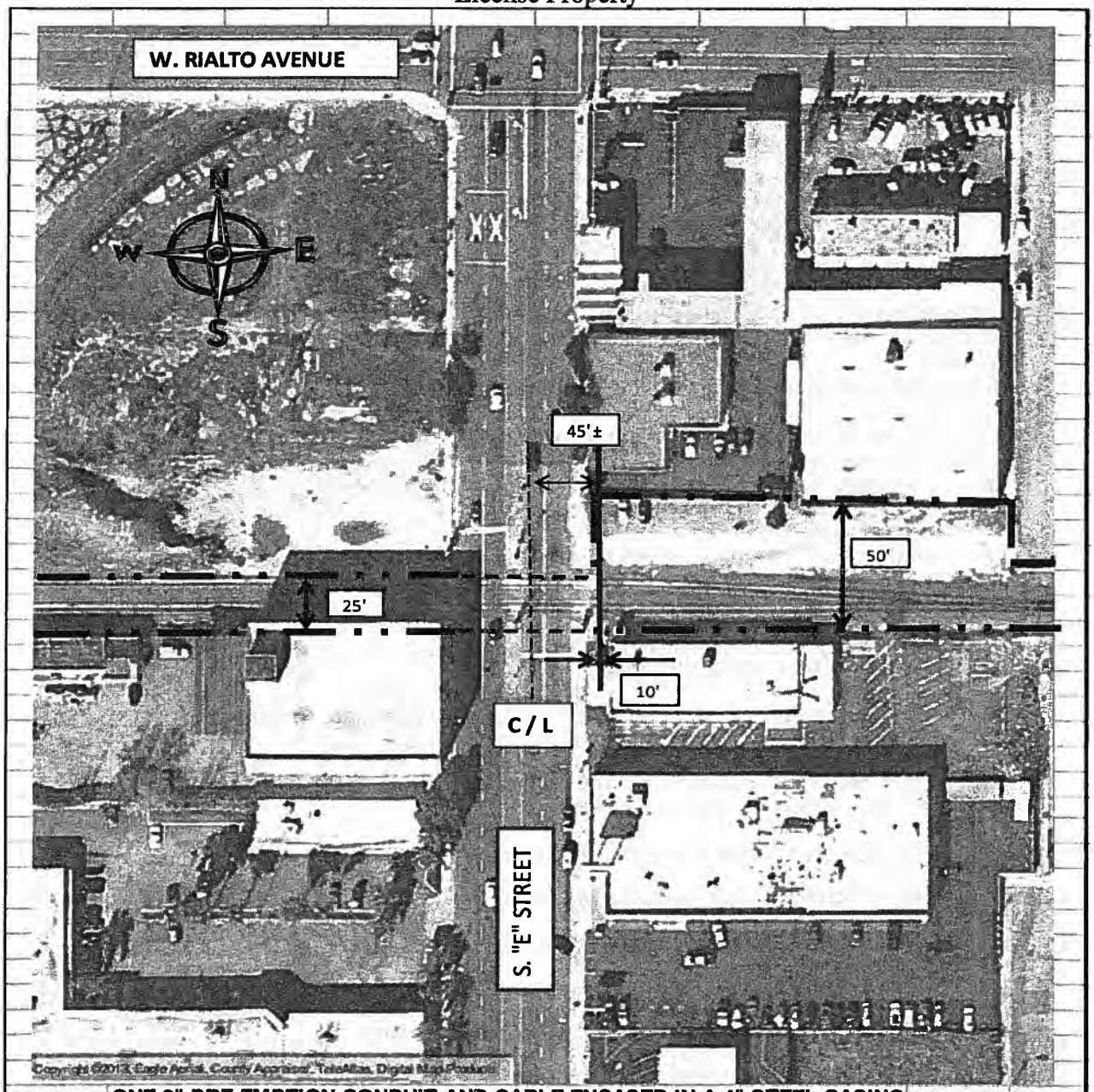
24.19 Revocable License. Licensee agrees that notwithstanding the improvements made by Licensee to the License Property or other sums expended by Licensee in furtherance of this Agreement, the license granted herein is revocable by SANBAG in accordance with the terms of this Agreement.

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

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

Exhibit "A"

License Property



ONE 2" PRE-EMPTION CONDUIT AND CABLE ENCASED IN A 4" STEEL CASING

APN:	0136-031-01, 1036-032-20		
Date	06/11/2013		
Branch/Line	Mile Post	Lessee/Licensee	Governments SANBAG Working Together
REDLANDS	SANBAG	OMNITRANS	
County	Nearest Cross Street	SANBAG File Number	
SAN BERNARDINO	S. "E" STREET	RRND007670	
Area	City	Scale	SAN BERNARDINO ASSOCIATED GOVERNMENTS
500 SQ. FT.	SAN BERNARDINO	1"=100'	
Map Reference	Use	Thomas Guide Grid	1170 W. 3rd Street, 2nd Floor
RND 1B	SEE ABOVE	606 G2	San Bernardino, CA 92410-1715

Exhibit "B"

INSURANCE REQUIREMENTS FOR LEASES, LICENSES, AND PERMITS

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

Minimum Scope of Insurance (Check all applicable boxes)

Coverage shall be at least as broad as:

- ☒ Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- ☒ Insurance Services Office Form No. CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- ☐ Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.
- ☐ Course of Construction insurance form providing coverage for "all risks" of loss.
- ☐ Property insurance against all risks of loss to any tenant improvements or betterments.
- ☐ Insurance Services Office Railroad Protective Liability
- ☐ Contractor's Pollution Liability with coverage for:

a. bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;

b. property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;

c. defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; and

d. losses caused by pollution conditions that arise from the operations of the contractor described under the scope of services of this contract.

Minimum Limits of Insurance (Check all applicable boxes)

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

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

Deductibles and Self-Insured Retentions

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

Exhibit "B"

Other Insurance Provisions

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

1. SANBAG, its subsidiaries, officials and employees are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Lessee, Licensee, or Permittee; products and completed operations of the Lessee, Licensee, or Permittee; premises owned, occupied or used by the Lessee, Licensee, or Permittee; and automobiles owned, leased, hired or borrowed by the Lessee, Licensee, or Permittee. The coverage shall contain no special limitations on the scope of protection afforded to SANBAG, its subsidiaries, officials and employees.

2. For any claims related to this project, the Lessee, Licensee, or Permittee's insurance coverage shall be primary insurance as respects SANBAG, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by SANBAG, its subsidiaries, officials and employees shall be excess of the contractor's insurance and shall not contribute with it.

3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to SANBAG, its subsidiaries, officials and employees.

4. The Lessee, Licensee, or Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either a party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to SANBAG.

6. Workers' Compensation and Employer's Liability policies shall contain the inclusion of the SANBAG, its Subsidiaries, officials and employees as additional insured, or provide a waiver of subrogation.

Course of construction policies shall contain the following provisions:

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

Acceptability of Insurers

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

Verification of Coverage

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

Contractors and Subcontractors

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

Exhibit "C"

Permitted Hazardous Materials

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

Exhibit "D-1"

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.

EXHIBIT "D-2"

SANBAG JACK AND BORE GENERAL NOTES (Redlands Branch Line)

1. See SANBAG General Notes for addition requirements.
2. The Contractor shall layout the proposed jack and bore pits prior to the commencement of work. Only after the SANBAG inspector has approved the layout will the Contractor be allowed to begin work.
3. Jacking and receiving pits shall be constructed outside of the railroad right-of-way unless otherwise shown on the SANBAG approved plans.
4. At no time shall any contractor be permitted to cross any track without the permission from the railroad flagman.
5. All jack and bore operations within the railroad right-of-way shall be performed continuously on a 24-hour basis until work is completed with a SANBAG or BNSF flagman and SANBAG inspector present at all times. Should work begin without the flagman and inspector present, the work will be halted and any casing installed will be abandoned in place, pressure grouted full, and capped to the satisfaction of the SANBAG.
6. The contractor shall construct a temporary fence along the railroad right-of-way, or along the edge of pits closest to the track, extending 50-feet in both directions from the pit. Fences are not required for work at grade crossings.
7. Pits shall be fenced on sides.
8. The Contractor/permittee shall provide SANBAG with as-built drawings prior to the release of any deposited fund balance.
9. The Contractor shall submit to SANBAG for review, drawings and calculations for any shoring that may be influenced by the railroad tracks. All drawings and calculations shall be signed and stamped by a California licensed Civil or Structural Professional Engineer.
10. Prior to commencement of work, the Contractor shall submit to SANBAG for review, load calculations for the proposed jacking casing with applied load as defined by Cooper E-80 with a 50% added impact load. The calculations shall be signed and stamped by a California licensed Civil or Structural Professional Engineer.
11. It shall be the Contractor's responsibility to contact Underground Alert prior to the commencement of construction. At the same time, the contractor shall notify BNSF for railroad signal mark-outs.
12. All backfilling shall be at 90% relative dry compaction. For areas within or that affect the railroad right-of-way, the contractor shall submit a compaction report prepared by a California licensed Geotechnical Professional Engineer prior to release of any deposited fund balance.
13. Prior to the commencement of work, the Contractor shall submit to SANBAG for review, a description of the work process including scheduled activities.
14. The Contractor shall remove all temporary facilities constructed on the railroad right-of-way, debris, and other items not originally at the site prior to construction and shall notify SANBAG that all construction has been completed. After as-builts have been received, SANBAG inspects the construction site and signs-off the work, SANBAG will release any unused deposit funds.
15. The Contractor or contracting party shall obtain all permits necessary for the proposed project including but not limited to encroachment, SWPPP, and environmental permits, and third-party utility permits.

EXHIBIT "D-3"

SANBAG JACK AND BORE PIPELINE NOTES (Redlands Branch Line)

1. Unless otherwise shown on the plan view or plan and profile and approved by SANBAG, the Contractor shall adhere to the following requirements.
2. Boring of carrier or direct burial utilities by directional boring methods is prohibited.
3. For pipelines carrying flammable or hazardous materials, the Contractor shall adhere to special conditions stated in the Right-of-Entry (ROE) permit.
4. All underground utilities under railroad tracks shall be encased in a larger pipe or conduit called the "casing pipe."
5. Casing pipe shall be installed across the entire width of the railroad right-of-way and shall extend beyond the right-of-way a minimum of 10-feet.
6. Should ground water or other loose and unstable soils conditions be encountered during construction, the Contractor shall immediately stop work, notify the railroad flagman, provide necessary support to track and other railroad structures, and notify SANBAG. It shall be the responsibility of the contractor to make necessary corrections to construction process to allow for said conditions.
7. Prior to commencement of construction, the Contractor shall submit to SANBAG a plan showing the proposed method of casing installation, construction access, stockpile locations, SWPPP control measures, fencing type and location, and a milestone schedule.
8. All abandoned pipes shall be removed from their casing pipes. The empty casing pipe shall be pressure grouted full the entire length. Should there be no casing pipe, the abandoned pipe shall be pressure grouted full the entire length. A SANBAG inspector must be present during the grouting process.
9. The Contractor shall install permanent signs identifying the location of the pipe at the edge of the railroad right-of-way unless within a public grade crossing.
10. All ends of the casing pipe shall be sealed unless otherwise authorized by SANBAG.
11. The top of casing shall have a minimum depth of 6-feet below the top of tie and a minimum depth of 5-feet below ground surface including bottom of ditches and other low points within the railroad right-of-way.
12. Casing and carrier pipes shall be constructed to prevent leakage of any substance. When casing pipes are sealed at each end, vent pipes shall be installed.
13. All casing pipes shall be installed with a minimum slope of 1%.
14. Installation of casing pipes by open trench is prohibited.
15. Casing jacking shall adhere to the following requirements.
    a. This method shall be in accordance with the American Railway Engineering and Maintenance of Way Association recommended practices, Volume 1, Chapter 1, Part 4, "Earth Boring and Jacking Culvert Pipe Through Fills." This operation shall be conducted without hand-mining ahead of the pipe and without the use of any type of boring, auguring, or drilling equipment.
    b. Bracing and backstops shall be designed and jacks with sufficient rating used so that the jacking can progress without stoppage (except for adding lengths of pipe) until the leading edge of the pipe reaches the receiving pit.
    c. During jacking, an earth plug 1.5 times the diameter of the casing shall be maintained at all times. Jacking operations shall be continuous on a 24-hour per day basis until the jacking operation is completed.
16. Casing boring shall adhere to the following requirements.
    a. This method consists of pushing the pipe into the fill with a boring auger rotating within the pipe to remove the spoil. When augers or similar devices are used for casing placement, the front of the pipe shall be provided with mechanical arrangements or devices that will positively prevent the auger from leading the casing so that the there will be no unsupported

excavation ahead of the casing. The augur and cutting head arrangement shall be removable from within the pipe in the event an obstruction is encountered. The over-cut by the cutting head shall not exceed the outside diameter of the pipe by more than one-half inch. The face of the cutting head shall be arranged to provide reasonable obstruction to the free flow of soft or poor material.

b. The use of water or other liquids to facilitate casing placement and/or spoil removal is prohibited.
c. Plans and descriptions of the auger stop arrangement to be used shall be submitted to SANBAG for approval prior to commencement of work.
d. Any method which employs simultaneous boring and jacking or drilling and jacking for pipes over 8-inches in diameter that does not adhere to the above requirements will not be permitted. For casings 8-inches and smaller in diameter, augering, or boring without the same requirements may be considered if approved by SANBAG.

17. If an obstruction is encountered during installation of the casing pipe that will stop the forward action of the pipe, and it becomes evident that it is impossible to advance the pipe, operations will cease and the pipe shall be abandoned in-place and pressure grouted full before continuing with work. Location, length, and depth of abandoned casing pipes and carrier pipes shall be shown on the as-built drawings.
18. Bored or jacked installations shall have a bored-hole diameter essentially the same as the outside diameter of the casing plus the thickness of the protective coating. If voids should develop or if the bored-hole diameter is greater than the outside diameter of the casing pipe, plus coating, by more than approximately 1 inch, grouting or other methods as approved by SANBAG shall be employed to fill such voids.
19. Pressure grouting of the soils before or during jacking or boring may be required to stabilize the soil, control water, prevent loss of material, and prevent settlement or displacement of the ground and/or tracks. Grout shall be cement, chemical, or other special injection material selected to accomplish the necessary stabilization. The grouting contractor shall be a specialist in the field with a minimum of 5-years continuous experience of successfully grouting soil. Materials to be used and the method of injection shall be prepared by a California licensed Geotechnical Engineer, or by an experienced and qualified company specializing in this work and submitted for approval by SANBAG prior to the commencement of work. Proof of experience and competency shall accompany the submission.
20. When water is know or expected to be encountered, pumps of sufficient capacity to handle the flow shall be maintained at the site and be constantly attended operationally on a 24-hour per day basis until the SANBAG inspector determines their operation can be safely halted. When dewatering, close observation shall be maintained to detect any settlement or displacement of track, ground, or facilities.
21. The dewatering system shall lower and maintain the ground water level a minimum of 2 feet below the invert at all times during construction by utilizing will points, vacuum well points, or deep wells to prevent the inflow of water or water and soil into the heading. Ground water observation wells may be required to demonstrate that the dewatering requirements are being complied with.
22. The proposed methods of dewatering shall be submitted to SANBAG prior to the commencement of work. The discharge from the dewatering operations in the vicinity of the railroad shall be carefully monitored. Should excessive fine soils particles at any time during the dewatering process be observed, the dewatering shall be halted immediately and cannot resume until the unsatisfactory condition is remedied to the satisfaction of the SANBAG inspector.

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. R 13167 Amendment No. _____

By and Between

San Bernardino Associated Governments acting as the San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission and City of Rialto

Contract Description License Agreement on the San Gabriel Subdivision Mile Post 86.4

Board of Director's Meeting Date: June 5, 2013

Overview of BOD Action: Approve Contract No. R13167 with the City of Rialto granting a license agreement on the San Gabriel Subdivision railroad right-of-way, City of Rialto mile post 86.4 east;

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

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

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
6/5/13	6/30/18	

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

FINANCIAL INFORMATION

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

☐ A Budget Amendment is required. How are we funding current FY? N/A

☐ 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 _____ %

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

CONTRACT NO: R13167

By and Between

SAN BERNARDINO ASSOCIATED GOVERNMENTS acting as the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY and the SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

And

CITY OF RIALTO

For

License Agreement on the San Gabriel Subdivision Mile Post 86.4

LICENSE AGREEMENT

This LICENSE AGREEMENT ("Agreement") is made and entered into as of July 10, 2013 by and between the **SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY AND THE SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION**, a public agency existing under the authority of the laws of the State of California (jointly referred to as ("SANBAG"), and **CITY OF RIALTO** a corporate municipality, ("LICENSEE"), upon and in consideration of the agreements, covenants, terms and conditions below:

PART I

BASIC LICENSE PROVISIONS

1. Description of License Property:
An underground crossing of SANBAG property on the San Gabriel Subdivision San Bernardino at Cedar Avenue southerly of Rialto Avenue at a point approximately fifty feet (50') easterly of the center line of Cedar Avenue and an additional five foot (5') by ten foot(10') by six inches (6") area for a concrete splash pad located on the eastern side of the pipeline, in the City of Rialto, County of San Bernardino, at Mile Post 86.4 (SCRRA Mile Post 54.1) as shown on Exhibit "A".
Approximate area:
One Thousand Fifty Square Feet (1,050 Sq. Ft.) (§1.1)

2. Use of License Property:
Licensee may use the License Property only for:
Installation, operation, maintenance and repair of one (1) thirty nine inch (39") storm drain pipeline encased in a fifty four inch (54") steel casing only, and no other uses(§1.1, §10)

3. Commencement Date:
July 10, 2013, or upon approval and execution by SANBAG's Board of Directors. (§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. $___0.00_____per year, payable annually in advance
   - ☐ b. $___0.00____ per month, payable monthly in advance (§2.1)

B. Additional License Fee:

☒ a. One-time fee: $1,500.00

☐ b. Other fees: $N/A (§2.1)

C. Base License Fee Adjustment Dates (Not 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 (§2.2)

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

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

8. Licensee's Address:
CITY OF RIALTO
150 S. Palm Avenue
Rialto, California 92376 (§24.1)
Attn: Walter Allison
Principle Civil Engineer – Development Services
909-820-2525 x2439

9. Facility:
One (1) thirty nine inch (39") storm drain pipeline encased in a fifty four inch (54") steel casing (§1.1)

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.

CITY OF RIALTO

By: _____

Deborah Robertson
Mayor

Date: _____

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

By: _____

Janice Rutherford
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____

Jimmy L. Gutierrez
City Attorney

APPROVED AS TO FORM

By: _____

Eileen Monaghan Teichert
General Counsel

ATTEST

By: _____

Barbara McGee
City Clerk

CONCURRENCE

By: _____

Jeffery Hill
Contract Administrator

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.

CITY OF RIALTO

By: _____

Deborah Robertson
Mayor

Date: _____

SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

By: _____

Janice Rutherford
President, Board of Directors

Date: _____

APPROVED AS TO FORM

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City Attorney

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By: _____

Jeffery Hill
Contract Administrator

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

PART II - GENERAL LICENSE PROVISIONS

1. GRANT OF LICENSE/TERM

1.1 Grant of License. SANBAG hereby grants a non-exclusive 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 supersede all prior verbal or written agreements and understandings between the Parties with respect to the items set forth herein. This Agreement may be amended at any time by the written agreement of SANBAG and Licensee. No amendments, changes, revisions or discharges of this Agreement in whole or in part, or at any time, shall be binding upon the parties unless the same shall be in writing and executed by both parties hereto.

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

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

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

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

24.15 Termination for Public Use. In addition to any and all other termination rights of SANBAG and regardless of the Term set forth in the Basic License Provisions, Licensee hereby expressly recognizes and agrees that the License Property is located on SANBAG property that may be developed for public projects and programs which may be implemented by SANBAG or other public agencies, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects and/or other public uses (collectively and individually "Public Use"), and that Licensee's use of the License Property under this License is a temporary interim use as to which Licensee has no right to nor expectation of use for any particular length of time. Accordingly, as a condition to entering into this License, SANBAG expressly reserves the right to terminate the License for any of such Public Use by thirty (30) days written notice to Licensee. Licensee expressly acknowledges and agrees that:

Licensee

SANBAG

(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.

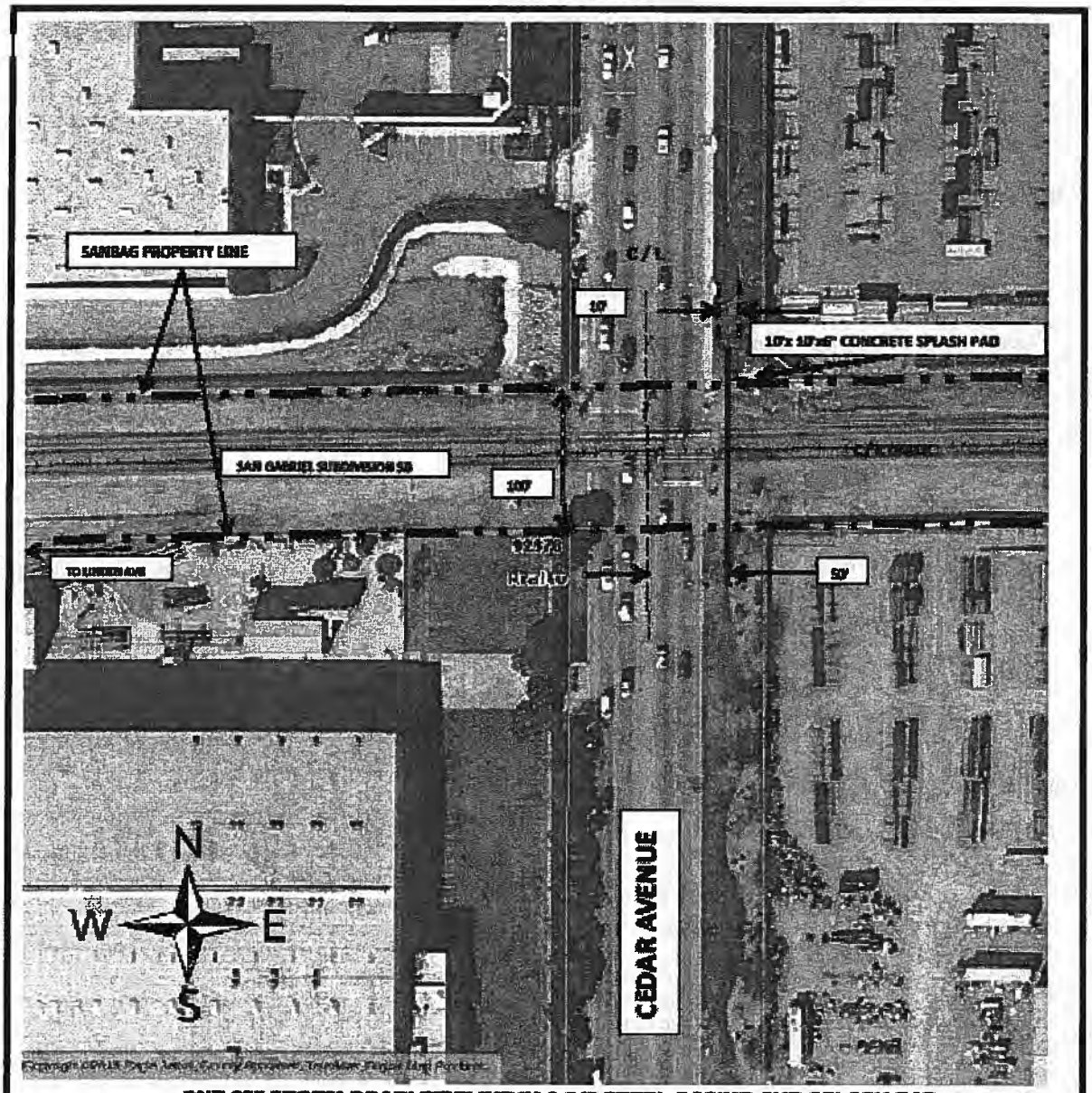
24.18 No Recording. Licensee shall not record or permit to be recorded in the official records of the county where the License Property is located, this Agreement, any memorandum of this Agreement or any other document giving notice of the existence of this Agreement or the license granted hereby.

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"

License Property



ONE 39" STORM DRAIN PIPELINE IN A 54" STEEL CASING AND SPLASH PAD

APN: 0128-062-18			
Date ########			
Branch/Line	Mile Post SCRRA 51.4	Lessee/Licensee	Governments SANBAG Working Together
SAN GABRIEL SUB	SANBAG 86.4	CITY OF RIALTO	
County	Nearest Cross Street	Contract Number	SAN BERNARDINO ASSOCIATED GOVERNMENTS
SAN BERNARDINO	CEDAR AVENUE	RSSB003761	
Area	City	Scale	1170 W. 3rd Street, 2nd Floor
1,050 SQ. FT.	RIALTO	1"=100'	San Bernardino, CA 92410-1715
Map Reference	Use	Thomas Guide Grid	
SSB2	STORM DRAIN	605 E1	

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"

SANBAG General Notes

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

Exhibit "D-2"

ADDITIONAL REQUIREMENTS
SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (SCRRA)

1. Licensee agrees to execute and deliver to SCRRA, prior to commencing any work within the rail right-of-way, SCRRA Right of Entry Agreement (Form Number 6) and deliver and secure approval of the insurance required by the two exhibits attached to Form Number 6. If the Licensee retains a contractor to perform any work within the rail right-of-way, the Licensee shall incorporate in its contract documents SCRRA Form Number 6 and SCRRA Rules and Requirements for Construction on Railway Property (Form Number 37). SCRRA's Right of Way Engineers Office can be reached at 1-909-394-3418.

2. The Licensee agrees to comply and to ensure that its contractor complies with instructions of SCRRA's Employee-In-Charge (EIC) and representatives, in relation to the proper manner of protection of the tracks and the traffic moving theron, pole lines, signals and other property of SCRRA or its member agency tenants or licensees at or in the vicinity of the work, and shall perform the work at such times as not to endanger or interfere with safe and timely operation of SCRRA's track and other facilities.

3. Licensee's contractor, at its sole cost and expense, shall obtain and maintain, in full force and effect, insurance as required by SCRRA during the entire construction period. The Contractor shall furnish copies of the insurance certificates to all affected operating railroads.

4. Third Party Safety Training is required for all work near or within the railroad right-of-way. Licensee's contractor shall schedule safety training by calling 1-877-452-0205. The contractor will need a valid SCRRA project number, located in the upper right hand corner of the Right-of-Entry. No work may commence on the railroad right-of-way until this training has been completed.

5. Licensee's contractor will call 1-877-452-0205 to arrange for flagging services a minimum of fifteen (15) working days prior to beginning work. Although every effort is made to accommodate your schedule, prior notification does not guarantee the availability of protective services for the proposed date of work.

6. Licensee or Licensee's contractor shall be responsible for the location and protection of any and all surface, sub-surface, and overhead lines and structures. Licensee shall not damage, destroy or interfere with any existing encumbrances, licenses and rights (whether public or private), granted upon or relating to the railroad right-of-way.

7. The contractor shall call SCRRA's signal department at 1-909-592-1346 to mark signal and communication cables and conduits. In case of signal emergencies or grade crossing problems, the contractor shall call SCRRA's 24-hour signal emergency number 1-888-446-9721.

8. The Licensee shall obtain permission from the owners of any fiber optic, gas, or oil lines that may located along or across the right-of-way.

9. The face of jacking and receiving pits shall be located a minimum of 25-feet from the centerline of the nearest track measured at right angles to the track and shall not be located between the track and the automatic signal gate arms.

10. Licensee shall prepare and submit traffic control plan for SCRRA approval for projects that will affect vehicular traffic at an existing highway-rail grade crossing.

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

Licensee	SANBAG

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. R 13161 Amendment No. _____

By and Between

San Bernardino Associated Governments acting as the San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission and City of Rialto

Contract Description License Agreement on the San Gabriel Subdivision Mile Post 86.4

Board of Director's Meeting Date: June 5, 2013

Overview of BOD Action: Approve Contract No. R13161 with the City of Rialto granting a license agreement on the San Gabriel Subdivision railroad right-of-way, City of Rialto mile post 86.4 west.

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

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

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
6/5/13	6/30/18	

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

FINANCIAL INFORMATION

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

☐ A Budget Amendment is required. How are we funding current FY? N/A

☐ 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 _____ %

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

CONTRACT NO: R13161

By and Between

SAN BERNARDINO ASSOICATED GOVERNMENTS acting as the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY and the SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

And

CITY OF RIALTO

For

License Agreement on the San Gabriel Subdivision Mile Post 86.4

File: RSSB003762

LICENSE AGREEMENT

This LICENSE AGREEMENT ("Agreement") is made and entered into as of July 10, 2013 by and between the **SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY AND THE SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION**, a public agency existing under the authority of the laws of the State of California (jointly referred to as ("SANBAG"), and **CITY OF RIALTO** a corporate municipality, ("LICENSEE"), upon and in consideration of the agreements, covenants, terms and conditions below:

PART I

BASIC LICENSE PROVISIONS

1. Description of License Property:
An underground crossing of SANBAG property on the San Gabriel Subdivision San Bernardino at Cedar Avenue southerly of Rialto Avenue at a point approximately fifty feet (50') westerly of the center line of Cedar Avenue in the City of Rialto, County of San Bernardino, at Mile Post 86.4 (SCRRA Mile Post 54.1) as shown on Exhibit "A".
Approximate area:
One Thousand Square Feet (1,000 Sq. Ft.) (§1.1)

2. Use of License Property:
Licensee may use the License Property only for:
Installation, operation, maintenance and repair of one (1) forty eight inch (48") storm drain pipeline encased in a sixty four inch (64") steel casing only, and no other uses(§1.1, §10)

3. Commencement Date:
July 10, 2013, or upon approval and execution by SANBAG's Board of Directors. (§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. $___0.00_____per year, payable annually in advance
      - ☐ b. $___0.00____ per month, payable monthly in advance (§2.1)

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

C. Base License Fee Adjustment Dates (Not 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 (§2.2)

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

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

8. Licensee's Address:
CITY OF RIALTO
150 S. Palm Avenue
Rialto, California 92376 (§24.1)
Attn: Walter Allison
Principle Civil Engineer – Development Services
909-820-2525 x2439

9. Facility:
One (1) thirty nine inch (39") storm drain pipeline encased in a fifty four inch (54") steel casing (§1.1)

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.

CITY OF RIALTO

By: _____
Deborah Robertson
Mayor

Date: _____

APPROVED AS TO FORM

By: _____
Jimmy L. Gutierrez
City Attorney

ATTEST

By: _____
Barbara McGee
City Clerk

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

By: _____
Janice Rutherford
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____
Jeffery Hill
Contract Administrator

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.

CITY OF RIALTO

By: _____
Deborah Robertson
Mayor

Date: _____

SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

By: _____
Janice Rutherford
President, Board of Directors

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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 supersede all prior verbal or written agreements and understandings between the Parties with respect to the items set forth herein. This Agreement may be amended at any time by the written agreement of SANBAG and Licensee. No amendments, changes, revisions or discharges of this Agreement in whole or in part, or at any time, shall be binding upon the parties unless the same shall be in writing and executed by both parties hereto.

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

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

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

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

24.15 Termination for Public Use. In addition to any and all other termination rights of SANBAG and regardless of the Term set forth in the Basic License Provisions, Licensee hereby expressly recognizes and agrees that the License Property is located on SANBAG property that may be developed for public projects and programs which may be implemented by SANBAG or other public agencies, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects and/or other public uses (collectively and individually "Public Use"), and that Licensee's use of the License Property under this License is a temporary interim use as to which Licensee has no right to nor expectation of use for any particular length of time. Accordingly, as a condition to entering into this License, SANBAG expressly reserves the right to terminate the License for any of such Public Use by thirty (30) days written notice to Licensee. Licensee expressly acknowledges and agrees that:

Licensee

SANBAG

(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.

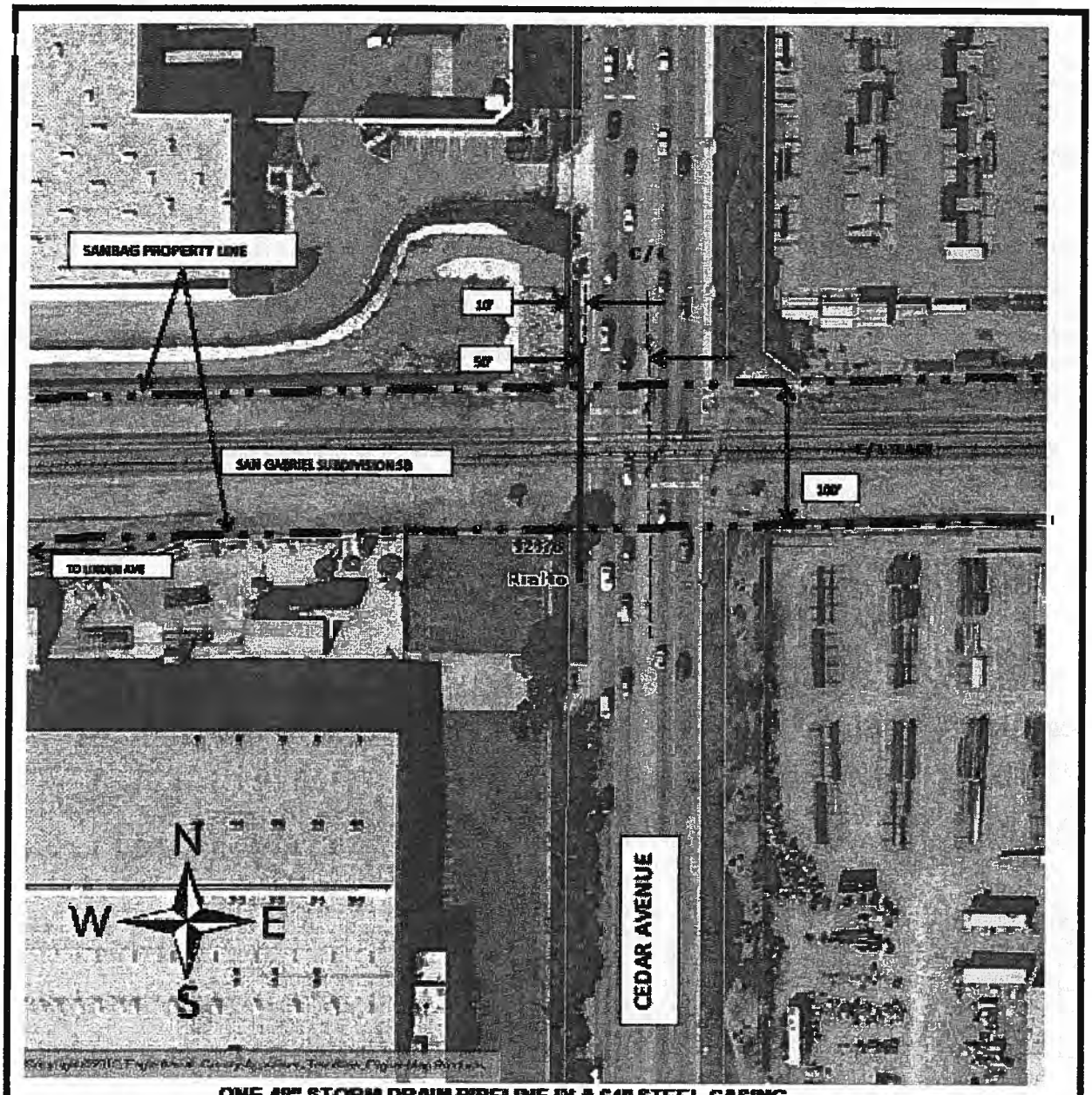
24.18 No Recording. Licensee shall not record or permit to be recorded in the official records of the county where the License Property is located, this Agreement, any memorandum of this Agreement or any other document giving notice of the existence of this Agreement or the license granted hereby.

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"

License Property



ONE 48" STORM DRAIN PIPELINE IN A 64" STEEL CASING

APN: 0128-062-18			
Date ########			
Branch/Line	Mile Post SCRRA 51.4	Lessee/Licensee	Governments SANBAG Working Together
SAN GABRIEL SUB	SANBAG 86.4	CITY OF RIALTO	
County	Nearest Cross Street	SANBAG File Number	
SAN BERNARDINO	CEDAR AVENUE	RSSB003762	
Area	City	Scale	SAN BERNARDINO ASSOCIATED GOVERNMENTS
1,000 SQ. FT.	RIALTO	1"=100'	1170 W. 3rd Street, 2nd Floor
Map Reference	Use	Thomas Guide Grid	San Bernardino, CA 92410-1715
SSB2	STORM DRAIN	605 E1	

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"

SANBAG General Notes

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

Exhibit "D-2"

ADDITIONAL REQUIREMENTS
SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (SCRRA)

1. Licensee agrees to execute and deliver to SCRRA, prior to commencing any work within the rail right-of-way, SCRRA Right of Entry Agreement (Form Number 6) and deliver and secure approval of the insurance required by the two exhibits attached to Form Number 6. If the Licensee retains a contractor to perform any work within the rail right-of-way, the Licensee shall incorporate in its contract documents SCRRA Form Number 6 and SCRRA Rules and Requirements for Construction on Railway Property (Form Number 37). SCRRA's Right of Way Engineers Office can be reached at 1-909-394-3418.

2. The Licensee agrees to comply and to ensure that its contractor complies with instructions of SCRRA's Employee-In-Charge (EIC) and representatives, in relation to the proper manner of protection of the tracks and the traffic moving theron, pole lines, signals and other property of SCRRA or its member agency tenants or licensees at or in the vicinity of the work, and shall perform the work at such times as not to endanger or interfere with safe and timely operation of SCRRA's track and other facilities.

3. Licensee's contractor, at its sole cost and expense, shall obtain and maintain, in full force and effect, insurance as required by SCRRA during the entire construction period. The Contractor shall furnish copies of the insurance certificates to all affected operating railroads.

4. Third Party Safety Training is required for all work near or within the railroad right-of-way. Licensee's contractor shall schedule safety training by calling 1-877-452-0205. The contractor will need a valid SCRRA project number, located in the upper right hand corner of the Right-of-Entry. No work may commence on the railroad right-of-way until this training has been completed.

5. Licensee's contractor will call 1-877-452-0205 to arrange for flagging services a minimum of fifteen (15) working days prior to beginning work. Although every effort is made to accommodate your schedule, prior notification does not guarantee the availability of protective services for the proposed date of work.

6. Licensee or Licensee's contractor shall be responsible for the location and protection of any and all surface, sub-surface, and overhead lines and structures. Licensee shall not damage, destroy or interfere with any existing encumbrances, licenses and rights (whether public or private), granted upon or relating to the railroad right-of-way.

7. The contractor shall call SCRRA's signal department at 1-909-592-1346 to mark signal and communication cables and conduits. In case of signal emergencies or grade crossing problems, the contractor shall call SCRRA's 24-hour signal emergency number 1-888-446-9721.

8. The Licensee shall obtain permission from the owners of any fiber optic, gas, or oil lines that may located along or across the right-of-way.

9. The face of jacking and receiving pits shall be located a minimum of 25-feet from the centerline of the nearest track measured at right angles to the track and shall not be located between the track and the automatic signal gate arms.

10. Licensee shall prepare and submit traffic control plan for SCRRA approval for projects that will affect vehicular traffic at an existing highway-rail grade crossing.

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

Licensee	SANBAG

Governments SANBAG Working Together

San Bernardino Associated Governments

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

TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 8

Date: June 20, 2013

Subject: Request for Proposal No. 14003, On-call Transit and Rail Services

Recommendation:* That the Committee recommend the Board, acting as the San Bernardino County Transportation Commission, authorize and approve release of Request for Proposal No. 14003 for qualified firms to provide On-call Transit and Rail Services.

Background: To support the activities necessary to develop, study, plan, design, and implement a variety of projects, studies, and goals for SANBAG and other agencies, a bench of on-call consultants is needed to assist staff on an as-needed basis. It is the intent to select and contract with more than one consultant to provide these services which cover a broad spectrum, such as, project and program management, staff augmentation, engineering, planning, and construction management.

The duration of each contract will be five (5) years which follows SANBAG contracting policy. Individual projects would be assigned among the contract consultants to the firm best qualified to conduct the specific work based upon expertise, experience, appropriate staffing availability and cost effectiveness. Depending on the task and through the duration of the contract, one or more firms will be requested to provide a scope and fee for said work. Based on qualifications of each firm for the task, staff will evaluate and determine which firm will be recommended for the task. This recommendation would be based on

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

CRTC1306b-maa

http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Requests%20for%20Proposals%20RFPs/RFP14003%20Scope%20of%20Work.docx

qualifications in keeping with state and federal regulations. However, should a firm's proposed fee be excessive as compared to the staff prepared Independent Cost Estimate (ICE), staff would then recommend a different firm for the task. Depending on the task, the fee may be a lump sum not-to-exceed or based on hourly rates, or possibly a combination. In some cases, there may be multiple firms selected for a specific task, each providing qualifications that the other may not have.

Some of the more specific immediate activities, per the Fiscal Year 2013/2014 budget, include staff support to manage projects: construction support; studies to improve grade crossing safety on the Metrolink San Bernardino line; grade crossing replacements and improvements on the Redlands line; studies to extend Metrolink to the San Bernardino International Airport, and transit oriented developments; studies for security systems and services at all Metrolink station within the County; and the development of Short Range Transit Plans for the bus operators and SANBAG.

Financial Impact: This item is consistent with the adopted budget for Fiscal Year 2013/2014.

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

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

ATTACHMENT "A"

RFP NO. 14003, On-Call for Transit and Rail Services

SCOPE OF WORK

GENERAL

The services to be provided by the Consultant for this Statement of Qualifications (SOQ) may include all work necessary from conceptual through implementation of railroad and non-railroad transit projects and other transit corridor planning projects. The Consultant will provide a variety of services that in general include but not limited to, rail and transit systems, multi-modal and transit centers, rail and transit maintenance facilities, support facilities, and non-motorized systems; program, project, and construction management; staff augmentation; planning, environmental, design as well as construction support; development/entitlement projects and evaluations; studies, analyses, and other general services.

The Authority may require any of the following services to be completed by the Consultant(s); however, since the frequency, quantity, and dollar value of each service listed below is uncertain, the services have been divided into two groups. Tier 1 services are those that will most likely be needed during the term of the contract and Tier 2 are those that may be needed at a later date. The proposer shall submit all necessary documentation required in this SOQ to support their respective qualifications that meet the needs of the Tier 1 services. These at a minimum should include staff resumes and related project experience that link staff to the projects. For Tier 2, the proposer shall demonstrate their ability to add the necessary firms and personnel at a later date for the required services. The Consultant does not need to identify firm, personnel, and related project experience at this time for the Tier 2 services. However, any addition of firms and personnel that would be needed for Tier 2 services, as well as Tier 1, would be subject to Authority's approval meeting all contractual requirements.

Following is a list of general categories for Tier 1 and Tier 2 services that may be required. For each category below, whether for Tier 1 or Tier 2, example references of typical tasks are shown but may not depict all tasks necessary to deliver the required services by the Authority. Other supporting tasks may be required by the Authority for each Contract Task Order as necessary to perform the required work.

Tier 1

For this Tier, the Consultant(s) will most likely support the Authority with regard to, but not limited to, the construction activities for the San Bernardino Passenger Rail Project (DSBPRP) and the San Bernardino Transit Center (SBTC), some elements of the Redlands Passenger Rail Project (RPRP) program management, and various studies current and potentially identified by the Authority. Construction management for DSBPRP and SBTC has already been procured.

- Program and Project Management and Staff Augmentation
  - Develop, manage, and administer projects and programs, for such tasks as scope, costs, schedules, finance, and contracts. Write agenda items and make presentations to SANBAG committees and Board of Directors.

- Support interagency and intra-agency coordination and public outreach including the preparation of presentation materials, making presentations, preparation of outreach materials, attending meetings, and assisting staff and other consultants.
- Assist in coordinating programs and projects with agencies such as Federal Transit Administration, Federal Railroad Administration, Southern California Regional Rail Authority, BNSF, County of San Bernardino, other county transportation commissions and authorities, transit agencies, cities, utility agencies and companies, and other local, regional, state, and federal agencies and stakeholders.
- Contract Management - Support in procurements of other consultants and construction contractors on varying projects, including assistance with project delivery and contract administration. Prepare and manage third-party agreements, consultant agreements, amendments, independent cost estimates, scopes of work, Requests for Proposals/Qualifications, and Invitations For Bid
- Project Controls - Create and monitor Quality Assurance/Quality Control (QA/QC) program. Create, update, manage, and maintain the Authority document control system.
- Grant writing, administration, and reporting, and preparation of supporting documentation.
- Transportation Development Act (TDA) – Development of TDA procedure manual and training and performing TDA performance audits of the six county transit operators and of SANBAG.
- Provide assistance with FTA grantee and contracting compliance requirements.
- Review requests by third-parties effecting Authority's assets such as railroad rights-of-way, facilities, and other Authority owned properties and interests.
- All other services as requested by Authority.

- Planning/Analysis – Rail and transit and systems and supporting elements, alternative analyses, financial analyses, system and traffic modeling and analyses, ridership modeling, Rail Traffic Control (RTC) modeling, and FTA New Starts and Small Starts; land use analyses, site development entitlements and designs, transit oriented developments; preparation of Short Range Transit Plans (SRTP), Long Range Transit Plans (LRTP), and Title VI reports.
- Environmental – Reports, surveys, mitigation, conceptual analysis, design, and construction support for such items as air quality, biology, cultural resources, archaeology, hazardous materials and waste, noise and vibration, paleontology, and Section 4(f). Development of CEQA and NEPA documentation and reports.
- Engineering and Maintenance – Planning, conceptual designs, preliminary engineering, PS&E, maintenance, and operations for such tasks as track design, transit and rail systems and stations, systems, communications and signals (C&S), video surveillance, safety systems, public address systems, transit and rail maintenance facilities, railroad maintenance of way (MOW), maintenance of equipment (MOE), and design support during construction.
- Construction Management - All services for transit and rail projects for stations, platforms, bridges, buildings, track, grade crossings; architectural, civil, structural, electrical, mechanical, and geotechnical; communications and signals; material testing, estimating, scheduling, constructability reviews, and construction staking.
- Security system analyses/interface and upgrades.
- Geotechnical - investigations, reports, testing, and construction support.

- Hydraulics and Hydrology – drainage studies and design, floodplain mapping, erosion control, and water quality management.
- Utility Agency Coordination – Investigation, coordination, pot-holing, designs, studies, and relocations.
- Surveying – Topography, boundary, and construction staking surveys; preparation of record maps, as-builts, right-of-way documentation; and aerial photography and topography.
- Right-of-Way – Acquisitions, appraisals, legal descriptions and plats; licenses, easements, and leases; condemnation, negotiations, and notary public services.
- Public Projects – Support Authority with third-party highway grade crossings, grade separation improvements, and bike trails.
- Other duties as assigned and for which general planning, engineering, and construction support expertise is required.

Tier 2

- Architecture/Building Design/Interior Design
- Landscape Architecture and Irrigation
- Urban design
- Bus transit studies and analyses
- Entitlements
- Prepare, modify, or update standards, standard plans, design standards, manuals, as-built drawings, track charts, etc.
- Overhead Cantenary Systems (OCS) and traction power systems.
- Preparation of rail and transit operations RPFs.

ATTACHMENT "B"

SOQ 14002

Fiscal Year 2014 Projects

Projects Budgeted by Authority for FY14

On-call consultants may be given Contract Task Orders to provide the necessary services to implement the following projects. Additional projects and services may be requested for Fiscal Year 2014 as well as subsequent fiscal years during the life of the consultant's contract. The general description of each task.

- Staff Augmentation – Additional Authority staff support for Construction Management of the Downtown San Bernardino Passenger Rail Project and San Bernardino Transit Center. Other miscellaneous support to Authority staff for various projects.
- San Bernardino International Airport Rail Access Study – An extension of Metrolink approximately two miles to the airport.
- Metrolink Station Security Study – Evaluate security options for the seven existing Metrolink stations within the County.
- Authority's Short Range Transit Plan – SRTP covering SANBAG's own projects and the operations and projects of the county transit operators.
- Agency Consolidation Study – Consolidation one or more of the transit providers into SANBAG or amongst themselves.
- San Gabriel Subdivision Grade Crossing Safety Study – Evaluation and recommendations for improvements to grade crossings.
- Redlands Subdivision Grade Crossing Improvements – Preparation of construction documents for the replacement of crossings.
- Redlands Subdivision Grade Crossing Improvement Construction Over-site of Third-party Projects - Provide construction management for third-parties projects.
- Metrolink Station and Transit Center Land Use Analysis – Evaluation of potential use for development along rail corridors.

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San Bernardino Associated Governments
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Phone: (909) 884-8276 Fax: (909) 885-4407 Web: www.sanbag.ca.gov

TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 9

Date: June 20, 2013

Subject: Release of Invitation for Bids (IFB) 14001 for construction of the Downtown San Bernardino Passenger Rail Project (DSBPRP)

Recommendation:* That the Committee recommend the Board, acting as the San Bernardino County Transportation Commission, authorize the release of Invitation for Bid No. 14001 to obtain bids for construction of the Downtown San Bernardino Passenger Rail Project (DSBPRP) pending final review and approval of San Bernardino Associated Governments General Counsel and Contract Administrator.

Background: The San Bernardino Associated Governments (SANBAG), acting as the San Bernardino County Transportation Commission, is proposing to extend Metrolink commuter passenger rail service. The extension is approximately one mile east from its current terminus at the existing Santa Fe Depot to new Metrolink commuter rail platforms at the proposed San Bernardino Transit Center (SBTC), near the intersection of Rialto Avenue and E Street in the City of San Bernardino. Included within the DSBPRP are new rail platforms at the SBTC and Depot, a pedestrian overpass, construction of a second track parallel to the existing track, grade crossing improvements, roadway closures, and drainage improvements. In May 2013, the Board of Directors approved the DSBPRP funding plan with an engineer's construction estimate of $66,347,000.

Since the Policy Committees and Board will be dark in July and August, respectively, staff is requesting authorization to release the IFB as soon as the

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

CRTC1306a-cd

plans and specifications are finalized, estimated to be sometime after July 3rd. Furthermore, funding for this project includes State Local Partnership Program (SLPP) monies in the amount of $10,921,226. Allocation of these funds is set to occur at the June 2013, California Transportation Commission (CTC) meeting, after which SANBAG will have six (6) months to award the construction contract. Granting authority to release the IFB without delaying a month or longer due to the Committee/Board dark months will ensure the SLPP funding won't be jeopardized. Staff is requesting the authorization to release IFB No. 14001 pending the final review and approval of SANBAG General Counsel and Contract Administrator. Prior to awarding the construction contract, staff will request Board approval of the plans and specifications.

Financial Impact: This item is consistent with the proposed Fiscal Year 2013/2014 budget. Funds associated to the construction of this project up to the current estimate have been budgeted.

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

Responsible Staff: Casey Dailey, Transit Analyst

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 10

Date: June 20, 2013

Subject: Release Invitation for Bid (IFB) No. 14002 for Construction of the San Bernardino Transit Center (SBTC)

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

1. Authorize the release of Invitation for Bid No. 14002 to obtain bids for construction of the San Bernardino Transit Center Project pending final review and approval of San Bernardino Associated Governments General Counsel, Contract Administrator and a funding agreement with Omnitrans.

2. Authorize staff to proceed directly to Board for approval of the Omnitrans funding agreement.

Background: In partnership with Omnitrans, the San Bernardino Associated Governments (SANBAG), acting as the San Bernardino County Transportation Commission (Commission), is proposing to construct the San Bernardino Transit Center (SBTC) near the intersection of Rialto Avenue and E Street in the City of San Bernardino. The project includes development of a bus facility with twenty-two bus bays, public facilities, and a public plaza. The engineer's construction estimate for the SBTC is $13,952,000. Construction of the SBTC is contingent upon Omnitrans and SANBAG developing and adopting a funding agreement to fully fund the project. The project could be delayed or postponed should the

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

CRTC1306b-cd

funding agreement not be adopted. Development of the funding agreement is currently underway and is expected to be ready for adoption by the July Board meeting. Staff is requesting authorization to submit the funding agreement directly to the Board for approval in order to keep the project on schedule and avoid jeopardizing $992,000 of Transportation Enhancement (TE) funding that is currently programmed for the San Bernardino Transit Center. The TE funding requires the construction contract must be awarded within six (6) months of the California Transportation Commission (CTC) allocation, which is scheduled for the June 11, 2013 meeting.

Since the SANBAG Policy Committees and Board will be dark in July and August, respectively, staff is requesting authorization to release the IFB as soon as the plans and specifications are finalized, which will be sometime after July 3, 2013. Staff is requesting the authorization to release IFB No. 14002 pending the final review and approval of SANBAG General Counsel and Contract Administrator. Prior to awarding the construction contract, staff will request Board approval of the plans and specifications.

Financial Impact: This item is consistent with the proposed Fiscal Year 2013/2014 budget. Funds associated to the construction of this project up to the current estimate have been budgeted.

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

Responsible Staff: Casey Dailey, Transit Analyst

CRTC1306b-cd

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 11

Date: June 20, 2013

Subject: Award Professional Services Contract to HDR Engineering, Inc. to complete a Rail Access Study to the Ontario Airport

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

1. Award Contract No. C13048 to HDR Engineering, Inc. for Professional Planning and Engineering Services for a two (2) year contract term for an amount not-to-exceed $584,035.

2. Approve Fiscal Year 2013/14 budget amendment to increase Task No. 0352 General Commuter Rail by $584,035 of State Transit Assistance Fund County Population (PUC99313) for a new task total of $3,644,842.

Background: The Board of Directors approved issuing a Request for Proposals (RFP) to complete a study for rail access to the Ontario International Airport at their February 2013 meeting. Seven (7) engineering firms submitted proposals, of which four (4) were shortlisted for interviews, resulting in a final selection of HDR Engineering, Inc. to complete this study of providing rail access to the Ontario Airport.

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA		SAFE		CMA	

Check all that apply.

CRTC1306d-jrf
http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C13048.docx
http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C13048%20Contract%20Summary%20Sheet.doc

The Ontario International Airport does not currently have rail access. Since this airport is close to major rail infrastructure, passenger rail connections to the airport is feasible and would be of great benefit to the air traveling public, airport development, and local economies. The ultimate goal is to provide rail connections within walking distance to the airport terminals.

In order to examine conceptual designs for these connections, SANBAG issued an RFP on February 6, 2013. The RFP requested that firms at a minimum should evaluate the potential for Metrolink service or other types of systems either on current rail infrastructure or new track alignments to access the airport. The scope of work for the RFP also included tasks such as:

- Reviewing the use of system types other than a Metrolink extension;
- Examination of potential alignments including station platforms and parking lots, transit connections, and equipment maintenance facilities;
- Completion of a conceptual level ridership analysis for each system identified;
- Perform rail operational modeling for all systems, including any potential impacts to Metrolink current or future operations;
- Development of a basic operating plan, including staffing and equipment requirements;
- Preparation of cost estimates for right-of-way acquisition, infrastructure, equipment, design, environmental clearance, operations and maintenance, and construction;
- Evaluation of potential environmental impacts and the type of environmental document that should be prepared; and
- Provide equipment data such as performance, fuel consumption, passenger capacity, consist configuration, availability, and maintenance costs.

The RFP for this study was issued on February 6, 2013, at the SANBAG Board of Directors meeting. The RFP was posted on SANBAG's website, San Bernardino Sun Newspaper and RFP notifications were sent to approximately 100 firms who specialize in these services. A Pre-Proposal Meeting was conducted on February 21, 2013, with 33 firms in attendance. Four (4) addendums to the RFP were issued to respond to questions and revise deadline dates. On March 14, 2013, seven (7) proposals were received by the date and time specified in the RFP. All the proposals were found to be responsive to the RFP.

An Evaluation Committee consisting of staff members from City of Ontario, Riverside County Transportation Commission, Orange County Transportation Authority, Los Angeles County Metropolitan Transportation Authority, and SANBAG's Director and Chief of Transit and Rail Programs reviewed and scored

the proposals. The proposals were evaluated based on the criteria identified in the RFP:

1. Qualifications, Related Experience, and References
2. Proposed Staffing and Project Organization
3. Project Approach/Work plan

Four (4) firms demonstrated significant experience and qualifications in providing transit study services. The Evaluation Committee agreed to interview four (4) firms (listed in alphabetical order):

- CDM Smith
- HDR Engineering, Inc.
- Parsons Brinkerhoff
- URS

On May 2, 2013, the Evaluation Committee conducted oral interviews with the four firms. The interviews were allotted 50 minutes and consisted of an opening presentation followed by thirty 30 minutes of questions and answers. Each firm had an overall understanding of SANBAG's scope of work and requirements. The multi-agency Evaluation Committee unanimously selected HDR as the most qualified firm. The panel selected HDR Engineering, Inc. due to extensive experience, qualifications, and previous success in providing transit study analysis. Their proposal and presentation was well-structured and provided more concise solutions. Their proposed phasing approach to implement transit service to the airport was determined to be superior.

The contract is for a two (2) year term at a cost of $584,035.

Financial Impact: This item is not consistent with Fiscal Year 2013/14 adopted budget. A budget amendment is needed to increase Task No. 0352 General Commuter Rail by $584,035 of State Transit Assistance Rail.

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

Responsible Staff: Justin Fornelli, Chief of Transit and Rail Programs

CRTC1306d-jrf

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CONTRACT SUMMARY SHEET

Contract No. C 13048 Amendment No. _____

By and Between

San Bernardino Associated Governments, acting as the San Bernardino County Transportation Commission and HDR Engineering, Inc.

Contract Description Ontario Airport Rail Access Study

Board of Director's Meeting Date: July 3, 2013

Overview of BOD Action: 1.) Award professional services contract to HDR Engineering, Inc. to complete a rail access study to the Ontario Airport for a not-to-exceed amount of $584,035. 2.) Approve Fiscal Year 2013/14 budget amendment to increase Task No. 0352 General Commuter Rail by $584,035 of State Transit Assistance Fund County Population (PUC99313) for a new task total of $3,644,842.

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

CONTRACT OVERVIEW

Original Contract Amount	$	584,035	**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	$	584,035	**TOTAL CONTINGENCY VALUE**	$	
TOTAL BUDGET AUTHORITY *(contract value + contingency)*				$	584,035

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
7/10/13	7/10/15	

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

FINANCIAL INFORMATION

☐ Budget authority for this contract currently exists in Task No. 0352.

☒ A Budget Amendment is required. How are we funding current FY? State Transit Assistance Fund County Population (PUC99313)

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

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

State Transit Assistance Funds County Population (PUC99313)

☒ Payable ☐ Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes: ☐ Retention? If yes, indicate % _____.

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

MITCH ALDERMAN	M. A. Alderman	6/11/13
Task Manager (Print Name)	Signature Mitch A. Alderman	Date
JUSTIN FORNELLI		6/11/13
Project Manager (Print Name)	Signature Justin Fornelli	Date
Contracts Administrator (Print Name)	Signature Jeffery Hill	Date
Chief Financial Officer (Print Name)	Signature William Stawarski	Date

CONTRACT C13048

BY AND BETWEEN

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

HDR ENGINEERING, INC.

FOR

ONTARIO AIRPORT RAIL ACCESS STUDY

This contract (referred to as "Contract"), is effective on the Effective Date as defined herein, by and between the San Bernardino Associated Governments acting in its capacity as the San Bernardino County Transportation Commission, (hereinafter referred to as "SANBAG"), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715; and HDR Engineering, Inc. (hereinafter referred to as "CONSULTANT") whose address is: 2280 Market Street, Suite 100, Riverside, CA 92501. SANBAG and CONSULTANT are each a "Party" and collectively the "Parties" herein.

RECITALS:

WHEREAS, SANBAG requires certain engineering planning services as described in Attachment A of this Contract and;

WHEREAS, CONSULTANT has confirmed that CONSULTANT has the requisite professional qualifications, personnel and experience and is fully capable and qualified to perform the services identified herein; and

WHEREAS, CONSULTANT desires to perform all services identified herein and to do so for the compensation and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the Parties hereto agree as follows:

ARTICLE 1. PROJECT DESCRIPTION

CONSULTANT agrees to perform services set forth in Attachment "A", Scope of Work, (hereinafter referred to as "Work" or "Services"), which is incorporated herein by reference in accordance with all applicable professional architectural, engineering, construction management, land surveying and/or materials testing standards which are generally accepted in the State of California, in accordance with the terms and conditions expressed herein and in the sequence, time, and manner defined herein. The word "Work", as used herein, includes without limitation, the performance, fulfillment and discharge by CONSULTANT of all obligations, duties, tasks, and services imposed upon or assumed by CONSULTANT hereunder; and the services performed hereunder shall be completed to the satisfaction of SANBAG, with their satisfaction being based on prevailing applicable professional standards.

ARTICLE 2. CONTRACT TERM

The Contract term shall commence upon issuance of a written Notice To Proceed (NTP) issued by SANBAG and shall continue in effect through July 10, 2015 or until otherwise terminated, or unless extended as hereinafter provided by written amendment. Except that all indemnity and defense obligations hereunder shall survive termination of this Contract. CONSULTANT shall not be compensated for any work performed or costs incurred prior to issuance of the NTP.

ARTICLE 3. COMPENSATION

3.1 Total compensation to CONSULTANT for full and complete performance of the Scope of Work, identified herein and in compliance with all the terms and conditions of this Contract, shall be on a Fixed Price basis for all obligations incurred in, or application to, Consultant's performance of Services, and for which CONSULTANT shall furnish all personnel, facilities, equipment, materials, supplies, and services (except as may be explicitly set forth in this Contract as furnished by SANBAG), shall not exceed the amount set forth in 3.2 below.

3.2 The total Contract Amount is five hundred eighty four thousand, thirty five dollars, ($584,035), which shall include all amounts payable to CONSULTANT for its profit, subcontracts, leases, materials and costs arising from or due to termination of this Contract. CONSULTANT shall be reimbursed based on the amounts identified below and the agreed to percentage of the Work completed each month:

3.3 CONSULTANT's overhead rates will be fixed, as agreed upon in Attachment B for the duration of this Contract and include all costs associated with the administration of this Contract. The fixed overhead rate will not be subject to adjustment, unless mutually agreed to by both Parties. Any percentage increase over the direct labor rate in Attachment B is not permitted without prior written authorization from SANBAG and in accordance with the Contract.

3.4 Wage increases for personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates, are reimbursable.

3.5 The Cost Principles and Procedures set forth in 48 CFR Chapter 1, Part 31 et. seq., as constituted on the effective date of this Contract shall be utilized to determine allowableness of costs under this Contract and may be modified from time to time by written amendment of the Contract.

3.5.1 CONSULTANT agrees to comply with Federal Department of Transportation procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

3.5.2 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowed under Chapter 1, Part 31 et. seq., Title 48, Contract Cost Principles and Procedures, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments shall be repaid by CONSULTANT to SANBAG.

3.6 Any Work provided by CONSULTANT not specifically covered by the Scope of Work shall not be compensated without prior written authorization from SANBAG. It shall be CONSULTANT's responsibility to recognize and notify SANBAG in writing when services not covered by the Scope of Work have been requested or are required. All changes and/or modifications to the Scope of Work shall be made in accordance with the "CHANGES" provision in this Contract.

ARTICLE 4. INVOICING

4.1 Payment to CONSULTANT as provided herein shall be payable in four (4) week billing period payments, forty-five (45) calendar days after receipt of an acceptable invoice by SANBAG of an invoice prepared in accordance with instructions below. Payment shall not be construed to be an acceptance of the Work.

4.2 CONSULTANT shall prepare invoices in a form satisfactory to and approved by SANBAG, and it shall be accompanied by documentation supporting each element of measurement and/or cost. Each invoice will be for a four-week billing period and will be marked with SANBAG's contract number, description and task order number, if applicable. Invoices shall be submitted within fifteen (15) calendar days after the period covered by the invoice. Invoices shall include request for payment for services (including additional services authorized by SANBAG) completed by CONSULTANT during each billing period, and shall include back-up information sufficient to establish the validity of the invoice. Any invoice submitted which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to CONSULTANT. Any costs incurred by CONSULTANT in connection with the resubmission of a proper invoice shall be at CONSULTANT's sole expense. The final invoice shall be marked "FINAL" and will be submitted after any and all closeout documents are submitted to SANBAG. Invoices shall be submitted to SANBAG as follows:

San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715
Contract No. C-13048
Attention: Accounts Payable

4.3 CONSULTANT shall furnish evidence, satisfactory to SANBAG, that all labor and materials furnished and equipment used during all periods prior to the period covered by any invoice have been paid in full. SANBAG shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such evidence. Upon furnishing such

evidence, satisfactory to SANBAG, SANBAG shall pay CONSULTANT the full amount of the invoice less disputed amounts.

4.4 Intentionally Left Blank

4.5 CONSULTANT shall include a statement and release with each invoice, satisfactory to SANBAG, that CONSULTANT has fully performed the Work invoiced pursuant to this Contract for the period covered, that all information included with the invoice is true and correct and that all payments to and claims of CONSULTANT and its subcontractors for Services during the period will be satisfied upon the making of such payment. SANBAG shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such statement and release.

4.6. No payment will be made prior to approval of any Work, nor for any Work performed prior to the NTP, nor for any work under any amendment to the Contract until SANBAG's Board of Directors takes action.

4.7. CONSULTANT agrees to promptly pay each subcontractor for the satisfactory completion of all Work performed under this Contract, no later than thirty (30) calendar days from the receipt of payment from SANBAG. SANBAG reserves the right to request documentation from CONSULTANT showing payment has been made to its subcontractors. SANBAG also reserves the right, at its own sole discretion, to issue joint checks to CONSULTANT and any subcontractor(s), which shall constitute payment to CONSULTANT in compliance with the terms of this Contract.

4.8 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations (FAR) System, Chapter 1, Part 31, et. seq., are subject to repayment by CONSULTANT to SANBAG.

ARTICLE 5. TAXES, DUTIES AND FEES

Except to the extent expressly provided elsewhere in this Contract, CONSULTANT shall pay when due, and the compensation set forth herein 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 CONSULTANT; and d) all other governmental fees and taxes or charges of whatever nature applicable to CONSULTANT to enable it to conduct business.

ARTICLE 6. AVAILABILITY OF FUNDS

The award and performance of this Contract is contingent on the availability of funds. If funds are not appropriated and/or allocated and available to SANBAG for the continuance of Services performed by CONSULTANT, Services directly or indirectly involved may be suspended or terminated by SANBAG at the end of the period for which funds are available. When SANBAG becomes aware that any portion of Services, which will or may be affected by a shortage of funds, it will promptly so notify CONSULTANT. Nothing herein shall relieve SANBAG from

its obligation to compensate CONSULTANT for Services already performed pursuant to this Contract. No penalty shall accrue to SANBAG in the event this provision is exercised.

ARTICLE 7. PERMITS AND LICENSES

CONSULTANT shall, without additional compensation, keep current all governmental permits, certificates and licenses (including professional licenses) necessary for CONSULTANT to perform Work, identified herein.

ARTICLE 8. DOCUMENTATION AND RIGHT TO AUDIT

8.1 CONSULTANT shall provide SANBAG, or authorized representatives or agents of SANBAG, including but not limited to Federal Transit or Federal Highway Administration, access to CONSULTANT's records that are directly related to this Contract for the purpose of inspection, auditing or copying. CONSULTANT 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 SANBAG, except in the event of litigation or settlement of claims arising out of this Contract in which case CONSULTANT agrees to maintain records through the conclusion of all such litigation, appeals or claims related to this Contract. CONSULTANT further agrees to maintain separate records for costs of work performed by amendment. CONSULTANT shall allow SANBAG, Caltrans FHWA, or any duly authorized agents to reproduce any materials as reasonably necessary.

8.2 The cost proposal and/or invoices for this Contract are subject to audit by SANBAG and/or any state or federal agency funding this Project at any time. After CONSULTANT receives any audit recommendations, the cost proposal shall be adjusted by CONSULTANT and approved by SANBAG's Project Manager to conform to the audit recommendations. CONSULTANT agrees that individual items of cost identified in the audit report may be incorporated into the Contract at SANBAG's sole discretion. Refusal by CONSULTANT to incorporate the audit or post award recommendations will be considered a breach of the Contract and cause for termination of the Contract. Any dispute concerning the audit findings of this Contract shall be reviewed by SANBAG's Chief Financial Officer. CONSULTANT may request a review by submitting the request in writing to SANBAG within thirty (30) calendar days after issuance of the audit report.

ARTICLE 9. RESPONSIBILITY OF CONSULTANT

9.1 CONSULTANT shall be responsible for the professional quality, technical accuracy, and the assurance of compliance with all applicable federal, State, and local laws and regulations, and other services furnished by the CONSULTANT under the Contract. The Contract includes reference to the appropriate standards for design or other standards for work performance stipulated in the Contract.

9.2 In addition to any other requirements of this Contract or duties and obligations imposed on CONSULTANT by law, CONSULTANT shall, as an integral part of its Services,

employ quality control procedures that identify potential risks and uncertainties related to scope, schedule, cost, quality and safety of the Project and the Services performed by CONSULTANT within the areas of CONSULTANT expertise. Risks that may be encountered include, but are not limited to, soil conditions, constructability, factors of safety, impact on adjacent properties, public safety, and environmental considerations. At any time during performance of the Scope of Work, should CONSULTANT observe, encounter, or identify any unusual circumstances or uncertainties, which could pose potential risk to SANBAG or the Project. CONSULTANT shall immediately document such matters and notify SANBAG in writing. CONSULTANT shall also similarly notify SANBAG in regard to the possibility of any natural catastrophe, potential failure, or any situation that exceeds environmental, design, and/or construction assumptions and could precipitate a failure of any structure or other part of the Project. Notifications under this paragraph shall be specific, clear and timely, and in a form which will enable SANBAG to understand and evaluate the magnitude and effect of the risk and/or uncertainties involved.

9.3 When a modification to a construction contract is required because of an error or deficiency in the design services provided under this Contract, CONSULTANT shall be responsible for any and all additional costs associated with the construction contract or the construction of the Project.

9.4 SANBAG shall advise CONSULTANT of their responsibility and collect the amount due, including but not limited to, withholding of payments, if the recoverable cost will exceed the administrative cost involved or is otherwise in SANBAG's best interest. SANBAG shall include in the Contract Audit File a written statement of the reasons for the decision or not recover the costs from CONSULTANT.

9.5 CONSULTANT shall, document the results of the work to the satisfaction of SANBAG, and if applicable, Caltrans and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of SANBAG's objectives.

9.6 The responsible consultant/engineer shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by him/her, and where appropriate, indicate his/her California registration number.

ARTICLE 10. REPORTING AND DELIVERABLES

All reports and deliverables shall be submitted in accordance with Attachment A, Scope of Work. At a minimum, CONSULTANT shall submit monthly progress reports. The report shall be sufficiently detailed for SANBAG to determine, if the CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or problems encountered, so remedies can be developed. This report shall be submitted with CONSULTANT's monthly invoice.

ARTICLE 11. TECHNICAL DIRECTION

11.1 Performance of Work under this Contract shall be subject to the technical direction of SANBAG's Director of Rail and Transit Programs, ("Director") or designee. SANBAG's Director may identify a designee (hereinafter referred to as "Designee"), in writing to CONSULTANT with the NTP and/or subsequently by written notice during the Contract. The term "Technical Direction" is defined to include, without limitation:

11.1.1 Directions to CONSULTANT, which redirect the Contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Scope of Work.

11.1.2 Provision of written information to CONSULTANT, which assists in the interpretation of drawings, reports, or technical portions of the Scope of Work described herein.

11.1.3 Review and, where required by the Contract, approval of technical reports, drawings, specifications and technical information to be delivered by CONSULTANT to SANBAG under the Contract.

11.1.4 Certain administrative changes to the Contract as defined in the CHANGES provision of this Contract.

11.2 Technical Direction must be within the Scope of Work under this Contract. SANBAG's Designee does not have the authority to, and may not, issue any Technical Direction which:

11.2.1 Increases or decreases the Scope of Work;

11.2.2 Directs CONSULTANT to perform Work outside the original intent of the Scope of Work;

11.2.3 Constitutes a change as defined in the Contract clause entitled "CHANGES";

11.2.4 In any manner cause an increase or decrease in the Contract's price as identified in 3.2 herein, or the time required for contract performance;

11.2.5 Changes any of the expressed terms, conditions or specifications of the Contract unless identified herein; or

11.2.6 Interferes with the CONSULTANT's right to perform the terms and conditions of the Contract; or

11.2.7 Approve any demand or claim for additional payment.

11.3 Failure of CONSULTANT and SANBAG's Designee to agree that the Technical Direction is within the scope of the Contract, or a failure to agree upon the Contract action to be taken shall be subject to the provisions of the "DISPUTES" Article herein.

11.4 All Technical Direction shall be issued in writing by SANBAG's Designee.

11.5 CONSULTANT shall proceed promptly with the performance of technical direction issued by SANBAG's Director or Designee, in the manner prescribed by this Article and within their authority under the provisions of this Article. If, in the opinion of CONSULTANT, any instruction or direction by SANBAG's Director or Designee falls within one of the categories defined in 11.2.1 through 11.2.7 above, CONSULTANT shall not proceed but shall notify SANBAG in writing within five (5) working days after receipt of any such instruction or direction and shall request SANBAG to modify the Contract accordingly. Upon receiving the notification from the CONSULTANT, SANBAG shall:

11.5.1 Advise CONSULTANT in writing within thirty (30) calendar days after receipt of the CONSULTANT's letter that the technical direction is or is not within the authority of this Contract.

11.5.2 Advise CONSULTANT within a reasonable time whether SANBAG will or will not issue a written amendment.

ARTICLE 12. CHANGES

12.1 The Work shall be subject to changes by additions, deletions, or revisions made by SANBAG. CONSULTANT will be advised of any such changes by written notification from SANBAG describing the change. This notification will not be binding on SANBAG until SANBAG's Board of Directors has approved any amendment to this Contract.

12.2 SANBAG may modify this Contract for certain administrative changes without issuing written amendment. Administrative changes as defined herein are limited to; changes to the personnel identified in this Contract, including Key Personnel and subcontractors; modifications to Attachment B, "Billing Rate Schedule", and changes to the name and or the address of the CONSULTANT. All administrative changes shall be documented in writing between the Parties.

12.3 Promptly after such written notification of change is given to CONSULTANT by SANBAG, the Parties will attempt to negotiate a mutually agreeable change in compensation or time of performance and amend the Contract accordingly.

ARTICLE 13. EQUAL EMPLOYMENT OPPORTUNITY

During the term of this Contract, CONSULTANT shall not willfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, gender, marital status, sexual orientation, age, political affiliation or disability. CONSULTANT agrees to comply with the provisions of Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment Practice Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

ARTICLE 14. CONFLICT OF INTEREST

CONSULTANT 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 or be contrary to the interests of SANBAG as to the Project. CONSULTANT further agrees that in the performance of this Contract no person having any such interest shall be employed. CONSULTANT is obligated to fully disclose to SANBAG, in writing, of any conflict of interest issues as soon as they are known to CONSULTANT.

ARTICLE 15. KEY PERSONNEL

The personnel specified below are considered to be essential to the Services being performed under this Contract. Prior to diverting any of the specified individuals to other projects, or reallocation of any tasks or hours of Services that are the responsibility of key personnel to other personnel, CONSULTANT shall notify SANBAG in writing in advance and shall submit justifications (including proposed substitutions, resumes and payroll information to support any changes to the labor rate) in sufficient detail to permit evaluation of the impact on the Project. Diversion or reallocation of key personnel shall not be made without prior written consent of SANBAG. CONSULTANT shall not substitute any key personnel without the prior written consent of SANBAG. In the event that the Parties cannot agree as to the substitution of key personnel, SANBAG may terminate the Contract. Key Personnel are:

Name	Function
Robert Klovsky	Principal-in-Charge
James G. "JD" Douglas	Project Manager
Jim Hecht	Engineering Discipline Leader

ARTICLE 16. REPRESENTATIONS

Services supplied by CONSULTANT under this Contract shall be supplied by personnel who are qualified, careful, skilled, experienced and competent in their respective trades or professions. CONSULTANT agrees that they are supplying professional services, findings, and/or recommendations in the performance of this Contract and agrees with SANBAG that the same shall conform to professional and engineering and environmental principles and standards that are generally accepted in the State of California.

ARTICLE 17. PROPRIETARY RIGHTS/CONFIDENTIALITY

17.1 If, as part of this Contract, CONSULTANT is required to produce materials, documents data, or information ("Products"), then CONSULTANT, if requested by SANBAG, shall deliver to SANBAG the original of all such Products which shall become the sole

property of SANBAG.

17.2 All materials, documents, data or information obtained from SANBAG's data files or any SANBAG-owned medium furnished to CONSULTANT in the performance of this Contract will at all times remain the property of SANBAG. Such data or information may not be used or copied for direct or indirect use outside of this Project by CONSULTANT without the express written consent of SANBAG.

17.3 Except as reasonably necessary for the performance of the Work, CONSULTANT agrees that it, its employees, agents and subcontractors will hold in confidence and not divulge to third parties without prior written consent of SANBAG, any information obtained by CONSULTANT from or through SANBAG unless (a) the information was known to CONSULTANT prior to obtaining same from SANBAG pursuant to a prior contract; or (b) the information was at the time of disclosure to CONSULTANT, or thereafter becomes part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONSULTANT or its employees, agents, or subcontractors, or (c) the information was obtained by CONSULTANT from a third party who did not receive the same, directly or indirectly, from SANBAG and who had, to CONSULTANT's knowledge and belief, the right to disclose the same. Any materials and information referred to in this Article, which are produced by CONSULTANT, until released in writing by SANBAG, except to the extent such materials and information become subject to disclosure by SANBAG under the California Public Records Act or other law, or otherwise become public information through no fault of CONSULTANT, or its employees or agents.

17.4 CONSULTANT shall not use SANBAG's name or photographs in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SANBAG.

17.5 All press releases or press inquiries 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 SANBAG unless otherwise agreed to in writing by the Parties.

ARTICLE 18. Intentionally Left Blank.

ARTICLE 19. TERMINATION

19.1 Termination for Convenience - SANBAG 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 pending SANBAG's instruction, and shall turn over such work in accordance with

SANBAG's instructions.

19.1.1 CONSULTANT shall deliver to SANBAG, all deliverables prepared by CONSULTANT or its subcontractors or furnished to CONSULTANT by SANBAG. Upon such delivery, CONSULTANT may then invoice SANBAG for payment in accordance with the terms herein.

19.1.2 If CONSULTANT has fully and completely performed all obligations under this Contract up to the date of termination, CONSULTANT shall be entitled to receive from SANBAG as complete and full settlement for such termination a pro rata share of the Contract cost based upon the percentage of all contracted Services satisfactorily executed to the date of termination.

19.1.3 CONSULTANT shall be entitled to receive the actual costs incurred by CONSULTANT to return CONSULTANT's equipment, if any, to it or its suppliers' premises, or to turn over work in progress in accordance with SANBAG's instructions plus the actual cost necessarily incurred in effecting the termination.

19.2 Termination for Cause- In the event CONSULTANT 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 shall be filed against CONSULTANT or a receiver shall be appointed on account of its insolvency, or if CONSULTANT 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, SANBAG may, without prejudice to any other rights or remedies SANBAG may have, and in compliance with applicable Bankruptcy Laws, (a) hold in abeyance further payments to CONSULTANT; (b) stop any services of CONSULTANT or its subcontractors related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONSULTANT specifying the date of termination. In the event of such termination by SANBAG, SANBAG may take possession of the products and finish services by whatever method SANBAG may deem expedient. A waiver by SANBAG of one default of CONSULTANT shall not be considered to be a waiver of any subsequent default of CONSULTANT, of the same or any other provision, nor be deemed to waive, amend, or modify this Contract.

19.2.1 CONSULTANT shall deliver to SANBAG all finished and unfinished deliverables prepared by CONSULTANT or its subcontractors or furnished to CONSULTANT by SANBAG within ten (10) working days of said notice.

19.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to SANBAG, satisfactory in form and content to SANBAG and verified by SANBAG. In no event shall

CONSULTANT be entitled to any payment for prospective profits or any damages because of such termination.

ARTICLE 20. STOP WORK ORDER

Upon failure of CONSULTANT or its subcontractors to comply with any of the requirements of this Contract, SANBAG shall have right to stop any or all Work affected by such failure until such failure is remedied or to terminate this Contract in accordance with Section 19.2 "TERMINATION FOR CAUSE" above.

ARTICLE 21. CLAIMS

SANBAG shall not be bound to any adjustments in the Contract amount or schedule unless expressly agreed to by SANBAG in writing. SANBAG shall not be liable to CONSULTANT for any claim asserted by CONSULTANT after final payment has been made under this Contract.

ARTICLE 22. INSURANCE

Without anyway affecting the indemnity provision identified in this Contract, CONSULTANT shall, at the CONSULTANT's sole expense, and prior to the commencement of any Work, 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 California admitted carrier with a Best rating of A-VII or better, and shall be written with at least the following limits of liability:

22.1 Professional Liability – CONSULTANT, at its own cost and expense, must maintain for the period covered by this Contract, Professional Liability Insurance in an amount not less than $1,000,000, per claim and $3,000,000 in the aggregate for all claims. Coverage shall be solely dedicated to claims arising from professional services provided under this Contract. Professional Liability shall be made on a claims made basis. If such policy contains a retroactive date for coverage of prior acts, this date will be prior to the date the CONSULTANT begins to perform Work under this Contract. CONSULTANT shall secure and maintain this insurance and "tail" coverage throughout the term of this Contract and for a minimum of three (3) years after Contract completion.

22.2 Worker's 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 services on behalf of CONSULTANT and all risks to such persons under this Contract.

22.3 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.

22.4 Commercial General Liability – Commercial General Liability insurance shall include coverage for Premises and Operations, Contractual Liability, Personal Injury 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. $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 is to be primary and non-contributory with any insurance carried or administered by SANBAG.

22.5 Automobile Liability - To include owned, non-owned and hired automobiles, in an amount of not less than $1,000,000 combined single limit.

22.5 Proof of Coverage - CONSULTANT shall furnish certificates of insurance to SANBAG evidencing the insurance coverage required above, prior to the issuance of the NTP, or as SANBAG requests, all such certificates, except those for Worker's Compensation and Professional Liability insurance, shall include San Bernardino County Transportation Authority, San Bernardino Associated Governments and all of its associated entities and capacities, including the San Bernardino County Transportation Commission, San Bernardino Congestion Management Agency and Service Authority for Freeway Emergencies, and their officers, employees, agents and volunteers, as additional insured on Commercial General Liability Insurance and auto insurance. Prior to commencing any work, CONSULTANT 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, CONSULTANT will provide SANBAG thirty (30) days written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONSULTANT will provide SANBAG ten (10) days written notice. CONSULTANT shall maintain insurance for the entire term of the 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.

22.6 Additional Insured - All policies, except for Worker's Compensation and Professional Liability policies, 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, and their officers, employees, contractors, agents, and volunteers as additional insured parties with respect to liabilities arising out to the performance of Work hereunder. 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.

22.7 Waiver of Subrogation Rights - CONSULTANT shall require the carriers of Commercial General Liability, Automobile Liability and Worker's Compensation to waive all rights of subrogation against SANBAG, its officers, employees, agents, volunteers, and

subcontractors. Such insurance coverage provided shall not prohibit CONSULTANT or CONSULTANT's employees or agents from waiving the right of subrogation prior to a loss or claim. CONSULTANT hereby waives all rights of subrogation against SANBAG.

22.8 All coverages for subcontractors shall be subject to all of the requirements stated herein. CONSULTANT shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor.

22.9 If requested by SANBAG, CONSULTANT shall submit copies of all required insurance policies including endorsements.

ARTICLE 23. INDEMNITY

23. 1 To the extent, but only to the extent, that CONSULTANT's Services fall within the scope of Civil Code Section 2782.8, the following indemnification is applicable:

CONSULTANT shall indemnify and defend (with legal counsel reasonably approved by SANBAG) SANBAG and its authorized officers, employees, agents and volunteers, from any and all losses, damages, liability, actions, and/or costs for claims that arise out of, pertain to, or are related to the negligence, recklessness, or willful misconduct of the design professional.

23.2 For all other services, CONSULTANT agrees to indemnify, defend (with legal counsel reasonably approved by SANBAG) and hold harmless SANBAG and its authorized officers, employees, agents and volunteers, from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including acts, errors, or omissions of any person and for any costs or expenses incurred by SANBAG 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. CONSULTANT's indemnification obligation applies to SANBAG's "active" as well as "passive" negligence but does not apply to SANBAG's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

ARTICLE 24. ERRORS AND OMISSIONS

CONSULTANT shall be responsible for the professional quality, technical accuracy, and coordination of all Services required under this Contract. CONSULTANT shall be liable for SANBAG costs resulting from errors or deficiencies, fines, penalties, and damages in Services furnished under this Contract, including but not limited to any costs associated with a modification to a construction contract required because of an error or deficiency in the Services provided by CONSULTANT under this Contract.

ARTICLE 25. OWNERSHIP OF DOCUMENTS

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by CONSULTANT under this Contract shall become the sole property of SANBAG when prepared, whether delivered to SANBAG or not.

ARTICLE 26. SUBCONTRACTS

26.1 CONSULTANT shall not subcontract performance of all or any portion of Work under this Contract, except to those subcontractors listed in the CONSULTANT's proposal, without first notifying SANBAG, in writing of the intended subcontracting and obtaining SANBAG's written approval of the subcontracting and the subcontractor. The definition of subcontractor and the requirements for subcontractors hereunder shall include all subcontracts at any tier.

26.2 CONSULTANT agrees that any and all subcontractors of CONSULTANT performing Work under this Contract will comply with the terms and conditions of this Contract applicable to the portion of Work performed by them. CONSULTANT shall incorporate all applicable provisions of this Contract into their subcontracts regardless of the tier. If requested by SANBAG, CONSULTANT shall furnish SANBAG a copy of the proposed subcontract for SANBAG's approval of the terms and conditions thereof and shall not execute such subcontract until SANBAG has approved such terms and conditions. SANBAG's approval shall not be unreasonably withheld.

26.3 Approval by SANBAG of any Services to be subcontracted and the subcontractor to perform said Services will not relieve CONSULTANT of any responsibility or liability in regard to the acceptable and complete performance of said Services. Any substitution of subcontractors must be approved in writing by SANBAG. CONSULTANT shall have the sole responsibility for managing of their subcontractors, including resolution of any disputes between CONSULTANT and its subcontractors.

ARTICLE 27. RECORD INSPECTION AND AUDITING

SANBAG, or any of its designees, representatives or agents shall at all times have access during normal business hours to CONSULTANT's operations and products wherever they are in preparation or progress, and CONSULTANT shall provide sufficient, safe, and proper facilities for such access and inspection thereof. Inspection or lack of inspection by SANBAG shall not be deemed to be a waiver of any of their rights to require CONSULTANT to comply with the Contract or to subsequently reject unsatisfactory services or products.

ARTICLE 28. INDEPENDENT CONTRACTOR

CONSULTANT is and shall be at all times an independent contractor. Accordingly, all Services or Work provided by CONSULTANT shall be done and performed by CONSULTANT under the sole supervision, direction and control of CONSULTANT. SANBAG shall rely on CONSULTANT for results only, and shall have no right at any time to direct or supervise CONSULTANT or CONSULTANT's employees in the performance of services or as to the manner, means and methods by which Work of Services are performed. All personnel furnished by CONSULTANT under this Contract, and all representatives of CONSULTANT, shall be and remain the employees or agents of CONSULTANT or of CONSULTANT's subcontractor(s) at all times, and shall not at any time or for any purpose whatsoever be considered employees or

agents of SANBAG.

ARTICLE 29. ATTORNEY'S FEES

If any legal action is instituted to enforce or declare any Party's rights under the Contract, 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 "Indemnity" provision of the Contract.

ARTICLE 30. 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. 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.

ARTICLE 31. FEDERAL, STATE AND LOCAL LAWS

CONSULTANT warrants that in the performance of this Contract, it shall comply with all applicable federal, State and local laws, ordinances, rules and regulations.

ARTICLE 32. PRECEDENCE

32.1 The Contract consists of the General Terms and Conditions, Attachment A, Scope of Work, and Attachment B, Billing Rate Schedule, SANBAG's Request For Proposal and CONSULTANT's proposal, all of which are incorporated herein by this reference.

32.2 The following order of precedence shall apply: First, the Contract including all Attachments A and B. Second, SANBAG's Request For Proposal; and Last; CONSULTANT's Proposal. In the event of a conflict between the Contract and the Scope of Work, the Contract will prevail.

32.3 In the event of an express conflict between the documents listed in this Article, or between any other documents, which are a part of the Contract, CONSULTANT shall notify SANBAG in writing within three (3) business days of its discovery of the conflict and shall comply with SANBAG's resolution of the conflict.

ARTICLE 33. COMMUNICATIONS AND NOTICES

Notices sent by mail shall be by United States Mail, postage paid, certified mail (return receipt requested). Any and all notices permitted or required to be given hereunder shall be deemed duly given and received, when; (a) upon actual delivery, if delivery is personally made or if made by

fax during regular business hours; (b) the first business day following delivery by fax when made not during regular business hours; or (c) upon the first business day at least three days after delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), as described above. 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. CONSULTANT shall notify SANBAG of any changes within ten (10) business days of the change.

To CONSULTANT	To SANBAG
HDR Engineering, Inc.	San Bernardino Associated Governments
2280 Market Street, Suite 100	1170 W. 3rd Street, 2nd Floor
Riverside, CA 92501	San Bernardino, CA 92410-1715
Attn: Robert Klovsky	Attn: Mitch Alderman
	cc: Contract Administrator
Phone: (951) 320-7300	Phone: (909) 884-8276

ARTICLE 34. DISPUTES

34.1 In the event any dispute, other than an audit, arises between the Parties in connection with this Contract (including but not limited to disputes over payments, reimbursements, costs, expenses, services to be performed, Scope of Work and/or time of performance), the dispute shall be decided by SANBAG's Contract Administrator within thirty (30) calendar days after notice thereof in writing which shall include a particular statement of the grounds of the dispute. If CONSULTANT does not agree with the decision, then CONSULTANT shall have ten (10) calendar days after receipt of the decision in which to file a written appeal thereto with SANBAG's Executive Director. If the Executive Director fails to resolve the dispute in a manner acceptable to CONSULTANT, then such appeal shall be decided by a court of competent jurisdiction.

34.2 During resolution of the dispute, CONSULTANT shall proceed with performance of the Contract with due diligence.

ARTICLE 35. GRATUITIES

CONSULTANT, its employees, agents, or representatives shall not offer or give to any officer, official, agent or employee of SANBAG, any gift, entertainment, payment, loan, or other gratuity.

ARTICLE 36. REVIEW AND ACCEPTANCE

All Work performed by CONSULTANT shall be subject to periodic review and approval by SANBAG at any and all places where such performance may be carried on. Failure of SANBAG to make such review, or to discover defective work, shall not prejudice the rights of SANBAG at the time of final acceptance. All Work performed by CONSULTANT shall be subject to periodic and final review and acceptance by SANBAG upon completion of all Work.

ARTICLE 37. CONFIDENTIALITY

Any SANBAG materials to which CONSULTANT or its subcontractors or agents have access to or materials prepared by CONSULTANT under the terms of this Contract shall be held in confidence by CONSULTANT, who shall exercise reasonable precautions to prevent the disclosure of confidential information to anyone except as authorized by SANBAG. CONSULTANT shall not release any reports, information of promotional material or allow for the use of any photos related to this Contract for any purpose without prior written approval of SANBAG.

ARTICLE 38. EVALUATION OF CONSULTANT

CONSULTANT's performance may be evaluated by SANBAG periodically throughout the Contract performance period, such as at the completion of certain milestones and/or at the completion of the Contract. A copy of the evaluation will be given to CONSULTANT for their information. The evaluation information shall be retained as part of the Contract file and may be used to evaluate CONSULTANT if they submit a proposal on a future RFP issued by SANBAG.

ARTICLE 39. SAFETY

CONSULTANT shall strictly comply with all OSHA regulations, local, municipal, state, and federal safety and health laws, orders and regulations applicable to CONSULTANT's operations in the performance of Work under this Contract. CONSULTANT shall comply with safety instructions issued by SANBAG and their representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while on the project construction site.

ARTICLE 40. DRUG FREE WORKPLACE

CONSULTANT agrees to comply with the Drug Free Workplace Act of 1990 per Government Code Section 8350 et seq.

ARTICLE 41. ASSIGNMENT

CONSULTANT shall not assign this Contract in whole or in part, voluntarily, by operation of law, or otherwise without first obtaining the written consent of SANBAG. SANBAG's exercise of consent shall be within its sole discretion. Any purported assignment without SANBAG's prior written consent shall be void and of no effect, and shall constitute a material breach of this Contract. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the Parties.

ARTICLE 42. AMENDMENTS

The Contract may only be changed by a written amendment duly executed by the Parties. Work authorized under an amendment shall not commence until the amendment has been duly executed.

ARTICLE 43. PREVAILING WAGES

43.1 By its execution of this Contract, CONSULTANT certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, CONSULTANT agrees to fully comply with such Prevailing Wage Laws. CONSULTANT shall make copies of the prevailing wage rates of per diem for each craft, classification or type of worker needed to execute Services available to interested parties upon request, and shall post copies at the CONSULTANT's principal place of business and at the project site. CONSULTANT will also adhere to any other applicable requirements, including, but not limited to, those regarding the employment of apprentices, travel and subsistence pay, retention and inspection of payroll records, workers compensation and forfeiture of penalties prescribed in the Labor Code for violations. CONSULTANT shall defend, indemnify and hold SANBAG, its elected officials, officers, employees and agents free and harmless form any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with Prevailing Wage Laws.

43.2 CONSULTANT shall provide notice of Prevailing Wage Laws by posting a Notice containing the following language at the Project job site(s): The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations (DIR) for the specific classification (or type of work) performed by workers on the project. These rates are listed on a separate job site posting of minimum prevailing rates required to be maintained by the public entity, which awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this project may be filed with the local office for the Division of Labor Standards Enforcement (DLSE). Local Office Contact Information: 464 West 4th Street, Room 348, San Bernardino, CA 92401, telephone (909) 383-4334. Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws. Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of 8 per day or 40 per week, etc.) as well as the name of the employer, the public entity that awarded the public works contract, and the location and name of the project. For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any DLSE office. Complaint forms are also available at the DIR website found at www.dir.ca.gov/dlse/PublicWorks.html.

43.3. CONSULTANT shall arrange a time for a representative from SANBAG to conduct a Kick Of Meeting with staff representing CONSULTANT and their subcontractors listed in the proposal. The Kick Of Meeting shall occur before commencement of work on the Project requiring payment of prevailing wages. At the Kick Off Meeting

applicable state labor law requirements shall be discussed, and copies of suggested reporting forms furnished. The following state labor law requirements applicable to the Contract are composed of but not limited to the following items, which will be discussed at the Kick Off Meeting:

(a) CONSULTANT's duty to pay prevailing wages under Labor Code Section 1770 et seq., should the project exceed the exemption amounts;

(b) CONSULTANT's duty to employ registered apprentices on the public works project under Labor Code Section 1777.5;

(c) The penalties for failure to pay prevailing wages (for non-exempt projects) and employ apprentices including forfeitures and debarment under Labor Code Sections 1775 and 1777.7;

(d) The requirement to keep and submit copies upon request of certified payroll records under Labor Code Section 1776, and penalties for failure to do so under Labor Code Section 1776(g);

(e) The prohibition against accepting or extracting kickback from employee wages under Labor Code Section 1778;

(f) The prohibition against accepting fees for registering any person for public work under Labor Code Section 1779; or for filling work orders on public works under Labor Code Section 1780;

(g) The requirement to list all subcontractors under Public Contracts Code Section 4104;

(h) The requirement to be properly licensed and to require all subcontractors to be properly licensed and the penalty for employing workers while unlicensed under Labor Code Section 1021 and under the California Contractors License Law, found at Business and Professions Code Section 7000 et seq;

(i) The prohibition against unfair competition under Business and Professions Code Sections 17200-17208;

(j) The requirement that CONSULTANT be properly insured for Workers Compensation under Labor Code Section 1861;

(k) The requirement that CONSULTANT abide by the Occupational, Safety and Health laws and regulations that apply to the particular construction project;

(l) The requirement to provide itemized wage statements to employees under Labor Code Section 226.

The Kick Off Meeting Checklist and Certification (Attachment C) must be signed by

CONSULTANT and each subcontractor on the Project subject to prevailing wage laws.

43.4. CONSULTANT shall maintain certified payroll records in accordance with Labor Code Section 1776 and furnish the records to a representative from SANBAG on a monthly basis or within 10 days of any separate request by SANBAG. Payroll records shall be furnished in a format prescribed by Title 8 CCR § 16401.

43.5. Payroll records timely furnished by CONSULTANT and subcontractors shall be reviewed by SANBAG as promptly as practicable after receipt thereof, but in no event more than 30 calendar days after such receipt. "Review" for this purpose means the inspection of the records furnished to determine whether (1) all appropriate data elements identified in Labor Code Section 1776(a) have been reported; (2) certification forms have been completed and signed in compliance with Labor Code Section 1776(b); and (3) no less than the correct prevailing wage rates have been reported as paid for each classification of labor listed thereon.

43.6. On a random basis and at such other times as it deems appropriate, SANBAG may also confirm the accuracy of payroll reports. "Confirmation" for this purpose means the corroboration of information in payroll reports through independent sources, including without limitation worker interviews, examination of any time and pay records found within the definition of "Payroll Records" in section 16000 of Title 8 of the California Code of Regulations, direct verification of "Employer Payments" (as defined at section 16000 of Title 8 of the California Code of Regulations) through third-party recipients of those payments, or any other legal and reasonable method of corroboration. As part of its confirmation process, SANBAG may require CONSULTANT and its subcontractors to furnish for inspection itemized statements prepared in accordance with Labor Code Section 226. SANBAG may conduct random confirmation based on a recognized statistical sampling of the records submitted.

43.7. Representatives of SANBAG may conduct in-person inspection(s) at the site or sites at which the contract for public work is being performed ("On-Site Visits"). On-Site Visits may be undertaken randomly or as deemed necessary by SANBAG. On-Site Visits may include visual inspection of required job site notices, including but not limited to (1) the determination(s) of the Director of Industrial Relations of the prevailing wage rate of per diem wages required to be posted at each job site in compliance with Labor Code Section 1773.2; (2) the Notice of pay days and time and place of payment required by Labor Code Section 207; and (3) the form prescribed by section 16451(d) above. On-Site Visits may also include inspections of records, inspections of the work site and observation of work activities, interviews of workers and others involved with the project, and any other activities deemed necessary by SANBAG to ensure compliance with prevailing wage requirements. In accordance with Labor Code Section 90, shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner, including but not limited to evidence of compliance with Labor Code Section 226 (itemized wage statements for employees) and any other laws enforced by the Labor Commissioner.

43.8. An Audit shall be prepared by SANBAG upon determining that there has been a violation of Division 2, Part 7, Chapter 1 of the Labor Code resulting in the underpayment of wages. An "Audit" for this purpose means as a written summary reflecting prevailing wage deficiencies for each underpaid worker, and including any penalties to be assessed under Labor Code Sections 1775 and 1813.

43.9. A prescribed routine for withholding penalties, forfeitures, and underpayment of wages for violations of the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code will apply to this Contract. Payments shall not be made to CONSULTANT by SANBAG when payroll records are delinquent or inadequate. The Labor Commissioner may require SANBAG to withhold contract payments when payroll records are delinquent or inadequate. The amount withheld shall be limited to those payments due or estimated to be due to the CONSULTANT or its subcontractors whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Commissioner has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the CONSULTANT or its subcontractors whose payroll records are delinquent or inadequate; provided that a CONSULTANT shall be required in turn to cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Commissioner provides notice that the subcontractor has cured the delinquency or deficiency. When contract payments are withheld under this section, the Labor Commissioner shall provide the CONSULTANT and its subcontractors, if applicable, with immediate written notice that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate; (2) specifies what amounts SANBAG has been directed to withhold; and (3) informs the CONSULTANT or its subcontractors of the right to request an expedited hearing to review the withholding of contract payments under Labor Code Section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Commissioner has exceeded his or her authority under this section. No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced. In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties may be assessed under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records.

43.10. For more information regarding the Labor Compliance Program requirements that will apply to this Contract or the procedures that will be used by the DLSE to review and confirm payroll records, conduct in-person site visits for inspection, audits, enforce apprenticeship standards, and handle complaints, investigations and violations CONSULTANT should refer to Chapter 1 of Part 7 of Division 2 of the Labor Code (commencing with Section 1771), Subchapters 4 and 4.5 of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations (commencing with Section 16421) and the DLSE Web site at http://www.dir.ca.gov/dlse/dlsePublicWorks.html.

ARTICLE 44. CONTINGENT FEE

CONSULTANT warrants, by execution of this Contract, that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding

for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, SANBAG has the right to terminate the Contract without liability, pay only for the value of Services actually performed, or in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 45. FORCE MAJEURE

CONSULTANT shall not be in default under this Contract in the event that the Services provided or Work performed by CONSULTANT are 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 or governmental restraint, and natural disasters such as floods, earthquakes, landslides, and fires, or other catastrophic events which are beyond the reasonable control of CONSULTANT and which CONSULTANT could not reasonably be expected to have prevented or controlled. "Other catastrophic events" does not include the financial inability of CONSULTANT to perform or failure of CONSULTANT to obtain either 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 CONSULTANT.

ARTICLE 46. WARRANTY

CONSULTANT warrants that all Services or Work performed shall be in accordance with the Contract as amended, and all applicable professional standards. In the event of a breach of this provision, CONSULTANT shall take the necessary actions to correct the breach at CONSULTANT's sole expense. If CONSULTANT does not take the necessary action to correct the breach, SANBAG, without waiving any other rights or remedies it may have, may take the necessary steps to correct the breach, and CONSULTANT shall promptly reimburse SANBAG for all expenses and costs incurred.

ARTICLE 47. ENTIRE DOCUMENT

47.1 This Contract and its attachments constitute the sole and only agreement governing services and supersedes any prior understandings, written or oral, between the Parties respecting the Project. All previous proposals, offers, and other communications, written or oral, relative to this Contract, are superseded except to the extent that they have been expressly incorporated into this Contract.

47.2 No agent, official, employee or representative of SANBAG has any SANBAG to bind SANBAG to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Contract, and CONSULTANT hereby stipulates that it has not relied, and will not rely, on same.

47.3 Both Parties have been represented or had the full opportunity to be represented by legal counsel of their own choosing in the negotiation and preparation of this Contract. Therefore, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning, and not for or against either Party.

ARTICLE 48. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

CONSULTANT shall comply with all applicable provisions of the Americans With Disabilities Act in performing work under this Contract.

ARTICLE 49. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, due to CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE 50. EFFECTIVE DATE

The date that this Contract is executed by SANBAG shall be the Effective Date of the Contract.

Signatures are on the following page.

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

HDR ENGINEERING, INC.

By: _____

Thomas Kim
Sr. Vice President

Date: _____

SANBAG

By: _____

Bill Jahn
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____

Eileen Monaghan-Teichert
General Counsel

CONCURRENCE

By: _____

Jeffery Hill
Contract Administrator

ATTACHMENT A, "SCOPE OF WORK"

ONTARIO AIRPORT RAIL ACCESS STUDY

SCOPE OF WORK

TASK 1 - PROJECT MANAGEMENT AND ADMINISTRATION

This task includes management and administration activities that will be provided by the Consultant consistent with the technical scope of services and with the requirements of the San Bernardino Associated Governments (SANBAG). Management includes overview and coordination of the work to meet the requirements of the approved quality assurance and quality control process and that the deliverables are produced within schedule and budget. Elements include coordination, reporting, quality control (QC), safety, and cost/schedule monitoring and control. The Consultant team's project manager (PM) will be the single point of contact with SANBAG and will be responsible for the quality of the design and the delivery of the project milestones within schedule and budget.

TASK 1.1 - PROJECT ADMINISTRATION/INVOICING

Activities

Task 1.1.1 - The Consultant will provide management and staff to plan, organize, direct, supervise, control, and coordinate administrative tasks.

Task 1.1.2 - Contract Administration includes issuance of new or amended work orders, obtaining of periodic reports on costs expended, receipt and certification of invoices, payment of invoices, compliance with all contract terms and conditions, receipt and routing of contract deliverables, and contract close-out. Consultant will establish and implement an administrative and financial audit and reporting process based on contract requirements.

Task 1.1.3 - Accounting/Invoicing includes establishing and maintaining a system of cost accounts based on the Project's Work Breakdown Structure (WBS) and to provide monthly invoicing and progress reports for the status of work accomplished. Progress reports will include a narrative of work accomplished, identification of issues and description of measures to recover schedule, status of major changes, percent complete for each activity, work plan for next two months and updated planned and actual progress.

Deliverables

- Monthly invoices and progress reports

TASK 1.2 - PROJECT MANAGEMENT

Activities

Consultant will include all necessary revisions to the Project Guide following HDR standard requirements. The Project Guide created for the study will serve as the basis of format, and it will include a detailed plan for management, staffing and schedule. Work items and deliverables shall be identified in accordance with the WBS. The schedule included in the Project Guide will identify the critical path and will define the subtasks.

The Project Guide will cover staffing, design scope and relevant standards. Upon SANBAG's approval of the Project Guide, the Consultant team will establish the following items:

TASK 1.3 - PROJECT DISCIPLINE COORDINATION

Activities

Task 1.3.1 - Develop and maintain WBS for task and subtasks.

Task 1.3.2 - Maintain control of documents in accordance with the SANBAG Document Control requirements.

Task 1.3.3 - Develop project schedule that will identify key milestone delivery schedules and critical path.

Deliverables

- WBS
- Project Schedule

TASK 1.4 - PROJECT SCHEDULE QA/QC PLAN AND IMPLEMENTATION

Activities

Task 1.4.1 - Consultant will prepare a Quality Assurance/Quality Control Plan for the project that addresses procedures for report review, cost estimate checking, plan checking, comment resolution, peer reviews, and audits. The QA/QC Plan will adhere to the HDR Quality Plan and its associated procedures such as QCP-001, QCP-002 and QCP-003.

Task 1.4.2 - Consultant will implement QA/QC by documenting reviews and retaining copies of review documents as appropriate for reports, Consultant will maintain a quality

control database of reviews in Folder 3.0 of the Rail Access Study project folder on ProjectWise and will coordinate with the project team for QC documentation.

Task 1.4.3 - Formal QC reviews will be conducted in compliance with requirements of QA/QC Plan at each major deliverable milestone

Deliverables

- QA/QC review documentation at the request of SANBAG

TASK 2 - ASSEMBLE BACKGROUND DATA AND INFORMATION ON THE STUDY AREA

HDR will assemble data on activity at the Ontario Airport.

Activities

TASK 2.1 - ASSEMBLE DATA ON ACTIVITY AT ONTARIO AIRPORT.

Assemble available data to document activity at Ontario Airport. Data to be assembled includes:

- Arrivals and departures, including time of day, time of year, annual trends
- Number of employees
- Activity level at previous peak operation (2007), including passenger volume, share of regional passenger volume, and number of employees if available
- Projected activity levels at airport buildout

TASK 2.2 - DOCUMENT EXISTING ONTARIO AIRPORT GROUND ACCESS

Assemble available information about current ground access to Ontario Airport including available transit services, parking location/supply/cost, and mode shares.

TASK 2.3 - DOCUMENT METROLINK SERVICE

Assemble available information about existing Metrolink service in the vicinity of Ontario Airport, including rail lines, service levels, nearby stations, planned and potential service improvements and passenger activity by station.

TASK 2.4 - GATHER CURRENT ORIGIN/DESTINATION DATA

Purchase three days' worth of cell phone data from AirSafe to identify the origins and destinations at zip code level of people at Ontario Airport. From the cell phone data, develop maps and graphics to illustrate the origins and destination of airport users and employees.

TASK 2.5 - DOCUMENT ATTRIBUTES OF COMPARABLE US AIRPORTS WITH RAIL CONNECTIONS.

For other airports in the United States that have rail transit connections, identify the passenger activity levels, type of rail transit connection, extent of regional rail system, and geographic location of the airport in relation to the metropolitan area. Compare these attributes for Ontario Airport with those of the US airports with rail transit connections

TASK 2.6 - PREPARE TECHNICAL MEMORANDUM

Prepare a technical memorandum that documents the data and information assembled in Subtasks 2.1 through 2.5.

Deliverables

- Technical Memorandum No. 1 – Background Data and Information

TASK 3 - DEVELOP PURPOSE AND NEED STATEMENT

Activities

TASK 3.1 - DEVELOP INITIAL PURPOSE AND NEED (P&N) STATEMENT

Develop a summary statement of the proposed Ontario Airport rail connection's purpose and need, i.e., the reasons a rail connection to the airport is desired and what it is expected to accomplish. The P&N Statement will articulate the long-term vision and goals for rail access, and will include information such as who is to be served, desired service attributes, and desired compatibility with regional goals, infrastructure constraints, or other transportation projects. The initial P&N Statement will be developed by the consultant team.

Deliverable

- Initial P&N Statement

TASK 3.2 - REVIEW OF INITIAL P&N BY INDUSTRY VISION PANEL

The consultant team's Industry Vision Panel will review the initial P&N and suggest refinements. Based on the IVP's comments, the initial P&N will be revised to create the Draft P&N Statement.

Deliverable

- Draft P&N Statement

TASK 3.3 - CONDUCT WORKSHOP WITH TECHNICAL WORKING GROUP (TWG)

A Technical Working Group (TWG) comprised of technical staff from SANBAG and the City of Ontario will provide technical review and input to the consultant team during the study. The Draft P&N Statement will be submitted to the TWG for review and comment. The TWG's suggested refinements will be incorporated to create a Revised Draft P&N.

Deliverable

- Revised Draft P&N Statement

TASK 3.4 - OBTAIN POLICY INPUT TO THE P&N

The Revised Draft P&N will be reviewed with one or more Board Members designated by SANBAG staff to provide policy input for the study.

TASK 3.5 - PREPARE FINAL PURPOSE AND NEED STATEMENT

Refinements to the P&N suggested through the policy review will be incorporated into the P&N. The resulting document will be the Final P&N Statement, which will serve as the guiding document for the remainder of the study.

Deliverable

- Final P&N Statement

TASK 4 - CONDUCT SCREENING ANALYSIS

TASK 4.1 - IDENTIFY EVALUATION CRITERIA AND METHODS

Identify the evaluation criteria and methodologies that will be used to screen the initial set of alternatives. The criteria should address all the major elements of the project's P&N Statement. Evaluation methodologies will be primarily qualitative.

Deliverable

- Working paper that defines evaluation criteria and methodologies for the screening analysis

TASK 4.2 - REVIEW/REFINE SCREENING CRITERIA AND METHODS

The working paper from Subtask 4.1 will be reviewed by the TWG; their comments or questions on the evaluation criteria or methodologies will be resolved in consultation with the consultant team, and a revised working paper will be prepared to guide the screening analysis.

Deliverable

- Revised working paper that defines evaluation criteria and methodologies for the screening analysis

TASK 4.3 - IDENTIFY ALTERNATIVES

A workshop will be held for consultant team members and the TWG to brainstorm potential transit mode options and alignment/route options including termini and intermediate stops. From these, the workshop participants will proceed to identify a number of alternatives consisting of mode and route to be analyzed in the screening analysis. Some alternatives will provide direct service to Ontario Airport, others will involve a transfer for the passenger. The selected alternatives should collectively represent the range of plausible technology and route options. A working paper will be prepared to describe the process used to develop alternatives, to identify the alternatives selected for analysis, and to present key reasoning used to select the alternatives.

Deliverable

- Working paper on development of alternatives

TASK 4.4 - REVIEW ALTERNATIVES WITH INDUSTRY VISION PANEL

The subtask 4.3 working paper will be reviewed with the IVP; their comments and questions will be used to identify possible refinements to the list of alternatives.

TASK 4.5 - REVIEW ALTERNATIVES WITH TWG

The possible alternatives refinements identified after review by the IVP will be discussed with the TWG, and a final list of alternatives will be prepared.

TASK 4.6 - CONDUCT SCREENING ANALYSIS

The alternatives will be evaluated according to the criteria and methods established in Subtask 4.2. A qualitative comparison matrix will be prepared to summarize the relative performance of each alternative in relation to the screening criteria. Up to six alternatives that perform best in relation to the criteria will be recommended for more detailed analysis in Task 5. A technical memorandum will be prepared to document the analysis and results of the screening.

Deliverable

- Technical Memorandum No. 2 – Alternatives Screening Analysis

TASK 4.7 - REVIEW SCREENING RESULTS WITH TWG

TASK 5 - EVALUATE ALTERNATIVES

Activities

TASK 5.1 - IDENTIFY EVALUATION CRITERIA AND METHODS

Identify the criteria and methodologies that will be used to evaluate the refined set of alternatives. The criteria will address all the major elements of the project's P&N Statement, and are expected to include costs, ridership, cost-effectiveness, operational effects on other rail services, environmental constraints, and right-of-way issues. Evaluation methodologies will be quantitative and qualitative.

Deliverable

- Working paper that defines evaluation criteria and methodologies for the evaluation of refined alternatives.

TASK 5.2 - REVIEW EVALUATION CRITERIA AND METHODS

The working paper from Subtask 5.1 will be reviewed by the TWG; their comments or questions on the evaluation criteria or methodologies will be resolved in consultation with the consultant team, and a revised working paper will be prepared to guide the evaluation of alternatives.

Deliverable

- Revised working paper that defines evaluation criteria and methodologies for the evaluation of alternatives.

TASK 5.3 - CONDUCT TECHNICAL ANALYSIS

Technical analysis will be performed to define each alternative and its features. The technical analysis will include the following for each alternative:

a. Equipment: The technology, type of vehicle, and manufacturer equipment data such as performance, fuel consumption, passenger capacity, consist configuration, costs, availability, and maintenance costs, will be identified.

b. Horizontal/vertical alignment: For rail or guideway alternatives, a conceptual alignment will be developed. Aerial photography and mapping will be acquired for the area north of the Ontario Airport terminals, west of I-15, east of Vineyard Avenue, and south of Eighth Street in Rancho Cucamonga. Mapping will be provided at a scale suitable for 1"=100' resolution, with orthoimagery having a pixel size of 0.50 ft. Survey data will be collected at key locations to determine elevations for the conceptual alignments. The horizontal and vertical alignment of each alternative will be developed at scale of 1" = 100' and shown on the aerial photograph base. The study budget assumes that one alternative will involve new tracks or guidelway for a distance os up to five miles outside the area covered by the new aerial photography, and that available aerial photography will be used for this additional area.

c. Bridges/grade crossings: Locations of bridges and grade crossings will be identified. For structures, locations and potential types will be identified.

d. Major utility conflicts: Potential conflicts with major utilities will be identified by first identifying any existing utilities within the project vicinity as obtained from a utility location service. With this research, known utility providers will be contacted by letter to request information on any utility facilities within the project vicinity. For each alternative, a utility matrix will be provided that lists the utility owner, facility and potential impact to each known utility.

e. Station stops: Locations of termini and intermediate stops will be identified, and elements to be included in each station will be identified. Criteria for station features and amenities, such as proposed platform lengths and level-boarding requirements, will be identified for each vehicle. Parking lots and other transit connections will be identified as applicable.

f. Transit-oriented development: Existing and planned development within one-half mile of potential station stops will be identified, and the amount of development (residential dwelling units and commercial square footage) contained or proposed in mixed-use developments within that half-mile radius will be documented.

g. Maintenance facility: A potential location for a maintenance facility will be identified if needed. Equipment requirements will be identified for each vehicle.

h. Environmental Constraints: Publicly available information and databases will be utilized to identify potential environmental constraints associated with each alternative. A study area will be defined for each alternative to facilitate a focused review and identification of potential environmental constraints. Up to two (2) days of field reconnaissance/visits will be conducted by the lead planner, biologist and archaeologist. Project footprints for impact analysis (i.e., habitat acreage calculations) will not be prepared as part of the constraints development process. Constraints development will focus on issues that would have the potential to affect the level of future environmental clearance under the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) and regulatory permitting (e.g., Clean Water Act, Endangered Species Act, National Historic Preservation Act, etc.). Issues of particular focus will include biological and cultural resources, proximity of sensitive land uses (or receptors), including public education and park facilities, and the presence of known (or previously documented) hazardous materials. For each alternative, the potential regulatory requirements will be summarized in a matrix format to facilitate comparative analysis between the alternatives.

i. Operations plan: Service levels will be defined including headways by time of day and day of week, staffing required to operate and maintain the system, dispatching responsibilities, and how equipment will be moved to and from a maintenance facility.

j. Travel time and transfer requirements: Transit travel times between Ontario Airport and up to ten destinations will be calculated based on each alternative's

technology, alignment, station locations, and operations plan. For each trip, transfer locations will be identified.

k. Capital cost: The capital cost will be estimated by applying typical unit cost factors to the various cost elements associated with developing each alignment. The capital cost estimate will include right-of-way acquisition, infrastructure, equipment, design, environmental clearance, and construction support.

l. Operations and maintenance cost: The annual cost of operations and maintenance will be estimated by applying typical hourly O&M cost factors to the service defined in the operations plan.

m. Project implementation schedule: The duration of each project development element will be estimated, including design, right-of-way acquisition, and construction.

TASK 5.4 - RAIL OPERATIONS MODELING

Up to three alternatives that operate on the Metrolink San Gabriel Subdivision will be coded into the RTC rail operations model and evaluated to determine transit times, route capacity and interoperability with Metrolink San Bernardino Line operations. It is assumed that an updated RTC model on the Metrolink San Bernardino Line for the project's implementation year will be available for use from the San Bernardino Line Strategic Assessment Study, conducted by HDR on behalf of SANBAG and Metro.

Specifically, each alternative will have the following simulations conducted:

a. A "Base Case" model will be created, where each alternative's operation will be input into the RTC model for the Metrolink San Bernardino Line to determine operational constraints and conflicts.

b. An "Infrastructure Case" model will be created, where additional rail infrastructure will be added to the model until both Metrolink and Ontario Airport rail operations are performing to agreed upon performance standards.

c. A "Randomized Case" model will be created, where various trains will enter the model limits later than scheduled to test the ability of the revised infrastructure to allow rail service to recover from service disruptions.

TASK 5.5 - RIDERSHIP FORECASTING

For each alternative, ridership will be estimated separately for airport passengers, airport employees, and non-airport related trips. Airport passenger ridership will be estimated with the assistance of a sketch level modeling tool (similar to those used to forecast ridership on rail connectors to the San Francisco and Oakland airports) based on factors including airport passenger activity, airport employment, travel time and cost for competing modes, and airport

parking cost. Airport employee ridership will be estimated using employee O/D data, future employment level, travel time and cost for competing modes, and airport employee parking cost. Non-airport related ridership will be estimated based on population and employment, parking availability, and transit accessibility.

TASK 5.6 - IDENTIFY POTENTIAL FUNDING SOURCES

Work with SANBAG staff to identify potential sources of funding for capital and operations and maintenance (O&M) costs. For the plausible sources that are capable of generating substantial amounts of funding, a rough order-of-magnitude estimate of potential revenue generation will be prepared.

TASK 5.7 - EVALUATE AND COMPARE ALTERNATIVES

Using the results of Subtasks 5.3 – 5.6, the alternatives will be evaluated according to the criteria and methods established in Subtask 5.2 and compared to each other to determine which alternatives perform best in relation to each of the adopted evaluation criteria. The comparative results will be summarized in a detailed matrix with quantitative results and a summary matrix with qualitative results.

TASK 5.8 - PREPARE ALTERNATIVES EVALUATION TECHNICAL MEMORANDUM

The technical analysis, alternatives evaluation, and comparison of alternatives will be documented in a technical memorandum.

Deliverable

- ☐ Technical Memorandum No. 3 – Evaluation of Alternatives

TASK 5.9 - REVIEW OF TECHNICAL EVALUATIONS

The Alternatives Evaluation technical memorandum will be reviewed with the TWG. TWG comments on the tech memo will be incorporated when the Draft Report is prepared in Task 6. Feedback from the TWG will be solicited as input to the selection of a preferred strategy in Subtask 5.10.

TASK 5.10 - PREPARE INITIAL RECOMMENDATION OF PREFERRED STRATEGY WITH PHASED IMPLEMENTATION

The technical results will be utilized to develop an initial recommendation of a future airport connection that best achieves the project Purpose and Need. The recommendation will include a long-term "ultimate" system that can deliver air passengers directly to the terminal area, as well as a phased plan of interim improvements that can cost-effectively enhance airport transit access in the near term and establish the basis for the ultimate system.

The phased implementation plan will identify airport passenger levels or other thresholds to indicate relative timing of the interim phases that comprise the recommended strategy.

For the recommended strategy, the required environmental clearance process (i.e., CEQA and/or NEPA) and anticipated technical studies will be identified along with a tentative schedule for completion. Potential regulatory permitting requirements will also be identifed, which may include compliance with state and federal endangered species act(s); the Clean Water Act (Sections 401 and 404); the California Register of Historic Resources and National Historic Preservation Act (NHPA) compliance (e.g., Section 106); California Fish and Wildlife Code (Section 1600); San Bernardino County Flood Control Permit(s) (e.g. 33 U. S.C 408), and Section 4(f) of the Department of Transportation Action of 1966. No field work/visits are included in this phase of work. Preparation of CEQA, NEPA, and regulatory permititng is not included as part of this scope of work.

Deliverable

- ☐ Working paper that describes the recommended strategy and the rationale for its recommendation.

TASK 5.11 - REVIEW/REFINE PRELIMINARY RECOMMENDATIONS

The subtask 5.10 working paper will be reviewed with the IVP and TWG; their comments and questions will be used to refine the preliminary recommendations.

TASK 5.12 - REVIEW ALTERNATIVES EVALUATION AND RECOMMENDATIONS WITH POLICY-MAKERS

The alternatives comparisons and refined recommendations will be reviewed with one or more Board Members designated by SANBAG staff to provide policy input for the study.

TASK 5.13 - FINALIZE RECOMMENDATIONS

Refinements to the recommendations suggested through the policy review will be incorporated into the recommendations working paper

TASK 6 - PREPARE REPORT

TASK 6.1 - PREPARE DRAFT REPORT

The Draft Report will document the data, assumptions, methodologies, analyses, findings, and recommendations of the study. It will consist of the technical memoranda and working papers prepared during the study, with appropriate revisions to reflect comments received from the TWG, IVP, and policy-makers. An Executive Summary will be included.

Deliverable

- ☐ Draft Report

TASK 6.2 - REVIEW DRAFT REPORT WITH TWG

The Draft Report will be submitted to the TWG for review and comment.

TASK 6.3 - REVISE DRAFT REPORT IN RESPONSE TO TWG COMMENTS

The TWG's suggested revisions will be incorporated into the Revised Draft Report.

Deliverable

- ☐ Revised Draft Report

TASK 6.4 - PRESENT REVISED DRAFT REPORT TO POLICY-MAKERS

The Revised Draft Report will be reviewed with one or more Board Members designated by SANBAG staff to provide policy input for the study.

TASK 6.5 - PREPARE FINAL REPORT

Revisions to the Revised Draft Report suggested through the policy review will be incorporated into the Final Report.

Deliverable

- ☐ Final Report

ATTACHMENT B, "PRICE SCHEDULE"

Governments SANBAG Working Together

Ontario Airport Rail Access Study
FEE ESTIMATE

TASK DESCRIPTION	BUDGET
TASK 1: PROJECT MANAGEMENT	
Task 1.1 - Project Administration/Invoicing	$9,420
Task 1.2 - Project Management	$8,154
Task 1.3 - Project Discipline Coordination	$4,392
Task 1.4 - QA/QC Plan and Implementation	$28,093
SUBTOTAL	**$50,059**
TASK 2: ASSEMBLE BROUNDGROUND DATA & INFORMATION ON THE STUDY AREA	
Task 2.1 - Assemble data on Activity at Ontario Airport	$1,440
Task. 2.2 - Document existing Ontario Airport Ground Access	$3,236
Task 2.3 - Document Metrolink Service	$708
Task 2.4 - Gather Current Origin/Destination Data	$8,930
Task 2.5 - Document Attributes of comparable US Airports w/Rail Connections	$3,478
Task 2.6 - Prepare Technical Memorandum	$4,741
SUBTOTAL	**$22,533**
TASK 3 - DEVELOP PURPOSE AND NEED STATEMENT	
TasK 3.1 - Develop Initial Purpose and Need (P&N) Statement	$6,424
Task 3.2 - Review of Initial P&N by Industry Vision Panel	$3,848
Task 3.3 - Conduct Workshop with Technical Working Group (TWG)	$1,836
Task 3.4 - Obtain Policy Input to the P&N	$1,196
Task 3.5 - Prepare Final P&N Statement	$1,516
SUBTOTAL	**$14,820**
TASK 4 - CONDUCT SCREEN ANALYSIS	
Task 4.1 - Identify Evaluation Criteria and Methods	$3,254
Task 4.2 - Review/Refine Screen Criteria and Methods	$2,336
Task 4.3 - Identify Alternatives	$10,358
Task 4.4 - Review Alternatives with Industry Vision Panel	$3,998
Task 4.5 - Review Alternatives with TWG	$1,196
Task 4.6 - Conduct Screening Analysis	$18,107
Task 4.7 - Review Screen results with TWG	$7,504
SUBTOTAL	**$46,752**
TASK 5 - EVALUATE ALTERNATIVES	
Task 5.1 - Identify Evaluation Criteria and Methods	$9,344
Task 5.2 - Review Evaluation Criteria and Methods	$4,672
Task 5.3 - Conduct Technical Analysis	$173,361
Task 5.4 - Rail Operations Modeling	$41,253
Task 5.5 - Ridership Forecasting	$34,470
Task 5.6 - Identify Potential Funding Sources	$11,398
Task 5.7 - Evaluate and Compare Alternatives	$27,686
Task 5.8 - Prepare Alternatives Evaluation Technical Memorandum	$21,355
Task 5.9 - Review of Technical Evaluations	$11,049
Task 5.10 - Prepare Initial Recommendation of Preferred Strategy with Phased Implementation	$36,934
Task 5.11 - Review/Refine Preliminary Recommendations	$13,621
Task 5.12 - Review Alternatives Evaluation and Recommendations with Policy Makers	$1,196
Task 5.13 - Finalize Recommendations	$3,016
	$0
SUBTOTAL	**$389,354**
Task 6 - PREPARE REPORT	
Task 6.1 - Prepare Draft Report	$14,567
Task 6.2 - Review Draft Report with TWG	$2,476
Task 6.3 - Revise Draft Report in Response to TWG Comments	$3,288
Task 6.4 - Present Revised Draft Report to Policy Makers	$1,196
Task 6.5 - Prepare Final Report	$3,788
SUBTOTAL	**$25,315**
SUBTOTAL LABOR	**548,832**
BUDGET FOR OTHER DIRECT COSTS (ODC'S)	
Postage, Reproduction, Miscellaneous, Etc.	$2,420
Travel/Mileage/Tolls/Metrolink Train Fare	$5,283
AirSage Data	$10,000
Aerial Flight and Photo Processing	$17,500
SUBTOTAL	**$35,203**
TOTAL ESTIMATED HOURS & FEE FOR ONTARIO AIRPORT RAIL ACCESS STUDY	**$584,035**

Governments
SANBAG
Working Together

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

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

Minute Action

AGENDA ITEM: 12

Date: June 20, 2013

Subject: Amendment No. 7 to Contract C10079, Redlands Rail Extension, to HDR Engineering, Inc. for Design Services

Recommendation:* That the Committee recommend the Board approve Amendment No. 7 to Contract No. C10079 with HDR Engineering, Inc. for design and environmental clearance services increasing the contract amount by $2,183,924 for a new not-to-exceed amount of $33,568,276; exercise a second one-year option to extend HDR's contract duration through February 8, 2015.

Background: In February 2010, SANBAG awarded Contract C10079 to HDR Engineering, Inc. (HDR) for the design and environmental clearance of the Downtown San Bernardino Passenger Rail Project (DSBPRP) and the Redlands Passenger Rail Project (RPRP). The HDR contract was intentionally broken into segments for which subsequent amendments would be considered in order to control cost and schedule as the projects developed and design scopes were refined. For each ensuing segment of the DSBPRP and RPRP projects (collectively referenced as the Project) to be completed, a new scope was identified based on the previous task. Fee negotiations were completed with HDR for the identified scope. Each contract amendment to date has been reviewed and approved by the Commuter Rail and Transit Committee followed by Board review and approval.

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

CRTC1306a-jrf
http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2013/crtc1306/AgendaItems/CRTC1306a1-jrf.docx
http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C10079-7.doc
http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C10079-7%20Attachment%20B.pdf
http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Final%20Agreements%20Library/C10079-2.docx

With the complexity of rail projects, third-party owners and regulators are controlling parties that can from time to time create unforeseen circumstances that change a project's requirements. For the Project, BNSF Railway, the Southern California Regional Rail Authority (SCRRA), Federal Transit Administration (FTA), Federal Railroad Administration (FRA), and the California Public Utilities Commission (CPUC), as well as cities and utilities companies have caused or required changes. Because of the complexity of the Project, it is common that changes are sometimes driven by regulation changes.

For this amendment, several design issues have been raised by third parties, which are not included in HDR's original contract or subsequent amendments. See Attachement A of the contract and detailed Executive Summary of the Amendment No. 7 Scope of Work for the Downtown San Bernardino Passenger Rail Project. In general the Scope of Work includes:

- FTA/FRA Level Boarding Requirements – Due to direction provided in March of 2013 by the FTA and FRA regarding the Americans with Disabilities Act (ADA) Level Boarding requirements on similar Metrolink station improvement projects; modifications to the existing design might be required. Per the regulation, SANBAG will be submitting a report to the FTA and FRA addressing level boarding. Depending on comments and direction received by the FTA and FRA, design modifications to the proposed platforms at the Depot and the San Bernardino Transit Center could be required.

- Omnitrans Additional Items – As the Omnitrans bus facility at the San Bernardino Transit Center has developed, design changes have been identified to better enhance inter-operability of the rail platforms to the bus facility. Improvements to relocate bus stop facilities at the Depot were also requested.

- California Transportation Commission Additional Requirements – In order to qualify for $10,921,000 of Prop 1B SLPP, the California Transportation Commission requires that right-of-way be obtained with a certification from Caltrans, which includes additional requirements not originally scoped.

- Right-of-Way Design Changes – As a result of developing right-of-way coordination and negotiations, design changes will be required to accommodate adjacent land owners.

- Utility Relocations and Revisions – Due to limited as-built utility information, SANBAG directed the Construction Manager for this project to complete potholing of existing facilities. Based on this data, additional design efforts are required to accommodate and relocate existing utilities in conflict with proposed improvements.

- Metrolink Additional Items - Metrolink has requested that additional safety items associated with the construction of the Eastern Maintenance Facility be incorporated into the project.

- City of San Bernardino Additional Requirements and Permits – City staff has recently required that the DSBPRP complete an Amendment to the City's General Plan, which requires additions and revisions to technical reports, additional community outreach efforts, and completing a revised permitting process.

- SANBAG Design Additions – SANBAG staff identified the need for additional wayfinding signage around the Santa Fe Depot to accommodate additional tenants and add period-themed signs throughout the Depot to provide clear direction to visitors and Metrolink customers.

Additionally, Amendment No. 7 reduces HDR's scope and fee associated with work to complete a Program Environmental Impact Report (PEIR) for proposed transit supportive land use updates along the Redlands Passenger Rail Project. Staff is recommending that Tasks 7.4 through 7.15 be removed from HDR's contract, previously approved in Amendment No. 2. The PEIR task was initially contracted with HDR to assist in meeting requirements of the State of California Sustainable Communities and Climate Protection Act of 2008 (SB 375) for the RPRP project. In an effort to better coordinate transit investment and land use planning, these tasks related to the development of transit supportive land uses around each of the station locations. Over the past two years HDR and SANBAG have supported each of the cities in developing new land uses, identifying rezoning opportunities, creating open space and trail connectivity, and incorporation of higher density development that can support greater transit ridership.

As work on these tasks matured, it became apparent that each city would need a separate PEIR and that each city would need to act as the lead agency for its own respective PEIR. Since the PEIR process is vital to the long term success and viability of RPRP, SANBAG plans to re-procure and fund a consultant to complete the work. Given the sensitivity of local land use authority and the need to preserve local control over land use, SANBAG is encouraging a more formal role of each city in the development of the PEIR. Representatives from each city will be invited to sit on the selection panel of the new consultant and be a member of the technical advisory committee managing the consultant. SANBAG staff has determined that a credit amount of $665,057 from a total task amount of $803,036 is fair and reasonable based on the work completed to date on Tasks 7.4 through 7.15 of Amendment No. 2. As such, Amendment No. 7 will incorporate this credit into the overall amendment amount.

Contract Fee Summary
$7,390,150 – Original Contract Amount
$25,015,906 –Amendment Nos. 1 - 6
$2,183,924 - Amendment No. 7
$33,568,276 – Proposed Total Not-to-Exceed Amount

See Exhibit A for a history of approved amendments to Contract No. C10079

Contract Extension
With construction of the Downtown San Bernardino Passenger Rail Project estimated to begin in early 2014 and complete in early 2016, Contract No. C10079 with HDR Engineering, Inc. needs to be extended to utilize HDR's contractual "Design Services during Construction". Amendment No. 6, executed in September of 2013 exercised one of the two, one-year options originally included in the contract, extending the contract term to February 8, 2014. Amendment No. 7 would exercise the second one-year option and extend HDR's contract to February 8, 2015.

Financial Impact: Currently there are sufficient funds appropriated in the Fiscal Year 2013/2014 budget for Amendment No. 7 to Contract C10079. However, if additional funds are required to complete the design services, staff will provide a budget amendment at a future Board meeting.

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

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

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. C 10079 Amendment No. 7

By and Between

San Bernardino Associated Governments and HDR Engineering, Inc.

Contract Description: Downtown San Bernardino Passenger Rail Project (DSBPRP) and Redlands Passenger Rail Project (RPRP) Design and Environmental Clearance Services

Board of Director's Meeting Date: July 10, 2013

Overview of BOD Action: 1.) Approve Amendment No. 7 to Contract No. C10079 with HDR Engineering, Inc. for design and environmental clearance services increasing the contract amount by $2,183,924 for a new not-to-exceed amount of $33,568,276. 2.) Approve Amendment to exercise a second one-year option to extend HDR's contract duration through February 8, 2015.

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

CONTRACT OVERVIEW

Original Contract Amount	$	6,990,150	**Original Contingency Amount**	$	400,000
Revised Contract Amount *Inclusive of prior amendments*	$	30,289,352	**Revised Contingency Amount** *Inclusive of prior amendments*	$	1,095,000
Current Amendment Amount	$	1,643,924	**Contingency Amendment**	$	540,000
TOTAL CONTRACT VALUE	$	31,933,276	**TOTAL CONTINGENCY VALUE**	$	1,635,000
			TOTAL BUDGET AUTHORITY *(contract value + contingency)*	$	33,568,276

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
02/03/10	02/08/14	02/08/15

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

FINANCIAL INFORMATION

☒ Budget authority for this contract currently exists in Task No. 379.

☒ A Budget Amendment is required.

How are we funding current FY? Currently there are sufficient funds appropriated in the Fiscal Year 2013/14 budget for Amendment No. 7 to Contract C10079. However, if additional funds are required to complete the design services, staff will provide a budget amendment at a future Board meeting.

☐ 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 Commuter Rail, FTA Section 5307, LTF Planning, Measure I Metrolink/Rail, LTF Rail, STA-Pop

☒ Payable ☐ Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

☐ Retention? If yes, indicate % _____.

☐ Disadvantaged Business Enterprise (DBE) Goal _____ %

JUSTIN FORNELLI		6/11/13
Project Manager (Print Name)	Signature	Date
MITCH ALCKMAN		6/11/13
Task Manager (Print Name)	Signature	Date
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
Contract Administrator (Print Name)	Signature	Date
Chief Financial Officer (Print Name)	Signature	Date

AMENDMENT NO. 7

TO

CONTRACT NO. C10079

BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

HDR ENGINEERING, INC.

This AMENDMENT No. 7 to Contract No. C10079 (this "Amendment") is made by and between HDR Engineering, Inc. (hereafter called CONSULTANT) and the San Bernardino County Transportation Authority (hereafter called AUTHORITY):

RECITALS:

A. **WHEREAS**, AUTHORITY, under Contract No. C10079, as amended by Amendments No. 1 through 6, has engaged the services of CONSULTANT to provide design, environmental, Federal Transit Administration processing, right-of-way acquisition, and land use services for the Downtown San Bernardino Passenger Rail and Redlands Passenger Rail Projects ("Projects"); and

B. **WHEREAS**, AUTHORITY and CONSULTANT desire to amend the aforesaid contract to remove certain (services that are no longer requiredunder this contract and to, include services that were contemplated but not included in previous amendments, and to exercise the last option term through February 28, 2015; and

C. **WHEREAS**, the parties agree that the net increase will be $2,183,924.00.

NOW THEREFORE, the parties mutually agree to amend Contract No. C10079 as follows:

1. The Scope of Services for Contract C10079, as identified in Amendment No. 2 shall be amended to remove Tasks 7.4 through 7.15 of Amendment 2.

2. The Scope of Services for Contract No. C10079 shall be amended to include all additional elements of the Scope of Services that are described in Attachment A to this Amendment No. 7.

3. Under Article 2., Performance Schedule and Force Majeure, sub-paragraph 2.1, to delete February 8, 2014 and replace with February 8, 2015.

4. Amend Article 3., "Contract Price and Cost Principals", sub-paragraph 3.2, to delete $31,384,352 as the not-to-exceed amount and replace with $33,568,276 as the revised not-to-exceed amount.

5. Include Attachment B to this Amendment No. 7, which includes the negotiated fee for the work identified herein.

6. Except as amended by this Amendment No. 7, all other provisions of Contract No. C10079, as amended, remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this Amendment No. 7 below.

HDR ENGINEERING, INC.

By: _____
Thomas Kim
Sr. Vice President

Date: _____

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

By: _____
Janice Rutherford, President
President

Date: _____

APPROVED AS TO FORM:

By: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE:

By: _____
Jeffery Hill
Contract Administrator

Changes to Scope of Work

Downtown San Bernardino Passenger Rail Project (DSBPRPR)
Redlands Passenger Rail Project (RPRP)

EXECUTIVE SUMMARY

A number of changes have occurred with SANBAG's planned approach to delivering final plans, specifications, and estimates (PS&E) for the Downtown San Bernardino Passenger Rail Project(DSBPRP). These changes were not anticipated, requiring an amendment to HDR's engineering services contract. A brief summary of the required additional work items is as follows, segmented by the party driving the change.

FTA

Pending the decision from the FTA regarding 2011-23576 DOT ADA Final Rule (Level Boarding Report), to provide level boarding at each train car, HDR will provide a revised design for platforms at the Santa Fe Depot and the San Bernardino Transit Center (SBTC) to accommodate the requirements, including newly published SCRRA standards for mini-high platforms to meet these guidelines.

Omnitrans

Continued development of the Omnitrans bus facility at the SBTC required SANBAG to initiate redesign of elements of the San Bernardino Transit Center canopies, platform furniture, and lighting for Transit Center Platform A adjacent to the Omnitrans bus facility to ensure this is a seamless facility.

Additionally, Omnitrans requested that SANBAG provide plans to move existing Omnitrans bus stops currently located near the Depot on 3rd Street at Metrolink Way to 2nd Street.

CTC

On May 10, 2013, San Bernardino Associated Governments (SANBAG) was notified that the Downtown San Bernardino Passenger Rail Project would need to obtain Right of Way Certification from Caltrans, previously not a requirement for this project, by June 4, 2013, so it could be presented to the California Transportation Commission (CTC) on June 6, 2013.

Right of Way Negotiations

As a result of ongoing right of way coordination and negotiations; design changes will be required to accommodate adjacent land owners. Additional right of way work activities will be performed, including coordination of additional building demolition efforts, Project ROW Certification with SANBAG for additional properties, and oversight of final file closeout tasks, including completion of acquisition diaries/logs.

Following submittal of the 100% DSBPR plans, a number of changes were requested to facilitate right of way acquisitions. The Southern California Gas Company requested that SANBAG provide site layouts and design plans as outlined in exhibits prepared by SCG.

In order to improve access to the SBTC Parking lot, two additional parcel acquisitions were required. This required HDR to provide additional Hazmat Phase 1 studies and design revisions to the SBTC Parking Lot entrance.

Utility Companies

Following the submittal of the 100% plans, SANBAG received additional design modification requests from utility companies after their review of the plans. The project plans will be revised to incorporate utility information for existing utilities recently provided by the utility companies and the City of San Bernardino.

Based on additional utility information recently received by SANBAG from utility companies that was not shown on the previously obtained as-built plans, SANBAG directed the construction manager for the project to obtain additional pothole data to check the locations and elevations of the newly-discovered lines. HDR will revise the DSBPR plans to incorporate this utility information and provide the required design modifications.

Following submittal of the 100% plans, the San Bernardino Municipal Water District (SBMWD) requested that SANBAG install a new water line near the intersection of Rialto Avenue and "I" Street during the construction of the DSBPR project.

Metrolink

During construction of the EMF project, Metrolink engineers requested that SANBAG add a railing to the already-constructed retaining wall adjacent to the existing train wash facility. After selection of the EMF contractor, Metrolink asked that infrastructure to support a future closed circuit security camera system be included in the EMF project and plans. As a result, HDR will incorporate necessary changes to the conformed EMF plans to allow for the implementation of the railing and security camera supporting infrastructure.

Metrolink requested that SANBAG provide additional rail corridor modeling to facilitate operations, maintenance, and crew work orders during and after construction of the DSBPR project. This task includes additional rail modeling to assist Metrolink in determining effective rail operations strategies during construction, beginning with the EMF cutover and continuing through the various stages of the DSBPR project.

City of San Bernardino

HDR will assist SANBAG in working with the City of San Bernardino to develop and assist the City in adopting an Amendment to the City's General Plan map and policy to accommodate the DSBPRP.

HDR will also assist SANBAG to work with the City of San Bernardino to facilitate public outreach efforts and continue to provide additional project support through the duration of the City of San Bernardino plan review process.

As a result of the City of San Bernardino's request to relocate and increase the size of the proposed detention basin, additional SCE poles were required to be relocated, requiring additional coordination efforts, rights research, and design assistance.

TASK 1 ADDITIONAL CITY OF SAN BERNARDINO PERMITS AND REQUIREMENTS

Initially, HDR was directed to provide a very limited permitting support to SANBAG due to the linear nature of the project. The City of San Bernardino has since requested that SANBAG follow the standard City permitting process for offsite work. HDR will assist SANBAG in processing additional submittals of permitting documents to the City of San Bernardino.

TASK 1.1 ADDITIONAL CITY REQUIREMENTS

Activities

HDR will assist SANBAG in working with the City of San Bernardino to develop and assist the City in adopting an Amendment to the City's General Plan map and policy to accommodate the DSBPRP; including street closures to enhance rail safety, feasibility considerations, and administrative standards for SBTC project review.

HDR will update the Hydrology and Hydraulics report to reflect updated site conditions based on modifications to the project limits. HDR will assist SANBAG in working with the City of San Bernardino to obtain approval for the Final Hydrology Report if required.

HDR will continue to assist SANBAG to work with the City of San Bernardino to facilitate public outreach meetings prior to and during construction.

Task 1.1.1 SBTC Parking Lot and Access Road (EDC Properties)

Task 1.1.2 Santa Fe Depot Parking Lot

Task 1.1.3 Hydrology and Hydraulics Report Review

Task 1.1.4 Public Outreach Meetings

Deliverables

- Supporting exhibits and narrative for the amendment to the City's General Plan
- Revised hydrology and hydraulics report
- Additional exhibits for public outreach meetings at the request of the City of San Bernardino

Assumptions

- Public Outreach meetings will be held no more than once every four months through the end of construction in February 2016.

TASK 1.2 CONTRACTOR PERMIT SUPPORT

Activities

To help maintain the project schedule, HDR will assist SANBAG by providing additional project support to facilitate the City of San Bernardino plan review process for public right of way. HDR will schedule and attend a comment resolution meeting with City staff, SANBAG, and the City's plan review consultant to review and resolve the City's comments.

Task 1.2.1 K Street (Improvements)

Task 1.2.2 3rd Street (Closure & Improvements)

Task 1.2.3 2nd Street (Improvements)

Task 1.2.4 Rialto Ave (Improvements)

Task 1.2.5 I Street (Closure & Improvements)

Task 1.2.6 G Street (Improvements)

Task 1.2.7 E Street (Improvements)

Deliverables

- Revised plans per comment resolution meeting

Assumptions

- One comment resolution meeting with the City of San Bernardino is anticipated for the completion of the Development Permits (DP1 and DP2).

TASK 2 EMF - ADDITIONAL SERVICES

During construction of the EMF project, Metrolink requested changes to the EMF plans. Metrolink asked that infrastructure to support a future closed circuit security camera system be included in the EMF project.

During the design phase of the EMF project, Metrolink elected to forego the inclusion of a pedestrian railing atop the proposed T-Wall retaining wall due to its proximity to the railroad tracks. During construction, Metrolink decided to include the railing.

TASK 2.1 SECURITY INFRASTRUCTURE DESIGN

Activities

HDR was directed to incorporate conduit and camera pole infrastructure designs into the EMF plan set for a future planned closed circuit camera security system. Preliminary designs for the security system were previously developed by another consultant (Xorail) working directly for Metrolink, but the design had to be modified to accommodate the new EMF improvements currently under construction. HDR coordinated with Xorail and Metrolink to check conduit sizes and locations; junction box types, sizes, and locations; camera pole placements and foundation designs, acceptable conduit installation methods and details; materials specifications requirements; and other necessary design details. Construction specifications and a cost estimate for this additional work were also prepared by HDR.

Task 2.1.1 Design

Task 2.1.2 Plans

Task 2.1.3 Specifications

Deliverables

- Meeting agendas and record minutes for three (3) coordination meetings attended by Xorail, Metrolink, and other involved parties.
- Draft revised electrical drawings incorporating the proposed CCTV security infrastructure. (Revise electrical plan sheets E-311 thru E-314. Add details to the General Notes and Fixture Details sheets.)
- Final revised electrical drawings addressing comments from Xorail, Metrolink, SANBAG, and other responsible parties.
- Draft and final material and construction specifications for the new CCTV infrastructure.
- Construction cost estimate for the CCTV infrastructure.

Assumptions

- All necessary CCTV security design and specifications provided by Xorail.

TASK 2.2 T-WALL CABLE RAILING DESIGN

HDR was directed to add a pedestrian railing to the 513-foot long retaining wall (T-Wall) adjacent to the existing train wash facility. The railing is to conform to the SCRRA standard design for a wire pedestrian railing, but be modified to attach to the tops of the T-Wall units already in place. Standard railing post spacing and the locations of field-drilled holes had to be modified to avoid conflicting with the T-Wall unit joints.

Activities

Task 2.2.1 Coordination/Meetings

Task 2.2.2 Design

Task 2.2.3 Plans

Task 2.2.4 Specifications

Deliverables

- Revised drawing SW-1103 to include railing posts and wall attachment details for the wire pedestrian railing.
- Revised drawing SW-1102 to include post spacing dimensions, cross bracing locations, and StrandVice placements in the elevation view for the wall.
- Copies of correspondence with Neel Company (T-Wall) attesting to the structural adequacy of the wall units to accommodate the railing.

TASK 3 FINAL DESIGN REVISIONS

This task includes additional technical support services following the 100% plan submittal. The additional services include plan and technical report revisions requested by Metrolink, Omnitrans, utility companies, and the City of San Bernardino. This task also includes modifications to the project plans and specifications and additional engineering support due to the following factors:

- Final right of way acquisition agreements
- Final utility company relocation plans
- Additional pre-construction potholing
- Coordination of Division 0 and Division 1 Specifications
- Additional public outreach exhibits

TASK 3.1 TRAFFIC REPORT REVISIONS (ITERIS) REQUIRED FOR PUBLIC ROAD CLOSURE MEETINGS (3RD STREET AND I STREET) AS REQUESTED BY CITY

The City of San Bernardino requested that SANBAG provide additional traffic data to support the proposed closures of "I" Street and Third Street. This work includes attendance at public meetings and traffic engineering activities.

Activities

ADT 7-day Classification Counts for the following areas:

- "I" Street south of Congress
- "I" Street between Belleview Street and Rialto Avenue

- Belleview Street between "I" and "J" Street
- Congress Street between "I" and "J" Street
- "J" Street between Belleview and Rialto Ave.
- "J" Street between 2nd and Rialto
- 3rd Street west of "I" Street
- "K Street north of 2nd Street
- J Street/Belleview Intersection

Deliverables

- ADT 7-Day Classification Count results
- Attendance at two public meetings

Assumptions

- No additional locations will require traffic counts other than those listed above.
- A single ADT 7-day Classification Count will be provided for each location listed above.

TASK 3.2 WAYFINDING

Activities

Additional signage and wayfinding items have been requested to meet revised requirements and to accommodate additional tenants at the Depot. Special signage will be added to commemorate the Colton Crossing relocation, period-themed elevation signs will be added to the canopies, and a commemorative plaque will be added at the Depot to recognize the historic significance of the building. Several signs will be modified to be free-standing rather than be attached to the building. Two large monument signs will be added at the Transit Center-end of the project.

Task 3.2.1 Transit Center Pylon

Task 3.2.2 Transit Center Entrance Monument

Task 3.2.3 Depot Commemorative Plaque at Flagpole

Task 3.2.4 Revise elevation signs details

Task 3.2.5 Revise location plan

Task 3.2.6 Revise detail drawings of overhead signs

Task 3.2.7 Revise detail drawings of directory – change material to aluminum + add lock to top

Task 3.2.8 Revise interpretive signs (Time Zones and Colton Crossing) based upon feedback/approval

Task 3.2.9 Revise both main monument signs – 2 more tenants

Task 3.2.10Provide new detail of post and panel to hold freestanding directories

Task 3.2.11Provide Sign with emergency numbers

Task 3.2.12Revise San Bernardino City logo with city seal on pedestrian overpass

Task 3.2.13Provide construction signage in two locations: one at the Santa Fe Depot, and one at the San Bernardino Transit Center

Task 3.2.14Revised Specifications

Deliverables

- Revised plans
- Revised specifications

Assumptions

- The Transit Center Pylon will be designed by the contractor based on parameters outlined in the project plans.

TASK 3.3 REVISIONS TO PLATFORM PLANS TO ACCOMODATE OMNITRANS BUS FACILITY DEVELOPMENT

As the adjacent Omnitrans Bus Facility project at the transit center has developed, changes have been requested which affect elements of the DSBPR Project. Canopies, platform furniture, and lighting will be moved to enhance the inter-operability of Transit Center Platform A and the adjacent Omnitrans bus facility.

Activities

- Move and redesign (3) canopies at Platform A to share between facilities but maintain safety between modes.
- Redesign Platform A to accommodate architectural finishes, drainage, and structural design.
- Add platform ramps to facilitate movement between sides of platform.
- Move and redesign fence separating rail and bus platforms longitudinally for Platform A.
- Move and redesign landscaping for rail and bus platforms longitudinally for Platform A.
- Revise plat and legal drawings.

Deliverables

Task 3.3.1 Revised Architectural Drawings and Details

Task 3.3.2 Revised Structural Drawings and Details

Task 3.3.3 Revised Electrical Drawings and Details

Task 3.3.4 Revised Plumbing Drawings and Details

Task 3.3.5 Revised Landscape Drawings and Details

Task 3.3.6 Revised Civil Drawings and Details

Task 3.3.7 Revised Plats and Legals

Task 3.3.8 Specifications

Assumptions

- Further development to the Omnitrans facility will not require additional changes to the DSBPR Project plans.

TASK 3.4 3RD STREET DESIGN REVISIONS

The City of San Bernardino requested that SANBAG upgrade street lighting in the area of the Santa Fe Depot from a 460V system to a 120V system. Per this request, HDR will work with the City of San Bernardino to provide the design to upgrade the 3rd Street lighting in this area.

During construction of the soon-to-be-completed I-215 Widening Project, HDR determined that the portion of 3rd Street west of I Street was constructed at different elevations than were provided in the I-215 plans. HDR will obtain additional survey and provide additional design modifications for the 3rd Street roadway to connect the Downtown San Bernardino Passenger Rail Project with the I-215 Widening Project.

Activities

Design revisions to the following items:

Task 3.4.1 Additional Electrical/Lighting

Task 3.4.2 Civil

Task 3.4.3 Landscaping

Task 3.4.4 Utilities

Task 3.4.5 Fencing

Task 3.4.6 ROW

Task 3.4.7 Plats & Legals

Task 3.4.8 Specifications

Deliverables

- Revised plans
- Revised specifications
- Revised plat maps and legal descriptions

Assumptions

- Modifications to connect the two projects 3rd Street will only be required along the north side of the street between the proposed DSBPRP cul-de-sac and the I-215 Widening project limits.

TASK 3.5 SECURITY EQUIPMENT ENCLOSURE REVISIONS

Originally, the 100% DSBPR plans included a canopy, slab, and charging station for the proposed security equipment enclosure. After the 100% submittal, HDR was directed to add two additional weather protection walls of concrete masonry faced in cement plaster to match the existing masonry and steel picket fence at the Santa Fe Depot. HDR will also provide plans for modifications to the existing fence to accomplish task.

Deliverables

Task 3.5.1 Revised Architectural Drawings and Details

Task 3.5.2 Revised Structural Drawings and Details

Task 3.5.3 Revised Electrical Drawings and Details

Task 3.5.4 Revised Civil Drawings and Details

Task 3.5.5 Specifications

TASK 3.6 ADDITIONAL OMNITRANS 2ND STREET BUS STOP DESIGN

Per the request of Omnitrans, HDR will provide plans to move the two existing bus stops currently located on 3rd Street at Metrolink Way to 2nd Street. The design will also require placement of the bus pads in a non-standard configuration requiring approval by the City of San Bernardino.

Deliverables

Task 3.6.1 Revised Civil Plans

Task 3.6.2 Coordination with the City of San Bernardino for design exceptions to bus pad design.

Assumptions

- The City of San Bernardino will approve the non-standard bus pad design elements required to meet Omnitrans' requests.

TASK 3.7 PLAN REVISIONS DUE TO FINAL UTILITY COMPANY RELOCATIONS AND ADDITIONAL POT HOLE INFORMATION

Following the submittal of the 100% plans, HDR received additional existing utility information from utility companies that was not shown on the previously obtained as-built plans. Based on this new information, SANBAG's construction manager for the project was directed to obtain additional pothole data to check the locations and elevations of the newly-discovered lines. HDR will revise the DSBPR plans to incorporate this utility information and provide the required design modifications.

Deliverables

Task 3.7.1 City Sewer Revisions Based on Additional PB Potholing

Task 3.7.2 Revise Utility Base File per PB Potholing

Task 3.7.3 Addition of Utility Companies Plans into Plan Set

Task 3.7.4 AT&T/MCI Generated Plans

Task 3.7.5 SoCal Gas Generated Plans

Task 3.7.6 SoCal Edison Generated Plans

Task 3.7.7 Verizon Generated Plans

Task 3.7.8 Time Warner Cable/Telecom Generated Plans

Assumptions

- Modifications to a maximum of 75 plan sheets.

TASK 3.8 SECURITY & BROADCAST SYSTEM ENGINEERING SUPPORT DURING CONSTRUCTION

Due to the increased complexity of the security and broadcast engineering design of the project, HDR's security and broadcast design subconsultant, PAC, will respond to construction submittals and RFIs during construction.

Activities

HDR's subconsultant, PAC Engineering, will review and comment on submittals and respond to Broadcast Engineering RFIs during the construction phase for the DSBPR Project.

Deliverables

Task 3.8.1 Reponses to submittals and RFIs

Assumptions

- PAC will review a maximum of 10 submittals
- PAC will respond to a maximum of 5 RFIs

TASK 3.9 ADDITIONAL DIVISION 0 AND DIVISION 1 SPECIFICATION SUPPORT

Due to changes to the project required by third-party owners and regulators, an increased level of coordination and review of the Division 0 and 1 specifications is recommended to reduce the project risk to SANBAG. HDR's subconsultant, Railroad Project Management (RPM), will provide support in coordinating and reviewing the provisions of the Division 0 and Division 1 Specifications as developed in the Division 0 and Division 1 Specification Workshops. This work will include making clarifications to the specifications prompted by SANBAG and the construction management team. RPM will also work to check that the specifications reflect changes as a result of amendments made to the IFB plan set during the bid phase of the project.

TASK 3.10 PUBLIC OUTREACH AND REGULATOR EXHIBITS

Activities

The HDR team will continue to prepare full size exhibits for use during Public Outreach, Regulatory, and Utility Coordination meetings for final design, bid support, and construction.

Deliverables

Task 3.10.1Exhibits

Assumptions

- Two exhibits per month for a duration of 31 months (62 exhibits total)

TASK 4 PLATFORM REVISIONS TO ACCOMMODATE LEVEL BOARDING

Pending the decision from the FTA regarding 2011-23576 DOT ADA Final Rule (Level Boarding Report), to provide level boarding at each train car door, HDR will provide a revised design for Platform A at the Santa Fe Depot and Platforms B and C at the San Bernardino Transit Center to accommodate the requirements.

TASK 4.1 MODIFICATIONS AT SANTA FE DEPOT

The potential redesign could require all platforms to be raised approximately 11 to 15 inches higher than the existing design elevation or Platform A be split longitudinally with only a portion of it being raised, requiring steps and ramps to connect the two sides of the platform. Canopies, platform furniture, and lighting will remain in the presently proposed locations, adjusted to accommodate the redesigned platform. The canopies will be modified to include benches on both

sides and to accommodate raised foundations and the creation of pilasters to support lighting and canopy foundations. Steps will be provided to connect each half of the platform to maintain a "center platform". Each end of the platform will be redesigned to accommodate accessible exiting via ramps and landings. The pedestrian bridge structure will be designed to land on the revised platform elevation. If Platform A is to be split longitudinally, a retaining wall will be added to the higher platform side of structure. Relocation of signage and the Amtrak accessible wheelchair lift stored in the base of pedestrian bridge will be included in the design.

Activities

- Modify and redesign canopies to accommodate platform split.
- Redesign platforms to accommodate architectural finishes, furniture, drainage, and structural design.
- Add platform ramps to facilitate movement between sides of platform.
- Redesign platform entry and exit ramps and landing to accommodate raised platforms.
- Revise and redesign fencing and gates for all platforms
- Design retaining wall for pedestrian bridge accommodation

Deliverables

- Revise Architectural Drawings and Details and Specifications
- Revise Structural Drawings and Details
- Revise Electrical Drawings and Details
- Revise Plumbing Drawings and Details
- Revise Civil Drawings and Details
- Revise Signage Drawings
- Revise and Redesign fencing and gates for platforms
- New Structural Retaining design Drawings and Details

Task 4.1.1 Santa Fe Depot – Update 100% DSBPRP Drawings to Accommodate Level Boarding

Task 4.1.1.1 General

Task 4.1.1.2 Track Plans

Task 4.1.1.3 Civil

Task 4.1.1.4 Architectural

Task 4.1.1.5 Video Surveillance

Task 4.1.1.6 EPIS

Task 4.1.1.7 Utilities

Task 4.1.1.8 Structural

Task 4.1.1.9 Electrical

Task 4.1.1.10 Mechanical

Task 4.1.2 Civil - Design Services to Accommodate Level Boarding

Task 4.1.2.1 Site plan for platform accessibility and egress

Task 4.1.2.2 Platform plans designed for level boarding

Task 4.1.2.3 Specifications

Task 4.1.3 Architecture - Design Services to Accommodate Level Boarding

Task 4.1.3.1 Platform Plans with furnishings and equipment layout

Task 4.1.3.2 Platform elevations

Task 4.1.3.3 Platform sections

Task 4.1.3.4 Canopy plans

Task 4.1.3.5 Canopy elevations

Task 4.1.3.6 Canopy sections

Task 4.1.3.7 Pedestrian Overpass Building Sections

Task 4.1.3.8 Pedestrian Overpass Building Plans

Task 4.1.3.9 Hand and guardrail details

Task 4.1.3.10 Specifications

Task 4.1.4 Structural - Design Services to Accommodate Level Boarding

Task 4.1.4.1 Platform structural design sections

Task 4.1.4.2 Platform structural details

Task 4.1.4.3 Wall Design and Details

Task 4.1.4.4 Specifications

Task 4.1.5 Electrical - Design Services to Accommodate Level Boarding

Task 4.1.5.1 Lighting Plans

Task 4.1.5.2 Power plans revised at canopies

Task 4.1.5.3 Specifications

Task 4.1.6 Drainage - Design Services to Accommodate Level Boarding

Task 4.1.6.1 Drainage Design

Task 4.1.6.2 Specifications

Task 4.1.7 Security - Design Services to Accommodate Level Boarding

Task 4.1.7.1 Coordinate camera locations impacted by lighting and canopy relocation

Task 4.1.7.2 Specifications

Assumptions

- HDR will continue to develop the level boarding report which was included in the Amendment 6 submittal.
- The level boarding plans will be included in the DSBPRP IFB submittal.
- HDR will not be responsible for designing commuter rail vehicle extensions. This work will be performed by STV under contract to Metrolink's operations department.

TASK 4.2 MODIFICATIONS AT SAN BERNARDINO TRANSIT CENTER

The potential redesign could require any number of platforms to be raised approximately 11 to 15

inches higher than the existing design elevation. This could require Platform B to be split longitudinally with steps and ramps between. Most likely, the south portion of Platform B and Platform C serving Metrolink trains will be required to be raised approximately 11 to 15 inches (to be determined) to accommodate various brands of existing rolling stock vehicles. Canopies, platform furniture, and lighting will remain in the presently proposed locations, adjusted to be on the high side of the redesigned platform. The canopies will be modified to include benches on both sides and to accommodate raised foundations and the creation of pilasters to support lighting and canopy foundations. Steps will be provided on Platform B to connect each half of the platform to maintain a "center platform". Each end of the platform will be redesigned to accommodate accessible exiting via ramps and landings. Side Platform C will be raised to match the elevation of the south side of Platform B. The Crewhouse will be raised along with adjacent service yard to maintain current level relationship with the platform. The foundation design will be checked and redesigned to meet structural requirements. The San Bernardino Transit Center Parking Lot will be redesigned to accommodate the changes made to the platforms by raising its north end.

Activities

- Modify and Redesign canopies to accommodate revised platform heights.
- Redesign all platforms to accommodate architectural finishes, furniture, drainage, and structural design.
- Add platform ramps to facilitate movement between sides of platform.
- Redesign platform entry and exit ramps and landing to accommodate raised platforms.
- Revise and Redesign fencing and gates for Transit Center Platform B
- Raise all elements and modify access to accommodate raised Transit Center Platform C.
- Raise Crewhouse to match raised Transit Center Platform C including verification of soils report and redesign of foundation and stem walls to accommodate raise.

Deliverables

- Revise Architectural Drawings, Details and Specifications
- Revise Structural Drawings and Details
- Revise Electrical Drawings and Details
- Revise Plumbing Drawings and Details
- Revise Civil Drawings and Details
- Revise Signage Drawings
- Revise and Redesign fencing and gates for all platforms
- Revise and Redesign Crewhouse Structural Drawings and Specifications
- Revise property line wall Drawings and Details
- Revise Soils report.

Task 4.2.1 San Bernardino Transit Center – Update 100% DSBPRP Drawings to Accommodate Level Boarding

Task 4.2.1.1 General

Task 4.2.1.2 Track Plans

Task 4.2.1.3 Civil

Task 4.2.1.4 Architectural

Task 4.2.1.5 Crew House Plans

Task 4.2.1.6 Video Surveillance

Task 4.2.1.7 EPIS

Task 4.2.1.8 Utilities

Task 4.2.1.9 Structural

Task 4.2.1.10 Electrical

Task 4.2.1.11 Mechanical

Task 4.2.2 Civil - Design Services to Accommodate Level Boarding

Task 4.2.2.1 Site plan for platform accessibility and egress

Task 4.2.2.2 Crew House site plan for accessibility

Task 4.2.2.3 Platform plans designed for level boarding

Task 4.2.2.4 Specifications

Task 4.2.3 Architecture - Design Services to Accommodate Level Boarding

Task 4.2.3.1 Platform Plans with furnishings and equipment layout

Task 4.2.3.2 Platform elevations

Task 4.2.3.3 Platform sections

Task 4.2.3.4 Canopy plans

Task 4.2.3.5 Canopy elevations

Task 4.2.3.6 Canopy sections

Task 4.2.3.7 Pedestrian Overpass Building Sections

Task 4.2.3.8 Pedestrian Overpass Building Plans

Task 4.2.3.9 Hand and guardrail details

Task 4.2.3.10 Specifications

Task 4.2.4 Structural - Design Services to Accommodate Level Boarding

Task 4.2.4.1 Platform structural design sections

Task 4.2.4.2 Platform structural details

Task 4.2.4.3 Wall Design and Details

Task 4.2.4.4 Specifications

Task 4.2.5 Electrical - Design Services to Accommodate Level Boarding

Task 4.2.5.1 Lighting Plans

Task 4.2.5.2 Power plans revised at canopies

Task 4.2.5.3 Specifications

Task 4.2.6 Drainage - Design Services to Accommodate Level Boarding

Task 4.2.6.1 Drainage Design

Task 4.2.6.2 Specifications

Task 4.2.7 Security - Design Services to Accommodate Level Boarding

Task 4.2.7.1 Coordinate camera locations impacted by lighting and canopy relocation

Task 4.2.7.2 Specifications

Assumptions

- HDR will continue to develop the level boarding report which was included in the Amendment 6 submittal.
- The level boarding plans will be included in the DSBPRP IFB submittal.
- HDR will not be responsible for designing commuter rail vehicle extensions. This work will be conducted by STV under contract to Metrolink's operations department.

TASK 4.3 MINI-HIGH PLATFORM REDESIGN (RESULTING FROM NEWLY PUBLISHED SCRRA LEVEL BOARDING STANDARDS)

Following completion of the 100% plans, SCRRA published revised engineering standards which will require changes to the mini-high platforms. HDR will provide redesign and relocation of project mini-highs to conform to new standards that requires greater setback from edge of platform.

Activities

- Move and redesign (3) mini-highs at Transit Center Platforms A, B, and C to comply.
- Move and redesign (3) mini-highs at platforms A, B, and C at the Santa Fe Depot to comply.

Deliverables

Task 4.3.1 Revised Architectural Drawings and Details

Task 4.3.2 Revised Structural Drawings and Details

Task 4.3.3 Revised Civil Drawings and Details

Task 4.3.4 Revised Electrical and Lighting Drawings and Details

Task 4.3.5 Revised Specifications

TASK 5 ADDITIONAL SUPPORT SERVICES FOR UTILITY COMPANY NEGOTIATIONS AND COORDINATION

In order to maintain eligibility for State and Federal funding in the event that it became available, SANBAG requested that HDR follow Caltrans' local assistance guidelines.

As a result of the City of San Bernardino's request to relocate and increase the size of the proposed detention basin, additional SCE poles were required to be relocated, requiring additional coordination efforts rights research and design assistance.

TASK 5.1 UTILITY DESIGN AND COORDINATION

HDR will provide additional right of way support services for utility relocations and services per Caltrans Local Assistance Guidelines.

Task 5.1.1 Obtain draft and final utility relocation plans from utility owners to check that proposed utilities do not conflict with proposed improvements or existing features.

Task 5.1.2 Obtain estimates for utility agreements.

Task 5.1.3 Prepare Report of Investigation (ROI), with back up documents for determining liability.

Task 5.1.4 Prepare and send out Notice to Owner (NTO), with copy of approved plans & copy of work windows or special provisions

Task 5.1.5 Prepare Revised NTO if Scope, scheduling or Discovered Work is found

Task 5.1.6 Prepare Utility Agreements (UA's) if needed (payment proration, who performs the work, scheduling, replacement rights, etc., review and monitor invoices to UA)

Task 5.1.7 Assist SANBAG in obtaining permits and replacement rights prior to relocation

Task 5.1.8 Provide support during construction to follow up with utility owners that are relocating during construction, and check that they are on schedule

Task 5.1.9 Provide support during construction to follow up with utility owners that are relocating during construction, and check that they are on schedule

Task 5.1.10File Closeout

TASK 6 RIGHT OF WAY DESIGN CHANGES

After submittal of the 100% plans, Southern California Gas Company requested that SANBAG provide a design for the on-site Southern California Gas Company facilities based on their architect's site layout. HDR will develop these sketches into an engineered design and implement these changes into the final plans.

In order to improve access to the San Bernardino Transit Center Parking lot, two additional parcel acquisitions were required. This required HDR to provide additional Hazmat Phase 1 studies and design revisions to the SBTC Parking Lot entrance.

As a result of developing right of way coordination and negotiations, design changes will be required to accommodate adjacent land owners. Additional right of way work activities will be performed, including coordination of additional building demolition efforts, Project ROW Certification with SANBAG for additional properties, and oversight of final file closeout tasks, including completion of acquisition diaries/logs.

TASK 6.1 HAZMAT PHASE I (2 ADDITIONAL EDC PARCELS)

In order to provide better access to the proposed SBTC parking lot (2) additional properties along E Street will be required. As a result HDR will conduct two (2) additional Hazmat Phase I studies for the two properties fronting "E" Street.

Deliverables

- Hazmat Phase 1 Studies for two properties

TASK 6.2 SOCAL GAS PARKING LOT

After submittal of the 100% plans, Southern California Gas Company requested that SANBAG provide a design for the on-site Southern California Gas Company facilities based on their architect's site layout. HDR will develop these sketches into an engineered design and implement these changes into the final plans.

HDR right of way staff will provide of right of way services associated with the SoCal Gas (SCG) parking lot and property line block wall improvements. HDR will meet with new SCG team members and bring them up-to-speed on design and negotiation discussions. Additional right of way services will be required to address issues such as the abandoned railroad track and ties along SCG's east property line, environmental testing of the "give-back" property and the manner in which the parking lot/property line wall will be constructed and by whom it will be constructed.

Site layouts and design plans as outlined in exhibits prepared by SCG will be developed, including site grading, parking lot lighting, retaining wall design, landscaping improvements, and right-of way plat maps and legal descriptions.

Task 6.2.1 Coordination

Task 6.2.2 Electrical/Lighting

Task 6.2.3 Civil

Task 6.2.4 Landscaping

Task 6.2.5 Structures

Task 6.2.6 ROW

Task 6.2.7 Plat Maps & Legal Descriptions

Task 6.2.8 Drainage

Task 6.2.9 Specifications

Deliverables

- SoCal Gas IFB parking lot plans and specifications
- Meeting minutes from coordination meetings
- Plat Maps and legal descriptions for the SoCal Gas property

Assumptions

- The perimeter walls for the property will be owned and maintained by the Southern California Gas Company.

TASK 6.3 SBTC PARKING LOT ENTRANCE (REDESIGN)

HDR right of way staff will provide support for additional right of way requirements and acquisition oversight associated with the design and acquisition of two (2) additional EDC properties along "E" Street which will be used for access to the proposed San Bernardino Transit Center parking lot. Additional title reports and appraisals will be ordered for these two properties.

HDR engineering staff will provide site improvement plans including site grading, parking lot lighting, retaining wall design, landscaping improvements, and right-of way plat maps and legal descriptions.

Task 6.3.1 Civil

Task 6.3.2 Landscaping

Task 6.3.3 Utilities

Task 6.3.4 Fencing

Task 6.3.5 Structural

Task 6.3.6 Electrical/Lighting

Task 6.3.7 Drainage

Task 6.3.8 Right of way

Task 6.3.9 Plat Maps & Legal Descriptions

Task 6.3.10Specifications

Deliverables

- Revised SBTC parking lot IFB plans and specifications
- Meeting minutes from coordination meetings
- Plat Maps and legal descriptions for two EDC properties

TASK 6.4 2ND STREET (RELOCATE THE PROPOSED SIGNAL HOUSE TO ACCOMMODATE THE FULL TAKE OF THE "MCHENRY" PROPERTY)

As a result of right of way negotiations, HDR engineering staff will revise the 100% plans to relocate the railroad signal house from the northeast quadrant to the southwest quadrant of the 2nd Street railroad crossing. The revised signal house location will require changes to the civil, fencing, grading, drainage, and utility plans.

HDR right of way staff will provide analysis and revision of the right of way requirements for the Riverside Cement properties, as well as the McHenry property. Once it is determined that the proposed signal house can be moved to the McHenry property, revisions to the Legal Descriptions and Plat Maps, as well as an updated appraisal, will be made to accommodate the revised acquisition area.

Task 6.4.1 Civil

Task 6.4.2 Electrical

Task 6.4.3 Right of way

Task 6.4.4 Fencing

Task 6.4.5 Grading

Task 6.4.6 Utilities

Task 6.4.7 Drainage

Task 6.4.8 Plat Maps & Legal Descriptions

Task 6.4.9 Specifications

Deliverables

- Revised 2nd Street IFB plans and specifications

- Meeting minutes from coordination meetings
- Plat maps and legal descriptions

TASK 6.5 DEVELOPMENT PERMITS TYPES 1 AND 2

Per the City of San Bernardino's request, HDR will assist SANBAG with development and implementation of the pre-application and formal Development Permit Type 1 and 2 permit application approaches with the City to support the DSBPRP bid and construction timelines.

Following application, creation, submittal, and negotiation, HDR will follow-up for the City's Development Permit (Type 2) for the SANBAG Parking Facility Development Permit Type 2. HDR will prepare the SANBAG Parking Facility Parking Program that defines SANBAG's shared-use parking resources and provides SANBAG parking revenue opportunities.

Task 6.5.1 So Cal Gas Property Parking Lot

Task 6.5.2 De Gorter Property Parking Lot

Task 6.5.3 Detention Pond (Arrowhead Pond Property)

Deliverables

- Pre-application and formal Development Permit Type 1 and 2
- Meeting minutes from coordination meetings

Assumptions

- The SBTC plans north of the station platforms will be included in a separate IFB submittal and constructed by another contractor.

TASK 6.6 BUILDING DEMOLITION SUPPORT

HDR right of way staff will assist SANBAG to coordinate additional building demolition efforts because additional properties have been added since the original scope was developed. This will include coordination of building board-ups and fencing around the properties if required.

HDR will coordinate hazmat testing for both lead and asbestos paint and deliver reports of findings for inclusion in the Demolition IFB package. HDR will periodically observe the demolition activities and submit information to support project close-out to SANBAG, once all properties have been cleared.

Task 6.6.1 K Street Properties (4 structures)

Task 6.6.2 DeGorter Property

Task 6.6.3 Bekins Property

Task 6.6.4 Gas Company Property (Walls and Building Foundation)

Task 6.6.5 Mantzoros Property

Task 6.6.6 All-Good Property

Task 6.6.7 EDC Property (2 structures)

Deliverables

- Hazmat testing results

Assumptions

- Board-up and fencing services will be contracted directly by SANBAG, with coordinating assistance provided by HDR.

TASK 6.7 ADDITIONAL RIGHT OF WAY SUPPORT SERVICES

HDR right of way staff will assist the engineering team in revisions to the right of way requirements and additional design associated with the EDC, Caltrans, Heftner, KLR, Big Z Auto, Byun and DeGorter properties. HDR will coordinate the preparation of and review of additional Legal Descriptions and Plat Maps needed for appraisal, appraisal review and acquisition activities, and will perform oversight of said acquisition and relocation activities.

HDR right of way staff will provide coordination with the engineering team related to design revisions and property owner's and their legal representative's requests for information and documentation of the proposed acquisition areas. HDR will coordinate meetings and respond to information requests in coordination with SANBAG's Condemnation Attorneys. HDR has coordinated and attended several additional meetings with the GSA regarding improvements for the Affaitati property and neighboring Mantzoros and SBTC properties.

HDR right of way staff will prepare the demolition specifications and IFB package information for the demolition of the following additional structures: 4 residential on K Street, 1 residential on 2nd Street, 7 commercial throughout the project limits, 3 trees along Rialto (needed for early utility relocation), and 1 storage shed at the Clark property on Rialto.) HDR will also coordinate project ROW Certification with SANBAG for additional properties and provide oversight on final file closeout tasks, including completion of acquisition diaries/logs and associated back-up documentation to be filed per Caltrans requirements.

Task 6.7.1 Additional Appraisal Maps, Legal Descriptions and Plats (Eng)

Task 6.7.2 Oversight of Epic Acquisition/Relocation Activities

Task 6.7.3 Coordination with Engineering re: Design Revisions and Property Owner Information Requests

Task 6.7.4 Oversight of Additional/Updated Appraisal Reports

Task 6.7.5 Oversight of Additional Legal Descriptions and Plat Maps

Task 6.7.6 Coordination with Condemnation Attorneys

Task 6.7.7 Additional Coordination with GSA for Affaitati property

Task 6.7.8 Coordinate Demolition of Structures (5 Residential, 7 Commercial, 3 trees and 1 storage shed)

Task 6.7.9 Coordinate ROW Certification with SANBAG

Task 6.7.10 Coordinate File Closeout with Epic

TASK 6.8 EPIC LAND SOLUTIONS (SUBCONSULTANT)

Task 6.8.1 Reimbursement of the extra work entailed in the 36 month acquisition/relocation period: due to project delays, additional work was required to meet with landowners and displacees; also requiring extra work were two offers to each landowner; appraisals were required to be updated which required additional management on our part. Offers were not officially made until almost three years after project start.

Task 6.8.2 Ongoing condemnation support including multiple package reviews at the request of the attorneys, ongoing preparation for the filing of eminent domain, and continuing negotiations with landowners during RON and ED filing.

Task 6.8.3 Ongoing and continued negotiations post eminent domain filing with landowners and displacees; new document preparation and execution required; additional visits with landowners and their attorneys in support of our legal team.

Task 6.8.4 Alley vacation paperwork, documentation, coordinating with HDR and title company; meeting with adjacent landowners regarding same; submit paperwork to legal team for review; make any additional changes necessary.

Task 6.8.5 Additional scope items requested since January which include changing vesting in all documents at SANBAG's request, requesting hand-delivery from legal team of most RON notices, and additional declarations requested by legal team.

TASK 6.9 PLAN REVISIONS IN CONJUNCTION WITH RIGHT OF WAY ACQUISITIONS

Activities

Right of way acquisitions for the project have required additional support that is still ongoing. As negotiations are finalized, some changes to the DSBPR plans will be required to reflect the negotiated agreements. The HDR team will provide final plan revisions driven by these right of way negotiation generated "hot sheet special provisions."

Deliverables

Task 6.9.1 Plan Revisions Due to Right of Way Acquisitions

Assumptions

- Modifications to a maximum of 50 plan sheets

TASK 6.10 CALTRANS RIGHT OF WAY CERTIFICATION

On May 10, 2013, San Bernardino Associated Governments (SANBAG) was notified that the Downtown San Bernardino Passenger Rail Project (Redlands First Mile Project) would need to obtain Right of Way Certification from Caltrans, previously not a requirement for this project, by June 4, 2013, so it could be presented to the California Transportation Commission (CTC) on June 6, 2013. Per SANBAG's direction, the HDR team immediately began work to compile all of the documentation and exhibits required for the Caltrans Certification of the right of way and utility relocations.

Activities

Successful delivery of right of way and the approval of project's SLPP funding will require obtaining the right of way certification approval from Caltrans District 8 and Caltrans Headquarters in Sacramento. In order for the certification to be approved by Caltrans, the proper certification forms must be prepared, the appropriate sections of the Caltrans Right of Way Manual must be adhered to, and a complete and comprehensive certification package must be submitted. HDR will prepare the necessary documents to deliver the submittal packages for Caltrans review and approval. Tasks required to obtain approval include:

- Prepare Right of Way Certification packages for a Cert 3 with Workaround.

- Prepare Right of Way Certification Binders, including all pertinent acquisition documents for each parcel.
- Create Right of Way requirements mapping per Caltrans formatting for inclusion in Certification Packages.

HDR will coordinate the relocation of utility facilities under franchise agreements or other rights. In addition, HDR will review the utility owners' documents and pertinent laws regarding utility rights, under the Streets and Highways Code and the Caltrans Right of Way Manual, to determine the liability of an affected utility. HDR will make arrangements with the affected utilities that have prior rights, to confirm their claims and to relocate their facilities as required. HDR will obtain, prepare and deliver required documents, amendments and reports to assist with proper relocation procedures, including the following items:

- Claim letter with copy of design plans
- Report of Investigation to determine liability for the cost of relocation
- Notice to Relocate
- Relocation plans and cost estimates from each utility company
- Approved relocation plans from the design engineer
- Utility agreement prepared by City, if required (payment pro-ration, who performs the work, scheduling, replacement rights, etc.)
- Assist with obtaining Permits and replacement rights prior to utility relocation
- Inspection and confirmation of relocated utilities report.
- Prepare Projects Engineer's Certification of Utility Relocation per Caltrans High and Low Risk Policy, for HDR Engineering, Inc. to review, approve, and sign.
- Coordinate with the project engineer for any needed Special Provisions required for utility owner coordinated work.
- Check that the project engineer has identified and included physical conflicts and inclusion in the construction plans.
- Prepare utility portion of the Right of Way Certification form and binder, organized by utility owner with copies of completed utility forms and all back up documents.

HDR will maintain a utility file for each utility facility that may be impacted, and will maintain the files in an auditable condition. The utility file will contain the following documents and other documents as requested by SANBAG or other agencies:

- Signed copies of all documents and agreements, including amendments
- Signed copies of final relocation plans and approvals
- Signed copies of all invoices and payments, including the final reconciliation and accounting
- Proof that all credits from utility owners have been received (depreciation, betterment, etc.)
- Diary notes from the resident engineer, approving relocation of utilities
- Signed copies of as-builts from utility companies
- Signed copies of permit and/or replacement right from local agency
- Signed copies of right of way map, showing location of replacement right
- Signed letter from appropriate governing authority accepting relocation conditions, if needed

- Review utility company invoices and compare amounts based on the estimated scope and fee of per the executed utility agreements with SANBAG

HDR will follow the proper steps, in the proper order, to show compliance with state and local requirements, and to show that right of way certification and reimbursements for relocation costs are not jeopardized.

Task 6.10.1Right of Way Certification Document Preparation

Task 6.10.2Engineering Support

Deliverables

- Right of Way Certification Submittal Package

Assumptions

- Package will be prepared for Certification 3 with Workaround

TASK 7 SAN BERNARDINO MUNICIPAL WATER DEPARTMENT UTILITY IMPROVEMENTS

HDR will provide additional design services to accommodate requests made by the San Bernardino Municipal Water Department (SBMWD). The items in this task are similar in character to those listed in Task 3 above, but the items listed below have been separated out for potential reimbursement by the SBMWD.

TASK 7.1 CITY WATER LINE AT RIALTO AVENUE AND I STREET

Following submittal of the 100% plans, the SBMWD requested that SANBAG install a new water line near the intersection of Rialto Avenue and "I" Street during the construction of the DSBPR project. The proposed water line will be designed by HDR and constructed by the Contractor for the DSBPR project. Discussions are underway for SBMWD to reimburse SANBAG for all design and construction costs for this water line, possibly to be offset by SBMWD waiving any permitting fees.

Deliverables

- Water line plans will be included in the final DSBPR plan set.

Assumptions

- Changes will be required to a maximum of 10 plan sheets.

TASK 8 ADDITIONAL RAIL OPERATIONS MODELING

Metrolink requested that SANBAG provide additional rail corridor modeling to facilitate operations, maintenance, and crew work orders during and after construction of the DSBPR project. This task includes additional rail modeling to assist Metrolink in determining effective rail operations strategies during construction beginning with the EMF cutover and continuing through the various stages of the DSBPR project.

TASK 8.1 MEETINGS AND COORDINATION

HDR will meet with Metrolink prior to performing the modeling work to discuss Metrolink's planned operations during construction so that HDR's modelers better understand the planned approach during modeling efforts. Once HDR has input the Metrolink-provided operating plans

into RTC, they will either validate those plans or work with Metrolink to adjust the plans accordingly. A final meeting will be held to discuss results of the modeling.

Assumptions

- Metrolink will develop and provide HDR staff with operating plans.
- Two face-to-face meetings with Metrolink will be required: one before the modeling work begins, and one following the modeling work to discuss the results with Metrolink.
- Three conference calls will be required for cooperation between HDR and Metrolink staff.

TASK 8.2 MODELING ANALYSIS

The HDR team will build an existing condition model, with current track infrastructure and train schedules, and simulate Metrolink's operational plan for the cutover to EMF. The model will be modified for each phase of construction, helping Metrolink to determine a preferred approach to optimize the altered operating conditions. HDR will also help test and validate crew options during each phase (hostler requirements).

In addition, HDR will simulate a closure of the north lead into the EMF, forcing Metrolink trains to enter and exit the facility via the south lead. The south lead will be modeled using three infrastructure scenarios:

- A new control point will be installed at the south lead switch
- A turnout with electronic timer will be installed at the south lead switch
- A hand throw turnout without signals will be installed at the south lead switch

Trains to/from EMF will be seeded into the Metrolink San Bernardino Line model to measure the impact upon daily train operations each model variation may have.

Deliverables

- Modeling results

Assumptions

- Modeling will be modified for each of the six phases of construction and will also be done for the existing condition and final condition.
- HDR will not be required to provide any memoranda or reports based on modeling results.

TASK 8.3 EXHIBITS

HDR will prepare exhibits to assist coordination efforts during the two planned meetings with Metrolink.

Deliverables

- Meeting exhibits

Assumptions

- Up to three exhibits will be prepared as needed for each of the scheduled face-to-face meetings.

TASK 9 BNSF RAIL, SIGNAL, AND UTILITY DESIGN AND RECORD OF SURVEY

This task includes the design of a new communications and signal system for a portion of the rail corridor north of Rialto Avenue that connects the Santa Fe Depot and the EMF yard. In conjunction with this work, a Record of Survey will be prepared from CP Rana to CP Vernon.

TASK 9.1 RAIL, UTILITY, AND SIGNAL DESIGN

HDR will provide track design changes to replace an existing BNSF turnout with one which complies with Metrolink Engineering Standards. Additionally, HDR will provide associated design changes for drainage, grading, and utilities.

HDR's subconsultant, PRE, will develop plans and an estimate for signal and communication design at Control Point (CP) Shortway and CP Mill. Work shall be composed of design of a new CP called CP Shortway, and modifications to the existing CP Mill for full SCRRA control and dispatching. Coordination with BNSF Railway Signal group will be necessary regarding interfacing between SCRRA and BNSF at CP Mill and/or CP Rana.

Deliverables

- Revised project plans
- Integrated plans as part of the entire DSBPR project final submittal.
- Integrated estimate as part of the entire DSBPR project final submittal.

TASK 9.2 DESIGN SERVICES DURING CONSTRUCTION – PTC IMPLEMENTATION

PRE will provide additional submittal review, RFI responses, as-built documentation preparation, Application Programming and Technical Assistance during construction for two new CPs added to the project. Additional submittal review, RFI responses, and coordination with Contractor and SCRRA will also be provided to assist SCRRA with the implementation of PTC.

Deliverables

- Responses to RFIs and Submittals

Assumptions

- The task does not include activities in conjunction with civil, structural, mechanical, or architectural engineering.
- The task does not include costs for deliverables other than stated within this task.
- Permits are not required for the PRE team's scope of work.
- PRE shall provide Adobe "pdf" files for deliverables.

TASK 9.3 RECORD OF SURVEY

HDR's subconsultant, Project Design Consultants (PDC), will provide a record of survey of the existing BNSF railway corridor that commences at CP Vernon (also being the historic San Bernardino Depot property) and runs southwesterly to the intersection with the Eastern Maintenance Facility (EMF) property and CP Rana. PDC will utilize the existing high-precision control network in place for the DSBPR PROJECT and will tie-into the pending record of survey at said Depot grounds.

The survey will determine the centerline and right of way width of each major crossing street and the two existing major storm drain creek facilities. The results of the survey will be incorporated into a Record of Survey (RS) to be recorded with the County of San Bernardino. PDC will set maximum of twelve railway right of way monuments at strategic locations along said railway.

Deliverables

- Record of Survey filed with the County of San Bernardino

CONTINGENCY

Contingency scopes and associated budgets are provided in this Proposal for the following potential activities.

DSBPR BNSF Support

A contingency budget was established for overall engineering design to provide SANBAG with design support throughout the Memorandum of Understanding (MOU) negotiation process with BNSF and to support SANBAG by providing possible minor design changes resulting from the negotiation process with the BNSF Railway.

EPIC Land Solutions Contingency

A contingency budget was established for EPIC Land Solutions to provide SANBAG with additional right of way services beyond this scope in the event they are required.

HDR Additional Design Tasks Support

A contingency budget has been established to provide SANBAG with additional design services that may be required due to changing requirements of stakeholders during the bid and construction phases of the project. This contingency will allow SANBAG to obtain design and support services obtained in an expedient manner during the time-sensitive bid and construction phases of the project.

Right of Way Certification Submittal and Updates

Upon SANBAG's request, HDR will coordinate the submittal of the Right of Way Certification package to Caltrans District 8 for review and approval. HDR will participate in multiple coordination meetings with SANBAG, Caltrans, Subconsultants and Utility Owners and will update information in the Certification package as information is received and per Caltrans review comments.

Certification will be updated to Level 2 during project construction.

ATTACHMENT A

Contract No. C10079 Amendment No. 7

Contract Amendment History

Below is the contract history between SANBAG and HDR Engineering, Inc. identifying the amendments that have been approved by the Board.

- Original Contract – Approved February 2010, for $7,390,150.
- Amendment No. 1 – Approved June 2010, for $1,021,704 for the sbX Bus Rapid Transit project right-of-way acquisition services. Total not-to-exceed amount following this amendment was $8,411,854.
- Amendment No. 2 – Approved January 2011, for $2,962,795 for additional design services for tasks on DSBPRP and RPRP and an additional $118,729 for sbX right-of-way acquisition services. Total not-to-exceed amount following this amendment was $11,374,649.
- Amendment No. 3 – Approved June 2011, for an additional net increase of $4,866,142. The amendment included removal of the right-of-way acquisition services for the Omnitrans sbX bus rapid transit project and added completion of construction bid documents for the DSBPRP portion of the Project to the scope of work. Total not-to-exceed amount following this amendment was $15,565,358.
- Amendment No. 4 – Approved September 2011, an additional $8,995,000 for environmental clearance and preliminary engineering for the RPRP portion of the Project. In general this work included replacement of track, bridges, and grade crossings, construction of passing sidings, stations, railroad signals and communication systems, Positive Train Control, a maintenance facility, locomotive and passenger car procurement and rehab. Total not-to-exceed amount following this amendment was $24,560,358.
- Amendment No. 5 – Approved January 2012, an increase of $3,924,694 for additional design services and for design services during construction. Total not-to-exceed amount following this amendment was $28,485,052.
- Amendment No. 6 – Approved September 2013, an increase of $2,899,300 to accommodate the FTA's request for the RPRP project to be processed under an Environmental Impact Study as opposed to an Environmental Assessment. Additional design services were also required for the DSBPRP due to third party requests. Total not-to-exceed amount following this amendment was $31,384,352.

Governments SANBAG Working Together

ATTACHMENT B
Contract C10079 Amendment 7
Summary of Fees
Downtown San Bernardino Passenger Rail Project and Redlands Rail Passenger Rail Project

	DSBPR HDR						TOTAL PROJECT FEE
Task Description	DSBPR TOTAL FEE HDR Engineering, Inc. (HDR)	TOTAL FEE Epic Land Solutions (Epic)	TOTAL FEE PAC	TOTAL FEE RPM	TOTAL FEE PRE	TOTAL FEE PDC	TOTAL PROJECT FEE
TASK 1: ADDITIONAL CITY OF SAN BERNARDINO PERMITS AND REQUIREMENTS SUPPORT (6)(7)	$102,909	$0	$0	$0	$0	$0	$102,909
TASK 2: EMF - ADDITIONAL SERVICES (2)	$42,886	$0	$0	$0	$0	$0	$42,886
TASK 3: FINAL DESIGN REVISIONS (1)(2)(4)(5)(6)(7)	$536,858	$0	$7,710	$58,750	$0	$0	$603,318
TASK 4: PLATFORM MODIFICATIONS TO ACCOMMODATE LEVEL BOARDING (3)	$217,753	$0	$0	$0	$0	$0	$217,753
TASK 5: ADDITIONAL SUPPORT SERVICES FOR UTILITY COMPANY NEGOTIATIONS AND COORDINATION (1)(6)(7)	$97,615	$0	$0	$0	$0	$0	$97,615
TASK 6: RIGHT-OF-WAY DESIGN CHANGES (1)(6)(7)(8)	$729,836	$165,096	$0	$0	$0	$0	$894,932
TASK 7: SAN BERNARDINO MUNICIPAL WATER DEPARTMENT UTILITY IMPROVEMENTS (1)(7)	$10,978	$0	$0	$0	$0	$0	$10,978
TASK 8: ADDITIONAL RAIL OPERATIONS MODELING (2)	$76,885	$0	$0	$0	$0	$0	$76,885
TASK 9: BNSF RAIL, SIGNAL, AND UTILITY DESIGN AND RECORD OF SURVEY (5)	$39,791	$0	$0	$0	$129,500	$36,414	$204,705
CONTINGENCY* (1)(2)(3)(4)(5)(6)(7)	$505,000	$35,000	$0	$0	$0	$0	$540,000
BUDGET FOR ODC'S (1)(2)(3)(4)(5)(6)(7)	$47,000	$5,000	$0	$0	$0	$5,000	$57,000
TOTAL FEE SCOPE ADDED	$2,407,511	$205,096	$7,710	$58,750	$129,500	$40,414	$2,848,981
DEDUCTION OF REDLANDS PASSENGER RAIL PROJECT PEIR TOD SCOPE:							-$665,057
VALUE AFTER RPRP SCOPE DEDUCTION:							$2,183,924

Additional work drivers:
(1) Utility Companies
(2) Metrolink
(3) FTA
(4) Omnitrans
(5) BNSF
(6) Right-of-Way Negotiations
(7) City of San Bernardino
(8) CTC

Contingency Breakdown*

Task 1: Additional City of San Bernardino Permits and Requirements Support	$25,000
Task 2: EMF - Additional Services	$15,000
Task 3: Final Design Revisions	$185,000
Task 4: Platform Modifications to Accommodate Level Boarding	$25,000
Task 5: Additional Support Services for Utility Company Negotiations and Coordination	$55,000
Task 6: Right-of-Way Design Changes	$135,000
Task 7: San Bernardino Municipal Water Department Utility Improvements	$10,000
Task 8: Additional Rail Operations Modeling	$10,000
Task 9: BNSF Rail, Signal, Utility Design, and Record of Survey	$80,000
Total Contingency:	$540,000

CRTC1306a2-jrf

SANBAG Contract No. **C10079-2**
San Bernardino County Transportation Authority
and
HDR Engineering Inc.
for
Redlands First Mile and Redlands Passenger Rail Project

FOR ACCOUNTING PURPOSES ONLY

☒ Payable ☐ Receivable	Vendor Contract # _____ Vendor ID HDRI	Retention: ☐ Yes _____ % ☒ No	☐ Original ☒ Amendment

Notes:

Original Contract:	$ 6,990,150	**Previous Amendments**	$ 1,021,704
		Previous Amendments Contingency / Allowance Total:	$ 0
Contingency / Allowance Amount	$ 400,000	**Current Amendment:**	$2,962,795
		Current Amendment Contingency / Allowance:	$ 0

Contingency Amount requires specific authorization by Task Manager prior to release.

Contract TOTAL ▶ $ 11,374,649

* Funding sources remain as stated on this document unless and until amended by proper authority. Funding sources are those which are ultimately responsible for the expenditure.

▼Include funding allocation for the original contract or the amendment

Main Task/ Project	Level 1	Level 2	Cost Code/ Object	Grant ID/ Supplement	Funding Sources/ Fund (Measure I, STP, CMAQ, etc.) Type	Amounts for Contract Total or Current Amndmnt Amt
315	000	000	52005	99008	Omnitrans	$ 118,729
379	_____	_____	52005	4150	Measure I Metrolink/Rail	$ 11,255,920

Original Board Approved Contract Date:	2/3/10	Contract Start: 2/8/10	Contract End: 2/8/13
New Amend. Approval (Board) Date:	12/1/10	Amnd. Start: 12/1/10	Amend. End: 2/8/13

Allocate the **Total Contract Amount** or **Current Amendment** amount between **Approved Budget Authority** in the current year and **Future Fiscal Year(s) Unbudgeted Obligation**.

Approved Budget Authority ▶	Fiscal Year: 10/11 $ 0	**Future Fiscal Year(s) – Unbudgeted Obligation ▶**	$ 2,962,795

☐ Budget authority for this contract currently exists in Task No. _____ (C-Task may be used here.).
☐ A budget amendment is required. A Budget Amendment Request is attached.

CONTRACT MANAGEMENT

Check all applicable boxes:

☒ Intergovernmental ☒ Private ☒ Federal Funds ☐ State/Local Funds
☐ Disadvantaged Business Enterprise (DBE) ☐ Underutilized DBE (UDBE)

Task Manager: Mitch Alderman	**Contract Manager:** Ryan Graham

Task Manager Signature Date

Contract Manager Signature Date

Chief Financial Officer Signature Date

C10079-2

AMENDMENT NO. 2

AGREEMENT BY AND BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

HDR, INC

FOR

REDLANDS FIRST MILE AND REDLANDS PASSENGER RAIL PROJECT

This AMENDMENT No. 2 to CONTRACT No. 10-079 entered into this 5th day of January, 2011 between the firm of HDR, Inc (hereafter called CONSULTANT) and the San Bernardino Associated Governments/San Bernardino County Transportation Authority (hereafter called AUTHORITY):

WITNESSETH,

WHEREAS, SANBAG, under SANBAG Contract 10-079 ("Contract"), has engaged the services of CONSULTANT to provide consultant support for the Redlands First Mile and Redlands Passenger Rail Project ("Project"); and

WHEREAS, The parties desire to amend the scope of work;

NOW THEREFORE, the parties mutually agree to amend the Contract as follows:

1. The scope of work has been amended to include the additional work included in Attachment A to this agreement.

2. The not-to-exceed amount of the Contract shall be increased by $2,962,795. No additional contingency amount is included in this amendment. The amended total Contract not-to-exceed amount shall be $11,374,649

Except as amended by this Amendment No. 2, all other provisions of the Contract and any prior Amendments to the Contract remain in full force and effect.

IN WITNESS THEREOF, the authorized parties have below signed:

SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY

By: _____
Brad Mitzelfelt
President

Date: _____

HDR, INC

By: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Penny Alexander-Kelley
SANBAG Counsel

Date: _____

BACKGROUND

There have been a series of events that have caused the project scope to expand due to a number of unforeseen discoveries and changes in direction that have taken place from the inception of the project that lead to this amendment request. The scope items described below are segregated between the Redlands First Mile (RFM) project, the Redlands Corridor Alternatives Analysis (RCAA) project and the Omnitrans sbX (SBX) project. The following items changed the course of direction:

RFM: The STV concept plans and alternatives report were the basis of scoping the preliminary design, environmental document and right-of-way support. Based on significant operations modeling performed by HDR, it was determined that there were several missing components that were required to develop a functioning facility.

1. Layover Facility -There was a need to investigate opportunities to increase layover capacity since the existing Inland Empire Maintenance Facility (IEMF) will need to be abandoned and salvaged due to track configuration constraints. HDR developed concept and conducted rail operation modeling to evaluate four potential alternatives to address this issue: (1) utilizing the proposed Transit Center and existing Santa Fe Depot stub-tracks and utilizing the existing Eastern Maintenance Facility (EMF), (2) new layover facility at Sierra Avenue, (3) new layover facility at G Street, and (4) expanding the existing EMF in accordance with the previous approvals for that facility. Based on rail modeling, alternative 1 was determined to be feasible reinforcing the idea that the RFM project and EMF expansion projects have independent utility. Alternative 1, however, presented an inefficient and fragmented situation where layover locations would be spread out at three locations that would require an increase in operations cost to address crew distribution, security of layover trains and limitations in operations. Based on construction cost estimates and site constraints, it was determined that building out of the previously approved expansion of the EMF would be least costly and the most efficient alternative when compared to constructing new layover facilities. Two variations were developed to expand EMF: to expand the yard tracks laterally to maintain the new yard tracks short of Lytle Cajon Channel and to construct a bridge over Lytle Cajon Channel and expand longitudinally. Based on requests from Metrolink, the longitudinal expansion variation was chosen to maintain consistency with the original phased design of EMF following the Phase 3 approach, which was previously approved through a California Environmental Quality Act (CEQA) Statutory Exemption. The planned and previously approved expansion of the EMF was designed to serve the whole SCRRA rail system and SANBAG has decided to undertake the design development of expanding EMF through this scope of work. SANBAG will implement construction of the EMF expansion based on funding availability.
2. Rail Operations - In order to maintain rail operations and make the necessary pedestrian safety improvements to accommodate Amtrak and Metrolink trains at the Santa Fe Depot, a pedestrian grade separation was required. HDR evaluated four alternatives and the PDT chose the Mission Style pedestrian overhead that will be located at the west end of the Depot.
3. E Street Transit Center - HDR evaluated eight alternatives at the proposed transit Center

to balance the requirements of Metrolink, sbX and the future RCAA projects. The PDT selected an alternative that addressed sbX needs and future expansion needs that met the requirements of the rail operations modeling.

4. Corridor Alignment - The RFM project alignment has been revised from the original concept report to meet Metrolink track alignment requirements. This has increased the number of impacted properties, real estate acquisition, drainage, grade crossings, and the environmental process.
5. Environmental Process - HDR determined that there is a high likelihood that unmitigable impacts related to noise and air quality issues will occur. Additionally, modification to the Depot, which is listed on the National Register of Historic Places (NRHP), is a sensitive issue and requires detailed analysis. Based on these factors, the HDR Team recommended that the more appropriate environmental document to addresses these issues at a level of detail that provides legal defensibility is an Environmental Impact Report (EIR)/Environmental Assessment (EA) instead of the originally scoped Mitigated Negative Declaration (MND). In fact, the potential for the noise-related impact to remain significant and unavoidable requires that SANBAG prepare an EIR.

RCAA: The RCAA scope has also been expanded to include preparation of a Programmatic Environmental Impact Report (PEIR) for Proposed Transit Supportive Land Use Updates in the form of General Plan Amendments and/or zoning changes for up to ten station area locations. The Cities of San Bernardino, Loma Linda, and Redlands along the corridor will define proposed transit supportive land use updates for each of the station areas to be analyzed within the PEIR. The PEIR will need to be certified by each of the participating jurisdictions (CEQA Lead Agencies). One PEIR will be prepared that each jurisdiction will certify. SANBAG will act as a liaison between the jurisdictions and the jurisdictions' project manager/agent for preparation of the PEIR. Updates to existing land use plans and the preparation of the PEIR will require substantial collaboration and cooperation among the participating jurisdictions throughout the process, and is integral to the progress and successful implementation of the project and the PEIR. The PEIR will incorporate as applicable the goals, policies, and objectives of the Regional Transportation Plan (RTP), the Sustainable Communities Strategy (SCS), and the Regional Greenhouse Gas (GHG) Inventory and Reduction Plan that are anticipated to be developed concurrently with the proposed PEIR for Proposed Transit Supportive Land Use Updates.

SBX: Several additional subconsultants had to be added to provide appraisals to support the right-of-way services for the sbX project. This scope of work identifies additional tasks that were requested of the HDR team.

TASK 1 PROJECT MANAGEMENT AND ADMINISTRATION (RFM)
Additional labor hours are being requested to account for ongoing project management, coordination, and project accounting due to the expanded scope outlined in this amended scope proposal.

TASK 1.1 PROJECT ADMINISTRATION (RFM)
The Consultant will provide ongoing management and staff to plan, organize, direct, supervise, control, and coordinate administrative tasks related to this scope of work.

TASK 2 AGENCY/PROJECT/UTILITY COORDINATION AND MEETINGS (RFM)
The original scope of work did not anticipate the additional number or duration of required project meetings associated with the RFM and RCAA Projects. Additional labor hours are being requested for internal coordination and meeting with the SHPO to discuss pedestrian bridge options and potential impacts to the Santa Fe Depot. The additional hours also take into account a longer environmental schedule and increased level of detail required for preparation of an EIR. In addition, based on the original scope of work, it was assumed that all project impacts could be reduced to less than significant levels. Due to the level of impacts that are now anticipated, additional comments are expected; therefore, additional hours for comment resolution meetings will be required.

TASK 2.1 AGENCY COORDINATION (RFM)
HDR and its subconsultants will continue to coordinate with all external agencies, jurisdictions, and third parties during environmental clearance and preliminary design development.

2.1.1 SANBAG: The amended scope is intended to cover both past and future hours dedicated to meetings and coordination related to the expanded scope items discussed above. In addition, HDR will continue to provide presentation support services on an as needed basis and will attend all requested presentations in support of the RFM and RCAA projects.

2.1.2 Railroads (Metrolink, BNSF, Amtrak and CHSRA): The original scope did not account for focused coordination with Metrolink to obtain past design and environmental documents related to the recently constructed EMF. HDR has also continued to coordinate with Metrolink on the subject of EMF at biweekly meetings in Los Angeles intended for its existing Metrolink On-Call Professional Engineering Design Services Contract.

2.1.3 Cities (San Bernardino): Additional scope and hours are being requested to further coordinate with the City of San Bernardino on the proposed grade crossing closures along the RFM Project. In particular, the original scope did not account for a technical memorandum and detailed analysis of closing versus maintaining the existing Third Street grade crossing. In addition, additional coordination with the Cities will be required resulting from the need to prepare an EIR, which was not included in the original scope of services.

2.1.5 Permitting Agencies (Caltrans, County, FRA, FTA, RWQCB and USACE): Additional hours will be required to coordinate with applicable regulatory permitting agencies on the development of an EIR for the RFM Project and any necessary regulatory permits (e.g., Clean Water Act 404, 401). The additional hours will also cover up to two additional CEQA public review meetings: one meeting during the NOP review period and one meeting after the Draft EIR is circulated for public review.

2.1.10 State Historic Preservation Office (SHPO): The original scope did not include coordination with SHPO to develop consensus on a pedestrian overpass or underpass concept at the Santa Fe Depot. The HDR team has developed architectural renderings of three overpass concepts and one underpass concept to be presented to SHPO at its headquarters in Sacramento. SANBAG will determine which of the four concepts will be presented to SHPO based on input from project stakeholders.

Deliverables:

- HDR will maintain files containing documentation of decisions made and communications with all listed parties above. HDR will submit these files to SANBAG during project closeout or at the request of SANBAG throughout the duration of this project.

TASK 2.2 MEETINGS (RFM)

The expanded scope will necessitate additional meetings beyond what was originally budgeted in order to develop consensus and ascertain key constraints and design criteria related to the EMF, EIR and other key tasks outlined in this proposed scope amendment.

2.2.1 Project Coordination Meetings: The HDR team will continue to conduct biweekly project coordination meetings with key staff, task leaders and SANBAG to discuss project reporting, coordination requirements and progress at the HDR Riverside office. The additional scope is intended to cover past participation by key staff assigned to the operations, EMF, pedestrian overpass and EIR tasks. The original scope did not account for the prolonged duration required to develop consensus on these particular aspects of the project due to the changes discussed herein.

2.2.2 Project Development Meetings: The HDR team will continue to conduct monthly project development meetings as indicated in the original scope. The additional scope is intended to cover past participation by key staff assigned to the operations, EMF, pedestrian overpass and EIR tasks. The original scope did not account for the prolonged duration required to develop consensus on these particular aspects of the project due to the changes herein.

2.2.3 City Meetings: The HDR team will continue to conduct meetings with the City of San Bernardino on as needed basis to discuss potential grade crossing closures at Third Street and I Street; along with improvements to existing grade crossings at Second Street, Rialto Avenue, G Street and E Street. In addition, HDR will continue to coordinate with the City of San Bernardino on obtaining as-built mapping for existing public utilities for incorporation into the existing utility base map. The original scope did not anticipate the

necessary magnitude of coordination required to obtain pertinent mapping data and approval of proposed street closures due to the changes herein and City's reduction of staff on resources.

2.2.4 Railroad/Transit Meetings: The HDR team will continue to coordinate with Metrolink, Amtrak and BNSF staff on developing consensus on the Santa Fe Depot track and platform reconfiguration concept. In addition, HDR will continue to coordinate with Metrolink staff on development of the expanded EMF to accommodate a total storage capacity of 12-6 car trains and 1-8 car train. The original scope did not include meetings dedicated to the development of a new layover facility site and eventual abandonment of the IEMF.

2.2.5 Environmental Agency/Public Meetings: Additional meetings will be required for preparation of an EIR through the end of November 2011. The original scope assumed preparation of a Draft and Final IS/EA, which was scheduled for completion in November 2010.

2.2.7 Comment Resolution Meetings: Deliverables related to new task items summarized in this amended scope will prompt a greater magnitude of design review comments relative to the original scope. At least one additional meeting will be required to develop consensus among reviewers and the HDR design team for the EMF 30% design submittal. Additional hours will be required to log design review comments and respond with the appropriate response dispositions and clarifying comments.

2.2.8 State Historic Preservation Office Meetings: The original scope did not include allowances for a pedestrian overpass at the historic Santa Fe Depot in order to safely address passenger circulation for Amtrak and SCRRA patrons. Construction of an overpass will prompt a series of meetings with the SHPO due to the overpass's relative size and proximity to the historic Depot. The meetings are anticipated to occur at SHPO's main headquarters in Sacramento, which will require preparation of architectural renderings of the SANBAG preferred alternative.

Deliverables:

- Preparation of meeting agendas, meeting minutes, action item tracker, meeting planner and scheduling.

TASK 3 BASELINE ANALYSIS AND ENGINEERING SUPPORT EVAL (RFM)

The expanded scope will necessitate additional topographic survey and utility mapping for areas not identified in the original scope.

TASK 3.2 SURVEYING AND MAPPING (RFM)

The original surveying and mapping footprint is not wide enough to provide the necessary topographic coverage to design track drainage features such as ditches and under drains. Due to Metrolink track geometry standards, the current proposed track alignment at I-215 is well outside of the existing right-of-way corridor in order to provide necessary horizontal clearances to the recently constructed corridor protection walls. The original survey footprint was defined

assuming that the I-215 corridor protection wall design would accommodate construction of a future second mainline track within the existing railroad corridor. However, the bearings of the recently constructed corridor protection walls require a near tangent track horizontal alignment in the vicinity of I-215, which consequently forces the tracks to encroach into private parcels on the south side of the corridor.

3.2.5 Ground/3D Laser Scanning (HDS) Surveys: Additional data processing is required for mapping from 3rd Street to S. Arrowhead Avenue that is beyond the limits identified in the original scope of work. This will include topographic mapping and 1-foot contours delivered in Microstation format. The DTMs will be updated and will be delivered in Inroads. Field verification will be completed of the visible surface utility features within the areas as well as QC of these areas. The backyards of the residences will not be included as the scanner would not have collected that information. The buildings and fence lines will be mapped in those cases.

Deliverables:

- Topographic mapping in Microstation format
- Digital terrain model in Inroads format

TASK 3.4 UTILITY BASE MAPPING (RFM)

Addition of the EMF and unanticipated challenges in obtaining requested existing utility mapping serves as the basis for requesting additional budget for this particular task. The original scope did not account for the level of effort necessary to obtain as-built and schematic utility mapping of public facilities within the original project footprint. The additional requested scope is intended to cover labor and expenses that have already been expended to complete this particular aspect of the project.

3.4.1 Data Collection and Review: Additional research and collection time was required to obtain and coordinate the existing utilities along the proposed project limits due to expansion of the project limits and associated with the lack of resources from agencies to collect and provide the data that required HDR staff to make multiple visits to those agencies to make copies of the available data.

Deliverables:

- Revised existing utility base map detailing utility location and type
- Updated utility matrix detailing all pertinent utility data

TASK 3.5 GEOTECHNICAL INVESTIGATION (RFM)

Expansion of the project footprint to include the EMF will necessitate additional borings at the existing EMF site, which will also include a new bridge over the Lytle Cajon Channel. Inclusion of the EMF will necessitate additions to the Geotechnical Investigation Plan and Draft/Final Geotechnical Report.

3.5.3 Geotechnical Report: The HDR team will prepare a technical report that includes the EMF within the defined project footprint and addresses the following topics identified in the original scope:

- Boring logs

- Soil classifications
- Laboratory testing results
- Suitability of materials at existing on-site borrow pit locations
- Geologic and seismic hazards evaluation
- Seismic design parameters
- Foundations design data
- Soils resistance to lateral loads
- Stability of excavations
- Evaluation of corrosivity
- Suitability of excavated materials for fill or structural backfill
- Recommendations for earthwork requirements
- Structural section thickness of base, sub base, pavement, and track roadbed

Deliverables:

- Updated Geotechnical Investigation Plan that includes additional borings in the EMF site
- Updated Draft and Final Geotechnical Reports that include the EMF site

TASK 4 DESIGN REFINEMENT/ENVIRONMENTAL CLEARANCE (RFM)

As previously discussed in the Amendment Background section, SANBAG decided to undertake the design development of expanding EMF through this scope of work. The HDR team is requesting additional scope that was necessary to provide additional rail operations modeling and to further develop the concept design of the expansion of EMF site as a separate construction package from the current RFM project. Additionally, HDR is requesting additional scope to prepare the EIR/EA documentation for the RFM project that will not address the expansion of EMF which has been previously approved.

TASK 4.2 DESIGN REFINEMENT AND OPERATIONS MODELING (RFM)

4.2.1 Alternatives Concept Layout Plans/Refinement: The original scope did not include allowances for a new layover facility to provide additional storage capacity as concluded in the RFM Operations Report. Eventually, it was determined that expanding the existing EMF at this time and according to previous approvals to provide additional capacity would be the most cost effective approach. Two alternatives were ultimately developed for opening day and ultimate build-out configurations.

Deliverables:

- Updated schematic for the track configuration that includes the EMF

4.2.4 Rail Operations Analysis: RTC modeling was expanded to confirm rail operations at the proposed EMF. Specifically, the New Case model infrastructure was modified to include the EMF and subsequently run to evaluate the network's ability to accommodate the proposed passenger train schedule and the requirements for capacity, flexibility, operational methods and future capacity designated by Metrolink, Amtrak and BNSF. The amended scope is intended to cover labor hours dedicated to the validation of the final track and train control system infrastructure proposed to support the proposed operations.

Deliverables:

- Meeting minutes and documentation of variations and uncertainties revealed in the RTC modeling process
- Rail Operations Report that includes EMF alternatives

4.2.5 Project Definition Report (PDR): The purpose of this report is to define the major project components, describe the project issues, make recommendations for a preferred design approach, and establish a conceptual cost estimate. This report will serve as the basis for future design efforts and will be distributed to all project stakeholders in order to develop consensus on the final track configuration concept.

Deliverables:

- Project Definition Report

TASK 4.4 ENVIRONMENTAL CLEARANCE (RFM)

Based on preliminary results of the noise and air quality technical reports, HDR determined that there is a high likelihood that impacts associated with these issues will be unmitigable and would remain significant and unavoidable. This determination was made after multiple internal discussions and discussions with SANBAG related to the evaluation of mitigation options. CEQA will not allow an MND to be prepared for a project that results in a significant and unavoidable impact. Therefore, the HDR Team recommends that the more appropriate environmental document to addresses these issues at a level of detail that provides legal defensibility is an EIR/EA.

4.4.1 Strategy, Background, Scoping and NOP: The HDR team proposes an increase in hours to account for the preparation and distribution of the Notice of Preparation and the increased level of detail, commensurate with an EIR, on project background discussion.

4.4.2 Environmental Technical Memos: The HDR team will continue to prepare studies and prepare technical reports in support of the EIR as follows:

4.4.2.2 Air Quality: The team will analyze air quality impacts resulting from increased motor vehicle trips generated by the expanded facility, along with impacts associated with its construction. The modified document will strictly adhere to the requirements set forth in the original project scope.

4.4.2.3 Biological Resources: Unanticipated security clearance issues and railway supervisor coordination issues decreased efficiency in the planned field survey approach and resulted in multiple trips to the field to complete the biological evaluation. Changes in project footprint will require additional field work and assessment.

4.4.2.4 Cultural Resources: It was originally assumed that only 13 properties would require historic evaluation. Following initiation of the field investigation and coordination with the City of San Bernardino, it was discovered that a substantial number of additional properties required evaluation. ICF has evaluated 35 properties for the RFM project. Changes in the project footprint will also require additional field work and

property assessment for both architectural historians and archaeologists. Additional hours have been added to the scope of work to address these changes.

The amended scope also includes allowances for completion of California Department of Parks and Recreation (DPR) Reports for additional properties to be impacted by the new project boundary.

4.4.2.5 Ground Water Monitoring Wells: The HDR team will identify the number and location of each monitoring well within the existing facility. The team will also research the BNSF Archives (known as the Pigeon Coup) for records and information pertaining to the size and depth of each well. Afterwards, HDR will meet with BNSF Staff to identify which environmental firm is responsible for monitoring the wells. HDR will also provide site reconnaissance to visually confirm each well location and existing condition; along with identifying which wells can remain in place, which ones need to be abandoned and which ones need to be redeveloped. Finally, HDR will schedule and attend team meetings for proper coordination.

4.4.2.8 Noise and Vibration: Additional hours will account for the need to compare the results of the FTA General Noise Assessment spreadsheet (Chicago Create / HMMH, 2006) with the guidance contained in Chapter 5 (General Noise Assessment) and Chapter 6 (Detailed Noise Assessment) of the FTA Transit Noise and Vibration Impact Assessment. The use of the chapters provides more flexibility in the choice of assumptions which may better suit the details of this project. The HDR team will also be taking measurements of operating Metrolink trains to refine the baseline noise assumptions. Changes in the project footprint will also require noise analysts to go back out in the field to gather additional baseline measurements for the noise and vibration analysis. A Vibration Assessment will also be prepared to analyze potential impacts to the historic Santa Fe Depot building from the proposed track realignment at the San Bernardino Metrolink Station. The Vibration Assessment will be a general-level screening analysis utilizing baseline noise measurements rather than baseline vibration measurements. Additional hours have been added to the scope of work to account for this analysis.

4.4.2.10 Visual Effects: Production of renderings has been a critical component of the RFM project to date, but it wasn't included in the original scope of services. Changes in aesthetics as viewed from sensitive public viewing areas will be presented through use of renderings to obtain environmental clearance from the State Historic Preservation Office (SHPO) and the City of San Bernardino. Changes in landform, as viewed from sensitive public viewing areas will be described verbally, assessed for impacts and significance. Mitigation options will be identified to address specific impacts. Lastly, an analysis will be performed using FHWA methodology of the existing versus "with project" visual quality.

4.4.2.13 Construction Impacts and Staging: The current proposed track alignment at I-215 is well outside of the existing right-of-way corridor in order to provide necessary horizontal clearances to the recently constructed corridor protection walls. The task's

original scope assumed that the I-215 corridor protection wall design would accommodate construction of a future second mainline track within the existing railroad corridor. However, the alignment of the recently constructed corridor protection walls require a near tangent track horizontal alignment in the vicinity of I-215, which consequently forces the tracks to encroach into private parcels on the south side of the corridor. The memo will need to provide an expanded commentary regarding the implications of the recently constructed I-215 corridor protection walls.

4.4.2.14 Water Quality Management Plan: To be in compliance with the San Bernardino County NPDES MS4 permit (adopted Jan 29, 2010), HDR will prepare the Preliminary Water Quality Management Plan (PWQMP) to summarize the storm water quality issues of the project preliminary engineering and environmental phase. The PWQMP is used to document the decision-making process relating to the implementation of BMPs within a project. Identification of storm water quality issues will be coordinated with, but not limited to, the following stakeholders: County of San Bernardino, City of San Bernardino, SANBAG, Santa Ana Region RWQCB, BNSF and others. It is assumed that one build alternative in addition to the no-build alternative will be evaluated in this report.

This report will be prepared in accordance with the Model Water Quality Management Plan Guidance from the San Bernardino County Storm water Program, dated June 1, 2004, based on Order no. R8-2002-012. The following assumptions are made:

- The PWQMP will be based on the Hydrology and Drainage Study.
- Project falls under a permit-specified category and is similar to a road/freeway/highway use project with corresponding pollutants of concern.
- The PWQMP template will be based on Order no. R8-2002-012, the previous related permit, but modified to comply with the last permit, Order no. 2010-0036.
- Update of the project PWQMP to be in compliance with the PWQMP regular and roadway template (consistent with the Order no. 2010-0036) is not part of this scope. These templates are scheduled for public release on July 29, 2011 and January 29, 2012, respectively.
- The proposed improvements (especially within the Depot) are not covered by the existing Statewide Industrial General Permit SWPPP.

The report will include related figures and tables and be included in the required PWQMP template. The identified proposed post-development Best Management Practices (BMPs) addressing storm water quality of the WQMP will be coordinated with the project WQAR. The scope of services includes preparation of the Draft, review, quality assurance and quality control, and solicitation of comments of the PWQMP.

Deliverables:

- Environmental technical memos as detailed above

4.4.3 EIR/EA: The original scope of work contemplated preparation of a Mitigated Negative Declaration that limits the project to actions which can be fully mitigated to below a level of significance. Based on preliminary results of the noise and air quality technical reports, there is a high likelihood that impacts associated with these issues will be unmitigable and would remain significant and unavoidable. This conclusion was made after multiple internal discussions and discussions with SANBAG related to evaluation of mitigation options. CEQA will not allow an MND to be prepared for a project that results in a significant and unavoidable impact. Therefore, the HDR Team recommends that the more appropriate environmental document to addresses these issues at a level of detail that provides legal defensibility is an EIR/EA. The environmental documents will comply with both CEQA and NEPA.

The level of detail required under CEQA to prepare a legally defensible EIR is substantially greater than an MND and will require substantially more time and effort. Therefore, additional hours have been added to this particular task for the preparation of the environmental document to reflect this change. For example, the EIR will need to include a more detailed assessment of the existing project site conditions as compared to an MND. The EIR will also require a more detailed analysis of potential project impacts related to the range of environmental issue areas, many of which have supporting technical studies (see below).

A primary difference between an EIR and MND and the basis for much of the additional time and effort proposed in the amendment is due to additional analysis sections. For example, an EIR requires evaluation of project alternatives. The number of alternatives that will be evaluated is unknown. An EIR also requires a more in-depth cumulative impacts analysis than an MND. This requires the EIR preparer to coordinate with local jurisdictions to obtain their current discretionary project lists and research the projects and incorporate the impacts from those projects into a cumulative impacts analysis. Other additional EIR sections and requirements specific to the RFM project that are over and above the requirements for an MND include preparation of a Statement of Overriding Considerations (SOC) and Findings of Fact. Preparation of a Mitigation Monitoring and Reporting Program (MMRP) will involve additional labor hours as the level of effort is increased with the analysis of additional project components resulting in additional impacts and mitigation measures not previously contemplated. The EIR for the RFM project will be prepared according to the requirements of CEQA and include all required components, as discussed above.

In addition, a Section 4(f) Evaluation, pursuant to U.S. DOT Act of 1966, 49 U.S.C. 303(c), will be prepared to address impacts to historic sites included in, or determined eligible for, the NHRP – specifically, the historic San Bernardino Depot.

The HDR team will prepare a joint EIR/EA per the requirements of CEQA and the Federal Transit Administration's (FTA) NEPA procedures. At this time, preparation of an EA is assumed; however, based on the preliminary results of the technical studies, upon review of the studies, FTA may determine that an Environmental Impact Statement (EIS) is required.

4.4.3.1 Screencheck Draft EIR/EA: As discussed above, preparation of the Screencheck Draft EIR/EA requires substantially more time and effort than preparation of an MND. ICF will prepare a Screencheck Draft EIR/EA for client review according to CEQA and

FTA format/guidelines. The following is a potential outline for the EIR/EA, however the actual document scope will be refined following completion of the Initial Study and coordination with FTA:

- Table of Contents
- Executive Summary
- Introduction, Purpose and Need
- Proposed Action and Alternative/Project Description
- Affected Environment/Existing Conditions
    - Aesthetics/Visual Resource
    - Agricultural Resources
    - Air Quality
    - Biological Resources
    - Climate Change
    - Cultural Resources
    - Geology, Minerals and Soils
    - Hazards and Hazardous Materials
    - Hydrology and Water Quality
    - Land Use
    - Noise
    - Paleontological Resources
    - Public Services and Utilities
    - Population and Housing
    - Recreation
    - Socioeconomics
    - Transportation and Traffic
    - Water Resources
    - Cumulative Impacts
- Environmental Consequences/Impact Analysis (includes topical areas listed above)
- Consultation and Coordination
- Other Required CEQA Sections
- References

4.4.3.2 Draft EIR/EA: As discussed above, preparation of the Draft EIR/EA requires substantially more time and effort than preparation of an MND.

4.4.3.3 Notice of Completion (NOC)/Notice of Intent (NOI): The HDR team will prepare a NOC to accompany submittal of the Draft EIR/EA to the County of San Bernardino Clerk and the Governor's Office of Planning and Research.

4.4.3.4 Mitigation Monitoring and Reporting Program: No scope change requested, however additional labor hours are added as the level of effort is increased with the analysis of an expanded project resulting in additional impacts requiring mitigation not previously contemplated.

4.4.3.5 Screencheck Final EIR/EA: As discussed above, preparation of the Screencheck Final EIR/EA requires substantially more time and effort than preparation of an MND.

4.4.3.6 Final EIR/EA Documents: Based on the preliminary results of the noise and air quality technical studies, the Final EIR/EA will require preparation of a Statement of Overriding Considerations. HDR assumes that SANBAG would contribute to development of the Findings in the event that significant and unmitigated impacts are identified. The Final EIR/EA will also require preparation of Findings of Fact (Section 15090 of the State CEQA Guidelines). These documents are not required for an MND and are also part of the basis for this amended scope of work.

4.4.3.7 Notice of Determination (NOD) and Finding of No Significant Impact (FONSI): No scope change requested.

4.4.4 PUBLIC OUTREACH

This task includes attendance by staff at two additional public meetings that were not included in the original scope and fee estimate. Labor hours associated with additional meetings and stakeholder coordination required to fulfill public outreach requirements are included in this task. The addition of two meetings also requires the preparation of additional presentation materials and meeting notices.

TASK 6 PREPARATION OF CONSTRUCTION DOCUMENTS (RFM)

This task includes development of final 30% construction documents for the EMF and Santa Fe Depot pedestrian overpass/underpass that were not included in the original scope and fee estimate.

TASK 6.4 STATION PLATFORM AND LIGHTING PLANS (RFM)

The amended scope includes additional labor hours to evaluate existing lighting conditions in the vicinity of the historic Santa Fe Depot for compliance with the most stringent local jurisdictional lighting codes (e.g. Metrolink or City of San Bernardino). This expanded area includes the reconfigured parking lot directly east of the Depot along with the existing parking lots directly south and west of the Depot. In addition, the study area includes all pedestrian areas immediately surrounding the Depot, along with any additional areas at the discretion of SANBAG. Lastly, lighting will be added to the Depot's proposed pedestrian overpass in order to positively reinforce a patron's perception of safety and well being.

Deliverables:

- 30% Station Platform and Lighting Plans

TASK 6.9 EMF PRELIMINARY ENGINEERING EXPANSION PLAN (RFM)

The Eastern Area Maintenance Facility (EMF) expansion plans will include all required preliminary engineering level design documents for the expansion of the EMF. The proposed EMF expansion will substantially adhere to the Phase III expansion concept outlined in the *EMF Project Phasing and Funding Plan* which was authored by STV in February 2006. The current proposed concept developed by the HDR team includes opening day storage capacity for 12-6

car train consists and 1-8 car train consist for a total storage capacity of 13 trains. The expansion will occur in a southerly manner in order to avoid precluding the Phase II expansion concept that includes construction of a new locomotive and coach maintenance shop, train wash and a permanent transportation building. As a consequence, a new single span bridge will be required across the Lytle Cajon Channel that will connect into the recently constructed bridge across the Channel.

The proposed 30% preliminary engineering EMF expansion plans will include the following drawings:

	General Information
G-01	Cover Sheet
G-02	Title Sheet
G-03	Index of Drawings
G-04	Abbreviations and Symbols
G-05	Construction Site Plan
G-06	Survey Control Points and Right-of-Way Plan
G-07	Construction Staging Plan - Stage 1
G-08	Construction Staging Plan - Stage 2
G-09	Construction Staging Plan - Stage 3
	Trackwork Drawings
RR-01	Trackwork General Notes
RR-02	Trackwork Horizontal Geometry Notes
RR-03	Trackwork Key Plan
RR-04	Track Plan and Profile
RR-05	Track Plan and Profile
RR-06	Track Plan and Profile
RR-07	Track Typical Sections
RR-08	Track Details
RR-09	Track Geometry Data
	Civil Drawings
C-01	Storm Drain Key Plan
C-02	Storm Drain Plan 1
C-03	Storm Drain Plan 2
C-04	Storm Drain Plan 3
C-05	Storm Drain Plan 4
C-06	Fencing Plan
C-07	Fencing Plan
C-08	Site Paving and Grading Plan
C-09	Site Paving and Grading Plan
C-10	Site Paving and Grading Plan
C-11	Light Pole Foundation Plan
C-12	Light Pole Foundation Plan

	Utility Drawings
U-01	Existing Utilities
U-02	Composite Utilities Plan
U-03	Underdrain Key Plan
U-04	Underdrain and Oil Drip Line Plan
U-05	Sanitary Sewer Key Plan
U-06	Water and Natural Gas Plan
U-07	Fire Protection Plan
U-08	Underdrain Plan Sheet 1
U-09	Underdrain Plan Sheet 2
U-10	Underdrain Plan Sheet 3
U-11	Sanitary Sewer Plan and Profile Sheet 1
U-12	Sanitary Sewer Plan and Profile Sheet 2
U-13	Sanitary Sewer Plan and Profile Sheet 3
U-14	Drainage Details
U-15	Oil Drip Pan Details
U-16	Sanitary Sewer Details
	Structural Drawings
S-1	Bridge General Plan 1
S-2	Bridge General Plan 2
S-3	Typical Sections
S-4	Structural Details
S-5	Structural Details
S-6	Structural Details
S-7	Structural Details
S-8	Structural Details
S-9	Structural Details
	Plumbing Drawings
P-1	Plumbing Abbreviations, Symbols and General Notes
P-2	Plumbing Site Plan 1
P-3	Plumbing Site Plan 2
P-4	Plumbing Site Plan 3
P-5	Plumbing Site Plan 4
	Electrical Drawings
E-01	Electrical Abbreviations, Symbols and General Notes
E-02	Single Line Diagram
E-03	Title 24
E-04	Panel and Fixture Schedules
E-05	Site Plan
E-06	Electrical Details

Deliverables:

- 30% EMF Expansion Plans

TASK 6.10 SANTE FE DEPOT PEDESTRIAN OVERPASS PLANS (RFM)

6.10.1 Architectural Plans: The HDR team will prepare architectural plans and coordinate with HDR team discipline engineers for structural, track, civil/utility, mechanical, electrical, plumbing, lighting, security, way finding, and communications work related to the pedestrian overpass design at the historic Santa Fe Depot. The design will meet the design requirements outlined in the Metrolink Design Criteria Manual.

Reconfiguration of the Existing San Bernardino Depot as follows:

- Provide pedestrian overpass design, as approved, for access to isolated platform(s).
- Provide Elevator Design and coordinate with Electrical, Mechanical discipline engineers.
- Provide for platform canopies design and related work.
- Provide for communication/security office that will be housed at the base of the stairwell shaft of the pedestrian overhead bridge.
- Provide a layout of the security elements will be developed throughout the Santa Fe Depot and Transit Center sites.

The HDR team will submit the 30% construction documents to SANBAG including the following:

- Architectural drawings and specifications.
- Incorporation of review comments from SANBAG.
- Input to shared platform drawings.

6.10.2 Structural Plans: The HDR team will prepare Structural plans per the approach stated in Task 6.10.1.

6.10.3 Communication/Security Plan: The HDR team will prepare Communication/Security plans per the approach stated in Task 6.10.1.

The proposed 30% preliminary engineering Santa Fe Depot pedestrian overpass architectural, structural and communication/security plans will include the following drawings:

Architectural Drawings	
AP-01	Santa Fe Overpass Roof Plan
AP-02	Santa Fe Overpass Reflected Ceiling Plan
AS-01	Santa Fe Overpass Exterior Elevations
AS-02	Santa Fe Overpass Longitudinal Section
AS-03	Santa Fe Overpass Transverse Section
AS-04	Santa Fe Stair Section and Details
AS-05	Santa Fe Wall Sections
AS-06	Miscellaneous Overpass Details
AS-07	Finish, Door and Hardware Schedule
AS-08	Santa Fe Station Window Types
AD-01	Santa Fe Elevator Enlarged Plan and Section

AD-02	Santa Fe Elevator Cab Plan and Cab Elevations
AD-03	Santa Fe Elevator Cab Details
Structural Drawings	
S-01	Overpass Foundation Plan
S-02	Enlarged Plan of Stair and Elevator Area-1
S-03	Enlarged Plan of Stair and Elevator Area-2
S-04	Overpass Floor Framing Plan
S-05	Overpass Roof Framing Plan
S-06	Foundation Details-1
S-07	Foundation Detials-2
S-10	Stair Details
S-11	Elevator Pits and Framing Details
S-12	Overpass Framing Details-1
S-13	Overpass Framing Details-2
S-14	Construction Phasing Drawings
Communication/Security Drawings	
CS-01	Security Office Layout Plan
CS-02	Site Security Plan-1
CS-03	Site Security Plan-2
CS-04	Miscellaneous Communication/Security Details

Deliverables:

- 30% Santa Fe Depot Pedestrian Overpass Plans
- 30% Communication/Security Plans

TASK 7 TRANSIT ORIENTED DEVELOPMENT (RCAA)

The HDR team will assist the Cities of San Bernardino, Loma Linda and Redlands with the creation of Transit Oriented Development (TOD) overlay zones or the necessary land use changes to help promote greater transit use. The HDR team will assist in preparing vision plans, guidelines, and standards for overlay district zoning, or another land use mechanism developed for implementation of TODs, at the Downtown San Bernardino Intermodal Transit Center, Mill Street, and Tippecanoe Avenue station areas in the City of San Bernardino. The team will build upon, collaborate with and coordinate their efforts with other consultant efforts. The following outlines a scope of work for a distance of approximately one-half (1/2) mile from each station area with a focus on the one-quarter mile area.

It is anticipated that the City of San Bernardino will reallocate resources from its Caltrans planning grant to create TOD Overlay Zones for Mill Street and Tippecanoe Avenue to potential RCAA station areas at Waterman Avenue and Mountain View Avenue. Reallocations are anticipated in September.

TASK 7.1 BACKGROUND INFO, ISSUES, OPPORTUNITIES AND CONSTRAINTS AND INPUT INTO CITY OF REDLANDS TRANSFER DEVELOPMENT RIGHTS (TDR) STUDY (RCAA)

a) Meet monthly with a TOD group including SANBAG, Omnitrans, City of San Bernardino, City of Redlands, City of Loma Linda and County of San Bernardino staff and key officials to obtain information, review previous studies, the City's General Plans, studies underway, each cities' goals for TODs and sustainable communities, proposed outreach program and potential implementation mechanisms under consideration such as an overlay zone, HDR will discuss funding windows and bench marks for funding. Assume five meetings.

b) Downtown San Bernardino Intermodal Transit Center TOD area:

The HDR team will provide the following scope of work for a distance of approximately one-half (1/2) mile for the San Bernardino Intermodal Transit Center Station area with a focus on the one-quarter (1/4) mile area.

Review new studies provided by the City, SANBAG, and Omnitrans including the San Bernardino Downtown Core Vision & Action Plan and San Bernardino Intermodal Transit Station and Village, and other relevant City plans, studies, and projects currently underway such as the EIR, Main Street Overlay, etc. Briefly review the City of San Bernardino General Plans regarding transit-supportive policies.

Update existing conditions, opportunities and constraints for the station area in the Redlands Passenger Rail Station Area Plan prepared by Gruen Associates (2007). Using SCAG data, the HDR Team will prepare GIS maps of existing land uses within ¼ and ½ mile for the station area. Also, a tabulation of existing uses by acreage will be prepared for the station area.

The HDR Team will conduct a series of interviews with city staff and other relevant stakeholders identified by staff for their input on the next steps to implement the station area plan, potential TOD principles, concepts, policies and guidelines.

Provide a memorandum summarizing findings on existing conditions, relevant plans, issues, opportunities and constraints for the San Bernardino Intermodal Transit Center station and incorporate this information into a PowerPoint presentation.

Deliverables

- Update and expand the San Bernardino Intermodal Transit Center station information with graphics
- Memorandum summarizing existing conditions, plans, issues, opportunities and constraints.
- PowerPoint summary of the memorandum.

TASK 7.2 ALTERNATIVES AND CONSENSUS BUILDING (RCAA)

For the Downtown San Bernardino Intermodal Transit Center area the HRD Team will prepare alternative land use plans for the station addressing land use, density and intensity, and circulation connectivity plans (vehicular, bike, pedestrian) for the station area south of Rialto Avenue to address transit supportive land use benchmarks. In addition, The HDR Team will refine policies, standards, and guidelines for the station area. Present alternative concepts to city staff at a meeting. Assume up to three (3) meetings total for this task.

For the City of Loma Linda, the HDR team will meet with appropriative staff to define and review their current TOD planning policies, standards and programs, and identify potentially

suitable adjustments to enhance the achievement of TOD. Two presentations to the City Council to summarize land use planning benefits from transit supportive land use and identify policy direction to consider transit supportive General Plan and zoning code land use updates will be provided. Presentations would be coordinated and conducted jointly with SANBAG staff. Two follow-up meetings with City staff on implementation of City Council policy direction to City staff.

Deliverables

- Two presentations with SANBAG to the City Council of Loma Linda
- Two follow-ups meetings with City of Loma Linda staff
- Alternative concepts and policies, standards for the San Bernardino Intermodal Transit Center area

TASK 7.3 TOD CONTINGENCY TASK ITEMS (RCAA)

The following tasks are contingency tasks to be provided on SANBAG task order.

7.3.1 City of Redlands Transit Oriented Development Overlay Zone Support

This task supports the City of Redlands in their creation and adoption of transit oriented development overlay zones or General Plan amendments for the ½ mile areas around each proposed transit station. Support would include assistance in document review and edits, policy development, urban design concepts, parking and traffic concepts. Specific support tasks to the City of Redlands would be defined and approved as SANBAG task orders.

7.3.2 Draft SANBAG RCAA System Policy and Standards

Assist with the creation of a SANBAG policy relative to stations, right of way and other interactions with cities and/or property owners within the corridor. As the system is new to SANBAG, a policy framework needs to be developed concurrently or in advance of project implementation. To date a Draft Station Joint Use and Development Policy was requested to be prepared to address potential private sector development of station areas. A draft was submitted to SANBAG for review and comment.

Deliverables:

- Draft Station Joint Use and Development Policy submitted.
- Draft policy and/or standards for the RCAA system as requested in task orders

7.3.3 General Plan Amendment and Coordination Support to Cities

Provide additional support to cities regarding transit supportive General Plan Amendments and coordination and to the cities and SANBAG. Additional support could include meetings, presentations, data support, and organizational efforts to implement coordination.

7.3.4 Coordination with SCAG Regarding Transit Supportive Land Use Updates

Provides contingency support to coordinate RCAA transit supportive land use update assistance

to the cities with SCAG's update of the Regional Transportation Plan and creation of a regional Sustainable Communities Strategy (or Alternative Planning Strategy). The RCAA is somewhat ahead of SCAG's development of the updated Regional Transportation Plan and Sustainable Communities Strategy (or Alternative Planning Strategy) and coordination and with SCAG could assist the RCAA and the cities in implementing transit supportive land use. Tasks are anticipated to be enhanced data and policy coordination.

7.3.5 Gruen Associates Additional Scope of Services for Redlands Stations

Deliverables:

- Existing Conditions analysis on 24" x 24" boards: Aerial photos, existing land use map, General Plan Land Use Map using art work from existing segment
- Opportunities and Constraints analysis on 24" x 24" boards
- Working Meetings in Redlands to develop land use plans: Five (5) meetings. With City staff, Tri-City, University of Redlands, New York land owner consultants
- Land Use Plans: plan design and graphics on 24" x 24" boards
- Powerpoint presention: one for each of the three cities from the above information

Assumptions:

- Redlands stations: Mountain View, Alabama, California, New York, University,and Downtown (assume 5 of 6 stations)
- Input from City staff and other consultants will be provided
- Tabulations of land use areas not included (if included assume $1,000)
- Only one set of revisions for land use plans.

TASK 7.4 PROGRAM ENVIONMENTAL IMPACT REPORT FOR PROPOSED TRANSIT SUPPORTIVE LAND USE UPDATES (RCAA)

Project Purpose: Existing land use densities within a half-mile radius of planned Redlands Corridor Alternatives Analysis (RCAA) stations (station areas) are not sufficiently transit supportive to achieve an adequate project rating based on the Federal Transit Administration (FTA) measurement criteria. These criteria are components of the FTA project evaluation process for capital funding assistance. Adoption of transit supportive land use planning updates in the station areas will be an important factor in meeting FTA funding criteria.

To move toward this goal, the General Plan land use designations and zoning classifications in the Cities of San Bernardino, Loma Linda, and Redlands would need to be amended to provide for more pedestrian and transit supportive land uses and densities around planned RCAA stations. Increasing land use density within station areas will increase the RCAA ridership potential along the corridor, and help support sustainable economic and community development.

The RCAA is a proposed high capacity transit system with three to ten transit stations along the corridor between downtown San Bernardino and the University of Redlands. The San Bernardino Associated Governments (SANBAG) is working to secure federal funding from FTA through New Starts and/or Small Starts Programs. The RCAA supports economic development by providing an important new element in the transit system to support the participating jurisdiction's ability to:

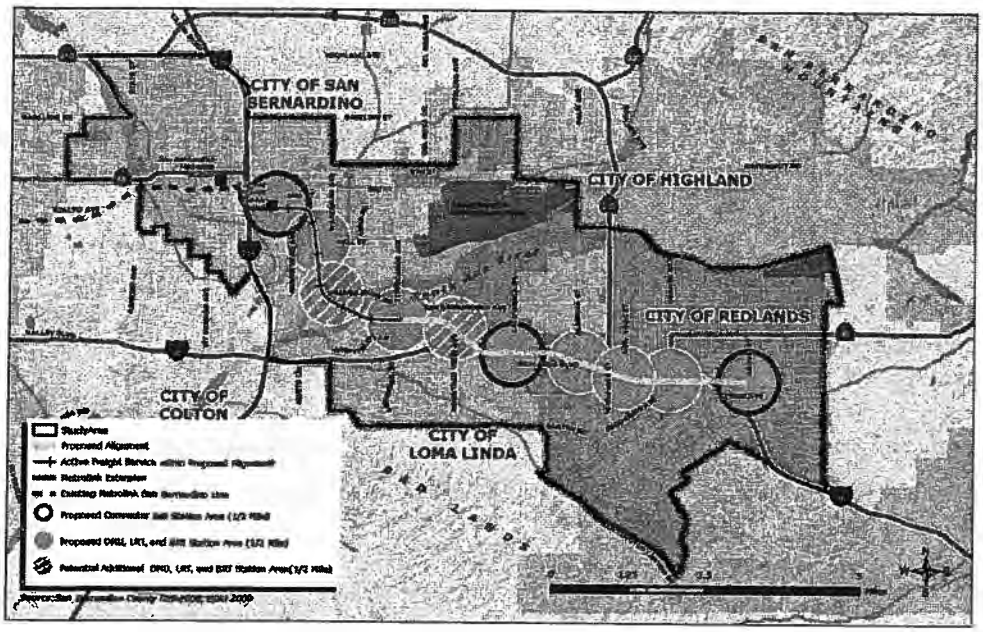
- Continue to attract new businesses and to retain existing businesses;
- Create viable locations for new businesses, new jobs, and new housing at underutilized sites;
- Support convenient compact development patterns with a variety and density of uses, integrate well-designed pedestrian systems and streetscapes, and increase opportunities to commute by walking or biking;
- Provide transit opportunities to reduce vehicle miles traveled (VMT); and
- Support local and regional planning goals for the development of transit corridors through the Inland Empire.

Project Understanding

The project is the preparation of a Programmatic Environmental Impact Report (PEIR) for Proposed Transit Supportive Land Use Updates in the form of General Plan Amendments and/or zoning changes for up to ten station area locations (previously defined as being within a half-mile radius of planned RCAA stations). Station area locations are shown in Figure 1, Project Location and further described below:

1. San Bernardino Transit Center
2. Mill Street Station
3. Waterman Avenue Station
4. Tippecanoe Street Station
5. Mountain View Avenue Station
6. California Street Station
7. Alabama Street Station
8. New York Street Station
9. Downtown Redlands Station
10. University Station

Figure 1 – Project Location



The Cities of San Bernardino, Loma Linda, and Redlands along the corridor will define proposed transit supportive land use updates for each of the station areas to be analyzed within the PEIR. The PEIR will need to be certified by each of the participating jurisdictions. One PEIR will be prepared that each jurisdiction will certify. SANBAG will act as a liaison between the jurisdictions and the jurisdictions' project manager/agent for preparation of the PEIR.

Updates to existing land use plans and the preparation of the PEIR will require substantial collaboration and cooperation among the participating jurisdictions throughout the process, and is integral to the progress and successful implementation of the project and the PEIR. The PEIR will incorporate as applicable the goals, policies, and objectives of the Regional Transportation Plan (RTP), the Sustainable Communities Strategy (SCS), and the Regional Greenhouse Gas (GHG) Inventory and Reduction Plan that are anticipated to be developed concurrently with the proposed PEIR for Proposed Transit Supportive Land Use Updates.

Benefits of Programmatic Environmental Documentation

The PEIR would meet the California Environmental Quality Act (CEQA) requirements for the Cities of San Bernardino, Loma Linda, and Redlands, which will act as CEQA lead agencies to consider the proposed transit and pedestrian supportive land use updates (within a half-mile of planned RCAA stations) in their respective cities. Review, comment, and certification of a PEIR by the City of San Bernardino, the City of Loma Linda, and the City of Redlands would provide a cohesive and formal approach to land use, transportation, and air quality planning in the corridor while also defining a framework for subsequent development proposals. When a particular development project is proposed within the half-mile transit supportive area, the respective participating jurisdiction would be required under CEQA to determine if a subsequent level of CEQA documentation (i.e., tiering) would be required in accordance with CEQA. The PEIR would provide a programmatic approach to CEQA documentation for transit supportive land uses in the corridor.

We understand that a Memorandum of Understanding (MOU) is currently being developed between the parties that will define the roles and responsibilities of SANBAG and the participating jurisdictions during the planning and implementation process. SANBAG will act as a liaison between the participating jurisdictions and project manager for preparation of the PEIR.

PROGRAM ENVIRONMENTAL IMPACT REPORT (RCAA)

This scope of work addresses preparation of a PEIR and supporting technical studies for the Proposed Transit Supportive Land Use Updates in the form of General Plan Amendments and/or zoning changes within a half-mile radius for up to 10 planned RCAA stations in the Cities of San Bernardino, Loma Linda and Redlands (see Figure 1, Project Location). HDR recognizes that preparation of the PEIR is contingent upon completion of a MOU by and among SANBAG and the Cities of San Bernardino, Loma Linda and Redlands.

The PEIR would provide an assessment of the Proposed Transit Supportive Land Use Updates relative to the potential effects on the surrounding environment. The PEIR would include an evaluation of project related impacts and environmental effects, both positive and negative, that would occur as a result of the project. Many aspects of the project promote environmental stewardship within the region, and should be recognized within the PEIR. HDR's approach to the PEIR would address the project impacts and benefits equally, as appropriate. By providing a balanced assessment of project related effects on the environment, this will help to build consensus between participating jurisdictions and the public as to what the environmental impacts and benefits of the project would be. An initial evaluation of project-related benefits associated with Proposed Transit Supportive Land Use Updates includes the following:

- Supporting transit use along the corridor thus minimizing commute times and distances, while relieving congestion in the region;
- Reduced GHG emissions and air pollution;
- Reduced infrastructure costs;
- Promoting compact development patterns while maximizing infill development opportunities around existing infrastructure;
- Increasing energy efficiency (i.e., electricity, natural gas, and possible water consumption) by reduced building footprints;
- Incorporating a mix of housing types to accommodate a greater jobs/housing balance in the East Valley region; and
- Accommodating growth near transit, while conserving other areas within the region for lower intensity uses.

TASK 7.5.1 MOU DEVELOPMENT AND PROJECT DEVELOPMENT AND

INITIATION

7.5.1.1 Development of a Memorandum of Understanding (MOU)

The purpose of the MOU among SANBAG and the Cities of San Bernardino, Loma Linda and Redlands is to develop a PEIR for Proposed Transit Supportive Land Use Updates to the cities' respective General Plans that would be jointly adopted by the Cities and SANBAG. A Draft MOU will be submitted to SANBAG and the participating jurisdictions as directed by SANBAG for comprehensive review and comment, including legal review. The Draft MOU will be revised to reflect comments received, including legal review edits by SANBAG general counsel. A Final MOU document incorporating comments will be submitted to SANBAG. SANBAG will be responsible for securing parties' acceptance and signatures to the MOU.

Deliverables

- Draft MOU (Electronic copy); and
- Final MOU (Electronic copy)

7.5.1.2 Development of a Project Plan

The Project Plan will include a comprehensive summary of existing baseline land use information (General Plan and Zoning) for each station area within the Cities of San Bernardino, Loma Linda and Redlands to appropriately assess the proposed project relative to each of the environmental resource topics to be analyzed within the PEIR. The Project Plan will include a comprehensive project description, including detailed land use tables and graphic representation (maps) of the proposed land use updates for each station area.

The Project Plan will summarize the land use updates associated with the project, and provide a compilation of proposed land use development policy and standards for station areas in the Cities of San Bernardino, Loma Linda and Redlands. The Project Plan would also identify other existing plans, studies, and land use information being developed concurrently (under a separate effort) that would contribute to enhancing the sustainable development potential at station area locations.

The Project Plan will be prepared in close coordination with SANBAG and each of the participating jurisdictions to initiate the CEQA process accordingly, and mobilize HDR and subconsultant resources as appropriate. A Draft Project Plan will be submitted to SANBAG and the participating jurisdictions for comprehensive review and comment. The Draft Project Plan will be revised to reflect comments received from SANBAG and the participating jurisdictions. A Final Project Plan document will be submitted to SANBAG.

Deliverables

- Draft Project Plan (Electronic copy); and

- Final Project Plan (Electronic copy)

TASK 7.5.2 PROGRAM EIR TASK MANAGEMENT

7.5.2.1 Coordination of project team, client and participating jurisdictions. Attendance at up to 40 hours of project-related meetings, including the EIR kick-off meeting and scoping meeting.

7.5.2.2 Assisting cities in proposing and helping facilitate cost effective CEQA collaboration not in the adopted Task 7 scope. The cities have identified the lack of a CEQA approach as being critical in implementing transit supportive land use planning updates. The task supports cities' consensus on the jointly adopted PEIR approach for transit supportive land use planning updates.

Deliverables

- Monthly progress reports

TASK 7.5.3 TECHNICAL STUDIES

HDR assumes that one set of consolidated comments on each of the draft technical studies will be provided by SANBAG and each of the participating jurisdictions. In an effort to be as cost efficient as possible, this is necessary because each technical study will need to be updated based upon comments from up to four commenting agencies. If comments on each technical study were received from multiple staff persons within each participating jurisdiction, the cost of the effort to incorporate comments would increase substantially.

7.5.3.1 Aesthetics/Visual Resources

Prepare a program-level Aesthetics/Visual Resources Assessment report. The report will include an analysis of current visual assessments (e.g. studies undertaken as part of General Plan updates), provide a description of the existing visual environment, and analyze potential changes in visual resources (both inside and outside of station areas) relative to the preferred transit alternative selected for the RCAA. This report will be tailored to the specific thresholds of the applicable jurisdiction as applicable. This task includes review of existing visual assessments and information along with a site visit for the primary report preparer to take existing condition photos for incorporation into the report. Visual simulations are not proposed as part of this scope. HDR plans on utilizing the previously prepared Gruen Study (San Bernardino Downtown Specific Plan) to show typical building prototypes and visual examples reflective of similar transit supportive land uses that are proposed as part of the project.

HDR will submit a Draft Aesthetics/Visual Resources Assessment Report to SANBAG and the participating jurisdictions for review and comment. The Draft Aesthetics/Visual Resources Assessment Report will be revised to reflect comments received from SANBAG and

participating jurisdictions. HDR will produce a Final Aesthetics/Visual Resources Assessment Report and incorporate the results into the Aesthetics/Visual Resources section of the PEIR.

7.5.3.2 Air Quality

Prepare a program-level Air Quality Technical Report. The report will provide a description of baseline conditions, identify the regulatory environment related to air quality, and incorporate a regional analysis of air quality in the basin. This task will be completed by HDR's subconsultant, ICF.

ICF will prepare an analysis of air quality impacts consistent with applicable procedures and requirements of the South Coast Air Quality Management District (SCAQMD). The air analysis will describe existing environmental and regulatory air quality conditions, followed by a General Plan level analysis of the potential air quality impacts associated with the anticipated changes in General Plan designations, and the distribution of land uses within each station area due to the institution of transit supportive land uses. The air quality analysis will focus on the criteria for project-related pollutants of greatest concern in the South Coast Air Basin (SCAB) that would be affected by changes in land use designations in each jurisdiction. Those pollutants include ozone precursor (reactive organic gases [ROGs] and oxides of nitrogen [NO_X]), carbon monoxide (CO), and inhalable particulate matter (PM10 and PM 2.5). ICF air quality specialists will prepare an air quality analysis describing existing air quality conditions, the project's air impacts, and mitigation measures (including those recommended and required by the SMAQMD) designed to reduce the significance of project-related air impacts. The mitigation measures will be discussed at a General Plan level of detail and would focus on any measures already identified in the General Plans of the participating jurisdictions.

In the air quality setting section, ICF will describe the existing environmental conditions and the current air quality regulatory environment as it applies to this program-level analysis. ICF will summarize meteorological and climatological data for the study area, as well as localized conditions in the vicinity of the proposed project using data collected by the SCAQMD and the California Air Resources Board (ARB). The pollutants of concern in the planned station area locations and their known health effects will also be described. The existing state and federal ambient air quality standards; the SCAQMD's attainment status with regard to those standards; and a discussion of applicable air quality goals, policies, and attainment plans of state and local agencies, including the region's most recent air quality plans, will be summarized. ICF will also describe the general locations of existing sensitive receptors in the vicinity of the station areas within the cities of San Bernardino, Loma Linda and Redlands.

ICF will identify potential air quality impacts using the SCAQMD's adopted thresholds of significance. ICF will describe the air quality thresholds used to identify significant impacts based on SCAQMD guidance, as well as the methodology used to estimate project-related emission impacts. Because the SCAQMD's localized significance thresholds (LSC) are not

applicable to regional projects of this nature, an analysis of air quality impacts using the SCAQMD LSC will not be conducted.

Construction impacts will be qualitatively evaluated and available and practicable mitigation measures, including those required and recommended by the SCAQMD and existing General Plan documents, will be discussed.

ICF will use the traffic data from the transportation and circulation analysis (i.e., trip generation rates or VMT) and the URBEMIS2007 or CT-EMFAC model to estimate operational emissions (area and mobile sources) of criteria pollutant associated with the proposed land use changes. This scope of work assumes the transportation and circulation analysis will provide traffic data under existing, interim, (with and without implementation of the proposed project), and build-out conditions (with and without implementation of the proposed project). ICF will also qualitatively evaluate whether the proposed General Plan amendments could result in increased health risks associated with diesel exhaust using guidance provided by the ARB, SCAQMD, and other published studies.

For the assessment of CO impacts, data from the transportation and circulation analysis will be reviewed to determine the need for localized CO modeling, based on methodology contained in the *Caltrans Transportation Project-Level Carbon Monoxide Protocol*. ICF will use the CALINE4 model and the latest version of ARB emission factors (EMFAC2007) to estimate CO concentrations at key intersections analyzed in the transportation and circulation analysis. CO concentrations at up to 3 intersections within each jurisdiction will be evaluated under existing, interim, (with and without implementation of the proposed project), and build-out conditions (with and without implementation of the proposed project). CO impacts will assessed by evaluating whether the proposed project meets the ambient air quality requirements for localized pollutants by determining whether it causes or contributes to an exceedance of state or federal CO standards. Where significant impacts are identified, ICF will identify mitigation measures (including those recommended and required by the SCAQMD) designed to reduce the significance of project-related air impacts.

HDR will submit a Draft Air Quality Report to SANBAG and the participating jurisdictions for review and comment. The Draft Air Quality Report will be revised to reflect comments received from SANBAG and participating jurisdictions. ICF will produce a Final Air Quality Report and incorporate the results of this report into the Air Quality section of the PEIR.

7.5.3.3 Global Climate Change/GHG

Prepare a program-level Global Climate Change/GHG Emissions Report. This task will be completed by HDR's subconsultant, ICF. ICF will prepare an analysis of climate change impacts associated with the proposed land use changes to the station areas in the cities of San Bernardino, Loma Linda and Redlands. The climate change analysis will describe existing environmental and regulatory climate change quality conditions, followed by an analysis of the

project's construction and operational impacts. The climate change analysis will focus on the GHGs of greatest concern, carbon dioxide, (CO2), methane (CH4) and nitrous oxide (N2O) that will be generated by implementation of the proposed project. ICF climate change specialists will prepare a climate change analysis describing existing conditions, the project's impacts to climate change and impacts to the project resulting from climate change, and mitigation measures designed to reduce the significance of project-related climate change impacts.

In the project setting section, ICF will describe the key concepts of climate change, the GHGs of greatest concern and their contribution towards climate change, and the current climate change regulatory environment as it applies to this project. ICF will also summarize existing GHG levels at station area locations based on the current San Bernardino County and SCAQMD GHG inventories.

In the project impacts section, ICF will evaluate the project's contribution towards climate change, as well as the effects of climate change on the project. ICF will identify significant impacts using guidance provided by the SCAQMD and the ARB. If no guidance is available or relevant to the project, ICF will consult with SCAQMD and SANBAG staff to identify appropriate thresholds which to evaluate impacts related to climate change.

Relative to the existing "traditional" land uses, transit supportive land uses are anticipated to be higher in density. Higher density land uses are often associated with decreased building, utility, and roadway construction materials by virtue of their density. Savings in construction materials can reduce raw materials associated with mining, logging, manufacturing, transport, and installation, which can result in energy savings and reduced GHG emissions. However, because of the programmatic nature of the proposed project, specific data would not be available to quantify project-specific construction activities and associated emissions. Consequently, construction impacts will be qualitatively evaluated and available and practicable mitigation measures, including those recommended by the SCAQMD, General Plans, and the California Attorney General, would be identified and discussed.

Typically, higher density land uses result in fewer and shorter vehicle trips, which correlates to a reduction in VMT. ICF will use the traffic data from the transportation and circulation analysis (i.e., trip generation rates or VMT) and the URBEMIS2007 or CT-EMFAC model to estimate GHG emissions from vehicular trips and VMT associated with land use changes resulting from the proposed project.

In addition to fewer and shorter vehicle trips, higher density land uses are also expected to have a smaller footprint on a per-unit basis. This often translates into increased energy efficiency because smaller building sizes requires less energy for heating and cooling needs, while higher density land uses often have more shared common walls and less exposed surfaces (roof, walls, and windows), which results in less energy for space heating and air conditioning than detached buildings. As a result, it is anticipated that the transit supportive land uses associated with the

project would have reduced electricity, natural gas, and possibly water consumption, relative to the existing "traditional" land uses. ICF will quantify GHG emissions from energy and water use associated with land use changes resulting from the proposed project using land use designations for existing and project conditions, the ARB's Reporting Tool for California GHG Emissions, and other accepted protocols.

In addition to evaluating the project's contribution towards climate change, ICF will also evaluate the effects of climate change on the project. The following consequences of climate change are primary concerns to the state of California:

- Sea level rise;
- Increased frequency and intensity of wildfires;
- Increased frequency and intensity of extreme heat events;
- Diminished Sierra snowpack;
- Increased frequency of extreme precipitation and/or flooding events;
- Shifts in precipitation patterns and amounts; and
- Shifts in plant and animal distributions.

It is anticipated that the primary consequences of climate change affecting the station area locations include:

- Increased frequency and intensity of extreme heat events (increased energy usage for cooling needs and increased mortality from extreme heat events);
- Diminished Sierra snowpack (decreased water supply to the station areas); and
- Increased frequency of extreme precipitation and/or flooding events (decreased water supply to the station areas).

It is difficult to accurately quantify the effects of climate change at station area locations, as current tools and models do not have sufficient resolution to forecast localized changes in climate and resulting effects related to climate change. Consequently, ICF will present a qualitative evaluation of the consequences of climate change to the station area locations using studies published by, but not limited to, the ARB, California Department of Water Resources, California Energy Commission, California Climate Change Center, and California Natural Resources Agency. Where significant impacts are identified, ICF will identify mitigation measures (including those recommended by the California Attorney General) designed to reduce the significance of project-related climate change impacts.

HDR will submit a Draft Global Climate Change/GHG Emissions Report to SANBAG and the participating jurisdictions for review and comment. The Draft Global Climate Change/GHG Emissions Report will be revised to reflect comments received from SANBAG and participating jurisdictions. ICF will produce a Final Global Climate Change/GHG Emissions Report and will incorporate the results of this report into the Climate Change section of the PEIR.

Assumptions

This scope of work assumes that GHG reductions associated with identified mitigation measures will not be quantified. It is also assumed that a HRA will not be required. If quantification is requested, ICF will prepare an amendment to the scope of work and cost to include mitigation quantification and HRA if necessary.

7.5.3.4 Cultural and Historical Resources

Prepare a program-level Cultural Resources Technical Report. This task will be completed by HDR's subconsultant, ICF that would include a records search for any newly identified resources at station areas (archeological and historical) that were not identified as part of the General Plan processes for the Cities of San Bernardino, Loma Linda and Redlands. A sensitivity analysis will be conducted based on a review of historic reference materials and a records search at the San Bernardino Archeological Information Center of the San Bernardino County Museum. For reference, the technical report will include the listings for the Cities of San Bernardino, Loma Linda and Redlands in the California Historical Resources Information System (CHRIS) which includes the statewide Historical Resources Inventory (HRI) database maintained by the California Office of Historic Preservation.

A discussion of archaeological resources and studies identified in the records search and General Plan documents for the participating jurisdictions will be included, as will baseline information for paleontological resources. A qualitative analysis will be provided for the preferred transit alternative selected for the RCAA relative to archaeological, historical and paleontological resources. Mitigation measures with an appropriate General Plan level of detail will also be identified. The analysis will further describe the cultural resources and identify the historical significance of structures at station area locations that could be affected by the proposed changes to land use. In addition, the analysis will identify the potential for archaeological sites to exist within station areas.

HDR will submit a Draft Cultural Resources Report to SANBAG and the participating jurisdictions for review and comment. The Draft Cultural Resources Report will be revised to reflect comments received from SANBAG and participating jurisdictions. ICF will produce a Final Cultural Resources Report and will incorporate the results of this report into the Cultural Resources section of the PEIR.

Assumptions

This scope assumes that a table of historical resources at station area locations will be sufficient and that survey inventory forms for each resource will not be required.

7.5.3.5 Hydrology

Prepare a program-level Hydrology Assessment Memorandum. The memorandum would

provide a general discussion of hydrologic setting at station area locations and a qualitative assessment of potential impacts to hydrology relative to the preferred transit alternative selected for the RCAA. Technical memo discussion will include:

- Analysis of existing significant drainage facility design documents;
- Identification of FEMA floodplains within station areas;
- Qualitative analysis of hydrologic impacts from proposed design alternatives;
- Qualitative analysis of potential impacts from design alternatives on existing drainage facility performance;
- Qualitative analysis of impacts to FEMA floodplains potentially impacted by the project; and
- Qualitative analysis of potential mitigation options required from adverse impacts to drainage facilities or floodplains resulting from project development.

Hydrological analysis will be qualitative and will be based on the San Bernardino County Flood Control requirements. No quantitative rational method hydrology calculations, unit hydrograph hydrology calculations, or continuous hydrologic simulations will be completed.

HDR will submit a Draft Hydrology Assessment Memorandum to SANBAG and the participating jurisdictions for review and comment. The Draft Hydrology Assessment Memorandum will be revised to reflect comments received from SANBAG and participating jurisdictions. HDR will produce a Final Hydrology Assessment Memorandum and incorporate the results into the Hydrology section of the PEIR.

7.5.3.6 Land Use and Planning

Prepare a Land Use and Planning Memorandum. The memorandum would describe baseline land use conditions, based upon adopted land use plans (e.g., General Plans, Specific Plans, Community Plans, etc.) for each participating jurisdictions, with a comparative analysis to the Proposed Transit Supportive Land Use Updates. The memorandum will include a comprehensive description of the Proposed Transit Supportive Land Use Updates in the form of General Plan Amendments and/or zoning changes relative to the preferred transit alternative selected for the RCAA. The memorandum will also provide an analysis of the proposed project as it fits into the regulatory environment that promotes sustainable development (e.g., Senate Bill 375, RTP/SCS, and Assembly Bill 32).

HDR will submit a Draft Land Use and Planning Memorandum to SANBAG and the participating jurisdictions for review and comment. The Draft Land Use and Planning Memorandum will be revised to reflect comments received from SANBAG and participating jurisdictions. HDR will produce a Final Land Use and Planning Memorandum and incorporate

the results into the Land Use and Planning section of the PEIR.

7.5.3.7 Noise and Vibration

Prepare a program-level Noise and Vibration Technical Report. The report would provide a description of baseline conditions and regulatory environment related to noise at station area locations and surrounding areas. This task will be completed by HDR's subconsultant, ICF. ICF will assess the noise and vibration impacts associated with implementation of the proposed project. ICF will identify relevant noise and vibration regulations and planning standards and determine significance thresholds by which to compare project impacts.

Existing noise and vibration conditions at station area locations will be quantified based on noise measurements, as well as available existing documentation (i.e., recent General Plan Updates, General Plan Amendments, etc). Short term measurements will consist of up to 10 short-term (10 to 15 minutes) and up to 5 long-term (continuous 24 hour measurement) measurements conducted at selected noise-sensitive locations. Noise/vibration effects from the various transit modes (commuter rail, Diesel Multiple Unit, Bus Rapid Transit and Light Rail Transit) will be assessed using the guidance and methodology as contained in the FTA's Transit Noise and Vibration Impact handbook. Traffic noise will be modeled using traffic data for existing, future without project, and future with project scenarios (up to 3 project scenarios are assumed). The most recent version of the Federal Highway Administration (FHWA)-approved traffic noise prediction model, Traffic Noise Model® (TNM®) Version 2.5 will be used for the traffic noise assessment.

The significance of noise impacts from the various project scenarios and transit modes will be compared and assessed based upon local standards for each of the participating jurisdictions. Potential impacts to existing and planned sensitive uses will be quantified at a programmatic level and mitigation measures (if necessary) will be recommended. The mitigation measures will be consistent with a General Plan level of analysis and will focus on plans and policies established by the existing General Plans of the participating jurisdictions.

The results of the analysis will be summarized in a Noise and Vibration Technical Report. HDR will submit a Draft Noise and Vibration Technical Report to SANBAG and the participating jurisdictions for review and comment. The Draft Noise and Vibration Technical Report will be revised to reflect comments received from SANBAG and participating jurisdictions. ICF will produce a Final Noise and Vibration Technical Report and incorporate the results of this report into the Noise section of the PEIR

Assumptions

Analyses of three project scenarios are included. If additional project scenarios are required, ICF will prepare an amendment to the scope of work and cost to include these scenarios.

7.5.3.8 Population and Housing

Prepare a Population and Housing Memorandum. The memorandum will provide an assessment of population and housing changes that would occur as a result of the proposed project. Analysis will rely on SANBAG and SCAG forecast information for the participating jurisdictions and how those projections would change with the land use modifications. SANBAG forecast information will also be considered in light of the current status and development of the Regional Housing Needs Assessment and RTP/SCS.

HDR will submit a Draft Population and Housing Memorandum to SANBAG and the participating jurisdictions for review and comment. The Draft Population and Housing Memorandum will be revised to reflect comments received from SANBAG and participating jurisdictions. HDR will produce a Final Population and Housing Memorandum and incorporate the results into the Population and Housing section of the PEIR.

7.5.3.9 Public Services and Utilities

Prepare a program-level Public Services and Utilities Assessment. The assessment will describe public services and utilities (on a jurisdiction-by-jurisdiction basis) and the potential changes in service demand relative to increased densities at station area locations. The assessment will consider the concentration of services and reduction in per/unit demand based upon density. Information from the Water Supply Analysis (Task 7.3.13) will be incorporated into this report.

HDR will submit a Draft Public Services and Utilities Assessment to SANBAG and the participating jurisdictions for review and comment. The Draft Public Services and Utilities Assessment will be revised to reflect comments received from SANBAG and participating jurisdictions. HDR will produce a Final Public Services and Utilities Assessment and incorporate the results into the Public Services and/or Utilities/Service Systems section of the PEIR.

7.5.3.10 Recreation

Prepare a program-level Recreation Analysis Memorandum. The memorandum will describe recreation facilities in station area locations and the potential changes in recreation services relative to increased densities at station area locations. Program-level mitigation measures will be identified, if needed.

HDR will submit a Draft Recreation Analysis Memorandum to SANBAG and the participating jurisdictions for review and comment. The Draft Recreation Analysis Memorandum will be revised to reflect comments received from SANBAG and participating jurisdictions. HDR will produce a Final Recreation Analysis Memorandum and incorporate the results into the Recreation section of the PEIR.

7.5.3.11 Traffic

Prepare a program level Traffic/Mobility Report. The report will describe baseline traffic, mobility and the regulatory environment that supports sustainable development at station area locations. This task will be completed by HDR's subconsultant, ICF. The analysis of potential transportation and circulation impacts resulting from the proposed project will be conducted by ICF with technical support from Iteris. It is expected that areas of intensification will be located in the vicinity of the RCAA corridor, and that areas of decreases in intensity may be located elsewhere within the Cities of San Bernardino, Loma Linda, and Redlands. It is assumed that up to ten areas of intensification will be identified (one per station area), as well as up to two areas of decreases in intensity in each City.

The General Plan documents of the participating jurisdictions will be reviewed to identify collector or higher classification roadways in the vicinity of each station area that may be affected by the change in intensity. In addition, locations along General Plan roadways that may be more distant from the locations where changes will take place, but that provide important regional connectivity to them, will also be identified. It is anticipated that up to four roadway segments in the vicinity of each station area plus two segments providing regional connectivity for each may be studied, for a total of up to 80 roadway segments (15 x 6). In addition, up to a total of 10 freeway segments on I-215 and I-10 may be studied.

Existing peak hour and daily traffic volumes will be collected for each study location. To the extent possible, data already collected for the RCAA will be utilized. Freeway data will be obtained from Caltrans' Performance Measurement System (PeMS). Existing and peak hour levels of service will be calculated based on the "Florida" level of service tables, which are included in Appendix A of the San Bernardino County Congestion Management Plan (CMP).

In order to maintain consistency with other work conducted for the project, the latest travel demand model used by SANBAG will be used for analysis of land use scenarios and ridership forecasts. Model scenarios will be developed for up to three land use alternatives to be evaluated as part of this effort. Each scenario may include intensifications and decreases in intensity in multiple areas. The model scenarios will be created by modifying the socioeconomic data (SED) in the traffic analysis zones of the model to reflect anticipated changes in population and employment in each zone. Adjustments may also be made to reflect changes in mode split (e.g., automobile, transit, walking) resulting from the proposed land uses changes. These adjustments may also be made "off-model" to reflect the impact of urban design or other attributes not captured by the model.

For each land use scenario, the analysis will develop year 2035 traffic volumes for all study area segments using existing traffic volumes and base-year and horizon-year modeled volumes, employing link post-processing methodologies approved by SANBAG. Future segment volumes will be compared to existing volumes to identify significant impacts, using impact criteria established by SANBAG and each of the participating jurisdictions. For segments at which a

significant impact is identified, Iteris will work with the project team to develop mitigation measures to reduce the impact to a less than significant level.

For each land use scenario, the analysis will include a summary of total daily VMT and Vehicle Hours Traveled (VHT) in the Cities of San Bernardino, Loma Linda, and Redlands. The VMT/VHT summaries will be broken down into 5-mph "speed bins" for both peak and off-peak periods, and for arterials and freeway segments separately. These data are for use in the Air Quality analysis prepared for the project.

A Draft Traffic/Mobility Report will be prepared documenting the methodologies, results, and conclusions of the traffic analysis. HDR will submit a Draft Traffic/Mobility Report to SANBAG and each of the participating jurisdictions for review and comment. The Draft Traffic/Mobility Report will be revised to reflect comments received from SANBAG and participating jurisdictions. ICF will produce a Final Traffic/Mobility Report and will incorporate the results of the report into the Transportation/Traffic section of the PEIR.

Assumptions

- Up to ten areas of intensification will be identified (one per station area), as well as up to two areas of decreases in intensity in each City.
- Only the preferred alternative selected for the RCAA will be evaluated.
- Because the Programmatic EIR will cover proposed changes in generalized land use categories and not specific development projects, the traffic analyses will be conducted at the roadway segment level of analysis, not the intersection level of analysis. Roadway segment analysis is an appropriate level of analysis when site-specific details are not known, such as the locations of ingress and egress points or the design of particular projects. It is often used for General Plan traffic analyses; although in the past some cities in San Bernardino County have opted to conduct intersection level analysis in conjunction with their General Plans. This practice developed because, under the County's CMP in place at the time, approval of subsequent development projects was facilitated by doing so. This is no longer the case, and there is no requirement that intersection level analyses be conducted for General Plan amendments.

7.5.3.12 Water Quality

Prepare a program-level Water Quality Assessment. The assessment will provide a general discussion of water quality issues and a qualitative assessment of potential impacts to water quality relative to increased densities at station area locations. Santa Ana Regional Water Quality Control Board has recently adopted San Bernardino County MS4 permit (Order R8-2010-0036) with no Water Quality Management Plan guidance yet created by the Co-permittees to implement this permit. Given the stage of stormwater permitting, project discussion will focus

on the new permit language and existing San Bernardino County Model Water Quality Management Plan. Based on these documents, project water quality discussion and qualitative analysis will include:

- Discussion of overall drainage patterns and receiving water bodies;
- Identification of potential pollutants generated by the project;
- Identification of downstream pollutants of concern;
- Identification of beneficial uses of receiving water bodies;
- Discussion of potential hydromodification impacts;
- Discussion of potential mitigation alternatives for pollutants of concern and hydromodification;
- Discussion of potential Low Impact Development (LID) features that could be utilized to treat and retain runoff in accordance with mitigation goals;
- General representative land use water quality impacts expected from changes in land-use (i.e. average impacts for a unit area); and
- General representative mitigation impacts (i.e. average beneficial mitigation per Best Management Practices [BMPs]).

Based on the preliminary level of design and the current stage of MS4 permitting within the County no specific quantitative water quality or detention calculations will be completed, including rational method hydrology calculations, unit hydrograph hydrology calculations, or continuous hydrologic simulations No specific engineering or sizing of BMPs or detention basins will be completed.

HDR will submit a Draft Water Quality Assessment to SANBAG and the participating jurisdictions for review and comment. The Draft Water Quality Assessment will be revised to reflect comments received from SANBAG and participating jurisdictions. HDR will produce a Final Water Quality Assessment and incorporate the results into the Hydrology section of the PEIR.

7.5.3.13 Water Supply Assessment

Prepare a Water Supply Analysis Report. The report will identify existing and forecasted water demand relative to increased densities at station area locations. HDR will rely on adopted Urban Water Management Plans for the various water providers that serve the participating jurisdictions. The analysis will discuss both in terms of municipal and groundwater sources. Program-level mitigation measures will be identified.

HDR will submit a Draft Water Supply Analysis Report to SANBAG and the participating

jurisdictions for review and comment. The Draft Water Supply Analysis Report will be revised to reflect comments received from SANBAG and participating jurisdictions. HDR will produce a Final Water Supply Analysis Report and incorporate the results into the Public Services and Utilities section of the PEIR.

7.5.3.14 Biological Resources

Prepare a program-level Biological Technical Report (BTR). HDR will prepare a program-level technical report that will incorporate information into the BTR from the Biological Constraints Memorandum (HDR, September 2010) previously prepared for the RCAA. For areas not previously surveyed in the Biological Constraints Memorandum, HDR will conduct a general survey within the half-mile radius of each station to characterize the existing vegetation communities located. However, given the scope and scale of the project and the programmatic approach, HDR will primarily utilize existing databases from SANBAG and the participating jurisdictions to determine the presence of sensitive habitat. HDR will access available aerial photography to determine the presence of likely sensitive habitats/vegetation (and associated sensitive species) within the vicinity of the station areas. HDR will also perform a search of the California Natural Diversity Database (CNDDB) to identify sensitive botanical and zoological species that may occur within the vicinity of the station areas.

All of the researched information will be used to evaluate the potential for the project site and immediate vicinity to support sensitive vegetation communities and associated special-status biological resources (including federal and state listed species). Sensitive vegetation communities, flora/fauna, and jurisdictional areas will be addressed in the report as they relate to federal, state, and local regulations and a qualitative analysis will be provided for the preferred transit alternative selected for the RCAA relative to biological resources. The analysis will further describe the biological resources and identify the significance of sensitive biological resources (e.g., botanical, zoological, wetland/waters, etc) within the vicinity of station areas that could be affected by the proposed changes to land use. Programmatic-level mitigation measures will also be identified, as appropriate.

HDR will submit a Draft Biological Technical Report to SANBAG and the participating jurisdictions for review and comment. The Draft Biological Technical Report will be revised to reflect comments received from SANBAG and participating jurisdictions. HDR will produce a Final Biological Technical Report and will incorporate the results of this report into the Biological Resources section of the PEIR.

Deliverables

- Draft Aesthetics/Visual Resources Assessment Report (4 hard copies, one electronic copy)
- Final Aesthetics/Visual Resources Assessment Report (4 hard copies, one electronic copy)

- Draft Air Quality Report (4 hard copies, one electronic copy)
- Final Air Quality Report (4 hard copies, one electronic copy)
- Draft Global Climate Change/GHG Emissions Report (4 hard copies, one electronic copy)
- Final Global Climate Change/GHG Emissions Report (4 hard copies, one electronic copy)
- Draft Cultural Resources Report (4 hard copies, one electronic copy)
- Final Cultural Resources Report (4 hard copies, one electronic copy)
- Draft Hydrology Assessment Memorandum (4 hard copies, one electronic copy)
- Final Hydrology Assessment Memorandum (4 hard copies, one electronic copy)
- Draft Land Use and Planning Memorandum (4 hard copies, one electronic copy)
- Final Land Use and Planning Memorandum (4 hard copies, one electronic copy)
- Draft Noise and Vibration Report (4 hard copies, one electronic copy)
- Final Noise and Vibration Report (4 hard copies, one electronic copy)
- Draft Population/Housing Memorandum (4 hard copies, one electronic copy)
- Final Population/Housing Memorandum (4 hard copies, one electronic copy)
- Draft Public Services/Utilities Assessment (4 hard copies, one electronic copy)
- Final Public Services/Utilities Assessment (4 hard copies, one electronic copy)
- Draft Recreation Analysis Memorandum (4 hard copies, one electronic copy)
- Final Recreation Analysis Memorandum (4 hard copies, one electronic copy)
- Draft Traffic/Mobility Report (4 hard copies, one electronic copy)
- Final Traffic/Mobility Report (4 hard copies, one electronic copy)
- Draft Water Quality Assessment (4 hard copies, one electronic copy)
- Final Water Quality Assessment (4 hard copies, one electronic copy)
- Draft Water Supply Analysis Report (4 hard copies, one electronic copy)
- Final Water Supply Analysis Report (4 hard copies, one electronic copy)

TASK 7.6 NOTICE OF PREPARATION (RCAA)

7.6.1 Preparation of the Notice of Preparation (NOP) for circulation

HDR will prepare and submit to SANBAG and the participating jurisdictions a Draft NOP for review and comment. HDR will revise to produce an NOP ready for public review and submittal to the State Clearinghouse. SANBAG will distribute the NOP to the State Clearinghouse and publish the NOP one-time in newspapers of general circulation that cover the participating jurisdictions.

7.6.2 Preparation of the Notice of Completion (NOC)

This will accompany the NOP to the State Clearinghouse.

Deliverables

- Draft Notice of Preparation (Electronic copy)
- Final Notice of Preparation (Electronic copy)
- Notice of Completion (Electronic copy)

TASK 7.7 SCREENCHECK NO.1 PEIR (RCAA)

7.7.1 Preparation of a Screencheck Draft PEIR for review by SANBAG and the participating jurisdictions. HDR proposes the following outline for the PEIR.

- Executive Summary
- Project Description
- Environmental Analysis
    - Aesthetics
    - Air Quality
    - Biological Resources
    - Cultural Resources
    - Geology and Soils
    - Global Climate Change
    - Hazards and Hazardous Materials
    - Hydrology
    - Land Use and Planning
    - Noise
    - Population and Housing
    - Public Services
    - Recreation
    - Transportation/Traffic
    - Utilities/Service Systems
    - Water Quality
- Growth Inducement
- Cumulative Impacts
- Other Mandatory Discussion Areas
- Alternatives Analysis (For scoping purposes, HDR assumes that the "No Project" and two additional alternatives will be analyzed in the EIR (total of three alternatives). The alternatives will focus on the reduction of impacts. At this juncture of the project, it is most likely that the alternatives would be focused analyzing varying levels of land use density increases and/or avoidance of certain

portions of participating jurisdictions within the envelope of density increase that contain sensitive resources (e.g., biological and/or cultural).

- Mitigation Monitoring and Reporting Program

Deliverables

- Screencheck No. 1 PEIR – 3 hard copies and one CD each for SANBAG and each participating jurisdiction (12 hardcopies and 4 CDs total)

TASK 7.8 SCREENCHECK NO. 2 PEIR (RCAA)

7.8.1 Revise Screencheck No.1 PEIR to reflect comments made by SANBAG and participating jurisdictions to prepare a Screencheck No. 2 PEIR.

Deliverables

- Screencheck No. 2 PEIR – 3 hard copies and one CD each for SANBAG and each participating jurisdiction (12 hardcopies and 4 CDs total)

TASK 7.9 SCREENCHECK No. 3 PEIR (RCAA)

7.9.1 Revise Screencheck No. 2 PEIR to prepare Screencheck No.3 PEIR for review by SANBAG and the participating jurisdictions.

Deliverables

- Screencheck No. 3 PEIR – 3 hard copies and one CD each for SANBAG and each participating jurisdiction (12 hardcopies and 4 CDs total)

TASK 7.10 DRAFT PEIR (RCAA)

7.10.1 Revise Screencheck No. 3 PEIR to prepare a Draft PEIR for public review.

7.10.2 Prepare the Notice of Availability to accompany the PEIR. Submit to SANBAG and participating jurisdictions for review and revise, as needed, to address comments made by SANBAG and the participating jurisdictions.

7.10.3 Prepare a Notice of Completion to accompany the PEIR to the State Clearinghouse.

Deliverables

- Draft PEIR – 50 hard copies and 10 CDs

TASK 7.11 1st Iterations Response to Comments/PEIR Errata (RCAA)

7.11.1 Review all comment letters received on the public review Draft PEIR.

7.11.2 Prepare a matrix summarizing all comments received on the Draft PEIR.

7.11.3 Meet with SANBAG and participating jurisdictions to discuss response to comment approach.

7.11.4 Coordinate with SANBAG, participating jurisdictions and the PEIR technical specialists, as needed, for input on response to comments.

7.11.5 Draft response to comments for review by SANBAG and participating jurisdictions. For the purposes of this proposal if excessive comments are received, then the costs will be determined on a "negotiated basis" when the draft document and comments on the project become available. We understand that excessive comments are generally considered to be more than 20 commenting agencies/individuals and/or over 150 individual comments that require answers other than "comment noted". This scope of work and cost estimate includes time to respond to up to 150 individual comments.

Deliverables

- Attend one meeting to discuss Response to Comments
- Response to Comment Summary Matrix (Electronic copy)
- Draft Response to Comments (Electronic copy)

TASK 7.12 2nd Iteration Response to Comments/PEIR Errata (RCAA)

7.12.1 Revise the response to comments and PEIR Errata to reflect comments made by SANBAG and participating jurisdictions. Resubmit to SANBAG and cities for second round review/comment.

7.12.2 Prepare the Mitigation Monitoring and Reporting Program (MMRP) for review.

Deliverables

- Revised Response to Comments (Electronic copy)
- Draft MMRP (Electronic copy)

TASK 7.13 Final CEQA Document (RCAA)

7.13.1 Finalize the PEIR, including response to comments and MMRP based upon final comments made by SANBAG and participating jurisdictions.

7.13.2 Preparation of Notice of Determination for each participating jurisdiction if the EIR is certified by their respective Councils.

Deliverables

- Final PEIR – 50 hard copies and 10 CDs
- MMRP
- Notice of Determination – Participating jurisdictions would pay the required California Department of Fish & Game (CDFG) and County filing fees.

TASK 7.14 FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS (RCAA)

7.14.1 Prepare the Findings of Fact for the PEIR. If the PEIR determines that the project will have significant and unmitigated impacts, HDR will also prepare the Statement of Overriding Considerations (SOC). HDR assumes that SANBAG and participating jurisdictions will contribute to development of the Findings in the event that significant and unmitigated impacts are identified. HDR will revise the Findings based upon comments made by SANBAG and the participating jurisdictions.

Deliverables

- Draft Findings/SOC (Electronic copy)
- Final Findings/SOC (Electronic copy)

TASK 7.15 MEETINGS/HEARINGS (RCAA)

7.15.1 Preparation for and attendance at up to 60 hours of meeting and/or hearings related to the PEIR. This includes attendance at a CEQA Scoping meeting. This is exclusive of the kick-off and response to comment meetings noted earlier in this scope of work.

Deliverables

- Meeting Attendance

SBX OMNITRANS RIGHT-OF-WAY

TASK 1.0 SBX OMNITRANS APPRAISALS (SBX)

The HDR team will assign real property appraisals and will coordinate obtaining appraisals. A "Notice of Intent to Appraise" will be sent to all property owners expected to have their properties partially or entirely acquired. Appraisers will send introductory letters indicating when

they expect to contact the owner for an appointment to perform the appraisal. If the land owner is agreeable, the appraiser and landowner will meet at the property at which time the landowner will be given an opportunity to provide the appraiser their opinions about the property and its value. When appraisals are completed, and before they are accepted, they are reviewed for accuracy and regulatory compliance by a review appraiser. The review appraiser will make the final recommendation of just compensation for SANBAG approval.

Deliverables

- NOI to appraise letters
- Written appraisals for all properties
- Appraisal review recommending just compensation

TASK 1.2 SBX OMNITRANS ACQUISITION PACKAGE PREPARATION (SRX)

A Purchase Offer package will be prepared for each landowner containing an offer letter and the accompanying regulatory statements and documents.

Deliverables

- Purchase Offer Package

Assumptions

- Omnitrans will provide document template
- Acquisition packages will be prepared for thirty (30) properties

Governments
SANBAG
Working Together

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

TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 13

Date: June 20, 2013

Subject: Reimburse the Orange County Transportation Authority for purchase of Southern California Regional Rail Authority rolling stock, Rotem passenger cars

Recommendation:* That the Committee recommend the Board reimburse the Orange County Transportation Authority (OCTA) $6,041,376 for Rotem cars purchased by the Southern California Regional Rail Authority (SCRRA) by assuming responsibility for approximately $2 million of OCTA's annual member share of the SCRRA capital budget from Fiscal Year 2013/14 through 2015/2016.

Background: Beginning in 2003, Southern California Regional Rail Authority (SCRRA) began the process of ordering new passenger and cab cars for Metrolink trains. After some contractual changes and re-bidding, SCRRA awarded a contract to Rotem on March 14, 2006. The base order included 54 coach cars and 33 cab cars for a total of 87. Four (4) additional contract options were exercised bringing the total number of cars purchased to 137 (57 cabs and 80 coaches).

Of the 137 cars purchased, Orange County Transportation Authority (OCTA) directly paid for 59 cars for their Fullerton to Laguna Niguel expansion project; Riverside County Transportation Commission (RCTC) paid for 17 cars for their Perris Valley Line expansion project; and SANBAG paid for 3 cars for non-specific uses. The balance of cars purchased was paid for using the SCRRA "All-share Formula", which distributes costs amongst the member agencies for system-wide expenses. The member agencies contributed various local, state, and federal

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.
CRTC1306b-jrf
Attachments:
http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2013/crtc1306/AgendaItems/CRTC1306b1-jrf.pdf

funds for a total of $273.8 million with Los Angeles County Metropolitan Transportation Authority (LACMTA) paying Ventura County Transportation Commission's (VCTC) share. SANBAG's share, including the 3 cars purchased for non-specific uses, was approximately 16% ($44 million).

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

Rotem Car Reconciliation – Distribution of Costs

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

To date, RCTC has paid their reconciliation share in full; VCTC has paid nearly $2 million of their reconciliation share; and LACMTA has committed to paying their reconciliation share contingent upon all other member agencies commitment to reconcile. Based on a staff report recommendation and MOU between SCRRA and OCTA, approved at the October 14, 2011 SCRRA Board Meeting (included as Attachment A), the member agencies have agreed that the reconciliation can come from direct contributions to specific shared projects or simply by member agencies assuming portions of OCTA's annual capital budget contribution.

For each weekday, SCRRA operates 37 consists with a total of 195 cars, that make up 169 trains. A consist is the make-up of each train. Rotem cars are safer as compared to the Bombardier cars previously purchased, due mostly to crash energy management systems. Generally, this is a system within each car that absorbs impact energy. Due to these additional safety features, each consist, at a minimum, is comprised of one (1) Rotem cab car at the end of the each train and one (1) Rotem coach car behind the locomotive. (A cab car is used in the "push" mode with a compartment and duplicate train controls for the engineer.) In

general, all Metrolink trains run in the "pull" mode coming out of Los Angeles Union Station with the locomotive in the lead and in the "push" mode with the cab car running at the front of the train headed towards Los Angeles. Since there are no plans or funding to purchase additional Rotem cars, and once all 137 Rotem cars are put into service, 58 of the existing Bombardier cars will be needed to complete train consists. As a result of purchasing the Rotem cars and restrictions on selling most of the equal amount of Bombardier cars, SCRRA has begun to store the Bombardier cars throughout the Metrolink system. SCRRA is also exploring leasing as many Bombardier cars as possible.

The reconciliation for the purchase of 22 Rotem cars is based on the core concept that the Metrolink service is a partnership and that all cars purchased are part of the entire 512 mile Metrolink system. A train that starts the day in Riverside may travel to Los Angeles, then through Orange County, then through the Inland Empire ultimately terminating in San Bernardino. The next day that same train set will travel on different routes. These "cycles" are choreographed to meet the service commitments of the schedule and to also make sure the equipment is properly cleaned and maintained. In addition, the number of Rotem cars within a train consist are not always the same, other than the basic requirement of two (2) Rotem cars per consist. Individual cars are also "cycled" out of service depending on maintenance and inspection requirements. Thus the concept that one (1) member agency funds a discrete asset is counter to how that asset is utilized.

SANBAG staff completed an analysis to determine the number of Rotem cars utilized by the County of San Bernardino, taking into account the system wide "cycling" of train consists and cars as discussed above. Based on this analysis, the County of San Bernardino uses 17 Rotem cars on any given weekday. To date, SANBAG has only paid for 13 Rotem cars, 3 directly and 10 through the All-share Formula. Reconciliation of $6.04 million to OCTA, based on the All-share Formula distribution for reconciliation of the 22 cars, will add three additional cars paid by SANBAG, bringing the total to 16.

Based on the analysis discussed above, staff recommends that SANBAG reimburse OCTA in an amount of $6,041,376 for Rotem cars purchased by SCRRA. Reconciliation will occur by SANBAG assuming responsibility for approximately $2 million of OCTA's annual member share of the SCRRA capital budget from Fiscal Year 2013/14 through 2015/16.

Financial Impact: Reimbursement to OCTA for Rotem cars will cost a total of $6,041,376 and will be reconciled by assuming an annual portion of approximately $2 million per year of OCTA's contribution to SCRRA's capital budget over three (3) years. Pending approval of the reimbursement plan, the specific allocation will be presented to the Board with the overall SCCRA fiscal year budget allocations.

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

Responsible Staff: Justin Fornelli, Chief of Transit and Rail Programs

CRTC1306b-jrf

METROLINK

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

TRANSMITTAL DATE: October 7, 2011

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

TO: Board of Directors

FROM: Chief Executive Officer

SUBJECT: Rotem Car Reconciliation

Issue

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

Recommendation

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

Alternative

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

Background

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

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

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

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

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

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

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

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

Budget Impact

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

Prepared by: Gray Crary, Chief Strategic Officer

John E. Fenton

JOHN E. FENTON
Chief Executive Officer

METROLINK.

Southern California Regional Rail Authority

September 2, 2011

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

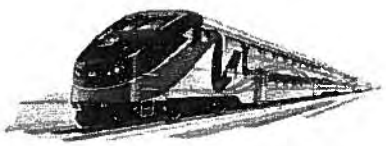
Dear Mr. Kempton,

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

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

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

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



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

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

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

Sincerely,

John E. Fenton

JOHN E. FENTON
Chief Executive Officer

cc: Member Agency CEOs
Richard Katz

METROLINK

Rotem Car Re-conciliation

(All Cars In System Service)

August 2011

Rotem Trailer Cars	
Base Price	$1.840
Insurance	$0.020
Freight Cost	$0.047
Total per car	$1.907
Total Reimbursement for 22 Cars	***$41.954***

All-Share Ratio	
LACMTA	47.50%
OCTA	19.80%
SANBAG	14.40%
RCTC	11.10%
VCTC	7.20%
Total	**100%**

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

Member Agency	Total Due	Cash (a)	Rehab (b)	Costs EMF Phase II - (C)	Express Trains	fn4	Total Paid
VCTC	$3.022	$2.000	$1.022	$0.000	$0.000		$3.022
OCTA	$8.306						
LACMTA	$19.929		$8.125	$0.744	$11.060	d	$19.929
SANBAG	$6.041		$3.180	$0.573	$2.288	e	$6.041
RCTC	$4.657		$4.413	$0.244	$0.000		$4.657
Total	$41.955	$2.000	$16.740	$1.561	$13.348		$33.649

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

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

(c) Cost share formula for EMF Phase II: LA 47.68%, SB 36.72%, RS 15.58%.
Shares relate to train miles by agency over affected segments (minus OCTA).

(d) LACMTA contribution for trailer cars for express service to Antelope Valley (3 Trailer 1 spare) -AND- 60% of 3 SB Express Trailers

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

5-Year Payback

(all values given in millions of dollars)

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

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

DRAFT

MEMORANDUM OF UNDERSTANDING

BETWEEN

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

AND

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

FOR

ROTEM RAIL CARS REIMBURSEMENT

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

RECITALS:

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

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

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

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

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

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

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

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

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

UNDERSTANDING

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

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

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY	**ORANGE COUNTY TRANSPORTATION AUTHORITY**
By: _____	By: _____
John E. Fenton	Will Kempton
Chief Executive Officer	Chief Executive Officer

DRAFT

Governments
SANBAG
Working Together

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 14

Date: June 20, 2013

Subject: Financial Commitment to the Southern California Regional Rail Authority for Fiscal Year 2013/2014

Recommendation:* That the Committee recommend the Board approve the following:

1. Approve Fiscal Year 2013/2014 operating assistance allocation of $11,442,000 in Valley Local Transportation Funds to Southern California Regional Rail Authority.

2. Approve Fiscal Year 2013/2014 capital assistance allocation of $3,634,500 in Federal Transit Administration 5309 and 5337 funds with local match to be funded from Toll Credits.

3. Approve Fiscal Year 2013/2014 capital assistance allocation of $2,000,000 in Federal Transportation Administration 5337 funds to Southern California Regional Rail Authority for the reimbursement of cost associated with the purchased of Rotem cars originally funded by Orange County Transportation Authority, provided the overall reimbursement plan was approved in the preceding agenda item.

Background: The Southern California Regional Rail Authority (SCRRA) Joint Powers Agreement requires that a preliminary budget be presented to the member

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

CRTC1306d-mmm

http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2013/crtc1306/AgendaItems/CRTC1306a1-mmm.doc
http://portal.sanbag.ca.gov/mgmt/committee/commuter/crtc2013/crtc1306/AgendaItems/CRTC1306d2-mmm.pdf

agencies by May 1st of each year. On April 26, 2013 the SCRRA board authorized the release of the Fiscal Year 2013/2014 preliminary budget, referenced here as "SCRRA Special Board". Adoption of the final budget is scheduled for June 28, 2013, and is contingent upon each of the five (5) member agencies approving their financial contribution for the fiscal year. The member agencies include SANBAG, Riverside County Transportation Commission (RCTC), Orange County Transportation Authority (OCTA), Los Angeles County Metropolitan Transportation Authority (LACMTA), and the Ventura County Transportation Commission (VCTC).

The proposed preliminary SCRRA budget for the Fiscal Year 2013/2014 is $245.2 million consisting of $211.4 million for operations and $33.8 million for capital rehabilitation projects.

SANBAG's member agency share of the Fiscal Year 2013/2014 capital budget is $3,634,500 and is funded with a combination of remaining Fiscal Year 2012/2013 Federal Transit Administration (FTA) 5309 funds and Fiscal Year 2012/2013 FTA 5337 funds.

Additionally, by separate SANBAG Board action, staff is requesting approval to reimburse SCRRA $6 million over a three year period for costs previously incurred by OCTA for the purchase of Rotem passenger cars. The proposed preliminary budget reflects a reimbursement of $2 million from SANBAG to SCRRA for the Rotem passenger cars resulting in a net deduction to OCTA's share of Fiscal Year 2013/2014 capital cost. Recommendation number three, formalizes the allocation of the $2 million for Fiscal Year 2013/2014 contingent upon approval of the overall reimbursement plan by the SANBAG Board.

The Fiscal Year 2013/2014 operations budget amount of $211.4 reflects an increase of 7.8% over the Fiscal Year 2012/2013 operations budget amount of $196.1 million. SANBAG's member agency share of the Fiscal Year 2013/2014 Operation budget is $11.447 million which is included in the approved SANBAG Fiscal Year 2013/2014 budget and funded with Valley Area Local Transportation Funds (LTF).

Member agency contributions towards operations represent the difference between the total cost of operations and all available revenue. The main increase in the total operations budget, approximately $8.3 million, is attributed to the transition of Positive Train Control (PTC) from a grant funded capital cost to a reoccurring operations cost. Two other key operations cost increases include contractual increases from the five main contracts which include rate escalators and costs associated to the operation of the Eastern Maintenance Facility (EMF).

The increase in member agency subsidy was identified as a source of concern by the members of the SCRRA Technical Advisory Committee (TAC). One of the solutions proposed by the TAC to offset the increase in member agency subsidy was a fare increase. The amounts presented represent a budget based on the SCRRA Board approving a five percent (5%) fare increase and an assumed increase of 2% in ridership. Should the SCRRA Board not approve this recommendation, SANBAG staff will provide a revised budget to the SANBAG Board for discussion to increase contribution.

SANBAG typically funds most, if not all, of its member agency operating subsidy with Valley LTF. LTF is a one of two transit-specific fund types included under the State Transportation Development Act (TDA). In the Valley, these funds are only used for transit purposes. LTF is the most flexible funding source available to fund operations costs. The other transit funding sources available to the Valley are either restrictive in nature or ineligible to use as a funding source for SCRRA operations.

From a cash flow standpoint SANBAG can financially afford the additional subsidy request in the current Fiscal Year without adversely affecting the transit and rail program as it is currently constituted. However, there is concern by SANBAG staff that without a proper short range transit plan (or SCRRA agency strategic plan) to use for future budgeting, the revenue stream may not be large enough to support all of the needs in the San Bernardino Valley.

Financial Impact: This item is consistent with the adopted SANBAG Fiscal Year 2013/2014 budget. Currently staff has budgeted $11.5 million of LTF Valley funds for operations which will pass through SANBAG financials.

The $5.7 million of FTA 5337 and 5309 funds million will not pass through SANBAG financials as we are not currently an FTA grantee. These monies will be transferred from FTA to SCRRA directly with SANBAG responsible for allocation of the funds to SCRRA and programming of the funds in the Federal Transportation Improvement Program.

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

Responsible Staff: Monica Morales, Transit Specialist

Governments
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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 15

Date: June 20, 2013

Subject: Review Financial Audits for Transit Operators

Recommendation:* That the Committee recommend the Board receive:

1. Omnitrans Comprehensive Annual Financial Report (CAFR) on the Annual Financial Audit for Fiscal Year 2011/2012
2. Mountain Area Regional Transit Authority (MARTA) Basic Financial Statements for Fiscal Year 2011/2012
3. Valley Transportation Services (Vtrans) Basic Financial Statements for Fiscal Year 2011/2012

Background: Public Utility Code 99245.2, Single Audit Act, and the U.S. Office of Management and Budget (OMB) require an annual audit be conducted of SANBAG and its affiliated organizations; Barstow Area Transit (BAT), Mountain Area Regional Transit Authority (MARTA), Morongo Basin Transit Authority (MBTA), Needles Area Transit (NAT), Omnitrans, Valley Transportation Services (Vtrans) and Victor Valley Transit Authority (VVTA). This item presents the results of audits performed on Omnitrans, MARTA, and Vtrans. The audit of the financial statements for Fiscal Year 2011/2012 was completed by two different firms. Mayer Hoffman McCann performed the annual audit for

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

CRTC1306c-mmm
http://portal.sanbag.ca.gov/mgmt/committee/gpc/gpc2013/gpc1306/AgendaItems/CRTC1306cA-mmm.pdf
http://portal.sanbag.ca.gov/mgmt/committee/gpc/gpc2013/gpc1306/AgendaItems/CRTC1306cB-mmm.pdf
http://portal.sanbag.ca.gov/mgmt/committee/gpc/gpc2013/gpc1306/AgendaItems/CRTC1306cC-mmm.pdf

Omnitrans and Vavrinek Trine and Day Co., LLC performed the annual audits for MARTA and Vtrans.

Each financial audit is included as additional material with the board packet and includes the following reports:

1. Audit of Operators Basic Financial Statements or CAFR
2. Single Audit Compliance Reports in accordance with Budget and Management (OMB) Circular A-133
3. Statement on Auditing Standards 114 (SAS 114)
4. Statement on Auditing Standards 115 (SAS 115)
5. National Transit Database (NTD)

Report/Letter	Omnitrans	MARTA	Vtrans
Basic Financial Report		X	X
CAFR	X		
Single Audit Report	X	X	
TDA/Prop 1B Report	X		
SAS 114 Letter	X	X	X
SAS 115 Letter	X		
NTD Report	X		

A management letter from Mayer Hoffman McCann for Omnitrans is attached (Attachments A1). It provides recommendations to improve the following controls:

- Enhance procedures over subrecipient monitoring and reporting to ensure information required by OMB Circular A-133 is obtained and key data elements are provided to subrecipients.
- Enhance security controls over information technology systems which include removing accounts for former employees.

Audit requirement SAS 114 (The Auditor's Communication with Those Charged with Governance) establishes standards and guidance on the auditor's communication with those charged with governance in relation to an audit of financial statements. It describes the role of communication, legal considerations, those who are charged with governance, management, matters to be communicated, the communication process, and documentation.

Audit requirement SAS 115 (Communicating Internal Control Related Matters Identified in an Audit) establishes standards and provides guidance on communicating matters related to an entity's internal control over financial

reporting identified in an audit of financial statements. It is applicable whenever an auditor expresses or disclaims an opinion on financial statements. The section defines the terms deficiency in internal control, significant deficiency, and material weakness; provides guidance on evaluating the severity of deficiencies in internal control identified in an audit of financial statements; and requires the auditor to communicate in writing, to management and those charged with governance, significant deficiencies and material weaknesses identified in an audit.

The SAS 114 and SAS 115 findings are indicated below. Attachments for each operator are also referenced:

- MARTA - Deficit unrestricted net assets of $56,715 primarily due to long term insurance liability. The deficit is expected to be funded through future earrings and no impact to operations is anticipated (Attachment B1).
- Vtrans – significant deficiency related to Internal Control (Attachment C1).
- Omnitrans - no significant matters to report (Attachment A2).

Single audit report includes report of internal control over financial reporting, Compliance, and schedule of expenditures of Federal Awards. The following significant deficiency and material weaknesses were identified by the Auditors:

- MARTA – Did not have formal year-end closing procedures. Subsequent to June 30, 2012, management implemented written procedures for year-end closing. Material weaknesses include documentation review or approval demonstrating performance of the control, implement policies and procedures for each of the key internal control system, bank reconciliations should be prepared reviewed, and approved timely, and adopt a comprehensive equipment management policy.
- Omnitrans – Develop and implement application and award procedures to ensure that the information required by OMB is obtained from all subrecipients during the application and award process. Additionally, all key data elements will be transmitted and reported to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS).

  NTD report is an agreed upon procedure on data contained in the Federal Funding Allocation Statistics Form for Omnitrans to evaluate compliance with the standards established by the Federal Transit Administration and NTD Form is in conformity with the requirements of Uniform System of Accounts and Records and reporting System, Final Rule, as specified in 49

CFR Part 630, Federal Register, January 15, 1993, and as presented in the 2012 Reporting Manual. The results of finding includes:

- Omnitrans - Develop and implement procedures to ensure that purchased transportation passenger miles entered into Trip Sheet Data Entry Database (Transtrack) are in agreement with the supporting trip sheets.

The financial statements for the transit operators includes an Independent Auditors' Report. Each transit operator received an unqualified opinion. The CAFR for Omintrans provides not only the basic financial statements, but also management discussion and analysis, required supplementary information, and supplementary information.

Effective Audit Fiscal Year 2011/2012, SANBAG procured Vavrinek Trine and Day Co., LLC as the new auditor for the transit operators (excluding Omnitrans). The previous auditor Miers & Miers provided audit services since 1992. This change created challenges for the operators since it was a new process for them. Typically the audits are completed within 180 days after the end of the fiscal year. The transition to the new auditor required a 90 day extension. The Omnitrans audit was completed by the December deadline. MARTA and Vtrans were able to meet this extension deadline.

Barstow Area Transit, Needles Area Transit, Morongo Basin Transit Authority and Victor Valley Transit Authority are still in the process of completing their financial reports. Barstow Area Transit and Needles Area Transit audits are in process, MBTA financial statements are in the draft form, and VVTA financial reports are in draft form and single audit is in progress. Once these audits are completed, SANBAG staff will present and report them to SANBAG Board.

Financial Impact: This item has no financial impact to the SANBAG Fiscal Year 2012/2013 budget.

Reviewed By: This item was scheduled for reviewed by the General Policy Committee on June 12, 2013. The finance department has reviewed and approved this item.

Responsible Staff: Monica Morales, Transit Specialist and Hilda Flores, Accounting Manager

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Administrative and Finance Committee
Omnitrans
San Bernardino, California

Recommendations Regarding Internal Control

In planning and performing our audit of the financial statements of Omnitrans as of and for the year ended June 30, 2012, in accordance with auditing standards generally accepted in the United States of America, we considered Omnitrans' internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of Omnitrans' internal control. Accordingly, we do not express an opinion on the effectiveness of the organization's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore material weaknesses or significant deficiencies may exist that were not identified.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency or combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. We did not identify any deficiencies in internal control that we consider to be material weaknesses, as defined above.

In addition, as a service to you, we identified other matters during our audit that provide you an opportunity to enhance your existing internal controls. The matters identified below are provided as recommendations for your consideration and are not considered to be material weaknesses or significant deficiencies in internal control.

(1) Enhancing Procedures Over Subrecipient Monitoring and Reporting

For all federal sub-awards, Omnitrans did not provide pertinent federal award information details (CFDA Title and number, award name and number, etc.) to its subrecipients as required by OMB Circular A-133.

For sub-awards made on or after October 1, 2010, Omnitrans did not obtain the subrecipient's DUNS number during the subrecipient application and award process as required by 2 CFR Section 25.110 and Appendix A to 2 CFR part 25.

For non-ARRA sub-awards in excess of $25,000, Omnitrans did not enter key data elements of the sub-award into the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS). A requirement under the Federal Funding Accountability and Transparency Act (Transparency Act), as amended by Section 6202(a) of the Government Funding Transparency Act of 2008) is that non-ARRA subawards over $25,000 must be reported in the FSRS. The Information is to be reported in FSRS no later than the last day of the month following the month in which the award or the modification was signed.

Program personnel were not aware of these reporting requirements. Failure to obtain the DUNS number and ensure that all subrecipients are entered into FSRS could result in inaccurate reporting of subrecipient awards and expenditures.

Recommendation

We recommend that Omnitrans develop and implement subrecipient application and award procedures to ensure that the information required by OMB Circular A-133 is obtained from the subrecipient during the application process, and that the key data elements are provided to subrecipients and reported in FSRS by the end of the month following the month in which the award was made.

Management Response

As recommended, Omnitrans will develop and implement application and award procedures to ensure that the information required by OMB Circular A-133 is obtained from all subrecipients during the application and award process. Additionally, all key data elements will be transmitted and reported on the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS).

(2) Need for Enhanced Security Controls over Information Technology Systems

Access controls limit or detect inappropriate access to computer resources, thereby protecting them from unauthorized modification, loss and disclosure. Logical access controls require users to authenticate themselves (through the use of secret passwords or other identifiers) and limit the files and other resources that authenticated users can access and the actions that they can execute. Without adequate access controls, unauthorized individuals, including outside intruders and former employees, can surreptitiously read and copy sensitive data and make undetected changes or deletions for malicious purposes or personal gain. In addition, authorized users can intentionally or unintentionally read, add, delete, modify, or execute changes that are outside their span of authority. Inadequate access controls diminish the reliability of computerized data and increase the risk of destruction or inappropriate disclosure of data.

During our review of network and SAP accounts, we noted 5 former employees within active network accounts and 3 former employees with active SAP accounts. Omnitrans

IT indicated the accounts remain active by request by the departmental directors in order to access information from their accounts. However, the accounts result in a weakness in the security posture of the network. The accounts can be construed as "shared" accounts that are not directly associated to a current employee.

During our prior year review of password configurations for users logging onto the network, we noted certain security policies and procedures could be enhanced to provide better security over the network processing environment. It was indicated the password configurations were updated to be more in line with industry best practice. However, we noted additional areas where the password required could be further enhanced. Specifically, we noted password complexity requirements were not enabled. In addition, we noted the minimum password age was set to 0. Without a minimum password age set to greater than 0, users can cycle through passwords repeatedly until they get to an old favorite. Included below are generally accepted industry best practice password configurations:

- A minimum character length, at least 8 characters, should be required for passwords.
- Passwords should be required to be changed periodically, between 30 to 90 days.
- Passwords should be required to contain both alphanumeric and special characters.
- Use of old passwords (for example, within 6 generations) should be prohibited.
- Unsuccessful attempts to login should be limited to between 3 and 5 attempts.
- Individual users should be uniquely identified rather than having users within a group share the same ID or password; generic user IDs and passwords should not be used.

Recommendation

We recommend Omnitrans remove accounts for former employees. If this is not feasible, we recommend Omnitrans implement additional security controls over the accounts, including monitoring controls. In addition, we recommend Omnitrans enhance its user access (password) controls to be more in line with industry best practice.

Management Response

As recommended Omnitrans will implement additional security controls over the accounts, including monitoring controls. Additionally, Omnitrans has begun steps to enhance its user access (password) controls by implementing the following:

1. Password length has to be 8 characters or more.
2. Password has to include combination of alpha and numeric characters.
3. User cannot use the previous 6 passwords.
4. User cannot recycle old password within the 30 days window.
5. User password will expire every 60 days.

Administrative and Finance Committee
Omnitrans
San Bernardino, California

Omnitrans' written responses to the matters identified in our audit were not subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on them.

This communication is intended solely for the information and use of the management, those charged with governance, others within Omnitrans, and agencies that provided federal financial assistance to Omnitrans and is not intended to be and should not be used by anyone other than these specified parties.

Mayer Hoffman McCann P.C.

Irvine, California
October 31, 2012

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Administrative and Finance Committee
Omnitrans
San Bernardino, California

We have audited the financial statements of Omnitrans for the year ended June 30, 2012, and have issued our report thereon dated October 31, 2012. Professional standards require that we provide you with the following information related to our audit.

Our Responsibility under U.S. Generally Accepted Auditing Standards and OMB Circular A-133

Our responsibility, as described by professional standards, is to express an opinion about whether the financial statements prepared by management with your oversight are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit of the financial statements does not relieve you or management of your responsibilities.

Our responsibility is to plan and perform the audit to obtain reasonable, but not absolute, assurance that the financial statements are free of material misstatement. In planning and performing our audit, we considered Omnitrans' internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide assurance on the internal control over financial reporting. We also considered internal control over compliance with requirements that could have a direct and material effect on a major federal program in order to determine our auditing procedures for the purpose of expressing our opinion on compliance and to test and report on internal control over compliance in accordance with the U.S. Office of Management and Budget (OMB) Circular A-133.

As part of obtaining reasonable assurance about whether Omnitrans' financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grants, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit. Also, in accordance with OMB Circular A-133, we examined, on a test basis, evidence about Omnitrans' compliance with the types of compliance requirements described in the OMB Circular A-133 Compliance Supplement applicable to its major federal program for the purpose of expressing an opinion on Omnitrans' compliance with those requirements. While our audit provides a reasonable basis for our opinion, it does not provide a legal determination on Omnitrans' compliance with those requirements.

We are responsible for communicating significant matters related to the audit that are, in our professional judgment, relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures specifically to identify such matters.

Planned Scope and Timing of the Audit

Audit fieldwork was substantially completed by September 21, 2012. We performed the audit according to the planned scope and timing previously communicated to you in our letter dated August 13, 2012.

Significant Audit Findings

We reported to you in our single audit report on federal awards that our audit disclosed no material weaknesses in internal control. Other matters deserving your attention are reported in findings 2012-1 in the single audit report and in a separate letter addressed to you dated October 31, 2012.

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. We will advise management about the appropriateness of accounting policies and their application. The significant accounting policies used by Omnitrans are described in Note 1 to the financial statements. As described in Note 1 to the financial statements, Omnitrans changed accounting policies related to the reporting of deferred outflows of resources, deferred inflows of resources and net position by implementing Statement of Governmental Accounting Standards Board (GASB) No. 63, "Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position", in 2012. Implementing this GASB Statement did not result in any cumulative adjustment as of the beginning of the year. There are no significant transactions that have been recognized in the financial statements in a different period than when the transaction occurred.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected.

Examples of significant judgments and estimates reflected in Omnitrans' financial statements include:

- Judgments involving the useful lives and depreciation methodology to use for capital assets; and

- Judgments concerning whether an accrual for incurred but not reported claims for workers' compensation and general liability should be estimated and recorded at year end.
- Judgments involving the fair value and effectiveness of derivative investments associated with hedging transactions to stabilize the cost of fuel for buses.

We evaluated each of the significant judgments and estimates and found them to be reasonable and based upon supported documentation and/or reports from consultants specializing in the related field.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in performing and completing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. To our knowledge, no misstatements were identified during our audit.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting or auditing matter, whether or not resolved to our satisfaction that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter dated October 31, 2012.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to Omnitrans' financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Administrative and Finance Committee
Omnitrans
San Bernardino, California

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as Omnitrans' auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

This information is intended solely for the use of the Administrative and Finance Committee and management of Omnitrans and is not intended to be and should not be used by anyone other than these specified parties.

Irvine, California
October 31, 2012

Vavrinek, Trine, Day & Co., LLP
Certified Public Accountants

VALUE THE DIFFERENCE

Board of Directors
Mountain Area Regional Transit Authority
Big Bear Lake, California

We have audited the financial statements of the Mountain Area Regional Transit Authority (MARTA) for the year ended June 30, 2012. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards, *Government Auditing Standards* and OMB Circular A-133, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our engagement letter. Professional standards also require that we communicate to you the following information related to our audit.

Significant Audit Findings

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by MARTA are described in Note 1 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the year. We noted no transactions entered into by MARTA during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the financial statements were:

- Management's estimate of the depreciation of capital assets is based upon the estimated useful lives of the related capital assets.
- Management's estimate of compensated absences liability is based upon the vacation leave balance and pay rate of all eligible employees
- Management's estimate of the self-insurance liabilities is based upon the annual statement provided by an external self-insurance administrator
- Management's footnote disclosure on the employee pensions and deferred compensation plan is based on executed agreements between MARTA and the pension plan and deferred compensation plan providers

We evaluated the key factors and assumptions used to develop the estimates in determining that they are reasonable in relation to the financial statements taken as a whole.

Certain financial statement disclosures are particularly sensitive because of their significance to financial statement users. The most sensitive disclosures affecting the financial statements were:

- The disclosure of deficit unrestricted net assets in Note 12 to the financial statements. As of June 30, 2012, MARTA reported a deficit of $56,715. Management indicated that the deficit was primarily due to the long term insurance liability described in Note 7 to the financial statements. The deficit is expected to be funded through future earnings. Management asserted that no impact to operations is anticipated.

The financial statement disclosures are neutral, consistent, and clear.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. The misstatements noted below were corrected by management:

- Compensated absences were overstated by $5,834 as of June 30, 2012.
- Self insurance liabilities were overstated by $24,489 as of June 30, 2012.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter dated March 22, 2013.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the Authority's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as MARTA's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

Other Matters

With respect to the supplementary information accompanying the financial statements, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America, the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves.

This information is intended solely for the use of the Board of Directors and management of MARTA and is not intended to be and should not be used by anyone other than these specified parties.

Vavrinek, Trine, Day & Co., LLP

Rancho Cucamonga, California
March 22, 2013

Vavrinek, Trine, Day & Co., LLP
Certified Public Accountants

VALUE THE DIFFERENCE

INDEPENDENT AUDITORS' REPORT

To the Board of Directors
Mountain Area Regional Transit Authority
Big Bear Lake, California

We have audited the accompanying financial statements of the Mountain Area Regional Transit Authority (MARTA) as of and for the year ended June 30, 2012. These financial statements are the responsibility of MARTA's management. Our responsibility is to express an opinion on these financial statements based upon our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of MARTA's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to previously present fairly, in all material respects, the financial position of MARTA as of June 30, 2012 and the changes in financial position and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued our report dated March 22, 2013, on our consideration of MARTA's internal control over financial reporting and on our tests of its compliance with certain provisions of law, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

Management has omitted management's discussion and analysis that accounting principles generally accepted in the United States of America require to be presented to supplement the basic financial statements. Such missing information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of the financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. Our opinion on the basic financial statements is not affected by this missing information.

Vavrinek, Trine, Day & Co., LLP

Rancho Cucamonga, California
March 22, 2013

INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*

To the Board of Directors
Mountain Area Regional Transit Authority
Big Bear Lake, California

We have audited the basic financial statements of the Mountain Area Regional Transit Authority (MARTA) as of and for the year ended June 30, 2012 and have issued our report thereon dated March 22, 2013. Our report included an explanatory paragraph regarding MARTA's omission of management's discussion and analysis. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

Management of MARTA is responsible for establishing and maintaining effective internal control over financial reporting. In planning and performing our audit, we considered MARTA's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of MARTA's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of MARTA's internal control over financial reporting.

Our consideration of internal control over financial reporting was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control over financial reporting that might be significant deficiencies or material weaknesses and therefore, there can be no assurance that all deficiencies, significant deficiencies, or material weaknesses have been identified. However, as described in the accompanying schedule of findings and questioned costs, we identified certain deficiencies in internal control over financial reporting that we consider to be material weaknesses and another deficiency that we consider to be a significant deficiency.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. We consider the deficiencies described in the accompanying schedule of findings and questioned costs as items 2012-01, 2012-02, and 2012-04 to be material weaknesses.

A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the deficiency described in the accompanying schedule of findings and questioned costs as item 2012-03 to be a significant deficiency.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether MARTA's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, including Section 6667 of Part 21 of the California Code of Regulations and the allocation instructions of San Bernardino Associated Governments, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

MARTA's responses to the findings identified in our audit are described in the accompanying schedule of findings and questioned costs. We did not audit MARTA's responses and, accordingly, we express no opinion on them.

This report is intended solely for the information and use of MARTA's Board, management, federal agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Vavrinek, Trine, Day & Co., LLP

Rancho Cucamonga, California
March 22, 2013

Vavrinek, Trine, Day & Co., LLP
Certified Public Accountants

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INDEPENDENT AUDITORS' REPORT ON COMPLIANCE WITH REQUIREMENTS THAT COULD HAVE A DIRECT AND MATERIAL EFFECT ON EACH MAJOR PROGRAM, INTERNAL CONTROL OVER COMPLIANCE AND THE SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS IN ACCORDANCE WITH OMB CIRCULAR A-133

To the Board of Directors
Mountain Area Regional Transit Authority
Big Bear Lake, California

Compliance

We have audited the Mountain Area Regional Transit Authority's (MARTA) compliance with the types of compliance requirements described in the *OMB Circular A-133 Compliance Supplement* that could have a direct and material effect on each of MARTA's major federal programs for the year ended June 30, 2012. MARTA's major federal programs are identified in the summary of auditors' results section of the accompanying schedule of findings and questioned costs. Compliance with the requirements of laws, regulations, contracts, and grants applicable to each of its major federal programs is the responsibility of MARTA's management. Our responsibility is to express an opinion on MARTA's compliance based on our audit.

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and OMB Circular A-133 *Audits of States, Local Governments and Non-Profit Organizations*. Those standards and OMB Circular A-133 require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about MARTA's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion. Our audit does not provide a legal determination of MARTA's compliance with those requirements.

In our opinion, MARTA complied, in all material respects, with the compliance requirements referred to above that could have a direct and material effect on each of its major federal programs for the year ended June 30, 2012. However, the results of our auditing procedures disclosed an instance of noncompliance with those requirements, which is required to be reported in accordance with OMB Circular A-133 and which is described in the accompanying schedule of findings and questioned costs as item 2012-05.

Internal Control Over Compliance

Management of MARTA is responsible for establishing and maintaining effective internal control over compliance with the requirements of laws, regulations, contracts, and grants applicable to federal programs. In planning and performing our audit, we considered MARTA's internal control over compliance with the requirements that could have a direct and material effect on a major federal program to determine the auditing procedures for the purpose of expressing our opinion on compliance and to test and report on internal control over compliance in accordance with OMB Circular A-133, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of MARTA's internal control over compliance.

A *deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. *A material weakness in internal control over compliance* is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses, as defined above. However, we identified a deficiency in internal control over compliance that we consider to be a significant deficiency as described in the accompanying schedule of findings and questioned costs as item 2012-05. A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Schedule of Expenditures of Federal Awards

We have audited the financial statements of MARTA as of and for the year ended June 30, 2012, and have issued our report thereon dated March 22, 2013, which contained an unqualified opinion on those financial statements. Our report included an explanatory paragraph regarding MARTA's omission of management's discussion and analysis. Our audit was performed for the purpose of forming our opinion on the financial statements that collectively comprise MARTA's basic financial statements. The accompanying schedule of expenditures of federal awards is presented for purposes of additional analysis as required by OMB Circular A-133 and is not a required part of the basic financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the schedule of expenditures of federal awards is fairly stated in all material respects in relation to the financial statements as a whole.

MARTA's responses to the findings identified in our audit are described in the accompanying schedule of findings and questioned costs. We did not audit MARTA's responses and, accordingly, we express no opinion on them.

This report is intended solely for the information and use of MARTA's Board, management, federal awarding agencies, and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Vavrinek, Trine, Day & Co., LLP

Rancho Cucamonga, California
March 22, 2013

MOUNTAIN AREA REGIONAL TRANSIT AUTHORITY

SCHEDULE OF FINDINGS AND QUESTIONED COSTS

FOR THE YEAR ENDED JUNE 30, 2012

II. FINANCIAL STATEMENT FINDINGS

Finding 2012-01

INTERNAL CONTROLS

Criteria:

For certain internal controls, such as a review or an approval, a signature demonstrating the performance of the control should be evident.

Condition:

While testing various transaction cycles, we noted that certain internal controls were asserted by management to be implemented; however the evidence that the internal control was performed could not be presented.

Context:

The conditions noted above were identified during testing of various transaction cycles and inquiry with personnel throughout the engagement.

Effect:

The internal control environment is weakened.

Cause:

The performance of certain internal controls were not documented.

Recommendation:

MARTA should document the performance of internal controls through a signature, initial, date, or other method to ensure that the control was performed and to demonstrate the timing of the completion of the control.

View of Responsible Official and Planned Corrective Actions:

To better improve the performance of internal controls and to provide evidence that a review or approval of a document has taken place, management has implemented the practice whereby employees performing these reviews, approvals and data entry of financial documents will include their signature or initials and date that the action took place.

MOUNTAIN AREA REGIONAL TRANSIT AUTHORITY

SCHEDULE OF FINDINGS AND QUESTIONED COSTS

FOR THE YEAR ENDED JUNE 30, 2012

II. FINANCIAL STATEMENT FINDINGS

Finding 2012-02

POLICIES AND PROCEDURES

Criteria:

MARTA should have policies and procedures for each of the key internal control systems. These policies should address:

- Control Environment; tone at the top, including the oversight of those charged with governance.
- Risk Assessment, the identification of risk, the process and/or procedures to address and manage risks (including fraud risks).
- Information and Communication; the policies should address how information is captured for financial reporting; and how MARTA will ensure effective communication will be maintained at all levels relating to the flow of information for financial and/or compliance reporting.
- Control Activities; outlining the specific and detailed procedures which will be followed for each internal control system.

Condition:

MARTA does not have a comprehensive set of formal policies and procedures. We have noted that many of the specific procedures followed by MARTA are based upon historical processes passed down verbally from employee to employee. Some of the specific areas which will need to have formal policies and procedures developed include: fraud, ethics, cash receipting, disbursements, payroll, budget, information technology, disaster recovery, capital assets, federal and state grant reporting, financial reporting, and year end closing. We noted the processes with formal written policies and procedures include capital assets and procurement which have not been updated since 1999 and 2001, respectively. As such policies and procedures over capital assets and procurement should be reviewed and updated as necessary.

Context:

The conditions noted above were identified during testing of various transaction cycles and inquiry with personnel throughout the engagement.

Effect:

The internal control environment is weakened. MARTA is at risk if certain employees were to leave as many of the processes are focused around specific employees that possess the detailed understanding of the systems.

Cause:

MARTA has not reviewed and/or documented in writing several of the key business processes. In addition, MARTA has not provided cross training for some of these areas.

MOUNTAIN AREA REGIONAL TRANSIT AUTHORITY

SCHEDULE OF FINDINGS AND QUESTIONED COSTS

FOR THE YEAR ENDED JUNE 30, 2012

II. FINANCIAL STATEMENT FINDINGS

Recommendation:

MARTA should begin the process of the review, development, documentation and implementation of policies and procedures. In addition, personnel should work though the same process to ensure that all business practices address appropriate risks, internal controls are properly designed and documented, staff are properly trained, and that cross training is taking place.

View of Responsible Official and Planned Corrective Actions:

MARTA management is committed to improving control environment, risk management, communication and training of policy and procedures in key areas and thereby improving MARTA's systems and procedures. Subsequent to June 30, 2012, various policies and procedures including ethics, cash handling, disbursements, payroll, budget, capital assets, financial reporting and year-end closing have been written and implemented. Staff has received copies and training in these policies and procedures. Annually, management will perform a review of the procedures and processes making updates as necessary.

Finding 2012-03

FINANCIAL REPORTING

Criteria:

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein and for the fair presentation of the financial statements in conformity with U.S. generally accepted accounting principles. This requires management to work through a year-end closing process to accumulate, reconcile, and summarize information for inclusion in the annual financial statements. The year-end closing process includes the review and/or reconciliation of all balances within MARTA's general ledger. Accounts must be reviewed for proper cutoff, classification and presentation. These processes should be complete before the external auditors begin the final fieldwork.

Condition:

MARTA did not have formal year-end closing procedures. As a result, the following deficiencies in the year end closing process were identified and recorded in the general ledger eight months after the fiscal year end, as follows:

- Compensated absences were not calculated correctly as of June 30, 2012.
- MARTA did not reconcile risk management liabilities relating to general liability and risk management per the general ledger to statements from the California Joint Powers Insurance Authority identifying liability balances at June 30, 2012.

MOUNTAIN AREA REGIONAL TRANSIT AUTHORITY

SCHEDULE OF FINDINGS AND QUESTIONED COSTS

FOR THE YEAR ENDED JUNE 30, 2012

II. FINANCIAL STATEMENT FINDINGS

Context:

The condition noted above was identified during testing of various accounts related to MARTA's year-end balances. MARTA did not have a comprehensive year-end closing process. In addition, personnel were not adequately trained on the year-end closing process.

Effect:

As a result of the year-end closing process that was used by MARTA, the financial information provided contained several material misstatements.

Cause:

MARTA does not perform a complete year-end close on a timely basis and does not maintain a comprehensive closing checklist or formalized policies and procedures to ensure that year-end accounting entries have been reported.

Recommendation:

As a result of the audit fieldwork MARTA began to address the above noted items. MARTA must continue to develop a comprehensive year-end closing process. This process should include detailed checklists to ensure that each financial statement area is reconciled, balanced and reviewed during the closing process. The closing process manual should also detail specific assignments, staff and timelines to complete the process. After each area has been closed by staff it should go through a review process to ensure accuracy. Each of these steps should be documented and signed off on the comprehensive checklist. In addition MARTA should provide staff training on the year-end closing process to ensure that all areas have been adequately addressed.

View of Responsible Official and Planned Corrective Actions:

Subsequent to June 30, 2012, management has implemented written procedures for year-end closing, which includes a checklist for review and entries. Staff has reviewed and has been trained on the detail of the steps specific to completing the process

Finding 2012-04

BANK RECONCILIATIONS

Criteria:

Bank reconciliations, reconciling the bank statements to the general ledger should be prepared, reviewed, and approved timely.

MOUNTAIN AREA REGIONAL TRANSIT AUTHORITY

SCHEDULE OF FINDINGS AND QUESTIONED COSTS

FOR THE YEAR ENDED JUNE 30, 2012

II. FINANCIAL STATEMENT FINDINGS

Condition:

We noted the bank reconciliations included items listed as reconciling that appeared to have cleared previously. We also noted that, in certain instances, the reconciled balance did not agree to the corresponding general ledger account balance.

Context:

MARTA maintains multiple bank accounts. The total cash balance on the reconciliation agreed to the total cash balance in the general ledger however, as noted in the condition above, the balances of certain individual accounts did not agree. The reconciliations also included detail that had cleared previously however had not been removed from the reconciliation.

Effect:

The risk of misstatement related to cash reconciliations is heightened.

Cause:

MARTA's procedures did not accurately reconcile cash to individual accounts and the review of the reconciliations was not documented.

Recommendation:

MARTA should enhance procedures to accurately reconcile cash to individual accounts and document the preparation, review, and approval of the reconciliations.

View of Responsible Official and Planned Corrective Actions:

A CPA firm has been hired by MARTA to do bank statement reconciliation of all accounts on a monthly basis, with documentation and review and approval being completed by the General Manager. This change is reflected in MARTA's Accounting Procedures.

MOUNTAIN AREA REGIONAL TRANSIT AUTHORITY

SCHEDULE OF FINDINGS AND QUESTIONED COSTS

FOR THE YEAR ENDED JUNE 30, 2012

III. FEDERAL AWARD FINDINGS AND QUESTIONED COSTS

Finding 2012-05

Program: Formula Grants for Other Than Urbanized Areas (includes ARRA)
CFDA No.: 20.509
Federal Grantor: U.S. Department of Transportation
Passed-through: State of California – California Department of Transportation
Award No.: Various
Award Year: Various
Compliance Requirement: Equipment and Real Property Management

Criteria:

The June 2012 Office of Budget and Management (OMB) Circular A-133 Compliance Supplement suggests that auditors obtain the entity's policies and procedures for equipment management and ascertain if they comply with the State's policies and procedures.

Condition:

MARTA does not have a comprehensive equipment management policy.

Questioned Costs:

None

Context:

The condition noted above was identified during our examination of the equipment management requirements of the program.

Effect:

As a result of the condition, there is an increased risk of noncompliance with equipment management provisions.

Cause:

MARTA does not have a comprehensive equipment management policy.

Recommendation:

We recommend that MARTA adopt a comprehensive equipment management policy.

Views of Responsible Officials and Planned Corrective Actions:

Management has implemented written policies and procedures for asset management (procurement policy, disposition of assets policy, and inventory tracking procedures) subsequent to June 30, 2012.

MOUNTAIN AREA REGIONAL TRANSIT AUTHORITY

SCHEDULE OF PRIOR YEAR AUDIT FINDINGS AND RESPONSES

FOR THE YEAR ENDED JUNE 30, 2012

Summarized below is the current status of all audit findings reported in the prior year audit's schedule of audit findings and questioned costs.

Financial Statement Findings

Finding No.	Area	Status of Corrective Action
2011-01	Internal Controls	Partially implemented. See current year finding 2012-01
2011-02	Policies and Procedures	Not implemented. See current year finding 2012-02
2011-03	Financial Reporting	Partially implemented. See current year finding 2012-03
2011-04	Capital Assets	Partially implemented. See current year finding 2012-02
2011-05	Risk Management	Not implemented. See current year finding 2012-03
2011-06	Bank Reconciliations	Not implemented. See current year finding 2012-04
2011-07	Statement of Economic Interests	Implemented

Federal Awards Findings

Finding No.	Program	CFDA No.	Compliance Requirement	Status of Corrective Action
2011-08	Formula Grants for Other than Urbanized Areas (Indirect)	20.509	Reporting	Implemented
2011-09	Formula Grants for Other than Urbanized Areas (Indirect)	20.509	Equipment and Real Property Management	Not implemented. See current year finding at 2012-05
2011-10	Formula Grants for Other than Urbanized Areas (Indirect)	20.509	Reporting	Implemented

Vavrinek, Trine, Day & Co., LLP
Certified Public Accountants

VALUE THE DIFFERENCE

INDEPENDENT AUDITORS' REPORT

Board of Directors
Valley Transportation Services
Upland, California

We have audited the accompanying statement of financial position of Valley Transportation Services (V-Trans), (a California nonprofit organization), as of June 30, 2012, and the related statements of activities, cash flows and functional expenses for the year then ended. These financial statements are the responsibility of V-Trans' management. Our responsibility is to express an opinion on these financial statements based upon our audits.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of V-Trans' internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of V-Trans as of June 30, 2012, and the respective changes in its net assets and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued a report dated March 13, 2013, on our consideration of V-Trans' internal control over financial reporting and on our tests of its compliance with certain provisions of law, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

Vavrinek, Trine, Day & Co., LLP

Rancho Cucamonga, California
March 13, 2013

Board of Directors
Valley Transportation Services
Upland, California

We have audited the financial statements of the Valley Transportation Services (VTrans) (a California nonprofit organization) for the year ended June 30, 2012. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our engagement letter. Professional standards also require that we communicate to you the following information related to our audit.

Significant Audit Findings

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by VTrans are described in Note 2 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the year. We noted no transactions entered into by VTrans during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the financial statements were:

- Management's estimate of the depreciation of capital assets is based upon the estimated useful lives of the related capital assets.

We evaluated the key factors and assumptions used to develop depreciation estimates in determining that they are reasonable in relation to the financial statements taken as a whole.

The financial statement disclosures are neutral, consistent, and clear.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter dated March 13, 2013.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the Authority's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as VTrans' auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

This information is intended solely for the use of SANBAG, the Board of Directors and management of VTrans and is not intended to be and should not be used by anyone other than these specified parties.

Vavrinek, Trine, Day & Co., LLP

Rancho Cucamonga, California
March 13, 2013

INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*

Board of Directors
Valley Transportation Services
Upland, California

We have audited the financial statements of the Valley Transportation Services (V-Trans), (a California nonprofit organization), (V-Trans) as of June 30, 2012, and have issued our report thereon, dated March 13, 2013. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States.

Internal Control over Financial Reporting

Management of V-Trans is responsible for establishing and maintaining effective internal control over financial reporting. In planning and performing our audit, we considered V-Trans' internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of V-Trans' internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of V-Trans' internal control over financial reporting.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies or material weaknesses and therefore, there can be no assurance that all deficiencies, significant deficiencies, or material weaknesses have been identified. However, as described in the accompanying schedule of findings and responses, we identified certain deficiencies in internal control over financial reporting that we consider to be material weaknesses and other deficiencies that we consider to be significant deficiencies.

A *deficiency in internal* control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. We did not identify any deficiencies that we consider to be material weaknesses.

A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the deficiency described in the accompany schedule of finding and response as item 2012-01 to be a significant deficiency.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether V-Trans' financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

V-Trans' responses to the findings identified in our audit are described in the accompanying schedule of findings and responses. We did not audit V-Trans' response and, accordingly, we express no opinion on them.

This report is intended solely for the information and use of the SANBAG, the Board of Directors, management, others within V-Trans, and officials of applicable state grantor agencies and is not intended to be, and should not be used by anyone other than these specified parties.

Vavrinek, Trine, Day & Co., LLP

Rancho Cucamonga, California
March 13, 2013

VALLEY TRANSPORTATION SERVICES
(A California Nonprofit Organization)

SCHEDULE OF FINDING AND RESPONSE
JUNE 30, 2012

The following finding represents a significant deficiency, material weakness, and/or instance of noncompliance related to the financial statements that are required to be reported in accordance with *Government Audit Standards.*

Finding 2012-01

Significant Deficiency

INTERNAL CONTROL – LACK OF SEGREGATION OF DUTIES

Criteria or Specific Requirement:

An element of effective internal controls is the proper segregation of duties. The basic premise of segregating duties is to prevent situations where an employee has the ability to perpetrate an error or irregularity and to conceal it as well. Proper segregation of duties provides for a system of checks and balances such that the functions by one employee are subject to review through the performance of the interrelated functions of another employee or management.

Condition Found:

We noted a lack of segregation of duties in the preparation of year end closing and adjusting journal entries, as no additional review are imposed on the prepared and posted journal entries in the general ledger. The monthly bank reconciliation process is also lacking adequate segregation of duties, as the external consultant is assigned with the task of compiling the bank reconciliations and booking the interest income journal entries in the general ledger without further management approval.

Context:

A fundamental concept in the design of an effective system of internal control is the segregation of duties.

Effect:

V-Trans' internal control system is weakened and adequate safeguards in preventing material misstatements in the financial statements are missing.

Cause:

V-Trans' current internal control system is not adequately designed to maintain a sufficient and effective level of segregation of duties.

Recommendation:

To strengthen the internal control system, we recommended that V-Trans implement procedures to ensure adequate of management review and approval for all accounting related processes.

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 16

Date: June 20, 2013

Subject: Fiscal Year 2013/2014 Transit Operator Funding Allocations

Recommendation:* That the Committee recommend the Board approve Fiscal Year 2013/2014 Transit Operator Funding Allocations, as indicated in Table 1, to the City of Barstow, City of Needles, Morongo Basin Transit Authority, Mountain Area Regional Transit Authority, Omnitrans, Victor Valley Transit Authority and Valley Transportation Services.

Background: San Bernardino Associated Government (SANBAG) staff has met with each of the transit operators to determine their funding needs for Fiscal Year 2013/2014. Table 1 outlines the proposed Fiscal Year 2013/2014 transit funding allocations for the individual transit operators aside from Southern California Regional Rail Authority (SCRRA). SCRRA allocations are addressed in separate Board actions. Measure I, Local Transportation Funds (LTF), and State Transit Assistance Funds (STAF) available for allocation to the individual transit operators are included as part of the proposed SANBAG Fiscal Year 2013/2014 Budget. The various other Federal Transit Administration (FTA), Congestion Mitigation and Air Quality (CMAQ), and Proposition 1B funds are received directly by the transit operators and, therefore, are not included in the proposed SANBAG Fiscal Year 2013/2014 Budget.

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

CRTC1306a-vj

Table 1

Operating Budget FY 2013/14

	Barstow[1]	MBTA	MARTA	Needles	Omnitrans	VVTA	VTrans
FTA 5307					$ 10,897,560		
FTA 5311	$ 250,176	$ 288,271	$ 214,235	$ 31,157		$ 213,002	
Measure I - S&D	$ 278,500	$ 104,268	$ 95,181	$ 11,000	$ 5,100,000	$ 682,310	$ 2,173,350
LTF[2]	$ 2,138,331	$ 2,620,024	$ 2,036,152	$ 179,721	$ 36,349,721	$ 13,989,028	
STAF-Operator		$ 34,999	$ 26,372		$ 1,150,817	$ 164,254	
MI - PDTMS[3]						$ 213,120	
Total	$ 2,667,007	$ 3,047,562	$ 2,371,940	$ 221,878	$ 53,498,098	$ 15,261,714	$ 2,173,350

Capital Budget FY 2013/14

	Barstow	MBTA	MARTA	Needles	Omnitrans	VVTA	VTrans
FTA 5307					$ 6,043,440	$ 3,556,757	
FTA 5339[4]					$ 3,406,336	$ 381,337	
CMAQ			$ 355,139		$ 5,197,506	$ 162,098	
LTF					$ 7,000,000		
STAF-Pop[5]		$ 24,306	$ 30,500	$ 256,460	$ 3,100,000	$ 2,128,000	
Prop 1B-PTMISEA					$ 2,798,942	$ 1,334,337	
Prop 1B Security					$ 128,566	$ 18,600	
Total		$ 24,306	$ 385,639	$ 256,460	$ 27,674,790	$ 7,581,129	
Grand Total	**$ 2,667,007**	**$ 3,071,868**	**$ 2,757,579**	**$ 478,338**	**$ 81,172,888**	**$ 22,842,843**	**$ 2,173,350**

[1]The LTF allocation to Barstow includes the unincorporated Colorado River LTF allocation for Big River service.
[2]The LTF allocations included under Operations reflect the total LTF available to the service area. Barstow, VVTA, MBTA and MARTA typically return a portion to the local jurisdictions for local street and road purposes pursuant to TDA Article 8. Additionally, the LTF amounts included under Operations may be used for either operating or capital expenses.
[3]Measure I (MI) - PDTMS allocation includes $168,365 from Victor Valley and $44,755 from North Desert.
[4]FTA 5339 allocation to Omnitrans includes revenue from FY 2012/13 and FY 2013/14.
[5]Use of STA-Pop for operations requires compliance with PUC Section 99314.6 efficiency requirements.

STAF-Population funds are distributed to the region based on population and to the transit operators based on need. The annual amount of STA-Population funds allocated to the various operators varies based on one-time capital needs and on-going capical needs. Included as part of the Fiscal Year 2013/2014 proposed allocations are three one-time allocations of Mountain/Desert apportioned STAF-Population funds. Staff is recommending approval of $2,000,000 to Victor Valley Transit Authority to assist with the purchase of five coach-style busses for their Fort Irwin service; $200,000 to the City of Needles for construction of a vehicle storage facility; and $30,500 to MARTA for vehicle maintenance equipment. Additionally, in December 2010, the Board approved the return of $7,000,000

unspent LTF to Omnitrans should they need it for the sbX project. Omnitrans has indicated a need for these funds which are included in Table 1 as a one-time allocation.

Prior to disbursement of LTF and STAF operators must submit their completed annual Transportation Development Act (TDA) audit for the previous fiscal year.

Financial Impact: Allocation of the pass-though LTF, STAF and Measure I funds are included in the proposed SANBAG Fiscal Year 2013/2014 Budget.

Reviewed By: This item is not scheduled for review by any other policy committee or technical advisory committee. The individual funding allocation plans have been reviewed by each transit operator.

Responsible Staff: Vanessa Jezik, Transportation Analyst

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 17

Date: June 20, 2013

Subject: Advancement of Fiscal Year 2013/2014 Local Transportation Funds to Omnitrans

Recommendation:* That the Committee recommend the Board authorize advanced disbursement of Fiscal Year 2013/2014 Local Transportation Funds allocated to Omnitrans to assist with an unforeseen cash flow disruption, contingent upon the availability of funding and removal of the indirect cost allocation of 3.27% currently being charged to the San Bernardino Transit Center.

Background: On April 19, 2013, SANBAG received notification from Omnitrans that the Amalgamated Transit Union (ATU) Local 1704 had objected to the referral of Federal Transportation Grant CA-90-Z009 in the amount of $15.3 million. Grant CA-90-Z009 is the federal funding that Omnitrans uses to fund Fiscal Year 2012/2013 Operating and Capital items on a reimbursement basis. The objection placed by ATU Local 1704 is part of a wider objection that the ATU has with the newly enacted Public Employees' Pension Reform Act of 2013, AB 340 (Furutani), Stats, 2012, Chapter 296 ("PEPRA") and has resulted in a processing delay for all Federal Transit Administration (FTA) grant applications within California.

Approximately $11.4 million of Grant CA-90-Z009 is related to on-going preventive maintenance operations costs. As of mid-May 2013, Omnitrans has expended approximately $10.1 million of funds which are to be reimbursed by Grant CA-90-Z009 and has a cash balance of approximately $11.3 million.

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA		SAFE		CMA	

Check all that apply.

CRTC1306d-cd

Omnitrans, like all other transit agencies that receive federal funds, must have a cash balance to cover immediate monthly expenses while awaiting reimbursement of federal funds. In December 2010, the Board directed staff to work with Omnitrans to account for and retain 2/12ths of its yearly operating budget for cash flow purpose which is approximately $11.5 million for Fiscal Year 2012/2013 and $11.9 million for Fiscal Year 2013/2014.

As a short-term mitigation measure, Omnitrans has indicated a need to have SANBAG advance a portion of their Fiscal Year 2013/2014 Local Transportation Fund (LTF) allocation as a result of the FTA grant funds being withheld. Omnitrans' Fiscal Year 2013/2014 LTF allocation amount is $36.34 million which is scheduled to be disbursed in four quarterly payments of $9.1 million. At this time it is estimated that approximately $3 million will need to be advanced to Omnitrans on top of their initial Fiscal Year 2013/2014 quarterly allocation amount of $9.1 million. Should the grant funds continue to be withheld through the second quarter of Fiscal Year 2013/2014 it is anticipated that the second quarter disbursement will be increased by $3 million as well.

The exact amount of funds that will be advanced to Omnitrans is currently unknown but in no event shall the total amount of LTF disbursed to Omnitrans exceed their Fiscal Year 2013/2014 LTF allocation amount of $36.34 million without further Board action. SANBAG disburses LTF funds one year in arrears (the funds accumulated in Fiscal Year 2012/2013 are disbursed in Fiscal Year 2013/2014) and has a sufficient LTF cash balance to expedite Omnitrans' Fiscal Year 2013/2014 LTF disbursement.

Additionally, the FTA has suspended distribution of two other Omnitrans grants including CA-04-0229 in the amount of $8,300,000 that is currently designated for the San Bernardino Transit Center and CA-95-X229 which is designated for the purchase of 40 Foot CNG Coaches, until the labor dispute is resolved. Construction of the San Bernardino Transit Center is scheduled to begin in early 2014 and does not have an immediate impact to Omnitrans' cash flow. Additionally, Omnitrans is delaying the purchase of the 40 Foot CNG Coaches until the labor dispute is resolved.

In order to advance the LTF funds to Omnitrans, SANBAG will require Omnitrans to remove the indirect cost allocation of 3.27% that is currently being charged to the San Bernardino Transit Center. The savings that will be realized by the removal of the 3.27% will go towards fully funding the San Bernardino Transit Center.

Financial Impact: This item has no financial impact on the current Fiscal Year 2012/2013 budget or proposed Fiscal Year 2013/2014 budget. Any funding that may be advanced to Omnitrans will come from their Fiscal Year 2013/2014 Local Transportation Fund allocation.

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

Responsible Staff: Casey Dailey, Transit Analyst

SANBAG Acronym List

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

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

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

San Bernardino Associated Governments

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MISSION STATEMENT

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

- Improve cooperative regional planning

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

- Strengthen economic development efforts

- Exert leadership in creative problem solving

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

Approved June 2, 1993
Reaffirmed March 6, 1996