



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

## **ADDITIONAL SUPPORT MATERIAL AGENDA ITEM NO. 7**

### **Board of Directors Meeting**

**October 2, 2013**

**10:00 a.m.**

#### **Location:**

San Bernardino Associated Governments  
Santa Fe Depot – SANBAG Lobby 1<sup>st</sup> Floor  
1170 West 3<sup>rd</sup> St., San Bernardino, CA

### **CONSENT CALENDAR**

#### **Administrative Matters**

##### **7. Assistant General Counsel Contract Amendment**

1. Approve the first amendment to legal services agreement C13036 with Robert D. Herrick to provide Assistant General Counsel legal services increasing the agreement amount by \$210,000 for a new not-to-exceed total of \$420,000 and extending the term to October 31, 2014, and authorize General Counsel to execute the agreement amendment on behalf of San Bernardino Associated Governments.
2. Approve Fiscal Year 2013/2014 Budget Amendment to increase Task Number 0120, Indirect-General, in the amount of \$79,000, and increase Task Number 0105, Indirect-Project Management in the amount of \$79,000 which will be funded by various funding sources through indirect cost allocation. **Eileen Monaghan Teichert**

**During the printing process, page number 3 of the agenda item and the Contract Summary Sheet were inadvertently omitted. Please find agenda item number 7 attached in its entirety.**



- 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:** October 2, 2013

**Subject:** Assistant General Counsel Contract Amendment

- Recommendation:**\*
1. Approve the first amendment to legal services agreement C13036 with Robert D. Herrick to provide Assistant General Counsel legal services increasing the agreement amount by \$210,000 for a new not-to-exceed total of \$420,000 and extending the term to October 31, 2014, and authorize General Counsel to execute the agreement amendment on behalf of San Bernardino Associated Governments.
  2. Approve Fiscal Year 2013/2014 Budget Amendment to increase Task Number 0120, Indirect-General, in the amount of \$79,000, and increase Task Number 0105, Indirect-Project Management in the amount of \$79,000 which will be funded by various funding sources through indirect cost allocation.

**Background:** On April 4, 2012, San Bernardino Associated Governments (SANBAG) Board of Directors approved the hiring of SANBAG's first in-house General Counsel, who commenced work May 19, 2012. General Counsel serves the legal needs of the five SANBAG entities (San Bernardino Associated Governments, San Bernardino County Transportation Authority, San Bernardino County Transportation Commission, San Bernardino County Service Authority for Freeway Emergencies and San Bernardino County Congestion Management Agency).

General Counsel provides direct legal advice and counsel to SANBAG's 50 employees and 14 on-site contract staff which serve the freeway, major rail

\*

*Approved*  
*Board of Directors*

*Date:*

*Moved:*                      *Second:*

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

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

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

Check all that apply.  
 BRD1310a-emt

<http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C13036-01.doc>

extension, interchange, grade separation, and numerous other projects and programs in SANBAG's fiscal year 2013/2014 \$733 million expenditure budget. The number and value of construction projects is the largest in SANBAG's history and is evidenced by the increasing volume of contracts and staff reports included in the monthly Board and policy committee agendas for which General Counsel must provide timely advice, review and approval.

General Counsel is responsible for representing SANBAG in litigation matters, for ensuring that lawsuits filed against SANBAG are tendered to the appropriate insurance carriers or responsible parties for defense and indemnity and for overseeing outside defense and right-of-way counsel. Additionally, General Counsel has identified a number of governance and contracting concerns that need to be addressed to further enhance SANBAG's compliance with the law.

General Counsel's staff consists of one-half of one full-time equivalent staff assistant. The volume, nature and complexity of the day-to-day General Counsel services, generally described above, exceed the capacity of one attorney. Accordingly, on October 3, 2012, the Board authorized General Counsel to enter into a one-year legal services agreement (C13036) with Robert D. Herrick, a highly qualified and experienced municipal law attorney to provide Assistant General Counsel services on a contract basis. The Assistant General Counsel agreement was for one year in an amount not-to-exceed \$210,000, compensating Mr. Herrick at an hourly rate of \$135 payable by retainer of \$5,000 per month applied toward the monthly billing for work performed.

General Counsel desires to provide prompt, excellent legal services to SANBAG and avoid causing delays to SANBAG's delivery of projects. To address SANBAG's continued burgeoning day-to-day legal demands, General Counsel respectfully requests that the Board approve an amendment to Mr. Herrick's agreement extending the term by slightly more than one year to October 31, 2014, and increasing the contract amount by \$210,000. All other terms and conditions of the agreement shall remain unchanged. Approval of this agreement amendment will continue to provide SANBAG with the presence of another in-house, on-site attorney providing up to approximately 1,600 hours of legal services per year, will assure provision of more timely excellent legal services, and will enable SANBAG to have backup attorney services in the absence of General Counsel, such as vacation or illness.

A budget amendment in the amount of \$158,000 is necessary to cover the cost of this contract amendment for the remaining nine months of Fiscal Year 2013/2014. The budget amendment will increase the two indirect cost allocation task numbers to which the Assistant General Counsel services are typically charged by equal

amounts—increasing Task Number 0120 Indirect-General by \$79,000 and Task Number 0105 Indirect-Project Management by \$79,000.

**Financial Impact:** A budget amendment for Fiscal Year 2013/2014 is needed in the amount of \$158,000 to cover the cost of nine months of the agreement amendment within this fiscal year, increasing Task Number 0120 Indirect-General by \$79,000, and Task Number 0105 Indirect-Project Management by \$79,000. Certain of the legal services costs under this agreement amendment may be charged to the budgets of specific projects to which the legal services relate.

**Reviewed By:** This item has been reviewed and unanimously recommended for approval by the General Policy Committee on September 11, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and the Amendment as to form.

**Responsible Staff:** Eileen Monaghan Teichert, General Counsel



# CONTRACT SUMMARY SHEET

Contract No. C C13036 Amendment No. 01

By and Between

San Bernardino Associated Governments and Robert D. Herrick

Contract Description Legal Services – Assistant General Counsel

**Board of Director's Meeting Date:** October 2, 2013  
**Overview of BOD Action:** Approve and authorize General Counsel to execute legal services agreement in the amount not to exceed \$420,000 for assistant general counsel legal services.

Is this a Sole-Source procurement?  Yes  No

CONTRACT OVERVIEW						
Original Contract Amount	\$	210,000	Original Contingency Amount	\$	0	
Revised Contract Amount Inclusive of prior amendments	\$	420,000	Revised Contingency Amount Inclusive of prior amendments	\$	0	
Current Amendment Amount	\$	210,000	Contingency Amendment	\$	0	
TOTAL CONTRACT VALUE	\$	420,000	TOTAL CONTINGENCY VALUE	\$	0	
<b>TOTAL BUDGET AUTHORITY (contract value + contingency)</b>					\$	420,000

<b>Contract Start Date</b> October 3, 2012	<b>Current Contract Expiration Date</b> October 3, 2013	<b>Revised Contract Expiration Date</b> October 31, 2014
Has the contract term been amended? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes - please explain. Contract term will be extended to October 31, 2014		

**FINANCIAL INFORMATION**

Budget authority for this contract currently exists in Task No.  
 A Budget Amendment is required. 0105, 0120  
 How are we funding current FY?  
 Federal Funds  State Funds  Local Funds  TDA Funds  Measure I Funds

*Provide Brief Overview of the Overall Funding for the duration of the Contract:*  
 The cost of legal services provided under this agreement amendment will be charged to and within the budgets of the projects and the funding sources to which the legal services relate.  
 Payable  Receivable

**CONTRACT MANAGEMENT INFORMATION**

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

Eileen Monaghan Teichert		8/30/13
Project Manager (Print Name)	Signature	Date
<u>WAVE BAKER</u>		8/30/13
Task Manager (Print Name)	Signature	Date
<u>W. S. STEWART</u>		9/3/13
Task Manager (Print Name)	Signature	Date
<u>Andre Zureich</u>		8/30/13
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
<u>Jerry Hill</u>		9/3/13
Contract Administrator (Print Name)	Signature	Date
<u>W. S. STEWART</u>		8/30/13
Chief Financial Officer (Print Name)	Signature	Date

**CONTRACT NO. C13036-01**

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

**AND**

**ROBERT D. HERRICK**

**(LEGAL SERVICES—ASSISTANT GENERAL COUNSEL)**

This First Amendment to Agreement No. C13036 (“Amendment”) is made and entered into by and between the San Bernardino Associated Governments, the San Bernardino County Transportation Authority, the San Bernardino County Transportation Commission, the San Bernardino County Service Authority for Freeway Emergencies, and the San Bernardino County Congestion Management Agency (hereafter referred to collectively as “SANBAG”) and Robert D. Herrick (“Attorney”). SANBAG and Attorney are each a “Party” and collectively the “Parties”.

**RECITALS**

A. SANBAG hired its first in-house General Counsel in May, 2012; and

B. Due to the high volume of SANBAG projects, the need to timely provide legal review and advice for such projects so as to avoid project delivery delays, and the necessity to immediately address a number of legal compliance issues, the SANBAG Board approved Agreement No. C13036 (“Agreement”) on October 3, 2012, with Attorney under which Attorney agreed to provide SANBAG with Assistant General Counsel services for a one-year term; and

C. The Parties desire for Attorney to continue providing such services for an additional one-year term at the same rate of compensation and same terms and conditions in the Agreement.

Now, therefore the parties agree to amend the Agreement as follows:

1. Section 2 (Term of Agreement) is deleted.
2. Subsection D of Section 3 (Compensation) is deleted and replaced with the following:

“D. Not-to-exceed amount.

The total amount paid to Attorney as compensation for services and reimbursement of expenses hereunder shall not exceed \$420,000.”

3. Section 13 (Term of Agreement) is deleted and replaced with the following:  
“The term of this Agreement shall be from the Effective Date to October 31, 2014. This Agreement may be extended, renewed, amended or renegotiated by the mutual written consent of the parties.”
4. The Recitals and the Agreement are incorporated into this Amendment.
5. This Amendment is effective on the date executed by SANBAG.
6. Except as specifically amended herein, the Agreement shall remain in full force and effect.

IN WITNESS THEREOF, the parties have executed this Agreement below.

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

ATTORNEY:

By: \_\_\_\_\_  
Robert D. Herrick  
Attorney-at-Law

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

SAN BERNARDINO ASSOCIATED  
GOVERNMENTS:

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