Governments SANBAG Working Together

San Bernardino Associated Governments
1170 W. 3rd St., 2nd Fl., 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

AGENDA

Commuter Rail and Transit Committee Meeting

November 14, 2013
10:00 a.m.

Location
SANBAG
1170 W. 3rd Street, (1st Floor Lobby)
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

AGENDA

Commuter Rail and Transit Committee Meeting

November 14, 2013
10:00 a.m.

Location:
SANBAG Office
1170 West 3rd St., 1st Fl., San Bernardino

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 – Anna Aldana

Notes/Actions

1. Possible Conflict of Interest Issues for the Commuter Rail and Transit Committee Meeting of November 14, 2013 Pg. 8

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. 10

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.

Notes/Actions

Discussion Items

Transit/Commuter Rail

3. 2014 Commuter Rail and Transit Committee Meeting Schedule Pg. 12

That the Committee recommend the Board approve the 2014 Commuter Rail and Transit Committee meeting schedule. **Mitch Alderman**

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

4. On-call Transit and Rail Services Contract No. C14003 and No. C14086 Pg. 26

That the Committee recommend the Board:

1. Approve award of Contract No. C14003 to Hatch Mott McDonald for On-Call Transit and Rail Services for an amount as described by Recommendation No. 3.

2. Approve award of Contract No. C14086 to Parsons Brinckerhoff, Inc. for On-Call Transit and Rail Services for an amount as described by Recommendation No. 3.

3. Approve a total not -to-exceed amount of $20 million for Hatch Mott McDonald (Contract No. C14003) and Parsons Brinckerhoff, Inc. (Contract No. C14086). **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 draft of the Contracts.

5. County-Wide Transit Efficiency Study Scope of Work Pg. 98

That the Committee recommend the Board Approve the Scope of Work for a County-Wide Transit Efficiency Study. **Mitch Alderman**

This item is not scheduled for review by any other policy committee. The Transit Review Ad Hoc Committee (Alan Wapner, Rhodes Rigsby, Dennis Michael, Ryan McEachron, Robert Lovingood, Jim Harris and Janice Rutherford and the Transit Review Technical Advisory Committee (General Managers/CEOs or their designee from each of the transit operators) have reviewed and accepted this Scope of Work.

Notes/Actions

Discussion Items Continued....

Transit/Commuter Rail (Cont.)

6. **Award Contract No. C14043 to Unlimited Environmental, Inc. for the Demolition, Abatement and Removal of Structures** Pg. 107

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

1. Award Contract No. C14043 to Unlimited Environmental, Inc. as the lowest responsive and responsible bidder in the not-to-exceed amount of $246,450 for the demolition, abatement and removal of structures located at 134 S. E Street in the City of San Bernardino.

2. Approve Allowances/Contingency for Contract No. C14043 for a not-to-exceed amount of $24,645 and authorize Executive Director, or his designee to release contingency as necessary for completion of the project. **Casey Dailey**

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

7. **Downtown San Bernardino Passenger Rail Project, San Bernardino Transit Center and Demolition of Commercial and Residential Structures Construction** Pg. 138

Authorize Staff to proceed directly to the Board of Directors without further consideration by the Commuter Rail and Transit Committee for the award of Contract No.:

1. C14001 for Construction of Downtown San Bernardino Passenger Rail Project

2. C14002 for Construction of San Bernardino Transit Center

3. C14072 for Demolition of Commercial and Residential Structures. **Casey Dailey**

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

Discussion Items Continued....

Transit/Commuter Rail (Cont.)

8. **Contracts granting certain licenses to cross San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission railroad right-of-way with the City of Rancho Cucamonga and Charter Communications** Pg. 140

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. R14082 with the City of Rancho Cucamonga granting a License Agreement on the San Gabriel Subdivision railroad right-of-way, City of Rancho Cucamonga mile post 98.2;

2. Approve Contract No. R14083 with the City of Rancho Cucamonga granting a License Agreement on the San Gabriel Subdivision railroad right-of-way, City of Rancho Cucamonga mile post 98.2;

3. Approve Contract No. R14084 with the City of Rancho Cucamonga granting a License Agreement on the San Gabriel Subdivision railroad right-of-way, City of Rancho Cucamonga mile post 93.7;

4. Approve Contract No. R14085 with Charter Communications granting a License Agreement on the San Gabriel Subdivision railroad right-of-way, City of Rancho Cucamonga mile post 98.2. **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.

9. **Agreement with Omnitrans for the receipt of Federal Transit Administration (FTA) Section 5307 and Congestion Mitigation and Air Quality (CMAQ) Improvement Program funds for the Downtown San Bernardino Passenger Rail Project** Pg. 295

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

1. Approve San Bernardino Associated Governments Contract No. R14038, with Omnitrans for the receipt of FTA Section 5307 and CMAQ funds totaling $22,306,000 for the Downtown San Bernardino Passenger Rail Project; and

2. Authorize the Executive Director or designee to execute such certifications and other documents as required to fulfill SANBAG's obligations under this Agreement; and

3. Approve a budget amendment in Task No. 0379 Commuter Rail Capital to increase State Local Partnership Program funds in the amount of $615,226 for a new fund total of $10,921,226; and

4. Approve a budget amendment in Task No. 0379 Commuter Rail Capital to decrease CMAQ by $10,921,226 for a new fund total of $0; and

5. Approve a budget amendment in Task No. 0379 Commuter Rail Capital to increase FTA Section 5307 by $22,306,000 for a new fund total of $22,306,000. **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 Contract.

Notes/Actions

Discussion Items Continued....

Transportation Fund Administration

10. Ten-Year Delivery Plan Update Pg. 313

Receive report on the planned update to the Ten-Year Delivery Plan.
Andrea Zureick

This item is scheduled for review by the Board Metro Valley Study Session on November 13, 2013 and the Mountain Desert Policy Committee on November 15, 2013.

Comments from Committee Members

Public Comment

ADJOURNMENT

Additional Information

Acronym List Pg. 322

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

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: 1

Date: November 14, 2013

Subject: Information Relative to Possible Conflict of Interest

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

Background: In accordance with California Government Code 84308, members of the 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
4	C14003	Hatch Mott McDonald, LLC *Mary Toutounchi, PE*	HDR Engineering, Inc. AMMA Transit Planning BASE + Birge Engineering Cambridge Systematics, Inc. CDM Smith Engineering Solutions Srvs. Gruen Associates Gannet Fleming ICF Jones & Stokes, Inc. JL Patterson & Associates, Inc. Kleinfelder Lance Schulte Overland, Pacific & Cutler PAC Engineering Pacific Railway Enterprises Patti Post & Associates Pacific Municipal Consultants Project Design Consultants Towill, Inc. Westbound Communications, Inc.

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG	X	CTC	X	CTA	X	SAFE	X	CMA	X

Check all that apply.

CRTC1311z-maa

4	C14086	Parsons Brinckerhoff *Doug B. Sawyer*	Anderson Penna Arellano Associates BRG Consulting, Inc. Epic Land Solutions JoAnna Capelle Leighton Consulting, Inc. Lynn Capouya, Inc. MK Consulting Pacific Railway Enterprises Patricia Voorhies Simon Wong engineering Twining, Inc. Wilson & Company
6	C14043	Unlimited Environmental, Inc. *Jill Dupleich*	None
8	R14085	Charter Communications *Beth Thompson*	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		X		X		X		
Paul Eaton City of Montclair	X		X			X				X		
James Ramos County of San Bernardino	X	X	X	X				X				
Peter Aguilar City of Redlands	X	X	X	X				X		X		
Bill Jahn City of Big Bear Lake		X		X				X		X		
Mike Leonard City of Hesperia	X	X	X	X		X						
Larry McCallon City of Highland	X	X	X	X		X				X		
L. Dennis Michael City of Rancho Cucamonga		X	X	X				X		X		
Ray Musser City of Upland	X	X		X		X				X		
Richard Riddell City of Yucaipa	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.

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.

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: 3

Date: November 14, 2013

Subject: 2014 Commuter Rail and Transit Committee Meeting Schedule

Recommendation:* That the Committee recommend the Board approve the 2014 Commuter Rail and Transit Committee meeting schedule.

Background: The San Bernardino Associated Governments (SANBAG) Commuter Rail and Transit Committee have established a regular meeting schedule on the third Thursday of each month, beginning at 10:00 a.m., at the SANBAG offices. Although a monthly schedule is adopted, it is acknowledged that when there are not sufficient business items to require a meeting, the meeting will be cancelled. It has also been the practice to modify the meeting date and time when the meeting has been rescheduled due to conflicts with other meetings or holiday schedules. SANBAG staff, however, has been directed to make every effort to minimize deviation from the regular schedule to insure continuity of meetings and participation.

A proposed 2014 meeting schedule is identified below for approval. Committee members and staff are urged to calendar these meetings for the coming year. Advance confirmation of meetings or cancellation notices are part of SANBAG's standard procedure for meeting preparation. The proposed meeting schedule conforms to the third Thursday of each month at 10:00 a.m.; however staff is proposing moving the November and December committee meetings as a result of the holidays.

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG	X	CTC	X	CTA	X	SAFE		CMA	X

Check all that apply.

CRTC1311a-maa
Attachment: http://portal.sanbag.ca.gov/mgmt/workgroups/admin/Shared%20Documents/2014%20SANBAG%20Master%20Calendar.doc

Proposed 2014 Commuter Rail and Transit Committee Meeting Dates

January 16, 2014
February 20, 2014
March 20, 2014
April 17, 2014
May 15, 2014
June 19, 2014
July 17, 2014 (DARK)
August 21, 2014
September 18, 2014
October 16, 2014
November 13, 2014
December 11, 2014

Financial Impact: Approval of the meeting schedule for the Commuter Rail and Transit Committee has no impact on the Fiscal Year 2013/2014 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

ATTACHMENT A

SANBAG 2014 Master Calendar

~ January 2014 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1 Board (Regular Date) New Year's Day HOLIDAY	2 SCAG Regional Council	3	4
5	6	7 Orthodox Christmas HOLIDAY	8 **Board (Proposed Date)**	9	10 SCRRA Board	11
12	13	14 Muhammad's Birthday Islamic HOLIDAY	15 **General Policy Committee**	16 **Metro Valley Study Session** **Commuter Rail/Transit Committee**	17 **Mt/Desert Committee**	18
19	20 Martin Luther King Day HOLIDAY	21	22 League New Mayors & Council Members	23 League New Mayors & Council Members	24 League New Mayors & Council Members	25
26	27	28	29	30	31	Notes:

SANBAG 2014 Master Calendar

~ February 2014 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5 **Board**	6 SCAG Regional Council	7	8
9	10	11	12 **General Policy Committee**	13 **Metro Valley Study Session**	14 SCRRA Board	15
16	17 President's Day HOLIDAY	18	19	20 **Commuter Rail/Transit Committee**	21 **Mt/Desert Committee**	22
23	24	25	26	27	28	Notes:

SANBAG 2014 Master Calendar

~ March 2014 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1 NACo. Legislative Conference
2 NACo. Legislative Conference	3 NACo. Legislative Conference	4 NACo. Legislative Conference	5 **Board** NACo. Legislative Conference	6 SCAG Regional Council	7	8
9	10	11	12 **General Policy Committee**	13 **Metro Valley Study Session**	14 SCRRA Board	15
16	17	18	19	20 **Commuter Rail/Transit Committee**	21 **Mt/Desert Committee** Naw-Ruz Baha'I HOLIDAY	22
23	24	25	26	27 **City/County Conference**	28 **City/County Conference**	29
30	31 Cesar Chavez	Notes:				

SANBAG 2014 Master Calendar

~ April 2014 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2 **Board**	3 SCAG Regional Council	4	5
6	7	8	9 **General Policy Committee**	10 **Metro Valley Study Session**	11 SCRRA Board	12
13	14	15 Passover Jewish HOLIDAY (4/15-4/22)	16	17 **Commuter Rail/Transit Committee**	18 **Mt/Desert Committee** Good Friday Christian HOLIDAY	19
20 Easter Sunday	21 First Day of Ridvan Baha'I HOLIDAY	22 Passover Jewish HOLIDAY (Ends)	23	24	25	26
27	28	29 Ninth Day of Ridvan Baha'I HOLIDAY	30	Notes:		

SANBAG 2014 Master Calendar

~ May 2014 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1 SCAG Regional Council	2 Twelfth Day of Ridvan Baha'I HOLIDAY	3
4	5	6	7 **Board**	8	9 SCRRA Board	10
11 Mother's Day	12	13	14 **General Policy Committee** CSAC Legislative Conference	15 **Metro Valley Study Session** **Commuter Rail/Transit Committee** CSAC Legislative Conference	16 **Mt/Desert Committee**	17
18	19	20	21	22	23 Declaration of the Bab Baha'I HOLIDAY	24
25	26 Memorial Day HOLIDAY	27	28	29 Ascension of Baha'u'llah Baha'I HOLIDAY	30	31

SANBAG 2014 Master Calendar

~ June 2014 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3 Shavout Jewish HOLIDAY	4 **Board**	5 SCAG Regional Council	6	7
8	9	10	11 **General Policy Committee**	12 **Metro Valley Study Session**	13 SCRRA Board	14
15 Father's Day	16	17	18	19 **Commuter Rail/Transit Committee**	20 **Mt/Desert Committee**	21
22	23	24	25	26	27	28 Beginning of Ramadan Islamic HOLIDAY
29	30	Notes:				

SANBAG 2014 Master Calendar

~ July 2014 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2 **Board**	3 SCAG Regional Council	4 Independence Day HOLIDAY	5
6	7	8	9 **General Policy Committee (DARK)** Martyrdom of the Bab Baha'i HOLIDAY	10 **Metro Valley Study Session (DARK)**	11 SCRRA Board NACo Annual Meeting	12 NACo Annual Meeting
13 NACo Annual Meeting	14 NACo Annual Meeting	15	16	17 **Commuter Rail/Transit Committee (DARK)**	18 **Mt/Desert Committee (DARK)**	19
20	21	22	23 Lailatul-Qadr Islamic HOLIDAY	24	25	26
27 End of Ramadan Islamic HOLIDAY	28	29	30	31	Notes:	

SANBAG 2014 Master Calendar

~ August 2014 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6 Board (DARK)	7 SCAG Regional Council	8 SCRRA Board	9
10	11	12	13 General Policy Committee	14 Metro Valley Study Session	15 Mt/Desert Committee	16
17	18	19	20	21 Commuter Rail/Transit Committee	22	23
24	25	26	27	28	29	30
31	Notes:					

SANBAG 2014 Master Calendar

~ September 2014 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1 Labor Day HOLIDAY	2	3 **Board** League Annual Conference	4 SCAG Regional Council League Annual Conference	5 League Annual Conference	6
7	8	9	10 **General Policy Committee**	11 **Metro Valley Study Session**	12 SCRRA Board	13
14	15	16	17	18 **Commuter Rail/Transit Committee**	19 **MT/Desert Committee**	20
21	22	23	24	25 Rosh Hashanah Jewish HOLIDAY	26	27
28	29	30	Notes:			

SANBAG 2014 Master Calendar

~ October 2014 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1 **Board**	2 SCAG Regional Council	3	4 Yom Kippur Jewish HOLIDAY
5 Eid al-Adha Islamic HOLIDAY	6	7	8 **General Policy Committee**	9 **Metro Valley Study Session** Sukkot Jewish HOLIDAY (10/9-10/15)	10 SCRRA Board	11
12 APTA Annual Meeting	13 APTA Annual Meeting Columbus Day HOLIDAY	14 APTA Annual Meeting	15 APTA Annual Meeting	16 **Rail/Transit Committee** High Desert Opportunity Shmini Atzeret Jewish HOLIDAY	17 **Mt/Desert Committee** Simchat Torah Jewish HOLIDAY	18
19	20 Birth of the Bab Baha'I HOLIDAY	21	22	23	24	25
26	27	28	29	30	31 Halloween	Notes:

SANBAG 2014 Master Calendar

~ November 2014 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5 **Board**	6 SCAG Regional Council	7	8
9	10	11 Veteran's Day HOLIDAY	12 **General Policy Committee** Birth of the Baha'u'llah Baha'I HOLIDAY	13 **Metro Valley Study Session** **Commuter Rail/Transit Committee (Proposed)**	14 **Mt/Desert Committee (Proposed)** SCRRA Board	15
16	17	18 CSAC Annual Meeting	19 CSAC Annual Meeting	20 ~~**Commuter Rail/Transit Committee**~~ CSAC Annual Meeting	21 ~~**Mt/ Desert Committee**~~ CSAC Annual Meeting	22
23	24	25	26 Day of the Covenant Baha'I HOLIDAY	27 Thanksgiving HOLIDAY	28 Thanksgiving Day After HOLIDAY Ascension of Abdu'l-Baha Baha'I HOLIDAY	29
30	Notes:					

SANBAG 2014 Master Calendar

~ December 2014 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3 **Board**	4 SCAG Regional Council	5	6
7	8	9	10 **General Policy Committee**	11 **Metro Valley Study Session** **Commuter Rail/Transit Committee (Proposed)**	12 **Mt/Desert Committee (Proposed)** SCRRA Board	13
14	15	16	17 Hanukkah (12/17-12/24) Jewish HOLIDAY	18 ~~**Commuter Rail/Transit Committee**~~	19 ~~**Mt/Desert Committee**~~	20
21	22	23	24 Christmas Eve HOLIDAY	25 Christmas Day HOLIDAY	26 Kwanzaa (12/26-1/1) Interfaith/African American HOLIDAY	27
28	29	30	31 New Year's Eve HOLIDAY	Notes:		

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: 4

Date: November 14, 2013

Subject: On-call Transit and Rail Services Contract No. C14003 and No. C14086

Recommendation:* That the Committee recommend the Board:

1. Approve award of Contract No. C14003 to Hatch Mott McDonald for On-Call Transit and Rail Services for an amount as described by Recommendation No. 3.

2. Approve award of Contract No. C14086 to Parsons Brinckerhoff, Inc. for On-Call Transit and Rail Services for an amount as described by Recommendation No. 3.

3. Approve a total not -to-exceed amount of $20 million for Hatch Mott McDonald (Contract No. C14003) and Parsons Brinckerhoff, Inc. (Contract No. C14086).

Background: The Request for Proposal (RFP) 14003 was released on July 10, 2013, and was sent electronically and by hard copy to approximately 100 consultants. The solicitation was issued in accordance with the San Bernardino Associated Governments (SANBAG) policies and procedures for architectural and engineering services.

The RFP was posted on SANBAG's website in response to a request from Mitch Alderman, Director of Transit and Rail Programs, to engage firms to provide On-call Transit and Rail Services. A pre-proposal conference was held on July 18, 2013, and was attended by approximately 70 consultants.

*

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.

CRTC1311b-maa

http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C14003.docx
http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C14083.docx

Addendum No. 1 was issued on July 12, 2013, for clarification of pre-proposal conference date; Addendum No. 2 was issued on July 31, 2013, responding to a revised schedule and scope of work, publication of pre-proposal sign-in sheets, provided updated forms, and answered consultant questions; and Addendum No. 3 was issued on August 12, 2013, responding to two (2) clarification questions from one (1) consultant.

Six (6) proposals were received by the date and time specified in the RFP. The following is a summary of the events that transpired in the evaluation and selection process. The anticipated total budget for a 5-year contract period is $20 million using state and local funds but may also include federal funds. A responsiveness review was conducted by the Contract Administrator and found that all submitted proposal complied with the RFP requirements.

Summary of Evaluation Process

The proposals were disseminated to all Evaluation Committee members, score sheets, and the Declaration of Impartiality and Confidentiality form were distributed to the committee members on August 26, 2013. The Evaluation Committee was comprised of individuals from SANBAG, Los Angeles County Metropolitan Transportation Authority (LACMTA), Riverside County Transportation Commission (RCTC), and VTrans.

Evaluation Committee Meeting

Evaluators concluded their individual review of the proposals and convened to review, discuss, and score the proposals to determine which firms would be invited to an interview. The Evaluation Committee members met on September 10, 2013, and discussed each proposal according to the evaluation criteria. At the completion of discussions, the committee members individually scored the proposals based on the evaluation criteria: Qualifications of the Firm - 35%, Management Approach – 35%, and Technical Approach/Work Plan - 30%.

Because of the scoring, the firms were ranked in order of technical merit, and a short-list was developed. The firms short-listed and invited to interviews listed in alphabetical order:

- CH2MHill
- Hatch Mott McDonald
- Parsons Brinckerhoff
- RailPros

The breakdown of evaluator scores were noted and discussed. The full detail of the scores is included in the Contract Audit File.

As required by state and federal regulations, the selection of Architecture and Engineering Services can only be based on qualifications. Therefore, no cost proposal was required in the RFP. For each task awarded to the selected firms under this On-call contract, a cost proposal will be negotiated.

At the evaluation meeting, the committee determined the following format:

Interviews

Interviews were conducted with the short-listed firms on September 16, 2013. Interviews were 60 minutes in length, which consisted of a 5-minute set-up period and 25-minute presentation by the firms followed by 30 minutes of questions and answers. At the completion of the interviews, the Evaluation Committee separately scored the interviews. As indicated in the RFP, the weighted technical scoring was 75% for proposals and 25% for interviews.

Evaluation Committee Recommendation Summary

The following firms were ranked the highest as determined by the combined scores of the proposal evaluation and interviews.

- Hatch Mott McDonald
- Parsons Brinckerhoff

The top two (2) highest ranked firms, Hatch Mott McDonald and Parsons Brinckerhoff were determined by the Evaluation Committee as the only two (2) firms qualified to perform the services specified in the Request for Proposal. Both firms were comprised of highly experienced staff, demonstrated a good understanding of SANBAG's needs, and have extensive experience providing high quality services to other agencies and clients.

While each contract provides for a not-to-exceed amount of $20,000,000, the contracts provide that neither firm is guaranteed any particular amount of work and that amounts paid to one (1) firm under contract for the same type of services will reduce the amount available to be awarded to other firms for the same types of services. This will allow SANBAG flexibility in awarding work to the best qualified firm for each assignment while allowing the program to be managed to its budget.

As a result of the scoring, the evaluation committee recommends that two (2) contracts to perform the services as outlined in the Request for Proposals (RFP 14003) be award to Hatch Mott McDonald (C14003) and to Parsons Brinckerhoff, Inc. (C14083). Evaluation forms and Dun & Bradstreet reports are located in the Contract Audit File.

Financial Impact: Award of these contracts is consistent with the Fiscal Year 2013/2014 budget.

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

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

CRTC1311b-maa

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. C 14003/14086 Amendment No. _____

By and Between

San Bernardino Associated Governments and Hatch Mott McDonald & Parsons Brinckerhoff, Inc.

Contract Description On Call Transit and Rail Services

Board of Director's Meeting Date: December 4, 2013

Overview of BOD Action: Award On-call Transit and Rail Services Contractors No. C14003 to Hatch Mott McDonald and C14086 to Parsons Brinckerhoff, Inc. for a combined not-to-exceed amount of $20 million.

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

CONTRACT OVERVIEW

Original Contract Amount	$	20,000,000	**Original Contingency Amount**	$	0.00
Revised Contract Amount *Inclusive of prior amendments*	$	0.00	**Revised Contingency Amount** *Inclusive of prior amendments*	$	0.00
Current Amendment Amount	$	0.00	**Contingency Amendment**	$	0.00
TOTAL CONTRACT VALUE	$	20,000,000	**TOTAL CONTINGENCY VALUE**	$	0.00
TOTAL BUDGET AUTHORITY *(contract value + contingency)*				$	20,000,000

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
12/4/13	12-31-2018	

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

FINANCIAL INFORMATION

☒ Budget authority for this contract currently exists in Task No. Various Transit & Rail Tasks

☐ A Budget Amendment is required. How are we funding current FY? Multiple Funding Sources

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

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

As each contract task order is issued, a funding task will be identified

☒ Payable ☐ Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

☐ Retention? If yes, indicate % _____.

☐ Disadvantaged Business Enterprise (DBE) Goal _____ %

Mitch A. Alderman Project Manager (Print Name)	M. A. Alderman Signature	10/28/13 Date
Mitch A. Alderman Task Manager (Print Name)	M. A. Alderman Signature	10/28/13 Date
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
Contract Administrator (Print Name)	Signature	Date
Chief Financial Officer (Print Name)	Signature	Date

CONTRACT C14003

BY AND BETWEEN

SANBAG

AND

HATCH MOTT McDONALD

FOR

ON-CALL TRANSIT AND RAIL SERVICES

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, ("SANBAG"), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715; and Hatch Mott McDonald ("CONSULTANT") whose address is 600 South Main Street, Suite 930, Orange, CA 92868. SANBAG and CONSULTANT are each a "Party" and collectively the "Parties".

RECITALS:

WHEREAS, SANBAG requires certain On-call Transit and Rail Work as described in Exhibit 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 Work identified herein and to do so for the compensation and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1. PROJECT DESCRIPTION

CONSULTANT agrees to perform the work and services set forth in Exhibit A, Scope of Work, ("Work"), 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 Work imposed upon or assumed by CONSULTANT hereunder; and the Work 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 December 31, 2018 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 Services, in compliance with all the terms and conditions of this Contract, and any Contract Task Orders (CTOs) issued, payment by CONSULTANT of 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 Not-To-Exceed Amount for all CTOs issued to CONSULTANT is Twenty-million Dollars ($20,000,000), subject to the terms of 3.3 below. All services shall be reimbursed pursuant to the hourly labor rates identified in Exhibit B "Billing Rate Schedule" and the executed CTO. The hourly labor rates identified in Exhibit B, shall remain fixed for the first year of this Contract, and may be escalated to a maximum increase of 5% for each subsequent year only by approval of SANBAG. The hourly rates shall include CONSULTANT's direct labor costs, indirect costs, and profit. All expenses shall be reimbursed for the amount identified in Exhibit B. The SANBAG will not reimburse for any expenses not shown in Exhibit B.

3.3 CONSULTANT acknowledges that SANBAG intends to maintain contracts with more than one firm for the types of Work identified in Article 1 above and may add additional firms at any time. As the need for Work arises, SANBAG will issue a request for CTO Proposal's to all firms under contract for such Work. Each qualified firm shall submit a technical response and price proposal based on the agreed upon rates identified in Exhibit B. SANBAG shall review each submittal and award the CTO to the firm that SANBAG determines to be best qualified for that CTO. Award of CTOs is at the sole discretion of SANBAG. SANBAG does not guarantee that it will issue any CTOs for any Work during the term of this Contract. CONSULTANT acknowledges that it may not be awarded any CTOs during the term of this Contract, and that SANBAG will maintain a budget for all of the type of Work identified in Article 1, and the amount available for potential award to CONSULTANT will be reduced by the amounts paid to other firms for CTOs awarded to them.

3.4 For personnel subject to prevailing wage rates as described in the California Labor Code, all wage increases that 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 Ch. 1, Sub Ch. E, Part 31, as constituted on the effective date of this Contract shall be utilized to determine allowability 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 48 CFR, Ch.1, Subch E, Part 31, 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. Any additional services agreed to shall become part of the Work.

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 Work (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:

SANBAG
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715
Contract No. C14003
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 Omitted**

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 Work 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 body or officer having authority to award the Contract on behalf of SANBAG ("Awarding Authority") 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, Ch. 1, Subch. E, Part 31, 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) 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 Work performed by CONSULTANT, Work 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 Work, which will or may be affected by a shortage of funds, it will promptly notify CONSULTANT. Nothing herein shall relieve SANBAG from its obligation to compensate CONSULTANT for Work 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 Caltrans, Federal Transit Administration (FTA) or Federal Highway Administration (FHWA), 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, FTA 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 Work furnished by the CONSULTANT under the Contract. The Contract includes reference to the appropriate standard of care 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 Work, employ quality control procedures that identify potential risks and uncertainties related to scope, schedule, cost, quality, and safety of the Project and the Work performed by CONSULTANT within the areas of CONSULTANT's 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 Work 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 to recover 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, FTA, 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 As applicable, the responsible professional duly authorized by the State of California shall sign and stamp all plans, specifications, estimates (PS&E) and other applicable data furnished by him/her, certify as-built drawings, and where appropriate, indicate his/her California registration or license 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 with their monthly invoices. 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.

ARTICLE 11. TECHNICAL DIRECTION

11.1 Performance of Work under this Contract shall be subject to the technical direction of SANBAG's Department Director of Transit and Rail Programs, ("Director"). 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 modifications to the Contract as defined in the "CHANGES" Article 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 "Changes" Article of the Contract;

11.2.4 In any manner cause an increase or decrease in the Contract price as identified in Article 3., 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;

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 Executive Director or Designee.

11.5 CONSULTANT shall proceed promptly with the performance of Technical Direction issued by SANBAG's Executive 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 Executive 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 scope 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 Awarding Authority has approved any amendment to this Contract.

12.2 SANBAG's Executive Director or Designee may modify this Contract for certain administrative modifications without issuing a written amendment. Administrative modifications as defined herein are limited to: substitutions of personnel identified in this Contract, including Key Personnel and subcontractors; modifications to hourly rates, classifications, and names of personnel in Attachment B; and modifications of the address of the CONSULTANT. All administrative modifications 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 adjustment to 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 Work 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 Work being performed under this Contract. Prior to diverting any of the specified individuals to other projects, or reallocation of any tasks or hours of Work 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's Executive Director or Designee. CONSULTANT shall not substitute any key personnel without the prior written consent of SANBAG's Executive Director or Designee. 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
Joseph Toolson (HMM)	Project Director
Mary Toutounchi (HMM)	Contract Manager
Gordon Head (HMM)	Quality Manager
Andrew Muth (HMM)	Project Management
JD Douglas (HDR)	Planning
Patrick O'Neill (HDR)	Environmental
Robert Klovsky (HDR)	Design
Philip Roupas (HMM)	Construction

ARTICLE 16. REPRESENTATIONS

All Work 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 profession 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 Work 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 Work 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 Work 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 tools and 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 Work 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 finished Work 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 under this Contract 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 the 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 carrier authorized to do business in the State of California with a recent A.M. Best rating of A-VII or better, and shall be written with 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 labor or 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. Also included shall be $1,000,000 in the aggregate for Personal/Advertising, $100,000 for Damages to Rented Premises, and $10,000 for Medical Expenses. For products and completed operations a $2,000,000 aggregate shall be provided. Commercial General Liability insurance 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.

22.6 Railroad Protective Liability Insurance (RPLI) – Should the CONSULTANT need to perform activities in a railroad right-of-way, SANBAG and/or a railroad operator may require CONSULTANT to provide RPLI. In such a case, the CONSULTANT shall obtain said RPLI in amounts and coverages and from issuers acceptable to SANBAG in its sole discretion. Depending on facts and circumstances, and the terms and conditions of the policy involved, SANBAG may choose to find that the CONSULTANT satisfactorily meets this requirement by obtaining one of the following: a) an acceptable RPLI-specific policy; b) a waiver of any railroad liability exclusion from the CONSULTANT'S existing general liability policy; or c) acceptable general liability insurance without a railroad exclusion.

22.7 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 insureds on Commercial General Liability Insurance and Automobile Liability 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 prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONSULTANT will provide SANBAG ten (10) days prior 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.

22.8 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, San Bernardino County Service Authority for Freeway Emergencies and their officers, members, employees, contractors, agents, and volunteers as additional insured parties with respect to liabilities arising out to the performance of Work hereunder. In addition, all policies shall contain endorsements naming the Southern California Regional Railroad Authority and their officers, employee, contractors, agents, and volunteers as additional insured parties with respect to liabilities arising out of the performance of the Work hereunder. In certain cases, additional insured endorsements in favor of other railroad operators may be required for particular Task Orders. 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.

22.9 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, members, 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.

22.10 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.

22.11 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 Work falls 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, members, 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 Work, CONSULTANT agrees to indemnify, defend (with legal counsel reasonably approved by SANBAG) and hold harmless SANBAG and its authorized officers, members, employees, agents and volunteers (Indemnities), from any and all claims, actions, losses, damages and/or liability (Claims) arising out of or related to any act or omission of consultant or any of its officers, employees, agents, subcontractors or volunteers and for any costs or expenses incurred by SANBAG on account of any such 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 Work required under this Contract. CONSULTANT shall be liable for SANBAG costs resulting from errors or deficiencies, in Work furnished under this Contract, including but not limited to any fines, penalties, damages, and costs associated with a modification to a construction contract required because of an error or deficiency in the Work 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 Work to be subcontracted and the subcontractor to perform said Work will not relieve CONSULTANT of any responsibility or liability in regard to the acceptable and complete performance of said Work. 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 Work or products.

ARTICLE 28. INDEPENDENT CONTRACTOR

CONSULTANT is and shall be at all times an independent contractor. Accordingly, all 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 Work or as to the manner, means and methods by which Work is 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 this Contract document, Exhibit A - Scope of Work, and Exhibit B - Price List, SANBAG's Request For Proposal and RFP Addenda, and CONSULTANT's proposal, all of which are incorporated in this Contract by this reference.

32.2 The following order of precedence shall apply: First, the Contract including Attachments A and B; second, SANBAG's Request For Proposal, including all addenda and instructions; and last, CONSULTANT's Proposal. In the event of a conflict between the Contract Articles 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: (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) the fourth business day following deposit of such notice into the United States Mail. 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 contact information changes within ten (10) business days of the change.

Hatch Mott McDonald	**To SANBAG**
600 South Main Street, Suite 930,	**1170 W. 3rd Street, 2nd Floor**
Orange, CA 92868	**San Bernardino, CA 92410-1715**
Attn: Mary Toutounchi	**Attn: Mitchell A. Alderman, Director of Rail and Transit Programs**
	cc: Jeffery Hill, Contract Administrator
Phone:	**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, Work 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 dispute is appealable to 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 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 or 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 as identified in Exhibit A 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 any future Request for Proposals or Request for Qualifications 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

CONSULTANT acknowledges that due to differing funding sources for various projects or Task Orders that may be covered by the Scope of Work, prevailing wage requirements or procedures may differ from Task Order to Task Order. CONSULTANT shall comply with all applicable laws and regulations pertaining to prevailing wages and prevailing wage reporting for the type of work to be done under each Task Order. Without limiting the generality of the foregoing, Consultant shall comply with the following:

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" projects, 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 the Work 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, members, 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-Off Meeting with CONSULTANT and their subcontractors listed in the proposal. The Kick-Off 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 Contract 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 (Exhibit 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.

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, SANBAG 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 Division of Labor Standards Enforcement (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 43. PREVAILING WAGES

43.1 Where CONSULTANT is notified by SANBAG that a particular Task Order will be funded in part or in whole with California state bond funds CONSULTANT shall also comply with the following:

(a) The Task Order will be subject to Chapter 1 of Part 7 of Division 2 of the Labor Code (commencing with Section 1771) and Subchapters 4 and 4.5 of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations (commencing with Section 16421) as it will be funded in whole or in part by California state bond funds, or is a design build project with Labor Compliance Program (LCP) requirements pursuant to statute. The CONSULTANT shall comply with these cited sections, including the obligation to furnish certified payroll records directly to the California Labor Commissioner in accordance with Title 8 CCR § 16461. The Compliance Monitoring Unit (CMU) of the Division of Labor Standards Enforcement (DLSE), which is part of the California Department of Industrial Relations (DIR), is responsible for monitoring and enforcement of the prevailing wage laws on that Task Order.

(b) All monitoring, inspection, review auditing and other power, authority, requirements and enforcement functions set forth in 43.1 to 43.10 above with respect to SANBAG shall also apply with respect to the Compliance Monitoring Unit of the DLSE (CMU).

(c) CONSULTANT shall post a Notice containing the following language at all Project job sites:

This public works project is subject to monitoring and investigative activities by the Compliance Monitoring Unit (CMU) of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. This Notice is intended to provide information to all workers employed in the execution of the contract for public work and to all consultants and other persons having access to the job site to enable the CMU to ensure compliance with and enforcement of prevailing wage laws on public works projects. 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 CMU at any office of 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 due to the short period of time following the completion of the project that the CMU may take legal action against those responsible. 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.

(d) the CMU may require a Kick-Off meeting with CONSULTANT staff and all subcontractors listed in the proposal or who are required to be identified or prequalified on a design-build project. The Kick-Off 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 same state labor law requirements set forth in 43.3 above shall be applicable to the Task Order and will be discussed at the Kick Off Meeting. The CMU may require a new Kick-Off Meeting Checklist and Certification (Exhibit C) be signed by CONSULTANT and each subcontractor on the Project subject to prevailing wage laws.

(e) Payroll records shall be furnished in a format prescribed by Title 8 CCR § 16401. The DLSE utilizes a third party vendor to provide the electronic certified payroll service – "My LCM". The service must be used by the Parties for the Project. A link is established for electronic certified payroll at https://app.mylcm.com. The site includes step-by-step instructions on how to manage employee profiles and submit payroll reports. My LCM training and on-going support are provided at no charge to prime CONSULTANT's and participating subcontractor. CONSULTANT shall be responsible for all subcontractors working on the Project and will have the responsibility to ensure

that it and its subcontractor are registered and trained as required to utilize the electronic payroll service. Employee information is entered once into My LCM and then remains in the system and is accessible to CONSULTANT. My LCM eliminates the need for CONSULTANT to submit paper prevailing wage documents and forms while providing an online database of all certified payroll reports. All contract-specific wage rates and classifications are available within My LCM.

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 the Work 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. SEISMIC SAFETY REQUIREMENTS

CONSULTANT agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. CONSULTANT also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project. CONSULTANT also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

ARTICLE 46. ENERGY CONSERVATION

CONSULTANT agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. CONSULTANT also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

ARTICLE 47. FEDERAL CHANGES

CONSULTANT shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between SANBAG and FTA, as they may be amended or promulgated from time to time during the term of this Contract. CONSULTANT's failure to so comply shall constitute a material breach of this Contract.

ARTICLE 48. CLEAN AIR

CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. CONSULTANT agrees to report each violation to SANBAG and understands and agrees that SANBAG will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. CONSULTANT also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

ARTICLE 49. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

SANBAG and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to SANBAG, CONSULTANT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. CONSULTANT agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

ARTICLE 50. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

CONSULTANT acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, CONSULTANT certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, CONSULTANT further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONSULTANT to the extent the Federal Government deems appropriate. CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

ARTICLE 51. SUSPENSION AND DEBARMENT

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, CONSULTANT is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. CONSULTANT is required to comply with 49 CFR 29, Subpart C

and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

> "The certification in this clause is a material representation of fact relied upon by SANBAG. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to SANBAG, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

ARTICLE 52. CIVIL RIGHTS

52.1 Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, CONSULTANT agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, CONSULTANT agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

52.2 Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. CONSULTANT agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, CONSULTANT agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, CONSULTANT agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, CONSULTANT agrees to comply with any

implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, CONSULTANT agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

52.3 CONSULTANT also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

ARTICLE 53. INCORPORATION OF FTA TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any SANBAG requests, which would cause SANBAG to be in violation of the FTA terms and conditions. The CONSULTANT agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

ARTICLE 54. CHANGES TO FEDERAL REQUIREMENTS

CONSULTANT shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between SANBAG and FTA, as they may be amended or Best Practices Procurement Manual – Appendix A.1 Page 17 promulgated from time to time during the term of this contract. CONSULTANT's failure to so comply shall constitute a material breach of this contract.

ARTICLE 55. FORCE MAJEURE

CONSULTANT shall not be in default under this Contract in the event that the Work performed by CONSULTANT is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government 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 56. WARRANTY

CONSULTANT warrants that all Work performed shall be in accordance with the Contract, 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 57. ENTIRE DOCUMENT

47.1 This Contract and its attachments constitute the sole and only agreement governing the Work 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 authority 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 58. 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 59. 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 60. 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.

HATCH MOTT MCDONALD

By: _____

M. Joseph Toolson
Vice President

Date: _____

SANBAG

By: _____

W.E. Jahn
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____

Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____

Jeffery Hill
Contract Administrator

Exhibit "A"
Scope of Work
Contract No. C14003
On-call Transit and Rail Services

GENERAL

The services to be provided by the Consultant for this Request for Proposal (RFP) 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.
- 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.
- Assist with the development and operations of vanpool programs.
- 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.

Exhibit "B"
Hourly Rates
Contract No. C14003
On-call Transit and Rail Services

	Range	
Program Management - Project and Programs, Contract Management, Project Controls, Grants, TDA, 3rd Party Projects	**Low**	**High**
Project Director	$230	$290
Contract Manager	$210	$260
Program Manager	$210	$260
Quality Control	$190	$220
Project Manager	$120	$220
Project Controls(Estimator, Scheduler)	$140	$220
Rail Road Management Specialist	$150	$320
Grants Manager	$130	$230
Planning - Capital Improvements, Studies, Operational Analyses, Land Use, Transit Development		
Principal Planner	$280	$340
Senior Planner	$170	$220
Planner	$160	$200
Planning Analyst	$140	$180
Planning Specialist	$150	$190
Modeler	$90	$200
Transit Planning - Capital Improvements, Studies, Operational Analyses, FTA, Land Use, Transit Plans, Title VI		
Principal Transit Planner	$280	$340
Senior Transit Planner	$170	$250
Transit Planner	$160	$230
Transit Analyst	$180	$290
Transit Specialist	$170	$250
Operational Modeler	$90	$180
Financial Analyst	$340	$420
Environmental - NEPA, CEQA, Studies, Mitigation, Permitting		
Principal Environmental Planner	$210	$270
Senior Environmental Planner	$200	$250
Environmental Planner	$130	$230
Environmental Analyst	$130	$220
Environmental Specialist	$90	$210
Senior Biologist	$90	$210
Biologist	$90	$210

	Range	
Engineering - Conceptual, Planning, PS&E, Construction Support, Security Systems, MOW, MOE	**Low**	**High**
Managing Engineer	$240	$310
Principal Engineer	$200	$260
Senior Engineer	$160	$200
Engineer	$110	$160
Construction Management - Resident Engineer, Testing, Project Control, Inspections		
Construction Manager	$180	$280
Resident Engineer	$160	$280
Office Engineer	$150	$190
Inspector	$80	$190
Safety Officer	$120	$160
Surveying - Design, R/W, Construction, Mapping, R/W Acquisition		
Office Surveyor	$180	$230
Party Chief	$120	$180
Rodman/Chainman	$120	$160
Instrument Person	$120	$170
Right-of-Way - Acquisition, Appraisals		
Managing Agent	$190	$240
Senior Agent	$120	$180
Agent	$70	$100
Appraiser	$60	$90
Geotechnical - Preliminary and Final Reports, Testing, Exploration, Construction		
Managing Engineer	$150	$200
Principal Engineer	$170	$210
Senior Engineer	$110	$140
Engineer	$80	$110
Field Technician	$180	$220
Lab Technician	$60	$90
CADD - Support for all Classifications		
Senior CADD Operator	$60	$100
CADD Operator	$50	$90

	Range	
Administration - Support for all Classifications	**Low**	**High**

Senior Administrative Assistant	$50	$100
Administrative Assistant	$40	$80
Graphic Designer	$90	$110

- Rate may be adjusted annually based on contract requirements.
- Filed overhead rates will be applied for field personnel.

CONTRACT C14083

BY AND BETWEEN

SANBAG

AND

PARSONS BRINCKERHOFF, INC.

FOR

ON-CALL TRANSIT AND RAIL SERVICES

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, ("SANBAG"), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715; and Parsons Brinckerhoff, Inc. ("CONSULTANT") whose address is 451 E. Vanderbilt Way, Suite 200, San Bernardino, CA 92408. SANBAG and CONSULTANT are each a "Party" and collectively the "Parties".

RECITALS:

WHEREAS, SANBAG requires certain On-call Transit and Rail Work as described in Exhibit 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 Work identified herein and to do so for the compensation and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1. PROJECT DESCRIPTION

CONSULTANT agrees to perform the work and services set forth in Exhibit A, Scope of Work, ("Work"), 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 Work imposed upon or assumed by CONSULTANT hereunder; and the Work 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 December 31, 2018 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 Services, in compliance with all the terms and conditions of this Contract, and any Contract Task Orders (CTOs) issued, payment by CONSULTANT of 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 Not-To-Exceed Amount for all CTOs issued to CONSULTANT is Twenty-million Dollars ($20,000,000), subject to the terms of 3.3 below. All services shall be reimbursed pursuant to the hourly labor rates identified in Exhibit B "Billing Rate Schedule" and the executed CTO. The hourly labor rates identified in Exhibit B, shall remain fixed for the first year of this Contract, and may be escalated to a maximum increase of 5% for each subsequent year only by approval of SANBAG. The hourly rates shall include CONSULTANT's direct labor costs, indirect costs, and profit. All expenses shall be reimbursed for the amount identified in Exhibit B. The SANBAG will not reimburse for any expenses not shown in Exhibit B.

3.3 CONSULTANT acknowledges that SANBAG intends to maintain contracts with more than one firm for the types of Work identified in Article 1 above and may add additional firms at any time. As the need for Work arises, SANBAG will issue a request for CTO Proposal's to all firms under contract for such Work. Each qualified firm shall submit a technical response and price proposal based on the agreed upon rates identified in Exhibit B. SANBAG shall review each submittal and award the CTO to the firm that SANBAG determines to be best qualified for that CTO. Award of CTOs is at the sole discretion of SANBAG. SANBAG does not guarantee that it will issue any CTOs for any Work during the term of this Contract. CONSULTANT acknowledges that it may not be awarded any CTOs during the term of this Contract, and that SANBAG will maintain a budget for all of the type of Work identified in Article 1, and the amount available for potential award to CONSULTANT will be reduced by the amounts paid to other firms for CTOs awarded to them.

3.4 For personnel subject to prevailing wage rates as described in the California Labor Code, all wage increases that 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 Ch. 1, Sub Ch. E, Part 31, as constituted on the effective date of this Contract shall be utilized to determine allowability 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 48 CFR, Ch.1, Subch E, Part 31, 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. Any additional services agreed to shall become part of the Work.

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 Work (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:

SANBAG
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715
Contract No. C14003
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 Omitted**

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 Work 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 body or officer having authority to award the Contract on behalf of SANBAG ("Awarding Authority") 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, Ch. 1, Subch. E, Part 31, 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) 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 Work performed by CONSULTANT, Work 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 Work, which will or may be affected by a shortage of funds, it will promptly notify CONSULTANT. Nothing herein shall relieve SANBAG from its obligation to compensate CONSULTANT for Work 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 Caltrans, Federal Transit Administration (FTA) or Federal Highway Administration (FHWA), 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, FTA 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 Work furnished by the CONSULTANT under the Contract. The Contract includes reference to the appropriate standard of care 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 Work, employ quality control procedures that identify potential risks and uncertainties related to scope, schedule, cost, quality, and safety of the Project and the Work performed by CONSULTANT within the areas of CONSULTANT's 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 Work 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 to recover 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, FTA, 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 As applicable, the responsible professional duly authorized by the State of California shall sign and stamp all plans, specifications, estimates (PS&E) and other applicable data furnished by him/her, certify as-built drawings, and where appropriate, indicate his/her California registration or license 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 with their monthly invoices. 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.

ARTICLE 11. TECHNICAL DIRECTION

11.1 Performance of Work under this Contract shall be subject to the technical direction of SANBAG's Department Director of Transit and Rail Programs, ("Director"). 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 modifications to the Contract as defined in the "CHANGES" Article 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 "Changes" Article of the Contract;

11.2.4 In any manner cause an increase or decrease in the Contract price as identified in Article 3., 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;

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 Executive Director or Designee.

11.5 CONSULTANT shall proceed promptly with the performance of Technical Direction issued by SANBAG's Executive 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 Executive 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 scope 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 Awarding Authority has approved any amendment to this Contract.

12.2 SANBAG's Executive Director or Designee may modify this Contract for certain administrative modifications without issuing a written amendment. Administrative modifications as defined herein are limited to: substitutions of personnel identified in this Contract, including Key Personnel and subcontractors; modifications to hourly rates, classifications, and names of personnel in Attachment B; and modifications of the address of the CONSULTANT. All administrative modifications 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 adjustment to 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 Work 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 Work being performed under this Contract. Prior to diverting any of the specified individuals to other projects, or reallocation of any tasks or hours of Work 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's Executive Director or Designee. CONSULTANT shall not substitute any key personnel without the prior written consent of SANBAG's Executive Director or Designee. 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
Joseph Toolson (HMM)	Project Director
Mary Toutounchi (HMM)	Contract Manager
Gordon Head (HMM)	Quality Manager
Andrew Muth (HMM)	Project Management
JD Douglas (HDR)	Planning
Patrick O'Neill (HDR)	Environmental
Robert Klovsky (HDR)	Design
Philip Roupas (HMM)	Construction

ARTICLE 16. REPRESENTATIONS

All Work 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 profession 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 Work 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 Work 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 Work 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 tools and 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 Work 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 finished Work 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 under this Contract 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 the 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 carrier authorized to do business in the State of California with a recent A.M. Best rating of A-VII or better, and shall be written with 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 labor or 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. Also included shall be $1,000,000 in the aggregate for Personal/Advertising, $100,000 for Damages to Rented Premises, and $10,000 for Medical Expenses. For products and completed operations a $2,000,000 aggregate shall be provided. Commercial General Liability insurance 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.

22.6 Railroad Protective Liability Insurance (RPLI) – Should the CONSULTANT need to perform activities in a railroad right-of-way, SANBAG and/or a railroad operator may require CONSULTANT to provide RPLI. In such a case, the CONSULTANT shall obtain said RPLI in amounts and coverages and from issuers acceptable to SANBAG in its sole discretion. Depending on facts and circumstances, and the terms and conditions of the policy involved, SANBAG may choose to find that the CONSULTANT satisfactorily meets this requirement by obtaining one of the following: a) an acceptable RPLI-specific policy; b) a waiver of any railroad liability exclusion from the CONSULTANT'S existing general liability policy; or c) acceptable general liability insurance without a railroad exclusion.

22.7 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 insureds on Commercial General Liability Insurance and Automobile Liability 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 prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONSULTANT will provide SANBAG ten (10) days prior 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.

22.8 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, San Bernardino County Service Authority for Freeway Emergencies and their officers, members, employees, contractors, agents, and volunteers as additional insured parties with respect to liabilities arising out to the performance of Work hereunder. In addition, all policies shall contain endorsements naming the Southern California Regional Railroad Authority and their officers, employee, contractors, agents, and volunteers as additional insured parties with respect to liabilities arising out of the performance of the Work hereunder. In certain cases, additional insured endorsements in favor of other railroad operators may be required for particular Task Orders. 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.

22.9 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, members, 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.

22.10 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.

22.11 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 Work falls 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, members, 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 Work, CONSULTANT agrees to indemnify, defend (with legal counsel reasonably approved by SANBAG) and hold harmless SANBAG and its authorized officers, members, employees, agents and volunteers (Indemnities), from any and all claims, actions, losses, damages and/or liability (Claims) arising out of or related to any act or omission of consultant or any of its officers, employees, agents, subcontractors or volunteers and for any costs or expenses incurred by SANBAG on account of any such 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 Work required under this Contract. CONSULTANT shall be liable for SANBAG costs resulting from errors or deficiencies, in Work furnished under this Contract, including but not limited to any fines, penalties, damages, and costs associated with a modification to a construction contract required because of an error or deficiency in the Work 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 Work to be subcontracted and the subcontractor to perform said Work will not relieve CONSULTANT of any responsibility or liability in regard to the acceptable and complete performance of said Work. 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 Work or products.

ARTICLE 28. INDEPENDENT CONTRACTOR

CONSULTANT is and shall be at all times an independent contractor. Accordingly, all 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 Work or as to the manner, means and methods by which Work is 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 this Contract document, Exhibit A - Scope of Work, and Exhibit B - Price List, SANBAG's Request For Proposal and RFP Addenda, and CONSULTANT's proposal, all of which are incorporated in this Contract by this reference.

32.2 The following order of precedence shall apply: First, the Contract including Attachments A and B; second, SANBAG's Request For Proposal, including all addenda and instructions; and last, CONSULTANT's Proposal. In the event of a conflict between the Contract Articles 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: (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) the fourth business day following deposit of such notice into the United States Mail. 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 contact information changes within ten (10) business days of the change.

Parsons Brinckerhoff, Inc	**To SANBAG**
451 E. Vanderbilt Way, Suite 200,	**1170 W. 3rd Street, 2nd Floor**
San Bernardino, CA	**San Bernardino, CA 92410-1715**
Attn: Rich Walker	**Attn: Mitchell A. Alderman, Director of Rail and Transit Programs**
	cc: Jeffery Hill, Contract Administrator
Phone:	**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, Work 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 dispute is appealable to 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 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 or 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 as identified in Exhibit A 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 any future Request for Proposals or Request for Qualifications 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

CONSULTANT acknowledges that due to differing funding sources for various projects or Task Orders that may be covered by the Scope of Work, prevailing wage requirements or procedures may differ from Task Order to Task Order. CONSULTANT shall comply with all applicable laws and regulations pertaining to prevailing wages and prevailing wage reporting for the type of work to be done under each Task Order. Without limiting the generality of the foregoing, Consultant shall comply with the following:

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" projects, 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 the Work 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, members, 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-Off Meeting with CONSULTANT and their subcontractors listed in the proposal. The Kick-Off 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 Contract 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 (Exhibit 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.

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, SANBAG 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 Division of Labor Standards Enforcement (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 43. PREVAILING WAGES

43.1 Where CONSULTANT is notified by SANBAG that a particular Task Order will be funded in part or in whole with California state bond funds CONSULTANT shall also comply with the following:

(a) The Task Order will be subject to Chapter 1 of Part 7 of Division 2 of the Labor Code (commencing with Section 1771) and Subchapters 4 and 4.5 of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations (commencing with Section 16421) as it will be funded in whole or in part by California state bond funds, or is a design build project with Labor Compliance Program (LCP) requirements pursuant to statute. The CONSULTANT shall comply with these cited sections, including the obligation to furnish certified payroll records directly to the California Labor Commissioner in accordance with Title 8 CCR § 16461. The Compliance Monitoring Unit (CMU) of the Division of Labor Standards Enforcement (DLSE), which is part of the California Department of Industrial Relations (DIR), is responsible for monitoring and enforcement of the prevailing wage laws on that Task Order.

(b) All monitoring, inspection, review auditing and other power, authority, requirements and enforcement functions set forth in 43.1 to 43.10 above with respect to SANBAG shall also apply with respect to the Compliance Monitoring Unit of the DLSE (CMU).

(c) CONSULTANT shall post a Notice containing the following language at all Project job sites:

This public works project is subject to monitoring and investigative activities by the Compliance Monitoring Unit (CMU) of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. This Notice is intended to provide information to all workers employed in the execution of the contract for public work and to all consultants and other persons having access to the job site to enable the CMU to ensure compliance with and enforcement of prevailing wage laws on public works projects. 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 CMU at any office of 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 due to the short period of time following the completion of the project that the CMU may take legal action against those responsible. 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.

(d) the CMU may require a Kick-Off meeting with CONSULTANT staff and all subcontractors listed in the proposal or who are required to be identified or prequalified on a design-build project. The Kick-Off 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 same state labor law requirements set forth in 43.3 above shall be applicable to the Task Order and will be discussed at the Kick Off Meeting. The CMU may require a new Kick-Off Meeting Checklist and Certification (Exhibit C) be signed by CONSULTANT and each subcontractor on the Project subject to prevailing wage laws.

(e) Payroll records shall be furnished in a format prescribed by Title 8 CCR § 16401. The DLSE utilizes a third party vendor to provide the electronic certified payroll service – "My LCM". The service must be used by the Parties for the Project. A link is established for electronic certified payroll at https://app.mylcm.com. The site includes step-by-step instructions on how to manage employee profiles and submit payroll reports. My LCM training and on-going support are provided at no charge to prime CONSULTANT's and participating subcontractor. CONSULTANT shall be responsible for all subcontractors working on the Project and will have the responsibility to ensure

that it and its subcontractor are registered and trained as required to utilize the electronic payroll service. Employee information is entered once into My LCM and then remains in the system and is accessible to CONSULTANT. My LCM eliminates the need for CONSULTANT to submit paper prevailing wage documents and forms while providing an online database of all certified payroll reports. All contract-specific wage rates and classifications are available within My LCM.

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 the Work 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. SEISMIC SAFETY REQUIREMENTS

CONSULTANT agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. CONSULTANT also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project. CONSULTANT also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

ARTICLE 46. ENERGY CONSERVATION

CONSULTANT agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. CONSULTANT also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

ARTICLE 47. FEDERAL CHANGES

CONSULTANT shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between SANBAG and FTA, as they may be amended or promulgated from time to time during the term of this Contract. CONSULTANT's failure to so comply shall constitute a material breach of this Contract.

ARTICLE 48. CLEAN AIR

CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. CONSULTANT agrees to report each violation to SANBAG and understands and agrees that SANBAG will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. CONSULTANT also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

ARTICLE 49. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

SANBAG and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to SANBAG, CONSULTANT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. CONSULTANT agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

ARTICLE 50. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

CONSULTANT acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, CONSULTANT certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, CONSULTANT further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONSULTANT to the extent the Federal Government deems appropriate. CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

ARTICLE 51. SUSPENSION AND DEBARMENT

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, CONSULTANT is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. CONSULTANT is required to comply with 49 CFR 29, Subpart C

and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

> "The certification in this clause is a material representation of fact relied upon by SANBAG. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to SANBAG, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

ARTICLE 52. CIVIL RIGHTS

52.1 Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, CONSULTANT agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, CONSULTANT agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

52.2 Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. CONSULTANT agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, CONSULTANT agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, CONSULTANT agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, CONSULTANT agrees to comply with any

implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, CONSULTANT agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

52.3 CONSULTANT also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

ARTICLE 53. INCORPORATION OF FTA TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any SANBAG requests, which would cause SANBAG to be in violation of the FTA terms and conditions. The CONSULTANT agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

ARTICLE 54. CHANGES TO FEDERAL REQUIREMENTS

CONSULTANT shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between SANBAG and FTA, as they may be amended or Best Practices Procurement Manual – Appendix A.1 Page 17 promulgated from time to time during the term of this contract. CONSULTANT's failure to so comply shall constitute a material breach of this contract.

ARTICLE 55. FORCE MAJEURE

CONSULTANT shall not be in default under this Contract in the event that the Work performed by CONSULTANT is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government 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 56. WARRANTY

CONSULTANT warrants that all Work performed shall be in accordance with the Contract, 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 57. ENTIRE DOCUMENT

47.1 This Contract and its attachments constitute the sole and only agreement governing the Work 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 authority 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 58. 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 59. 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 60. 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.

PARSONS BRINCKERHOFF, INC

By: _____

Douglas B. Sawyer
Sr. Vice President, Area Manager

Date: _____

SANBAG

By: _____

W.E. Jahn
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____

Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____

Jeffery Hill
Contract Administrator

Exhibit "A"
Scope of Work
Contract No. C14003
On-call Transit and Rail Services

GENERAL

The services to be provided by the Consultant for this Request for Proposal (RFP) 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.
- 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.
- Assist with the development and operations of vanpool programs.
- 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.

Exhibit "B"
Hourly Rates
Contract No. C14003
On-call Transit and Rail Services

Title	Range ($/Hr)		
Principal-In-Charge	$280	-	$310
Contract/Program Manager	$230	-	$250
Task Leader	$230	-	$260
Project Manager	$200	-	$230
Safety and Security	$195	-	$215
Railroad Coordinator	$200	-	$230
Project Administrator	$85	-	$105
Clerical	$40	-	$60
QA/QC Manager	$190	-	$215
Project Controls	$125	-	$180
Document Control	$100	-	$130
IT Specialist	$130	-	$150
Project/Task Specialist	$215	-	$240
Ops/Engineering Specialist	$225	-	$250
Finance/Grants Specialist	$275	-	$300
Est/Cost/Risk Specialist	$255	-	$280
System Modeling Specialist	$190	-	$210
Modeling Support	$80	-	$100
Senior Planner	$240	-	$270
Planner	$140	-	$165
Sr. Environmental	$180	-	$200
Environmental Support	$115	-	$150
Sr. Architect	$190	-	$205
Architect	$185	-	$205
TOD/Land Use/Permitting	$170	-	$190
Sr. Engineer	$170	-	$220
Engineer	$125	-	$160
Engineering Intern	$55	-	$80
CADD Designer	$105	-	$130
Design Visualization	$150	-	$180
Computer Graphics	$85	-	$110
**Sr. Resident Engineer	$175	-	$200
**Resident Engineer	$140	-	$170
**Office Engineer	$110	-	$140
**Survey Crew (2-Man)	$220	-	$250
Survey Technician	$130	-	$160
**Field Survey	$120	-	$150
**Sr. Inspector	$125	-	$145
**Inspector	$90	-	$125

**Denotes Field Position

Rates may be adjusted annually based on contract requirements.

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: 5

Date: November 14, 2013

Subject: County-Wide Transit Efficiency Study Scope of Work

Recommendation:* That the Committee recommend the Board Approve the Scope of Work for a County-Wide Transit Efficiency Study

Background: During the last cycle of Comprehensive Operational Analysis (COA) studies for the various transit operators within the County, it was determined that various tasks provided individually by each transit operator could potentially be pooled together to provide potential cost benefits and/or efficiencies. During the SANBAG budgeting process for the Fiscal Year 2013/2014, a budget of $500,000 was added to embark on the analysis.

At the July 11, 2013, SANBAG Board of Directors meeting a Transit Review Ad Hoc Committee was formed. The appointed members were Alan Wapner, Rhodes Rigsby, Dennis Michael, Ryan McEachron, and Robert Lovingood with Janice Rutherford as Chair. Subsequently Jim Harris was added to the Committee. This Committee will review options related to potential efficiency improvements affecting SANBAG and the transit operators. It is not the intention of the Ad Hoc Committee to look at the consolidation of agencies or to seek legislation to change the current make-up of each of the transit operators.

In addition to the Ad Hoc Committee, a Technical Advisory Committee (TAC) comprised of SANBAG staff and General Managers/CEOs or their designee from

*

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.
CRTC1311d-maa
Attachment: http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C14083%20CTO2%20SOW.docx

each of the transit operators was formed. The purpose of the TAC is to aid in the development of the Scope of Work, as well as provide insight on operations to the consultant. Since the July 11, 2013, SANBAG Board meeting, the Ad Hoc and TAC have met together and separately to identify the goals, expectation and tasks for the Scope of Work. Based on these meetings staff is requesting approval of Attachment A – Scope of Work for the Transit Efficiency Study. This study is projected to be complete in approximately nine (9) months from issuance of a Notice to-Proceed to the consultant conducting the study.

The consultant selected for this study will be from the recent procurement of On-Call Transit and Rail Services Request for Proposal (RFP 14003). Typically with On-Call Services, Scopes of Work do not require SANBAG Board approval; however, due to the delicacy of this study, the related Scope of Work is being brought forward for formal consideration and approval by the SANBAG Board.

Financial Impact: This item is consistent with the adopted Fiscal Year 2013/2014 budget. The task associated to this study is Task No. 0309 General Transit funded with General Local Transportation Funds (LTF) Planning.

Reviewed By: This item is not scheduled for review by any other policy committee. The Transit Review Ad Hoc Committee (Alan Wapner, Rhodes Rigsby, Dennis Michael, Ryan McEachron, Robert Lovingood, Jim Harris and Janice Rutherford and the Transit Review Technical Advisory Committee (General Managers/CEOs or their designee from each of the transit operators) have reviewed and accepted this Scope of Work.

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

CRTC1311d-maa
Attachment: http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C14083%20CTO2%20SOW.docx

SCOPE OF WORK
COUNTY-WIDE TRANSIT EFFICIENCY STUDY

Project Understanding and Goals
The San Bernardino Associated Governments seeks to conduct a study of the seven transit operators/agencies in San Bernardino County. The purpose is to identify potential cost efficiencies that can be achieved through coordination and joint efforts among the operators and SANBAG. An additional goal is to improve transit services for current and new transit users through better coordination among the operators and SANBAG.

It is important to note that the focus is not a study of the consolidation of agencies into SANBAG or among themselves, unless the agencies themselves see benefit to such consolidation. Rather, this study will perform a detailed assessment of each operator's operational and administrative functions, systems, and assets, and will identify specific functions and areas where efficiencies can be achieved through combined efforts. For example, joint procurement of costly items (vehicles, fuel, spare parts) may yield cost economies if pursued in a combined manner by several of the agencies.

Finally, the Consultant's role in this study is to perform the detailed assessment, identify opportunities for efficiencies or improved service, and identify the steps that would be needed to pursue and implement those opportunities. Any decision to coordinate or combine efforts in specific functional areas rests with SANBAG and the operators.

The following Scope of Work outlines the tasks the Consultant Team, working with SANBAG and the transit agencies, will follow to conduct the Transit Review study. Also included with this scope is an additional task to focus on a specific inter-agency project: expansion of the regional vanpool program.

Task 1. Transit Agency Assessment

1.1 Kick-off Meeting
The Consultant Team will meet with SANBAG staff and the Operators to determine the overall goals of possible coordination or optimization of transit agency functions, which may include administrative efficiencies/cost savings, service and program coordination (connectivity, schedules, fares, transfers), and development of regional policies and interagency agreements on County-wide transit services. We will identify which agencies, services and programs should be included in the detailed assessment, which may vary from agency to agency depending on size and current operations.

Deliverable: Memorandum outlining study goals and areas of focus for subsequent tasks.

1.2 Agency Functional Assessment
The Consultant Team will gather information on each transit agency/operator on their current functional duties, legislative mandates and restrictions on funding sources/uses, responsibilities, programs and services, and develop a functional inventory. Our proposed method is to develop a detailed questionnaire of all current operations and functions for each operator, in order to identify common activities for each agency and potential opportunities for efficiencies or improved services. The questionnaire will include the following areas:

a. Current transit services provided, service delivery method (in-house operation or contracted), status/expiration dates of major operational contracts, service planning

approach, direct support functions for service (maintenance, operations, security, etc.), fare collection method/equipment, cash handling and fare policies, call centers, and customer service.

b. Administrative support functions, such as marketing, finance, accounting, budgeting, risk, debt management, programming, grants/revenue sources, governance system/representation, policy-setting role, compliance (Title VI/DBE), procurement, project development, capital planning, construction, personnel issues (staffing levels, job descriptions and roles, labor contracts, work rules, reporting structures, benefits (health insurance, holidays, vacations) and retirement system. We will identify in-house positions as well as contract positions that are providing key functions for the agency.

c. MIS/IT systems, including networks, hardware, software licenses, manner in which IT decisions are made and supported (in house vs. contract), software/licenses, scheduling, GPS/AVL, NTD reporting, shared drives, financial and accounting systems, payroll.

d. Fixed Asset review, including, but not limited to revenue and non-revenue vehicle inventory, equipment, fueling stations, rail/commuter stations, real property, right-of-way and buildings.

Information for this task will come from a review of budgets, SRTPs, audits, triennial reviews, long-range plans, and Comprehensive Operational Analyses, as available for each agency. The Consultant Team will also conduct site visits for in-depth interviews with each agency. The data collected from this detailed assessment will be summarized in a matrix format to allow side-by-side comparisons and easier identification of areas for potential efficiency.

Deliverable: Matrix inventory of functional areas for the transit agencies, with supporting written summary overview of each agency.

1.3 Performance Review – Using the information developed in Task 1.2, the Consultant Team will conduct a high level performance review of each agency against their adopted goals, objectives, and service standards, and compared with peer agency performance. We will look for areas where agencies are doing well and areas with opportunity for improvement through coordination with other agencies. We will identify agency challenges and areas of potential economies/efficiencies through coordination or combined efforts on certain agency functions. We will also identify where or for which functions the agencies are currently coordinating effectively.

A draft report on the findings from Task 1.3 will be prepared and presented to SANBAG and the transit agencies in a workshop format for review and discussion. Following this review session, the report for Task 1.3 findings will be finalized.

Deliverables:

- **Draft report on the results of the performance review and identified opportunities for increased efficiencies or improved services.**
- **Workshop on findings of performance review and opportunities assessment**
- **Finalized Report on performance review and opportunities for increased efficiencies or improved services.**

1.4 Financial Review – Once the areas/functions for potential efficiency identified in Task 1.3 have been tentatively agreed upon, the Consultant Team will conduct a financial analysis of the potential financial impacts of any proposed coordination or combined effort on functions, by agency and functional area(s) impacted. We will determine areas of impact (increase or decrease in costs) based on estimates of staffing changes, operational, contracting, or policy changes, or transfer of functions, as well as a qualitative assessment for areas where costs are currently unknown (e.g., labor contract impacts).

The results of the financial review will be presented to SANBAG and the transit operators for review, discussion, and input. Following this meeting, the financial review will be finalized.

Deliverables:

- **Draft report on estimated financial impacts of contemplated functional changes**
- **Review session with SANBAG and the transit operators.**
- **Finalized Financial Review Report**

1.5 Agency Assessment Report

The Consultant Team will combine the work products and agency input from Tasks 1.1, 1.2, 1.3, and 1.4, and prepare a draft Agency Assessment Report and submit it for SANBAG and transit agency review. Following receipt of comments, we will finalize the report as the Task 1 Report of the Transit Review Study and submit it to SANBAG and the transit agencies.

Deliverables:

- **Draft Agency Assessment Report**
- **Final Agency Assessment Report incorporating comments received**

Task 2. Organizational Coordination and Optimization Alternatives

2.1 Comparative Review of Coordination/Optimization Alternatives

The Consultant Team will develop and provide a high-level review of inter-agency coordination and optimization programs that have been conducted in at least three other regions. One example is the consolidation of planning, programming, capital project development, and capital project construction that occurred in the San Diego region from 2003-2005. A summary report will provide findings and lessons learned from the experience in these other regions.

Deliverable: Report on the comparative review of coordination and optimization efforts between agencies in other regions.

2.2 Identify Alternatives

Based on Task 1's work products and the findings from the comparative review in Task 2.1, we will identify the range of coordination and optimization alternatives, from coordination agreements between just two transit agencies to region-wide coordination and/or transfer of functions between agencies.

Deliverable: Matrix describing agency coordination and optimization alternatives and their key features.

2.3 Develop Evaluation Criteria – We will work with SANBAG and the transit agencies to identify evaluation criteria to assess the alternatives.

Deliverable: Agreed-upon criteria for evaluating agency coordination/optimization alternatives

2.4 Evaluation – We will apply the selected evaluation criteria to the identified alternatives and develop an evaluation matrix.

Deliverable: Matrix of findings from evaluation of coordination/optimization alternatives.

2.5 SANBAG/Agency Direction on Evaluation Results
We will meet with SANBAG and the transit agencies to review the evaluation results. Depending on the findings, this could become a series of meetings to discuss and refine the desired outcomes. We will identify the preferred alternatives based on input received.

Deliverable: Meeting(s) with SANBAG and the Transit Agencies to review the results from Tasks 2.1 through 2.4 on agency coordination and optimization alternatives, evaluation criteria, and evaluation results. Receive comment on findings and incorporate into study.

2.6 Coordination and Optimization Alternatives Report
We will summarize the results of Task 2's work in a draft Organizational Coordination and Optimization Alternatives report and submit to SANBAG for review. Following receipt of comments, we will finalize the report as Chapter 2 of the Transit Review Study.

Deliverable: Coordination and Optimization Alternatives Report (Chapter 2 of Transit Review 5tudy)

Task 3. Implementation Planning

3.1 Identify Implementation Steps
Based on the findings from Task 1's Agency Assessment and Task 2's Coordination and Optimization Alternatives Report, the Consultant team will work with SANBAG and the transit agencies to identify the actions and steps needed to implement the selected coordination/optimization alternatives. These could include inter-agency coordination agreements, development of regional transit service coordination policies, and/or transfer of functions or personnel to implement the preferred alternative(s). It is anticipated that identifying the implementation steps and agency roles will likely require a number of working sessions with the agencies.

Deliverables:

- **Working sessions with the agencies to identify implementation steps and roles, followed up by meeting summaries**
- **Report on required action items to implement selected functional, operational, staffing, contracting, and policy changes or transfers of functions, by agency.**

3.2 Implementation Plan
Using Task 3.1's report, the Consultant Team will work with SANBAG and the transit agencies to identify timelines for implementation of the selected strategies, for incorporation into an Implementation Plan. This plan will likely identify a phased approach, with short, mid-range, and long term timelines for the selected strategies.

Deliverable: Agency Coordination Implementation Plan

3.3 Inter-Agency Agreements

A likely outcome of this study will be the need for Inter-Agency agreements between SANBAG and each transit agency, and between transit agencies on certain functional areas. Such agreements will spell out agency goals, roles and responsibilities, timeframes, handling of any transfers of personnel or resources, service levels, and possibly funding sources. The Consultant Team will work with SANBAG and each affected transit agency to develop model Inter-Agency agreements as required for implementation of the efficiency and service improvement strategies.

Deliverables: Model Inter-Agency Agreements for use by SANBAG and the Transit Agencies

3.4 Final Transit Agency Coordination/Optimization Plan

The Consultant Team will combine all work products from the study to produce a final Agency Coordination/Optimization Plan. A draft of the Plan will be developed and submitted to SANBAG for review. Following receipt of comments, we will finalize the Plan for submittal to SANBAG and the transit agencies.

Deliverables:

- **Draft Final Transit Agency Coordination/Optimization Plan**
- **Final Transit Agency Coordination/Optimization Plan**

Task 4. Focused Inter-agency Coordination Effort – Expansion of the Regional Vanpool Program

Introduction and Task Understanding

While tasks 1 through 3 look at overall coordination efforts and strategies between and among the agencies, this task applies coordination efforts to a specific project – a desire to expand the Regional Vanpool Program. A vanpool is a group of commuters who voluntarily participate in an arrangement to travel in a single van to and from work and share the lease cost of the van as well as other expenses. Public agencies that provide a monthly incentive to vanpools (most often up to $400 per month off the lease price) based on federal criteria, report vanpool monthly statistics into the National Transportation database (NTD) like other transit modes. Since vanpools are inexpensive to operate and generate high passenger miles, hours and trips compared to other transit modes, the federal transit revenue generated as a result of the increase in NTD statistics is at a minimum 2:1. For this reason, SANBAG partnered with the Victor Valley Transit Authority (VVTA) in 2011 to jumpstart a program in the greater Victor Valley and is interested in expanding the program to the rest of San Bernardino County.

4.1 Kick-off Meeting

We will meet with SANBAG staff, SANBAG's rideshare consultants, VVTA staff, Riverside County Transportation Commission (RCTC) and other stakeholders as directed, to determine the project's goals, areas of coordination and information sharing. Finalize communication methods, project timeline and deliverables.

Deliverable: Kick-off Meeting and Meeting Summary

4.2 Review Work to Date

We will summarize the Victor Valley vanpool program, current participation, issues, needs and opportunities.

Deliverable: Memorandum summarizing current status of Victor Valley Vanpool Program

4.3 Inventory Current IE Vanpool Participation

We will analyze and summarize subarea participation of the current Victor Valley vanpool program. We will work with SANBAG's rideshare consultants and large employers to determine the current demand for vanpools by subarea. Based on growth in Victor Valley program, we will assess potential for program growth throughout the IE subareas.

Deliverable: Memorandum reviewing assessment of potential for vanpool program expansion

4.4 Revisit Regional Vanpool Agreement

In 2006, when Metro and OCTA were about to jumpstart their vanpool programs, and the Inland Empire (IE) was unable to fund/staff a program, the region agreed to fund a vanpool based on its destination. Now that the IE has its own vanpool program, this Agreement has a negative impact on IE program growth and revenue. We will discuss with SANBAG and RCTC Executive Staff the background on this agreement, current impacts and possible recommendations to change the agreement to more positively impact the IE vanpool program.

Deliverable: Meeting and follow-up Memorandum summarizing options and recommendations regarding the existing vanpool Agreement with Metro and OCTA.

4.5 Assess iVanpool Expansion

The Victor Valley application, database, reporting system, called iVanpool, was developed with the intention of expansion to other programs and within the IE. We will discuss with VVTA and the SANBAG Rideshare consultant the status of the program, manners in which to expand the system, hosting, enhancements, and other impacts to this effort.

Deliverable: Memorandum on issues involved with expanding the iVanpool reporting system to cover new vanpools in the IE.

4.6 Develop Options and Funding Scenarios for IE Vanpool Program Expansion

We will develop options/scenarios for roles and responsibilities, coordination, administration, revenue sharing, intergovernmental needs, consistent program policies and guidelines, reporting, and budget and revenue projections for an expanded IE vanpool program. Based on the budget projection, we will brainstorm with SANBAG and stakeholders on options for funding program expansion to other subareas. We will review current funding sources and potential discretionary grant opportunities, and research jumpstart funding utilized by vanpool programs in other regions in the country.

Deliverable: Memorandum on options and scenarios for overall expansion of the vanpool program in the IE, including roles, responsibilities, budget requirements, revenue projections, and jumpstart funding alternatives.

4.7 Develop Implementation Plan

Based on analysis and results of Tasks 4.1 – 4.6, and direction from SANBAG, we will develop an implementation plan for SANBAG to expand the vanpool program. This plan will include a budget for staff (either contract or internal), lease costs, marketing, materials and other administrative needs, funding sources and timeline for securing start-up funding, revenue projections and a timeline for implementation.

Deliverable: Implementation Plan for vanpool program expansion

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: 6

Date: November 14, 2013

Subject: Award Contract No. C14043 to Unlimited Environmental, Inc. for the Demolition, Abatement and Removal of Structures

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

1. Award Contract No. C14043 to Unlimited Environmental, Inc. as the lowest responsive and responsible bidder in the not-to-exceed amount of $246,450 for the demolition, abatement and removal of structures located at 134 S. E Street in the City of San Bernardino.

2. Approve Allowances/Contingency for Contract No. C14043 for a not-to-exceed amount of $24,645 and authorize Executive Director, or his designee to release contingency as necessary for completion of the project.

Background: On September 23, 2013, Information for Bid (IFB) 14043 was released seeking bids on the demolition, abatement and removal of the structures located at 134 S. E Street (Bekins building), in preparation for the construction of the Downtown San Bernardino Passenger Rail Project (DSBPRP). On October 1, 2013, a Pre-Bid site walk was performed and a total of six (6) bids were received on October 15, 2013. The table on the following page shows the bidders and the respective amounts.

*

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.

CRTC1311c-cd
Attachment: http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C14043.docx

Bidder	Bid Amount
1. Unlimited Environmental, Inc.	$246,450.00
2. Real Estate Consulting Services	$273,552.00
3. T.W. Contracting, Inc.	$319,650.00
4. Midwest Environmental Control	$349,663.70
5. Clauss Construction	$383.017.85
6. Interior Demolition, Inc.	$471,168.00

Staff has determined that Unlimited Environmental, Inc. is the lowest responsive and responsible bidder and is recommending they be awarded Contract No. C14043.

Financial Impact: This item is consistent with the SANBAG Fiscal Year 2013/2014 budget. The funding for the construction contract is State Transit Assistance Fund Task No. 0379.

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 the Contract.

Responsible Staff: Casey Dailey, Transit Analyst

CRTC1311c-cd
Attachment: http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C14043.docx

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. C 14043 Amendment No. _____

By and Between

San Bernardino County Transportation Commission and Unlimited Environmental, Inc.

Contract Description Demolition of all structures, removal and disposal of all lead based paint and asbestos containing materials, landscaping, shrubs, tree(s) removal, and grading of the parcel(s) for drainage, including import and export of fill materials as needed, and the removal of utilities and utility lines servicing structures at 134 S. E Street, San Bernardino, CA.

Board of Director's Meeting Date: December 4, 2013
Overview of BOD Action: Award Contract C14043 to Unlimited Environmental, Inc. for the Demolition, Abatement and Removal of Structures

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

CONTRACT OVERVIEW

Original Contract Amount	$	246,450	**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	$	246,450	**TOTAL CONTINGENCY VALUE**	$	24,645
TOTAL BUDGET AUTHORITY *(contract value + contingency)*				$	271,095

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
12/4/2013	3/31/2014	

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

FINANCIAL INFORMATION

☒ Budget authority for this contract currently exists in Task No. 0379.
☐ A Budget Amendment is required.
How are we funding current FY? STA Rail 1050.30.0379.53701

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

*Provide Brief Overview of the **Overall** Funding for the duration of the Contract:* STA Rail 1050.30.0379.53701
☒ Payable ☐ Receivable

CONTRACT MANAGEMENT INFORMATION

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

Casey Dailey		10.28.13
Project Manager (Print Name)	Signature	Date
Mitch Alderman	M. M. Alderman	10/28/13
Task Manager (Print Name)	Signature	Date
Andrea Zureick		
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
Contract Administrator (Print Name)	Signature	Date
Chief Financial Officer (Print Name)	Signature	Date

CONTRACT C14043

BY AND BETWEEN

SANBAG

AND

UNLIMITED ENVIRONMENTAL, INC.

FOR

DEMOLITION, ABATEMENT AND REMOVAL OF STRUCTURES

This contract, (referred to as "Contract"), is effective on the Effective Date as defined herein, by and between San Bernardino Associated Governments, acting in its capacity as the San Bernardino County Transportation Commission, ("SANBAG"), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715; and Unlimited Environmental, Inc. (referred to hereafter as "CONTRACTOR") whose address is; 1390 32nd Street, Signal Hill, CA 90755. SANBAG and CONTRACTOR are each a "Party" and collectively the "Parties" herein.

RECITALS:

WHEREAS, SANBAG has determined that it requires the demolition of certain structures, removal and disposal of all lead based paint and asbestos containing materials, landscaping, shrubs, tree(s) removal, and grading of the parcel(s) at 134 S. E Street in the City of San Bernardino, for drainage, including import and export of fill materials as needed, and the removal of utilities and utility lines servicing structures scheduled for demolition; and

WHEREAS, the work described herein cannot be performed by the employees of SANBAG; and

WHEREAS, CONTRACTOR has certified that they have the requisite personnel, experience, materials, and equipment and is fully capable and qualified to perform these services identified herein; and

WHEREAS, CONTRACTOR desires to perform all work identified herein and to do so for the compensation and in accordance with the terms and conditions set forth in this contract.

NOW, THEREFORE, the Parties hereto agree as follows:

ARTICLE 1. CONTRACT DOCUMENTS

The complete Contract includes all of the following Contract Documents: the Contract

terms and conditions; bid dated October 7, 2013; and the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished; Drawings, entitled Final Demolition Plan 134 S. E Street; Addenda Nos 1 and 2; Project Plans dated August 9, 2013; and Performance and Payment Bonds.

ARTICLE 2. BONDS

CONTRACTOR will furnish a Payment bond, in the form provided by SANBAG in the IFB, in an amount equal to one hundred percent (100%) of the contract price, and a faithful Performance bond in the form provided by SANBAG in the IFB, in an amount equal to one hundred percent (100%) of the contract price, said bonds, to be secured from a surety company satisfactory to SANBAG within ten (10) working days of the Notice of Award of this Contract and prior to the commencement of work under this Contract. Bonds shall remain in full force and effect for a period of one (1) year following the date of filing of the Notice of Completion. Notwithstanding any other provision set forth in this Contract, performance by a Surety or Guarantor of any obligation of CONTRACTOR shall not relieve CONTRACTOR of any of its obligations thereunder.

ARTICLE 3. RETENTION/PROMPT PAYMENT

Pursuant to CFR 26.29, CONTRACTOR is required to pay all subcontractors for satisfactory performance no later than 7 days from when the CONTRACTOR receives payment from the SANBAG. SANBAG shall hold retainage from CONTRACTOR of five percent (5%) from each invoice, and shall make prompt and regular incremental acceptances of portions, as determined by SANBAG of the contract work and pay retainage to the CONTRACTOR based on these acceptances. The CONTRACTOR or subcontractor(s) shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work. Any delay or postponement of payment may take place only for good cause and with SANBAG's prior written approval. Any violation of these provisions shall subject CONTRACTOR to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the CONTRACTOR or subcontractor in the event of; a dispute involving late payment or nonpayment by the CONTRACTOR; deficient subcontractor performance and/or non-compliance by a subcontractor. This Article applies to DBE and non-DBE contractors.

ARTICLE 4. COMPENSATION

4.1 SANBAG agrees to pay, and CONTRACTOR agrees to accept in full payment for the work outlined in the Contract documents, the sum of $246,450 (**TWO HUNDRED FORTY SIX THOUSAND FOUR HUNDRED FIFTY DOLLARS**), subject to additions and deductions, if any, in accordance with said documents [including without limit that compensation due for unit price work shall be the actual number of such units performed multiplied by the unit price]. Payment shall not be made more often than once each thirty (30) days, nor shall the amount be paid in

excess of ninety-five percent (95%) of the Contract at time of completion. Payment requests shall not be deemed properly completed unless certified payrolls and any other mandatory submittals have been properly completed and submitted for each week worked during the time period covered by said payment request. Final payment to be made after acceptance of the Project. The Bid Schedule presented on the next page is incorporated into this Contract by this reference.

4.2 Pursuant to California Public Contract Code Section 22300, CONTRACTOR has the option to deposit securities with an Escrow Agent as a substitute for retention earnings required to be withheld. Alternatively, CONTRACTOR may submit a written request to SANBAG, who shall make payments of the retention amount directly to the Escrow Agent. The market value of the securities deposited at the time of substitution shall be at least equal to the cash amount required to be withheld as retention under this Contract. CONTRACTOR shall be responsible for paying all fees incurred by the Escrow Agent in administering the Escrow Account. Securities eligible for investment under this Section shall include those listed in Section 16430 of the Government Code.

ITEM NO.	ITEM CODE	DESCRIPTION	UNIT MEASURE	ESTIMATED QUANTITY	UNIT COST	TOTAL COST
1	n/a	Commercial/Warehouse structure(s)	SF	32,315	3.90	$126,029
2	n/a	Garage/Rear structure(s)	SF	2,350	0.98	$2,303
3	n/a	Awning	SF	2,210	0.45	$995
4	n/a	Tree(s)	Each	18	100.00	$1,800
5	n/a	Small trees, shrubs, landscaping, plants, etc.	Each	25	10.00	$250
6	n/a	Fencing parcel(s)	Each	1	2,500.00	$2,500
7	n/a	Utility removal (Gas, Water, Sewer, Electric)	Each	4	0.0	$0.00
8	n/a	Asbestos containing materials removal	SF	9,330	2.60	$24,258
9	n/a	Asbestos containing materials removal (DOORS)	Each	7	50.00	$350
10	n/a	Lead-based paint stabilization prior to demolition (Interior) Metal Substrates: doors, door frames, roll-up doors, roll-up door frames, window frames, stair stringers, stair railings, stair treads, elevator doors and elevator door frames Ceramic Substrates: restroom 1 wall tile	Each	Refer to ACM & LBP Hazmat Report	5,950.00	$5,950
11	n/a	Lead-based paint stabilization prior to demolition (Exterior) Metal Substrates: Doors, door frames, roll up doors, door frames, window frames, fire escape ladder, porch ceiling, and porch beams Concrete Substrates: Lower walls	Each	Refer to ACM & LBP Hazmat Report	4,535.00	$4,535
12	n/a	Concrete/Asphalt removal/haul	SF	34,200	1.90	$64,980
13	n/a	Import fill compacted per requirements	SF	10,000 – 12,000 est.	1.25	$12,500
					Total Cost	$246,450

ARTICLE 5. TAXES, DUTIES AND FEES

Except to the extent expressly provided elsewhere in this Contract, CONTRACTOR shall pay when due, and the compensation set forth in this Contract shall be inclusive of all: a) local, municipal, State, and federal sales and use taxes; b) excise taxes; c) taxes on personal property owned by CONTRACTOR; and d) all other governmental fees and taxes or charges of whatever nature applicable to CONTRACTOR to enable it to conduct business.

ARTICLE 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 work performed by the CONTRACTOR, work 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 work, which will or may be affected by a shortage of funds, it will promptly notify CONTRACTOR. Nothing herein shall relieve SANBAG from its obligation to compensate CONTRACTOR for work already performed pursuant to this Contract. No penalty shall accrue to SANBAG in the event this provision is exercised.

ARTICLE 7. PERMITS AND LICENSES

CONTRACTOR agrees that he/she is currently the holder of a valid license as a CONTRACTOR in the State of California and that the license is the correct class of license for the work described in the project plans and specifications. CONTRACTOR further agrees to maintain license through the entire duration of Contract without additional compensation from SANBAG.

ARTICLE 8. DOCUMENTATION AND RIGHT TO AUDIT

CONTRACTOR shall provide SANBAG, the U.S. Department of Transportation (DOT), including but not limited to the Federal Transit or Federal Highway Administration, and the Comptroller General of the United States, or other authorized representatives or agents of SANBAG, access to CONTRACTOR's records which are directly related to this Contract for the purpose of inspection, auditing or copying. CONTRACTOR shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a period of three (3) years from the date of final payment by SANBAG, except in the event of litigation or settlement of claims arising out of this Contract in which case CONTRACTOR agrees to maintain records through the conclusion of all such litigation, appeals or claims related to this Contract. CONTRACTOR further agrees to maintain separate records for costs of work performed by change order. CONTRACTOR shall allow SANBAG, Caltrans, FHWA or FTA, or its representatives of agents to reproduce any materials as reasonably necessary.

ARTICLE 9. SCHEDULE

CONTRACTOR agrees to complete the work within forty five (45) days from the time the Notice To Proceed is given by SANBAG. CONTRACTOR shall incur no costs and shall not perform or furnish any work, services or equipment under this Contract, unless and until SANBAG has issued a written Notice To Proceed (NTP).

ARTICLE 10. NONDISCRIMINATION/ EQUAL EMPLOYMENT OPPORTUNITY

10.1 CONTRACTOR agrees to comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of transportation (DOT), Title 49 CFR Part 21 as they may be amended from time to time, which are herein incorporated by this reference and made part of this Contract. The following minimum specific requirement activities of the Equal Employment Opportunity (EEO):

10.1.1 CONTRACTOR will work with SANBAG and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the Contract.

10.2.1 CONTRACTOR will accept as his operating policy the following statement: "It is the policy of this company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

10.2 EEO Officer: CONTRACTOR will designate and submit to the SANBAG in writing the EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active CONTRACTOR program of EEO and who must be assigned adequate SANBAG and responsibility to do so.

10.3 Dissemination of Policy: All employees of the CONTRACTOR who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONTRACTOR's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

10.3.1 Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the CONTRACTOR's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

10.3.2 All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the CONTRACTOR's EEO obligations within thirty days following their reporting for duty with the CONTRACTOR.

10.3.3 All personnel who are engaged in direct recruitment for the project will be instructed

by the EEO Officer in the CONTRACTOR's procedures for locating and hiring minority group employees.

10.3.4 Notices and posters setting forth the CONTRACTOR's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

10.3.5 CONTRACTOR's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

10.4 Recruitment: When advertising for employees, CONTRACTOR will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

10.4.1 CONTRACTOR will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, CONTRACTOR will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to CONTRACTOR for employment consideration.

10.4.2 In the event CONTRACTOR has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits CONTRACTOR's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements has the effect of discriminating against minorities or women, or obligates the CONTRACTOR to do the same, such implementation violates Executive Order 11246, as amended.)

10.4.3 CONTRACTOR will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

10.5 Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

10.5.1 CONTRACTOR will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

10.5.2 CONTRACTOR will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

10.5.3 CONTRACTOR will periodically review-selected personnel actions in depth to

determine whether there is evidence of discrimination. Where evidence is found, the CONTRACTOR will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

10.5.4 CONTRACTOR will promptly investigate all complaints of alleged discrimination made to the CONTRACTOR in connection with his obligations under this Contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the CONTRACTOR will inform every complainant of all of his avenues of appeal.

10.6 Training and Promotion: CONTRACTOR will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

10.6.1 Consistent with CONTRACTOR' work force requirements and as permissible under Federal and State regulations, the CONTRACTOR shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

10.6.2 CONTRACTOR will advise employees and applicants for employment of available training programs and entrance requirements for each.

10.6.3 CONTRACTOR will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

10.7 Unions: If CONTRACTOR relies in whole or in part upon unions as a source of employees, CONTRACTOR will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by CONTRACTOR either directly or through a CONTRACTOR's association acting, as agent will include the procedures set forth below:

10.7.1 CONTRACTOR will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

10.7.2 CONTRACTOR will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

10.7.3 CONTRACTOR is to obtain information as to the referral practices and policies of

the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to CONTRACTOR, CONTRACTOR shall so certify to the SANBAG and shall set forth what efforts have been made to obtain such information.

10.7.4 In the event the union is unable to provide CONTRACTOR with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, CONTRACTOR will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which CONTRACTOR has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents CONTRACTOR from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such CONTRACTOR shall immediately notify the SANBAG.

10.8 CONTRACTOR shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall notify all potential subcontractors and suppliers of his/her EEO obligations under this Contract. Disadvantaged business enterprises (DBE), as defined in 49 CFR Part 23 shall have equal opportunity to compete for and perform subcontracts, which the CONTRACTOR enters into pursuant to this contract. CONTRACTOR will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. CONTRACTOR shall obtain lists of DBE construction firms from SANBAG DBE Liaison. CONTRACTOR will use his best efforts to ensure subcontractor compliance with their EEO obligations.

10.9 Records and Reports: CONTRACTOR shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three (3) years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SANBAG. The records kept by the CONTRACTOR shall document the following: The number of minority and non-minority group members and women employed in each work classification on the project; the progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; the progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and the progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

10.9.1 CONTRACTOR will submit an annual report to the SANBAG each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, CONTRACTOR will be

required to collect and report training data.

ARTICLE 11. CONFLICT OF INTEREST

CONTRACTOR agrees that it presently has no interest financial or otherwise and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Work required under this Contract or to be contrary to the interests of SANBAG as to the Project. CONTRACTOR further agrees that in the performance of this Contract, no person having any such interest shall be employed. CONTRACTOR is obligated to fully disclose to SANBAG, in writing, of any conflict of interest issues as soon as they are known to CONTRACTOR. CONTRACTOR acknowledges that no member or delegate to, the Congress of the U.S. shall have any interest, direct or indirect, in this Contract or the benefits thereof.

ARTICLE 12. REPRESENTATIONS

All work supplied by CONTRACTOR under this Contract shall be supplied by personnel who are qualified, careful, skilled, experienced and competent in their respective trades or professions. CONTRACTOR agrees that the work performed shall conform to all drawings, plans and specifications herein.

ARTICLE 13. PROPRIETARY RIGHTS/CONFIDENTIALITY

13.1 If, as part of this Contract, CONTRACTOR is required to produce materials, documents data, or information ("Products"), then CONTRACTOR, if requested by SANBAG, shall deliver to SANBAG the original of all such products which shall become the property of SANBAG.

13.2 All materials, documents, data or information obtained from SANBAG's data files or any SANBAG-owned medium furnished to CONTRACTOR 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 CONTRACTOR without the express written consent of SANBAG.

13.3 Except as reasonably necessary for the performance of Work, CONTRACTOR 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 CONTRACTOR from or through SANBAG in connection with CONTRACTOR's performance of this Contract, unless (a) the information was known to CONTRACTOR prior to obtaining same from SANBAG pursuant to a prior contract; or (b) the information was obtained at the time of disclosure to CONTRACTOR, or thereafter becomes part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONTRACTOR or its employees, agents, or subcontractors, or (c) the information was obtained by CONTRACTOR from a third party who did not receive the same, directly or indirectly, from SANBAG and who had, to CONTRACTOR's knowledge and belief, the right to disclose the same. Any materials and information referred to in this Article, which are produced by CONTRACTOR for SANBAG in the performance and completion of CONTRACTOR's Services under this Contract, until released in writing by SANBAG,

except to the extent such materials and information become a part of public domain information through no fault of CONTRACTOR, or its employees or agents.

13.4 CONTRACTOR shall not use SANBAG's name or photographs of the Project in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SANBAG.

13.5 All press releases relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SANBAG unless otherwise agreed to in writing by the Parties.

ARTICLE 14. TERMINATION

14.1 Termination for Convenience - SANBAG shall have the right at any time, with or without cause, to terminate further performance of Work by giving thirty (30) calendar days written notice to CONTRACTOR specifying the date of termination. On the date of such termination stated in said notice, CONTRACTOR 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.

14.1.1 CONTRACTOR shall deliver to SANBAG, all deliverables prepared by CONTRACTOR or its subcontractors or furnished to CONTRACTOR by SANBAG. Upon such delivery, CONTRACTOR may then invoice SANBAG for payment in accordance with the terms herein.

14.1.2 If CONTRACTOR has fully and completely performed all obligations under this Contract up to the date of termination, CONTRACTOR shall be entitled to receive from SANBAG as complete and full settlement for such termination a pro rata share of the contract cost and a pro rata share of any fixed fee, for such Services satisfactorily executed to the date of termination.

14.1.3 CONTRACTOR shall be entitled to receive the actual cost incurred by CONTRACTOR to return CONTRACTOR's field tools and equipment, if any, to it or its suppliers' premises, or to turn over work in progress in accordance with SANBAG's instructions plus the actual cost necessarily incurred in effecting the termination.

14.2 Termination for Cause - In the event CONTRACTOR shall file a petition in bankruptcy court, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy court shall be filed against CONTRACTOR or a receiver shall be appointed on account of its solvency, or if CONTRACTOR shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice, SANBAG may, without prejudice to any other rights or remedies SANBAG may have, (a) hold in abeyance further payments to CONTRACTOR; (b) stop any Work of CONTRACTOR or its subcontractors related to such failure until such failure is remedied;

and/or (c) terminate this Contract by written notice to CONTRACTOR specifying the date of termination. In the event of such termination by SANBAG, SANBAG may take possession of the deliverables and finish Services by whatever method SANBAG may deem expedient. A waiver by SANBAG of one default of CONTRACTOR shall not be considered to be a waiver of any subsequent default of CONTRACTOR, nor be deemed to waive, amend, or modify any term of this Contract.

14.2.1 CONTRACTOR shall deliver to SANBAG all finished and unfinished products prepared under this Contract by CONTRACTOR or its subcontractors or furnished to CONTRACTOR by SANBAG within ten (10) working days of said notice.

14.3 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 CONTRACTOR be entitled to any prospective profits or any damages because of such termination.

ARTICLE 15. STOP WORK ORDER

Upon failure of CONTRACTOR or its subcontractors to comply with any requirements of this Contract, SANBAG shall have the right to stop any or all Work affected by such failure until such failure is remedied or to terminate this Contract in accordance with the Termination provision herein.

ARTICLE 16. 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 CONTRACTOR for any claim asserted by CONTRACTOR after final payment has been made under this Contract.

ARTICLE 17. INSURANCE

Without in anyway affecting the indemnity provision identified in this Contract, CONTRACTOR shall, at the CONTRACTOR's sole expense, and prior to commencement of any Work, procure and maintain in full force, insurance with carriers and with terms and conditions acceptable to SANBAG through the expiration of the patent deficiency in construction statute of repose set forth in Section 337.1 of the Code of Civil Procedure. The policies shall be written by a carrier authorized to do business in the State of California with a recent Best rating of A-VII or better, and shall be written with at least the following limits of liability:

17.1 Workers' Compensation/Employer's Liability Insurance – Certificate of Insurance must include the following coverages:

- Coverage A. Statutory Benefits
- Coverage B. Employer's Liability
- Bodily Injury by accident - $1,000,000 per accident
- Bodily Injury by disease - $1,000,000 policy limit/$1,000,000 each employee

Waiver of Subrogation endorsement naming SANBAG and its contracting entities as

identified in this Article.

17.2 Commercial General Liability – Certificate of Insurance must include the following coverages:

- $2,000,000 per Occurrence Limit/ $10,000,000 in the aggregate
- $1,000,000 Personal Advertising Injury Limit/$2,000,000 in the aggregate
- $2,000,000 Products/Completed Operations in the aggregate
- $5,000,000 umbrella or excess liability.
- Combined total for Commercial General Liability and Excess Liability limits of $25,000,000 will be required for projects with a contract value in excess of $25,000,000.
- Umbrella or excess policy shall follow form over the CONTRACTOR's General Liability coverage and shall provide a separate aggregate limit for products and completed operations coverage. The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

17.3 Commercial Auto Insurance – Certificate of Insurance must include the following coverages:

- Auto Liability limits of not less than $5,000,000 each accident.
- Combined Bodily Injury and Property Damage Liability insurance
- Coverage must include, but not limited to, owned autos, hired or non-owned autos
- Coverage must include an additional insured endorsement as identified in this Article.

a) Products and Completed Operations coverage. CONTRACTOR agrees to maintain this coverage for 10 years following the acceptance of Work or until all applicable Statutes of Limitation expire, whichever length of time is longer. CONTRACTOR further agrees to continue naming SANBAG and any other parties of interest as Additional Insured(s) for the entire length of time as described herein.
b) Contractual Liability without any modification of the definition of "Insured Contract".
c) Property Damage coverage including completed operations or its equivalent.
d) Coverage is to be on an "occurrence" form. "Claims Made" and "Modified Occurrence" forms are not acceptable except where "Professional Liability" coverage is required.
e) An endorsement stating that any aggregate limits apply on a "per project" and on a "per location" basis.
f) The project name must be indicated under "Description of Operations/Locations".

17.4 Proof of Coverage –

- Evidence of insurance in a form acceptable to SANBAG, including the required "additional insured" endorsements, shall be provided within 10 business days after Notice of Award is given to CONTRACTOR. Prior to commencing any work, CONTRACTOR shall furnish 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, CONTRACTOR will provide SANBAG 30 days prior written notice of such

cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONTRACTOR will provide SANBAG 10 prior days written notice.

- Certificates of Insurance, as evidence of required insurance, for the General Liability and Auto Liability and Umbrella-Excess Liability policies shall set forth deductible amounts applicable to each policy and all exclusions which are added by endorsement to each policy, and shall also include the Contract Number and Project Manager's name on the face of the certificate.
- SANBAG may expressly allow deductible clauses, which it does not consider excessive, overly broad, or harmful to interests of SANBAG. Regardless of the allowance of exclusions or deductions by SANBAG, CONTRACTOR shall be responsible for any deductible amount and shall warrant that the coverage provided to SANBAG is consistent with the requirements of this section.

- CONTRACTOR shall provide certified copies of all insurance policies required within ten (10) days of SANBAG's written request of said copies. All such certificates, except those for Worker's Compensation insurance, shall include 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 insureds on Commercial General Liability insurance and auto insurance. With respect to liability arising out of or connected with work or operations performed by or on behalf of the CONTRACTOR under this Contract. Coverage for such additional insureds shall not extend to liability:

  (a) Arising from any defective or substandard condition of the Roadway which existed at or prior to the time the CONTRACTOR commenced work, unless such condition has been changed by the work or scope of the work requires the CONTRACTOR to maintain existing Roadway facilities and the claim arises from the CONTRACTOR' failure to maintain; or

  (b) For claims occurring after the work is completed and accepted unless these claims are directly related to alleged acts or omissions of the CONTRACTOR which occurred during the course of the work; or

  (c) To the extent prohibited by Section 11580.04 of the Insurance Code.

17.5 Waiver of Subrogation Rights - CONTRACTOR shall require the carriers of Commercial General Liability, Automobile Liability and Worker's Compensation to waive all rights of subrogation against SANBAG, and its officers, employees, agents and volunteers, and subcontractors. Such insurance coverage provided shall not prohibit CONTRACTOR or CONTRACTOR's employees or agents from waiving the right of subrogation prior to a loss or claim. CONTRACTOR hereby waives all rights of subrogation against SANBAG.

17.6 Enforcement – SANBAG may take any steps as are necessary to assure CONTRACTOR's compliance with its insurance obligations as identified within this Article. Failure to continuously maintain insurance coverage as provided herein is a material breach of Contract. In the event the CONTRACTOR fails to maintain any insurance coverage required, SANBAG may, but is not required to, maintain this coverage and charge the expense to the CONTRACTOR or terminate this Contract. The required insurance shall be subject to the approval of SANBAG, but any acceptance of insurance certificates by

SANBAG shall in no way limit or relieve the CONTRACTOR of the CONTRACTOR's duties and responsibilities under the Contract to indemnify, defend and hold harmless SANBAG, and its authorized officers, employees, agents and volunteers. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the CONTRACTOR for liability in excess of such coverage, nor shall it preclude SANBAG from taking other actions as is available to it under any other provision of the contract or law. Failure of SANBAG to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

17.7 All coverages for subcontractors shall be subject to all of the requirements stated herein. CONTRACTOR shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor

17.8 If requested by SANBAG, CONTRACTOR shall submit copies of all required insurance policies including endorsements.

ARTICLE 19. INDEMNITY

CONTRACTOR agrees to indemnify, defend (with counsel approved by SANBAG in its sole discretion) and hold harmless SANBAG and its authorized officers, employees, agents and volunteers (indemnitees) from any and all claims, actions, losses, damages, and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors, or omissions of any person and for any costs or expenses incurred by the indemnitees on account of any claim except where such indemnification its prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. CONTRACTOR's indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. CONTRACTOR's indemnification obligation applies to the indemnitees' "passive" negligence but does not apply to the indemnitees' "sole" or "active" negligence or "willful misconduct" within the meaning of Civil Code Section 2782.

ARTICLE 20. OWNERSHIP OF DOCUMENTS

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by CONTRACTOR under this Contract shall become the property of SANBAG when prepared, whether delivered to SANBAG or not.

ARTICLE 21. RECORD AND INSPECTION AND AUDITING

SANBAG, or any of its designees, representatives or agents, including but not limited to the U.S. Department of Transportation, Federal Highways Administration or Federal Transit Administration shall at all times have access during normal business hours to CONTRACTOR's operations and products wherever they are in preparation or progress, and CONTRACTOR 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 CONTRACTOR to comply with the Contract or to subsequently reject and unsatisfactory Work or products.

ARTICLE 22. INDEPENDENT CONTRACTOR

CONTRACTOR is and shall be at all times an independent contractor. Accordingly, all Work provided by CONTRACTOR shall be done and performed by CONTRACTOR under the sole supervision, direction and control of CONTRACTOR. SANBAG shall rely on CONTRACTOR for results only, and shall have no right at any time to direct or supervise CONTRACTOR or CONTRACTOR's employees in the performance or as to the manner, means and methods by which work is to be performed. All personnel furnished by CONTRACTOR pursuant to this Contract, and all representatives of CONTRACTOR shall be and remain the employees or agents of CONTRACTOR or of CONTRACTOR's subcontractors at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of SANBAG.

ARTICLE 23. 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 attorney's fees. This Article shall not apply to those costs and Attorney's fees directly arising from any third party legal action against a Party hereto and payable under the "Indemnity" provision of the Contract.

ARTICLE 24. 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 25. FEDERAL, STATE AND LOCAL LAWS

CONTRACTOR warrants that in performance of this Contract, it shall comply with all applicable federal, State and local laws, ordinances, rules and regulations.

ARTICLE 26. PRECEDENCE

26.1 The Contract consists of the General Terms and Conditions, Special Provisions, Specifications and Plans. SANBAG's Invitation For Bids and CONSULTANT's bid, all of which are incorporated herein by this reference.

26.2 The following order of precedence shall apply: First, the Contract, including all attachments. Second, the Invitation for Bids and its addenda and attachments, and third, the Contractor's Bid and its attachments.

ARTICLE 27. 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) the fourth business day following deposit of such notice into the United States Mail. 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. CONTRACTOR shall notify SANBAG of any changes within ten (10) business days of the change.

To CONTRACTOR	**To SANBAG**
Unlimited Environmental, Inc.	**San Bernardino Associated Governments**
1390 32nd St.	**1170 W. 3rd Street, 2nd Floor**
Signal Hill, CA 90755	**San Bernardino, CA 92410-1715**
Attn: Jill Dupleich	**Attn: Mitch Alderman**
	cc: Contract Administrator
Phone: 562-981-2218	**Phone: (909) 884-8276**

ARTICLE 28. FEDERAL CHANGES

CONTRACTOR shall at all times comply with all applicable Federal regulations, policies, procedures and directives, including without limitation those listed directly or by reference in this Contract, as they may be amended time to time through the term of this Contract. CONTRACTOR's failure to comply shall constitute a material breach of Contract.

ARTICLE 29. LIQUIDATED DAMAGES

Should CONTRACTOR fail to complete all work within the time specified herein, including any written authorized changes, the actual damages to SANBAG for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, CONTRACTOR shall pay SANBAG the sum of $6,000 per each calendar day of delay as identified in the weekly statement of working days issued by the SANBAG. SANBAG shall not withhold liquidated damages if the delay is determined by SANBAG to be excusable in accordance with the Force Majeure article of this Contract. SANBAG may extend the period of performance of this Contract when in its sole judgment, sufficient justification to do so.

ARTICLE 30. ASSIGNMENT

CONTRACTOR agrees not to sell, transfer, or otherwise dispose of any contract part either voluntarily or by operation of law without prior written consent from SANBAG.

ARTICLE 31. SUBCONTRACTS

31. 1 CONTRACTOR shall perform with its own organization contract work amounting to not less **than 30 percent** (or a greater percentage if specified elsewhere in the Contract) of the total original contract price, excluding any specialty items designated by SANBAG. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by CONTRACTOR' own organization (23 CFR 635).

31. 1.1 "Its own organization" shall be construed to include only workers employed and paid directly by the prime CONTRACTOR and equipment owned or rented by the prime CONTRACTOR, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime CONTRACTOR.

31. 1.2 "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract. The contract amount upon which the requirements set forth in this Contract is computed includes the cost of material and manufactured products, which are to be purchased or produced by the CONTRACTOR under the contract provisions.

31.2 CONTRACTOR shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the Contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as SANBAG determines is necessary to assure the performance of the Contract.

31. 3 No portion of the Contract shall be sublet, assigned or otherwise disposed of except with the written consent of SANBAG, or authorized representative, and such consent when given shall not be construed to relieve CONTRACTOR of any responsibility for the fulfillment of the contract. Written consent will be given only after SANBAG has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. CONTRACTOR does not have the right to make any substitutions of any subcontractor listed in its Bid, except in accordance with the State of California Public Contract Code, Section 4100 et. seq. SANBAG's consent to substitution shall not be deemed to relieve CONTRACTOR of its obligation to fully comply with the requirements of this Contract. CONTRACTOR shall be responsible for all acts and omissions of its employees, subcontractors and their employees. CONTRACTOR is responsible for coordinating all work performed by the subcontractors. SANBAG reserves the right, but not the obligation, to review the subcontractor agreements for this project and to require any modifications so as to conform to the requirements set forth in this Contract.

ARTICLE 32. COORDINATION WITH OTHER CONTRACTS

SANBAG may undertake or award other contracts for work, and CONTRACTOR shall cooperate fully with the other CONTRACTOR's and SANBAG's employees or agents and carefully fit its own work to such additional work as may be directed by SANBAG. CONTRACTOR shall not commit or permit any act, which will interfere with the performance of work by any other CONTRACTOR or by SANBAG.

ARTICLE 33. PREVAILING WAGE REQUIREMENTS

33.1 All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll

deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than the higher of those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or the applicable General Prevailing Wage Rates as determined and published by the Director of the California Department of Industrial Relations, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR and such laborers and mechanics

33.2 Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions.

ARTICLE 34. SAFETY

34.1 In the performance of this Contract, CONTRACTOR shall comply with all applicable federal, State, and local laws, rules and regulations governing safety, health, and sanitation (23 CFR 635). The CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as SANBAG may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. It is a condition of this Contract, and shall be made a condition of each subcontract, which the CONTRACTOR enters into pursuant to this Contract, that CONTRACTOR and any subcontractor shall not permit any employee, in performance of this Contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

34.2 Pursuant to 29 CFR 1926.3, it is a condition of this Contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

ARTICLE 35. INTENTIONALLY OMITTED

ARTICLE 36. NON-SEGREGATED FACILITIES

36.1 CONTRACTOR, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. CONTRACTOR agrees that a breach of this certification is a violation of the EEO provisions of this Contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

36.2 As used in this certification, the term "segregated facilities" means any waiting rooms, work

areas, restrooms and washrooms, restaurants and other eating areas, time-clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

36.3 CONTRACTOR agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of $10,000 or more and that it will retain such certifications in its files.

ARTICLE 37. INTENTIONALLY OMITTED

ARTICLE 38. INTENTIONALLY OMITTED

ARTICLE 39. GRATUITIES

CONTRACTOR, its employees, agents or representatives shall not offer or give to an officer, official or employee of SANBAG, gifts, entertainment, payments, loans or other gratuities to influence the award of a contract or obtain favorable treatment under a contract.

ARTICLE 40. CONFIDENTIALITY

Any SANBAG materials to which the CONTRACTOR or its agents has access to or materials prepared by the CONTRACTOR during the term of this Contract shall be held in confidence by the CONTRACTOR, who shall exercise all reasonable precautions to prevent disclosure of confidential information to anyone except as authorized by SANBAG. CONTRACTOR shall not release any reports, information of promotional materials or allow for the use of any photos of the project for any purposes without written approval from SANBAG.

ARTICLE 41. CONVICT LABOR

In connection with the performance of work under this Contract, CONTRACTOR agrees not to employ any person, undergoing sentence of imprisonment at hard labor. This Article does not include convicts who are on parole or probation.

ARTICLE 42. INSPECTION OF SITE

CONTRACTOR acknowledges that it has investigated and satisfied itself as to the conditions affecting the work including, but not restricted to, those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electricity and roads and uncertainties of weather, river stages, tides or similar conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. CONTRACTOR fully acknowledges that it has satisfied itself

as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by SANBAG, as well as from information presented by the drawings and specifications made a part of this Contract. Any failure by CONTRACTOR to acquaint itself with the available information will not relieve it from responsibility for the difficulty of cost of successfully or interpretations made by CONTRACTOR on the basis of the information made available by SANBAG.

ARTICLE 43. RECYCLED PRODUCTS

CONTRACTOR shall comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act as amended, (42 USC 6962), including but not limited to the 40 CFR Part 247 and Executive Order 12873, as applicable. CONTRACTOR agrees to include this Article in all of its subcontracts.

ARTICLE 44. CLEAN WATER REQUIREMENTS

CONTRACTOR shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et. seq. CONTRACTOR shall report each violation to SANBAG and understands and agrees that SANBAG who will in turn, report each violation as required to assure notification to FHWA and appropriate Environmental Protection Agency (EPA) Regional Office. CONTRACTOR shall include this requirement in each subcontract exceeding $100,000.

ARTICLE 45. DRUG FREE WORKPLACE

CONTRACTOR agrees to comply with the Drug Free Workplace Act of 1990 per Government Code Section 8350 et. seq.

ARTICLE 46. SEVERABILITY

The partial or complete invalidity in whole or in part, of any one or more of the provisions of this Contract shall not affect the validity or continuing force and effect of any other provision.

ARTICLE 47. FORCE MAJEURE

CONTRACTOR shall not be in default under this Contract in the event that the Work performed by CONTRACTOR is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, natural disasters such as floods, earthquakes, landslides and fires, or other catastrophic events which are beyond the reasonable control of CONTRACTOR and which CONTRACTOR could not reasonably be expected to have prevented or controlled. "Other catastrophic events" do not include the financial inability of the CONTRACTOR to perform or failure of the CONTRACTOR to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the CONTRACTOR.

ARTICLE 48. INCORPORATION OF RECITALS

The Recitals stated above are true and correct and are hereby incorporated into this Contract.

ARTICLE 49. EFFECTIVE DATE

The date that this Contract is executed by SANBAG shall be the Effective Date of this Contract.

---------- SIGNATURES ARE ON THE FOLLOWING PAGE ----------

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

CONTRACTOR

By: _____
Jill Dupleich
Vice President

Date: _____

Licensed in accordance with an act providing for registration of contractors.

_____
License Number

_____
Federal Employer
Identification Number

SANBAG

By: _____
W.E. Jahn
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____
Jeffery Hill
Contract Administrator

BOND FORMS

SAN BERNARDINO ASSOCIATED GOVERNMENTS

Contract No. C14043

PAYMENT BOND FORM

KNOW ALL MEN BY THESE PRESENTS:

That the San Bernardino Associated Governments of the State of California (hereinafter referred to as (SANBAG) and _____ (hereinafter referred to as Principal) have by written agreement dated, _____2013, entered into a contract identified as:

CONTRACT No.: C14043 (hereinafter referred to as the Contract); and

That, pursuant to law and said Contract, and before entering upon the performance of said Contract, the principal is required to file with SANBAG a good and sufficient bond to secure the payment of labor and materials claims.

NOW, THEREFORE, said Principal and _____ as corporate surety (hereinafter referred to as Surety), Surety shall be listed in the Insurance Organizations Authorized by the Insurance Commissioner to Transact Business of Insurance in the State of California published by the Department of Insurance, State of California or successor publications, are held firmly bound unto SANBAG in the amount of $_____ ($_____) for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns both jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said principal, his/her or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named or referred to in Section 3181 of the California Civil Code, or amounts due under Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the CONTRACTOR and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor as required by Division 3, Part 4, Title XV, Chapter 7 (commencing at Section 3247) of the California Civil Code, or this bond, then said Surety will pay for the same, in an amount not to exceed the amount hereinafter set forth.

This bond shall insure to the benefit of any and all persons, companies and corporations named or referred to in Section 3181 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

And the said Surety, for value received, hereby stipulates and agrees that all alterations, extensions of time, extra and additional work, and other changes authorized by the Specifications or any part of the contract may be made without securing consent of the Surety on this bond, and any such actions shall not in any way affect the obligations of the Surety on this bond. Surety does hereby waive notice of any alterations, extensions of time, extra and additional work to the terms of the Contract or to the Specifications.

In the event suit is brought upon this Bond by SANBAG and judgment is recovered, Surety shall pay all costs incurred by SANBAG in such suit, including a reasonable attorney's fee to be fixed by the court.

Death, illness, disability or disqualification of the Principal shall not relieve Surety of its obligations hereunder.

Principal: _____

Dated _____ _____

Signature of Principal

_____

Surety

_____

Address

_____

City, State and Zip

Dated _____ _____

Signature of Surety

NOTE: Signatures of those executing for Surety MUST be properly acknowledged.

NOTE: This form may be reproduced for transmittal to the Surety for execution.

SAN BERNARDINO ASSOCIATED GOVERNMENTS

Contract No. C14043

PERFORMANCE BOND FORM

KNOW ALL MEN BY THESE PRESENTS:

That the San Bernardino Associated Governments of the State of California (hereinafter referred to as SANBAG) and _____ (hereinafter referred to as Principal) have by written agreement dated _____, 2013, entered into a contract identified as:

CONTRACT NO. C14043

(Hereinafter referred to as the Contract); and that, the Principal is required under the terms and conditions of said Contract to furnish a bond for the faithful performance of Contract.

NOW, THEREFORE, said Principal and _____as corporate surety (hereinafter referred to as Surety), Surety shall be listed in the Insurance Organizations Authorized by the Insurance Commission to Transact Business of Insurance in the State of California published by the Department of Insurance, State of California or successor publications, are held firmly bound unto SANBAG in the amount of $ _____ ($_____) for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns both jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the said principal, his/her or its subcontractors, heirs, executors, administrators, successors, or assigns, shall perform all of the covenants, conditions and agreements in said Contract and any alteration made as herein provided, in his/her or their part, to be kept and performed at the time, and in the manner therein specified, and shall indemnify and save harmless, SANBAG its officers, agents, and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force, virtue and affect.

And the said Surety, for value received, hereby stipulates and agrees that all alterations, extensions of time, extra and additional work, and other changes authorized by the Specifications or any part of the contract may be made without securing consent of the Surety on this bond, and any such actions shall not in any way affect the obligations of the Surety on this bond. Surety does hereby waive notice of any alterations, extensions of time, extra and additional work to the terms of the Contract or to the Specifications.

In the event suit is brought upon this Bond by SANBAG and judgment is recovered, Surety shall pay costs incurred by SANBAG in such suit, including a reasonable attorney's fee to be fixed by the court.

Death, illness, disability or disqualification of the Principal shall not relieve Surety of its obligations hereunder.

Principal: _____

Dated _____ _____

Signature of Principal

_____

Surety

_____

Address

_____

City, State and Zip

Dated _____ _____

Signature of Surety

NOTE: Signatures of those executing for Surety MUST be properly acknowledged.

NOTE: This form may be reproduced for transmittal to the Surety for execution.

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: 7

Date: November 14, 2013

Subject: Downtown San Bernardino Passenger Rail Project, San Bernardino Transit Center and Demolition of Commercial and Residential Structures Construction

Recommendation:* Authorize Staff to proceed directly to the Board of Directors without further consideration by the Commuter Rail and Transit Committee for the award of Contract No.:

1. C14001 for Construction of Downtown San Bernardino Passenger Rail Project
2. C14002 for Construction of San Bernardino Transit Center
3. C14072 for Demolition of Commercial and Residential Structures

Background: Bids are currently being sought for the Downtown San Bernardino Passenger Rail Project (DSBPRP) and San Bernardino Transit Center (SBTC) and will be due after the November Commuter Rail and Transit Committee meeting and before the December Board of Directors meeting. In order to meet specific deadlines for State and Local Partnership Program (SLPP) and Transportation Enhancement (TE) funding, the award of both contracts must take place in December. Staff is requesting permission to take the award of both DSBPRP and SBTC contracts directly to the Board without prior policy committee consideration.

In addition, Demolition of Commercial and Residential Structures is also out to bid. This bid is also due after the November Commuter Rail and Transit Committee meeting and before the December Board of Directors meeting. This

*

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.

CRTC1311d-cd

contract needs to be executed and associated demolition work completed prior to work beginning on the DSBPRP and SBTC projects. Staff is requesting authorization to proceed directly to the Board of Directors without further consideration by the Commuter Rail and Transit Committee for the award of Contract No. C14072 to ensure the DSBPRP and/or SBTC contractor does not encounter delays due to the structures still being in place.

All three contracts will be presented separately at the Board meeting for full discussion and consideration.

Financial Impact: The recommendations are consistent with the SANBAG Fiscal Year 2013/2014 budget. The funding for the construction contracts is comprised of Proposition 1B Transit Security Grant, Congestion Management Air Quality, FTA 5307 - Urbanized Area Formula Grants, FTA 5309 – Bus and Bus Facilities, Proposition 1B – PTMISEA, State Transit Assistance Funds, Measure I, State Local Partnership Program Funds, Transportation Enhancement Funds and Local Transportation Funds. Task No. 0311 and 0379.

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

Responsible Staff: Casey Dailey, Transit Analyst

CRTC1311d-cd

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: November 14, 2013

Subject: Contracts granting certain licenses to cross San Bernardino County Transportation Authority and the San Bernardino County Transportation Commission railroad right-of-way with the City of Rancho Cucamonga 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. R14082 with the City of Rancho Cucamonga granting a License Agreement on the San Gabriel Subdivision railroad right-of-way, City of Rancho Cucamonga mile post 98.2;
2. Approve Contract No. R14083 with the City of Rancho Cucamonga granting a License Agreement on the San Gabriel Subdivision railroad right-of-way, City of Rancho Cucamonga mile post 98.2;
3. Approve Contract No. R14084 with the City of Rancho Cucamonga granting a License Agreement on the San Gabriel Subdivision railroad right-of-way, City of Rancho Cucamonga mile post 93.7;

*

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.

CRTC1311a-mmm
http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/R14082.docx
http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/R14083.docx
http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/R14084.docx
http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/R14085.docx

4. Approve Contract No. R14085 with Charter Communications granting a License Agreement on the San Gabriel Subdivision railroad right-of-way, City of Rancho Cucamonga mile post 98.2.

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 City of Rancho Cucamonga will have three License Agreements. License Agreement No. R14082 is an underground crossing on the San Gabriel Subdivision, approximately fifteen feet (15') westerly from the centerline of Hellman Avenue; the approximate area is 600 square feet. License Agreement No. R14083 is also an underground grossing on the San Gabriel Subdivision, approximately seventeen feet (17') easterly from the centerline of Hellman Avenue; approximate area is 480 square feet. The City's final License Agreement No. R14084 is an underground crossing located approximately fifteen (15') easterly of the center line of Etiwanda Avenue on the San Gabriel Subdivision; the approximate area is 1,000 square feet.

The fourth License Agreement with Charter Communications, License Agreement No. R14085, is seeking a License Agreement for an underground crossing on the San Gabriel Subdivision, approximately seventeen fee (17') easterly from the center line of Hellman Avenue in the City of Rancho Cucamonga; the approximate area is 560 square feet.

Each License Agreement does allow SANBAG to terminate the License Agreement 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 boilerplate 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 a $1,500 one-time (1) administration fee to Epic Land Solutions, Inc. for all License Agreements.

Additionally the City of Rancho Cucamonga (R14082, R14083) will be charged an annual license fee of $1,500. License Agreement No. R14084 with the City of Rancho Cucamonga will not incur an annual license fee. Charter Communications (R14085) will be charged an annual license fee of $4,000

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

Reviewed By: This item is not scheduled for review by any other 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

CRTC1311a-mmm

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. R 14082 Amendment No. _____

By and Between

San Bernardino Associated Governments acting in its capacity as the San Bernardino County Transportation Commission and City of Rancho Cucamonga

Contract Description License Agreement

Board of Director's Meeting Date: December 4, 2013

Overview of BOD Action: 1. Approve Contract No. R14082 with the City of Rancho Cucamonga granting a license agreement on the San Gabriel Subdivision railroad right-of-way, City of Rancho Cucamonga mile post 98.2;

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**
10/4/13	N/A	

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?

☐ 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 _____ %

Monica M. Morales	Monica M. Morales	11.5.13
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

SANBAG Contract No.: R14082
Epic File No.: RSSB003771
Subdivision: San Gabriel Subdivision
Milepost(s): 98.2

SANBAG Contract No. R14082

LICENSE AGREEMENT

BETWEEN

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

CITY OF RANCHO CUCAMONGA

LICENSE AGREEMENT

This LICENSE AGREEMENT ("License") is made and entered into as of _____, 20___, by and between **SAN BERNARDINO ASSOCIATED GOVERNMENTS**, a public agency existing under the authority of the laws of the State of California and acting in its capacity as **SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION** ("SANBAG"), and, **CITY OF RANCHO CUCAMONGA**, a corporate municipality ("LICENSEE"), upon and in consideration of the agreements, covenants, terms and conditions below.

PART I – BASIC LICENSE PROVISIONS

The Basic License Provisions provided in this Part I and the Standard License Provisions set forth in Part II of this License, together with all Exhibits and Attachments referenced in either, are incorporated into and made part of this License. In the event of conflict between Part I and Part II or of any Exhibits and Attachments, Part I shall control.

Basic License Provisions	***Part II Section Cross Reference***

1. **Parties.**

SANBAG's Address:
SAN BERNARDINO ASSOCIATED GOVERNMENTS
1170 West 3rd Street, 2nd Floor
San Bernardino, California 92410-1715

Licensee's Address:

CITY OF RANCHO CUCAMONGA
10500 Civic Center Drive
Rancho Cucamonga, California 91730

Attn: Romeo David

Telephone: 909-477-2740 x 4070

E-mail: Romeo.David@cityofrc.us

Basic License Provisions

Part II Section Cross Reference

2. **Description of the Premises.** § 1.1
City/County: City of Rancho Cucamonga, County of San Bernardino
Subdivision: San Gabriel Subdivision

Address or Milepost Location:
SANBAG Mile Post 98.2
SCRRA Mile Post 39.59

Approximate area:
600 square feet; 0.013 acres

See map/diagram in Exhibit "A". In the event of any discrepancies between the description contained in this Part I and Exhibit "A", Part I shall control.)

Description and Dimensions of Premises Area:
An underground crossing located approximately fifteen feet (15') westerly of the center line of Hellman Avenue in the City of Rancho Cucamonga, measuring 10'x 60'.

3. **Allowable Improvements, Facilities and Uses. Licensee shall construct only the following improvements and/or facilities and conduct or permit only the following uses on the premises:** § 1.3

Description of Improvements and/or Facilities ("Improvements"):
Installation, operation, maintenance and repair of one (1) underground twelve inch (12") PVC casing extending sixty feet (60') across the Right of Way only, and no other uses.

Use of the Premises:
Casing to hold future conduits for city's internal use only. Upon determination that conduits or casings are to be installed, all documentation and specific design for said installation shall be submitted to SANBAG, 90 days prior to scheduling installation. Licensee agrees to pay for an additional amount to cover additional installations at the request of SANBAG.

4. **Term.**
Commencement Date: December 4, 2013 or upon execution of SANBAG's Board of Directors § 2.1
Term (check one):

- ☒ A. Month-to-month
- ☐ B. Until End Date:_____ (subject to termination pursuant to the terms of this License – see especially Standard License Provisions §2.2).

Basic License Provisions		*Part II Section Cross Reference*
5.	**License Fees.**	§ 3
	A. Administrative Fee: One time fee: $1,500.00	§ 3.1.1
	B. Base License Fee (check one):	
	☐ i. $_____ per month, payable monthly in advance	
	☒ ii. $1,500.00 per year, payable annually in advance	§ 3.1.2
	C. Additional License Fee (check one):	
	☐ i. One-time fee: $_____	
	☐ ii. Other fees: $_____, payable _____	§3.1.3
	D. Base License Fee Adjustment Dates (check if applicable):	
	☒ i. Annually, effective on the first day of the anniversary month of the Commencement Date, based on the published Consumer Price Index (or its successor) ("CPI") as defined in Section 3.2.1 of the General License Provisions.	§ 3.2 § 3.2.1
	☒ ii. At intervals of not less than three (3) years, based on the then current fair market rental value of the Premises as set forth in Section 3.2.2 of the General License Provisions.	§ 3.2.2
	☐ iii. Other: _____ _____	§ 3.2.3
6.	**Security Deposit (if any).** $_____	§ 4
7.	**Insurance Amount.** See Exhibit "B"	§§ 10, 13

IN WITNESS WHEREOF, the Parties identified in Item 1 of this Part I have duly executed this License on the date below, and effective as of the Commencement Date set forth above in Item 4 of this Part I.

LICENSEE: CITY OF RANCHO CUCAMONGA
A municipal corporation

By: _____
L. Dennis Michael
Mayor

Date: _____

SAN BERNARDINO ASSOCIATED GOVERNMENTS, acting in its capacity as SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

By: _____
W.E. Jahn,
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____
James L. Markman
City Attorney

CONCURRENCE

By: _____
Janice C. Reynolds
City Clerk

APPROVED AS TO FORM

By: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____
Jeffery Hill
Contract Administrator

PART II – STANDARD LICENSE PROVISIONS

TABLE OF CONTENTS

Section		Page
1.	GRANT AND SCOPE OF LICENSE	1
2.	TERM, TERMINATION AND SURRENDER	2
3.	PAYMENTS	4
4.	SECURITY DEPOSIT	6
5.	TAXES	6
6.	LIENS	6
7.	ASSUMPTION OF RISK AND WAIVER	7
8.	DEFAULT, BREACH AND REMEDIES	7
9.	INDEMNIFICATION	9
10.	INSURANCE	10
11.	MAINTENANCE AND REPAIR	10
12.	ALTERATIONS AND CONSTRUCTION	11
13.	CONTRACTORS; APPROVAL AND INSURANCE	11
14.	REIMBURSEMENT	12
15.	LANDSCAPING	12
16.	MARKERS	12
17.	COMPLIANCE WITH LAWS	12
18.	SANBAG'S RIGHT OF ACCESS	13
19.	ENVIRONMENTAL ASSESSMENT	13
20.	HAZARDOUS/TOXIC MATERIAL USE AND INDEMNITY	13
21.	UNDERGROUND STORAGE TANKS	14
22.	CONDEMNATION	15
23.	BROKER'S FEES	15
24.	SUBORDINATE RIGHTS	15
25.	ABANDONMENT	15
26.	GENERAL PROVISIONS	16

Exhibits:

"A" Premises
"B" Insurance Requirements
"C" Permitted Hazardous Material
"D" Additional Provisions

PART II - STANDARD LICENSE PROVISIONS

1. GRANT AND SCOPE OF LICENSE

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 2 of the Basic License Provisions (the "Premises"), for construction, installation, operation, alteration, maintenance, reconstruction and/or removal of the Improvements described in Item 3 of the Basic License Provisions, and any usual and necessary related appurtenances thereto (the "Improvements"), for the purposes described in Item 3 of the Basic License Provisions, together with rights for access and entry onto the Premises as necessary or convenient for the use of the Improvement and for no other purpose. In connection with this grant of license, Licensee, its employees, agents, customers, visitors, invitees, licensees, consultants 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 Improvements or the Premises, with the time and manner of such entry and access to be subject to SANBAG's prior written approval. The Premises, adjoining real property of SANBAG and personal property of SANBAG located thereon shall hereinafter collectively be referred to as "SANBAG Property."

1.2. Condition of Premises. Licensee acknowledges that it has inspected the Premises in its present condition, including without limitation, all existing environmental conditions. Licensee accepts the Premises "as is" as suitable for the purpose for which the Premises are licensed and assumes all risk with respect to all present conditions of the Premises, including, without limitation, existing environmental conditions. Taking of possession by Licensee shall be conclusive to establish that the Premises are in good and satisfactory condition when possession is taken.

1.3. Use. The Premises and the Improvements shall be used only for the purposes specified in Item 3 of the Basic License Provisions and for such lawful purposes as may be directly incidental thereto, and no other purpose. No change shall be made by Licensee in the use of the Premises, the Improvements or the commodity or product being conveyed through the Improvements (if any) without SANBAG's prior written approval.

1.4. Non-exclusive and Revocable Nature of License. The license granted herein is not exclusive and SANBAG specifically reserves the right to grant other licenses within the Premises. Licensee agrees that notwithstanding the Improvements made by Licensee to the Premises or other sums expended by Licensee in furtherance of this License, the license granted herein is fully revocable by SANBAG in accordance with the terms of this License.

1.5. Easements. SANBAG reserves to itself the right, from time to time, to grant such easements, rights and dedications that SANBAG deems necessary or desirable, and to cause the recordation of parcel maps, easement agreements and covenants, conditions

and restrictions, so long as such easements, rights, dedications, maps and covenants, conditions and restrictions do not unreasonably interfere with the permitted use of the Premises by Licensee. Licensee shall sign any of the aforementioned documents upon request of SANBAG and failure to do so shall constitute a material breach of this License.

2. TERM, TERMINATION AND SURRENDER

2.1. Term of License. The term of this License shall commence on the "Commencement Date" specified in Item 4 of the Basic License Provisions. If Item 4.A of the Basic License Provisions is checked, this License shall continue in full force and effect on a month-to-month basis as provided in Item 4.A of the Basic License Provisions. If Item 4.B of the Basic License Provisions is checked, then this License shall be a license for the term specified in said Item 4.B. The term of this License as provided above is referred to as the "Term."

2.2. Termination.

2.2.1. Convenience. If Item 4.A is checked, this License shall continue in full force and effect on a month-to-month basis until terminated by either Party on thirty (30) days' prior written notice. If Item 4.B is checked, this License shall continue in full force and effect until the End Date, unless SANBAG, acting by its Executive Directory or his or her designee, for any reason and in its sole and absolute discretion, determines that this License is no longer in SANBAG's best interests. In which case, SANBAG may terminate this License on thirty (30) days' prior written notice, but SANBAG shall also return to Licensee, within thirty (30) days after the termination, the pro-rata portion of any annual license fee paid by the Licensee for the portion of the agreed term that will not be used by Licensee.

2.2.2. Cause. SANBAG may terminate this License for cause in accordance with the provisions hereof, including, without limitation, Sections 24 (Abandonment), 8 (Default, Breach and Remedies) and 25.11 (Assignment). In addition, SANBAG shall have the right to immediately, without notice and at Tenant's expense, terminate this License upon discovery of any default set forth in Section 8.1(d) and abate any such public nuisance and/or dangerous condition.

2.2.3. Public Use. In addition to any and all other termination rights of SANBAG described herein, Licensee hereby expressly recognizes and agrees that the Premises are 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, roadways, parking facilities, flood control and drainage facilities, and/or any other public or other governmental uses (collectively and individually "Public Use"); and that Licensee's use of the Premises 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 that may be terminated by SANBAG by thirty (30) days written notice to Licensee as set forth in Section 2.2.1 above. Accordingly, as a

condition to entering into this License, Licensee expressly acknowledges and agrees that:

(a) SANBAG may terminate this License as set forth above for any Public Use, to be determined in the sole and absolute discretion of SANBAG's Executive Director, or designee;

(b) Licensee shall **NOT** object to, oppose,or protest at any approval proceeding; nor file suit to prevent or delay any Public Use when planned or implemented on or adjacent to the Premises;

(c) If SANBAG's Executive Director, or designee, at any time, or from time to time, determines in his or her sole and absolute discretion, that there is a need for the Premises or any adjoining property for a Public Use and such Public Use requires relocation or removal of the Improvements, Licensee shall reconstruct, alter, modify, relocate or remove its Improvements, as directed by SANBAG or any parties having operating rights over the Premises, at Licensee's sole cost and expense, within thirty (30) days after written notice from SANBAG; and

(d) 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 Premises for any Public Use, Licensee shall not, as a result of such termination and vacation of the Premises, be entitled to receive any:

(i) 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

(ii) compensation under any eminent domain or inverse condemnation law.

2.2.4. **Holdover Fee:** If Licensee fails to terminate use of the Premises and/or restore the Premises as required in Item 2.3 below, on or before the End Date specified in Item 4.B of the Basic License Provisions or the termination date established as otherwise provided in this License ("Termination Date"), then, in addition to any and all other remedies available to SANBAG under the terms of this License or at law or equity, Licensee shall pay a Holdover Fee equal to twice the Base License Fee in effect on the day prior to the Termination Date, calculated and payable on a monthly basis, for the number of months (partial months counting as whole months) from the Termination Date to the date that Licensee has terminated use and restored the Premises to the required condition. Licensee shall indemnify SANBAG against all liabilities, costs and damages sustained by SANBAG by reason of such holding over.

2.3. Termination of Use and Restoration of Premises. Upon termination of this License in accordance with the terms hereof, unless otherwise requested in writing by SANBAG prior to the date of termination, Licensee, at its own cost and expense, shall immediately remove all alterations additions and Improvements made by Licensee to the Premises 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

Improvements. 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 (including costs, interest, and fees), which Licensee agrees to pay to SANBAG on demand, or (ii) assume title and ownership of said Improvements. 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 Improvements are removed and the SANBAG Property is restored.

3. PAYMENTS

3.1. Fees. As consideration for the rights herein granted, Licensee agrees to pay to SANBAG the Administrative and License Fees specified in Item 5 of the Basic License Provisions, adjusted as set forth in Section 3.2.

3.1.1. Administrative Fee. The one time Administrative Fee set forth in Item 5.A shall be due and payable upon execution of this License.

[Note: SANBAG may require deposit in advance of preparing the License Agreement, in which case the amount deposited will be applied to the Administrative Fee at the time of execution or shall be forfeited to SANBAG to pay for SANBAG's administrative costs in negotiating, preparing and/or processing the License Agreement in the event that the License Agreement is not consummated, per SANBAG's adopted policies and procedures.]

3.1.2. Base License Fee. If Item 5.B.i 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 License. Thereafter, the Base License Fee, as such fee may be adjusted pursuant to the provisions of Section 3.2, 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. If Item 5.B.ii of the Basic License Provisions is checked, the annual License Fee amount, as such fee may be adjusted pursuant to the provisions of Section 3.2, shall be due and payable, without demand, annually in advance on or before the anniversary month of the Commencement Date for the convenience of both Parties, without affecting the Term of this License as specified in Section 2.1.

3.1.3. Additional License Fee. If Item 5.C.i of the Basic License Provisions is checked, the one-time fee noted therein shall be due and payable upon execution of this License. If Item 5.C.ii of the Basic License Provisions is checked, the fee noted therein shall be due and payable as indicated in Item 5.C.ii.

3.2. License Fee Adjustment.

3.2.1. Annual CPI Adjustment. If Item 5.D.i 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 is provided in Item 5 of the Basic License Provisions (the "Adjustment Date"). If no adjustment is made at the annual

anniversary date, an adjustment may nevertheless be made at a subsequent date and thereafter at not less than annual intervals. 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 month that is three (3) months prior to 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, three (3) months prior to the first day of the anniversary month of 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.

3.2.2. Fair Market Adjustment. If Item 5.D.ii 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 3.2.1, above) payable under this Section 3 shall be increased, but not decreased, in order to adjust the fee to the then fair market rental value of the Premises 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.

3.2.3. Other Adjustment. If Item 5.D.iii of the Basic License Provisions is checked, then, in addition to any adjustments required under Items 5.D.i and 5.D.ii, the adjustment set forth in 5.D.iii shall be applied in accordance with its terms.

3.3. Late Charge. Licensee acknowledges that late payment by Licensee of any payment owed to SANBAG under this License will cause SANBAG to incur costs not contemplated by this License, 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 License, at law or in

equity. In addition, any payment not made within 15 days of when due shall bear interest at the rate of eighteen percent (18%) per annum, or the highest legally allowable rate, whichever is lower, until paid in full.

4. SECURITY DEPOSIT

Upon execution of this License and in addition to the payment described in Section 3, SANBAG may require Licensee to pay SANBAG a security deposit in the amount set forth in Item 6 of the Basic License Provisions ("Security Deposit"), which sum shall be held by SANBAG in its general fund, without obligation for interest, as security for the faithful performance by Licensee of all of the terms, covenants, conditions and obligations of this License. If at any time Licensee fails to keep and perform any of the term, covenants, and conditions of this License, including making any payment required hereunder, SANBAG may, at its sole option, apply all or any portion of the Security Deposit to any overdue payment and/or any loss or damage incurred by SANBAG by reason of Licensee's default or breach. Within a reasonable time after termination of this License and after Licensee has vacated the Premises, SANBAG shall return, without interest, said deposit or portion remaining, if any, after deductions for any unpaid payments and any losses or damage sustained by SANBAG due to any breach or default by Licensee or any damage to the Premises or any failure to restore the Premises to the required condition.

5. 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 Improvements, the Premises and/or any personal property, fixtures or equipment located on or placed on the Premises, whether owned by Licensee or any person or entity acting for or at the request of Licensee; or (b) as a result of the Licensee's or the Improvements' operations.

6. LIENS

Licensee will fully and promptly pay for all materials joined or affixed to the Improvements or Premises, and fully and promptly pay all persons who perform labor upon said Improvements or Premises. Licensee shall not suffer or permit to be filed or enforced against the Premises or the Improvements, or any part thereof, any mechanics', material men'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. The term "Work" under this License means any construction, reconstruction, installation, restoration, alteration, repair, replacement, or removal, other than normal maintenance. Licensee shall provide SANBAG with immediate written notice of any such liens, claims, demands, or stop notices that are placed against the Premises or the Improvements. 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, 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, as well as any associated costs and fees, within ten (10) business days after billing. In such circumstances, SANBAG may, in its reasonable discretion, impose a fee on Licensee of twenty five percent (25%) of the costs of the discharge of the mechanic's lien or stop notice in order to cover administrative costs. SANBAG reserves the right at any time to post and maintain on the Premises 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 License.

7. 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 Improvements, the SANBAG Property and any other property of, or under the control or custody of, Licensee, which is on or near the Premises. 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 officers, directors, affiliates, employees, agents, independent contractors and subcontractors anyone directly or indirectly employed by or for whose acts Licensee is liable (collectively, "Personnel"), as a material part of the consideration for this License, 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 License.

8. DEFAULT, BREACH AND REMEDIES

8.1. Licensee Default. Licensee shall be deemed to have breached and be in default under this License when any of the following occurs:

(a) Licensee shall fail to make any payment herein reserved when due, or any reimbursement to SANBAG required herein when due;

(b) Licensee shall vacate all or a substantial portion of the Premises, whether or not Licensee is in default of the payment or other charges due under this License; or

(c) Licensee shall fail to comply with any other term, provision or covenant of this License, and shall not cure such failure within three (3) days after written notice thereof to Licensee.

(d) Licensee shall create or maintain, or allow any other person or entity to create or maintain, any public nuisance or any condition that fails to comply with any federal, state, SANBAG or rail operator specifications or safety regulations or that presents a danger to public safety or a safety hazard to any operations, personnel, passengers or property of SANBAG or any rail carrier operating upon the affected rail line(s) on the Premises or SANBAG's adjacent right of way.

8.2. SANBAG's Remedies.

8.2.1. Termination. Upon the occurrence of Licensee's default and breach, SANBAG shall have the right, at any time, with or without notice or demand, to terminate this License, and at any time thereafter to recover possession of the Premises or any part thereof and expel and remove therefrom Licensee and any other person occupying the same, by any lawful means, and again repossess and enjoy the Premises without prejudice to any of the remedies that SANBAG may have under this License, at law or equity by reason of Licensee's default or of such termination.

8.2.2. Corrective Measures. Should Licensee default on, 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 perform any corrective measures deemed by SANBAG in its sole and absolute discretion to be necessary or appropriate to protect public health or safety, or SANBAG's legitimate governmental or proprietary interests or the interests of its railroad operators ,s at Licensee's expense (including fees, costs and interest) which Licensee agrees to pay to SANBAG upon demand.

8.2.3. Costs. If SANBAG incurs any cost or expense occasioned by the default of Licensee (including but not limited to attorneys' fees and costs), then SANBAG shall be entitled to receive such costs together with interest on all funds SANBAG expends at the lesser of eighteen percent (18%) per annum or the maximum rate allowed by law, whichever is lower, including without limitation, brokers' fees incurred by SANBAG in connection with relicensing the whole or any part of the Premises; the costs of removing and storing Licensee's or other occupant's property; the costs of repairing, altering, and/or otherwise restoring the Premises to a safe and suitable condition, useable and acceptable to SANBAG, rail operators and future licensees; and all reasonable expenses incurred by SANBAG in enforcing or defending SANBAG's right and/or remedies, including reasonable attorneys' fees whether or not suit is actually filed.

8.2.4. Remedies Cumulative. All rights, privileges and remedies of the parties are cumulative and not alternative or exclusive to the extent permitted by law except as otherwise provided herein

8.3. SANBAG Default and Licensee's Remedies. SANBAG shall not be in default under this License unless SANBAG fails to perform obligations required of SANBAG within sixty (60) days after written notice is delivered by Licensee to SANBAG specifying the obligation which SANBAG has failed to perform; provided, however, that if the nature of SANBAG's obligation is such that more than sixty (60) days are required for performance, then SANBAG shall not be in default if SANBAG commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion. Licensee's exclusive remedies shall be an action for specific performance or action for damages.

9. INDEMNIFICATION

9.1. Licensee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless SANBAG, in all of its capacities, and its members, commissioners, officers, directors, employees, agents, consultants, contractors, partners, affiliated entities, subsidiaries, permittees, licensees, 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 Personnel (as defined in Section 7, Assumption of Risk and Waiver) 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 License, in each case whether occurring during the Term of this License or thereafter.

9.2. The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, gross, derivative, sole, joint, concurring or comparative) on the part of Indemnitees and is in addition to any other rights or remedies which Indemnitees may have under the law or under this License. Upon request of SANBAG, Licensee shall provide insurance coverage for possible claims or losses covered by the indemnification and defense provisions of this License.

9.3. 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 Licensee or its Personnel under workers' compensation acts, disability benefit acts or other employee benefit acts or insurance.

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

10. INSURANCE

10.1. SANBAG's Insurance. SANBAG may maintain insurance covering the Premises and SANBAG's ownership and operation thereof in such types and amounts as it deems necessary in its sole discretion. Such insurance shall be for the sole benefit of SANBAG and under its sole control. Licensee's insurance policies shall provide primary coverage to SANBAG; when any such policy issued to SANBAG provides duplicate coverage or is similar in coverage, SANBAG's policy will be excess over Licensee's policies.

10.2. Licensee's Insurance. Licensee, at its sole cost and expense, shall obtain and maintain in full force and effect during the Term of this License 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 License, to review and change the amount and type of insurance coverage it requires in connection with this License or the Work to be performed on the Premises. Prior to (i) entering the Premises or (ii) performing any Work or maintenance on the Premises, Licensee shall furnish SANBAG with insurance endorsements or certificates evidencing the existence, amounts and coverages of the insurance required to be maintained hereunder. SANBAG shall not be liable for the payment of any premiums or assessments for insurance required to be maintained by Licensee under this License. Self-insurance is not permitted. However, SANBAG may, in its sole and absolute discretion, permit self-insurance on a case by case, coverage by coverage, basis where the Licensee has documented, to SANBAG's sole satisfaction sufficient available assets and/or available funds and sufficient legal security in those assets to assure SANBAG that its risk is not greater than it would have been with acceptable insurance coverage, and otherwise meeting SANBAG's self-insurance requirements. The privilege 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 at any time. Upon revocation of self-insurance privilege, Licensee shall immediately provide all required insurances.

10.3. Increases to Insurance. If any increase in the fire and extended coverage insurance premiums paid by SANBAG is caused by Licensee's use and occupancy of the Premises, or if Licensee vacates the Premises and causes any increase in such premiums, then Licensee shall pay as an additional fee the amount of such increase to SANBAG, and, upon demand by SANBAG, the amount required to correct at Licensee's expense the cause of such disallowance, penalty or surcharge to the satisfaction of the particular insurance authority.

11. MAINTENANCE AND REPAIR

Licensee, at Licensee's sole expense, shall during the term of this License maintain the Improvements in a first-class condition, shall maintain the Premises in a good condition, free from weeds, litter, debris, refuse or other nuisance, and shall perform all maintenance and clean-up of the Premises and the Improvements as necessary to keep the Premises and the

Improvements 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 Premises by Licensee or Licensee's Parties, including but not limited to damage arising from any tests or investigations conducted upon the Premises, 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. Licensee shall not perform any maintenance on railroad tracks and facilities without express prior written approval of and direction from SANBAG or the railroads with valid operating authority over SANBAG's lines and compliance with all applicable standards, specification and safety requirements.

12. ALTERATIONS AND CONSTRUCTION

Except as otherwise provided herein, Licensee shall make no alterations, additions or Improvements to the Premises without obtaining the prior written consent of SANBAG in each instance. Any Work performed or caused to be performed by Licensee on the Improvements or the Premises shall be performed (a) at Licensee's sole cost and expense; (b) in accordance with any and all applicable permit requirements, laws, rules, regulations and safety requirements (including 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 Work on the Premises, 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 14 calendar days' written notice prior to commencement of any Work on the Premises or the Improvements, except in cases of emergency, in which event Licensee shall notify SANBAG's representative personally or by phone prior to commencing any Work. SANBAG shall have the right at any time and from time to time to post and maintain notices of non-responsibility 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.

13. CONTRACTORS; APPROVAL AND INSURANCE

Any contractors of Licensee performing Work on the Improvements or the Premises shall first be approved in writing by SANBAG and acquire all required right of entry permits and authorizations from SANBAG and any rail operator utilizing affected or adjacent railroad tracks. 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 coverage 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 Premises, to obtain and maintain in full force and effect during the Term of this License, or throughout the term of such Work (as applicable), insurance, as required by SANBAG, in the amounts and coverage specified on, and issued by insurance companies as described on, Exhibit "B". SANBAG reserves the right, throughout the Term of this License, to review and change the amount and type of insurance coverage it requires in connection with this License or the Work to be performed on the Premises.

14. REIMBURSEMENT

Licensee agrees to reimburse SANBAG for all reasonable costs and expenses that SANBAG incurs in connection with Work on or maintenance of the Premises or the Improvements, 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 License, protect the safety of, and railway operations upon, its tracks and right-of-way, and to otherwise protect its interests. The costs and expenses addressed in this Section 14 shall include all costs that SANBAG incurs in complying with the Work or maintenance requirements of the railroads with valid operating authority over SANBAG's lines.

15. LANDSCAPING

If required by SANBAG, then Licensee, at its sole cost and expense, shall install barrier landscaping to shield the Improvements from public view. SANBAG shall have the right to review and approve landscaping plans prior to installation. All landscaping activities shall be done in accordance with the provisions of Section 12 above (Alterations and Construction).

16. MARKERS

Except as modified by any additional provisions attached at Exhibit "D", project markers in form and size satisfactory to SANBAG, identifying the Improvements and their owner(s), shall 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.

17. 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 SANBAG Property, and shall furnish satisfactory evidence of such compliance promptly upon request of SANBAG. Licensee shall obtain all required permits or leases required by any governmental authority for its use of the Premises, at its sole cost and expense. Subject to SANBAG's approval, Licensee shall at its own cost and expense install and construct all physical improvements to or needed to serve the Premises that are required by any federal, state or local building code or other law or regulation applicable to the Premises, or that are made necessary by the nature of Licensee's use of the Premises. Licensee shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with, the Premises, all at Licensee's sole expense.

18. SANBAG'S RIGHT OF ACCESS

18.1. Inspections. SANBAG shall have the right at any time (upon provision of reasonable notice of inspection to Licensee) or in case of emergency (without notice), to inspect the Premises in order to protect SANBAG's interests therein and to monitor compliance with this License and all applicable federal, state and local laws, regulations, rules and orders.

18.2. Tests. 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 or SANBAG's 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. Licensee shall cooperate with SANBAG in any tests or inspections deemed necessary by SANBAG.

18.3. Costs. Licensee shall pay or reimburse SANBAG, as appropriate, for all reasonable costs and expenses incurred due to tests, inspections or any necessary corrective Work, maintenance and inspections thereafter.

18.4. Sale or Lease of Premises. SANBAG may at any time place on or about the Premises (including the Improvements) any ordinary "for sale" and "for lease" signs. Licensee shall also permit SANBAG and its agents, upon request, to enter the Premises or any part thereof, at reasonable times during normal business hours, to show the Premises to prospective tenants, purchasers or mortgagees.

19. ENVIRONMENTAL ASSESSMENT

Upon execution of this License, SANBAG may, in its sole discretion and if applicable, require Licensee to retain a duly licensed environmental consultant acceptable to SANBAG who shall perform an environmental assessment of the Premises and Licensee's and Licensee's Parties' business activities and prepare a report on Licensee's and/or Licensee's Parties' compliance with the provisions of this section. SANBAG may, if applicable, require Licensee to cause a similar environmental assessment to be conducted on an annual basis, and/or upon or within one (1) year after the expiration or earlier termination of this License, the cost of which shall be the sole responsibility of Licensee. Licensee shall provide a copy of the report or reports from the consultant(s) promptly to SANBAG upon receipt, and upon request shall promptly provide to SANBAG a copy of all data, documents and other information prepared or gathered in connection therewith.

20. HAZARDOUS/TOXIC MATERIAL USE AND INDEMNITY

20.1. Licensee shall operate and maintain the Premises in compliance with all, and shall not cause or permit the Premises to be in violation of any, Environmental Law which is now or may hereafter become applicable to Licensee or the Premises. 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 permit conditions, currently existing or as amended or adopted in the future. Except for any

Hazardous Material 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 Material to be brought upon, stored, used, generated, treated or disposed of on or about the SANBAG Property. Any Hazardous Material on the site shall be stored, used, generated and disposed of in accordance with all applicable Environmental Laws. As used herein, "Hazardous Material" 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 a hazardous or dangerous material or substance.

20.2. Licensee shall indemnify, defend (by counsel acceptable to SANBAG) and hold harmless the Indemnitees (as defined in Section 9, Indemnification) 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 Material upon or from the Improvements or the Premises or contamination of the SANBAG Property (i) which occurs due to the use and occupancy of the Improvements or the Premises 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.

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

20.4. In addition, in the event of any release on or contamination of the Premises, 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.

21. UNDERGROUND STORAGE TANKS

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

21.2. At SANBAG's option, upon the termination of this License 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 Material in, on, under and about the Premises, 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.

22. CONDEMNATION

In the event all or any portion of the Premises shall be taken or condemned for public use by a governmental agency or any other party having the power of eminent domain (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 Improvements. Any other compensation or damages arising out of such taking or condemnation awarded to Licensee are hereby assigned by Licensee to SANBAG.

23. BROKER'S FEES

Licensee agrees to indemnify and hold SANBAG harmless from and against any claims by any broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Licensee with regard to obtaining this License.

24. SUBORDINATE RIGHTS

This License 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, operate, 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 or any portion thereof, and in connection therewith the right to grant and convey to others, rights and interests to the SANBAG Property on the Premises and in the vicinity of the Improvements, regardless of any effect or impact on the Improvements. Licensee shall bear all costs and losses it incurs associated with any modifications to the Improvements necessary to accommodate SANBAG's exercise of any right hereunder. This License 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. This License 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 a covenant against the existence of any such title exceptions.

25. ABANDONMENT

Should Licensee at any time abandon the use of the Improvements or the Premises, 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 License 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 License

26. GENERAL PROVISIONS

26.1. Notices. All notices and demands which either of the Parties 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 the other Party at its address set forth in the Basic License Provisions. Either of the Parties 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.

26.2. Governing Law. This License shall be governed by the laws of the State of California.

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

26.4. No Third Party Beneficiaries. This License is not intended by either party to confer any benefit on any third party other than the constituent members of SANBAG, including without limitations any broker, finder, or brokerage firm.

26.5. Severability. If any term, covenant, condition or provision of this License, 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 License, 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.

26.6. 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 License, provided, however, that interest shall not be payable on late charges incurred by Licensee.

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

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

26.9. Waiver of Covenants or Conditions. The waiver by either Party of any term, covenant, agreement or condition under this License shall not invalidate this License, nor shall it be considered a waiver by it of any other covenant or condition or of the same covenant or condition in another instance. To the extent patterns of practice between the Parties are inconsistent with the terms of this License, such patterns of practice shall not waive in part or in full SANBAG's right to insist upon strict accordance with any of the provisions of this License. The subsequent acceptance of payments hereunder by SANBAG shall not be deemed to be a waiver of any preceding breach by Licensee of any provisions, covenant, agreement or condition of this License, other than the failure of Licensee to pay the particular payment so accepted, regardless of SANBAG's knowledge of such proceeding breach at the time of acceptance of such payment.

26.10. 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.

26.11. Assignment. This License and the license granted herein are personal to the Licensee. Licensee shall not assign or transfer (whether voluntary or involuntary) this License 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 be a material breach of this License, which gives SANBAG the right to immediately terminate this License and seek all other available remedies for breach.

26.12. Entire Agreement; Amendments. This License, including all attached Exhibits, constitutes the entire agreement between the Parties and supersedes all prior verbal or written agreements and understandings between the Parties with respect to the items set forth in this License. The Parties each acknowledge that no representations, inducements, promises or agreements, oral or written, have been made by either SANBAG or Licensee, or anyone acting on behalf of SANBAG or Licensee, other than those contained in this License. No amendments, changes, revisions, or discharges, at any time in whole or in part, of this License shall be binding upon the Parties unless they are in writing and executed by the Parties.

26.13. Attorneys' Fees. If either SANBAG or Licensee commences or engages in, or threatens to commence or engage in, an action by or against the other party arising out of or in connection with this License or the Premises, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and other costs incurred in connection with the action, preparation for such action, any appeals relating thereto and enforcing any judgments rendered in connection therewith. If SANBAG becomes involved in any action, threatened or actual, by or against anyone not a party to this License, but arising by reason of or related to any act or omission of Licensee or Licensee's Parties, Licensee agrees to pay SANBAG's reasonable

attorneys' fees and other costs incurred in connection with the action, preparation for such action, any appeals relating thereto and enforcing any judgments rendered in connection therewith.

26.14. Nondiscrimination. Licensee certifies and agrees that all persons employed by Licensee and/or Licensee's affiliates, subsidiaries, or holding companies, and any contractors retained by Licensee 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.

26.15. 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 License, including, at SANBAG's sole discretion, the relocation of the Improvements and the license granted hereby.

26.16. Time of Essence. Time is of the essence for this License.

26.17. Certificates. Licensee agrees from time to time within ten (10) days after request of SANBAG, to deliver to SANBAG, or SANBAG's designee, all financial statements for the previous three (3) fiscal years of Licensee, and an estoppel certificate stating that this License is in full force and effect, the date to which all applicable payments have been paid, the unexpired Term of this License and such other matters pertaining to this License as may be requested by SANBAG.

26.18. Security Measures. Licensee hereby acknowledges that the payments payable to SANBAG hereunder do not include the cost of guard service or other security measures, and that SANBAG shall have no obligation whatsoever to provide same. Licensee assumes all responsibility for the protection of Licensee, Licensee's Parties and their property from acts of third parties.

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

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

26.21. Flagmen. Where applicable, as a part of or in addition to all other safety obligations, Licensee shall maintain, at Licensee's expense, competent flagmen to protect and control movement of vehicles and equipment of Licensee or any other user of the Premises while upon the Premises, consistent with any applicable laws and regulations regarding work protection, including the rules and policies of SANBAG and/or any railroad operator having rights to utilize any affected or adjacent railroad tracks.

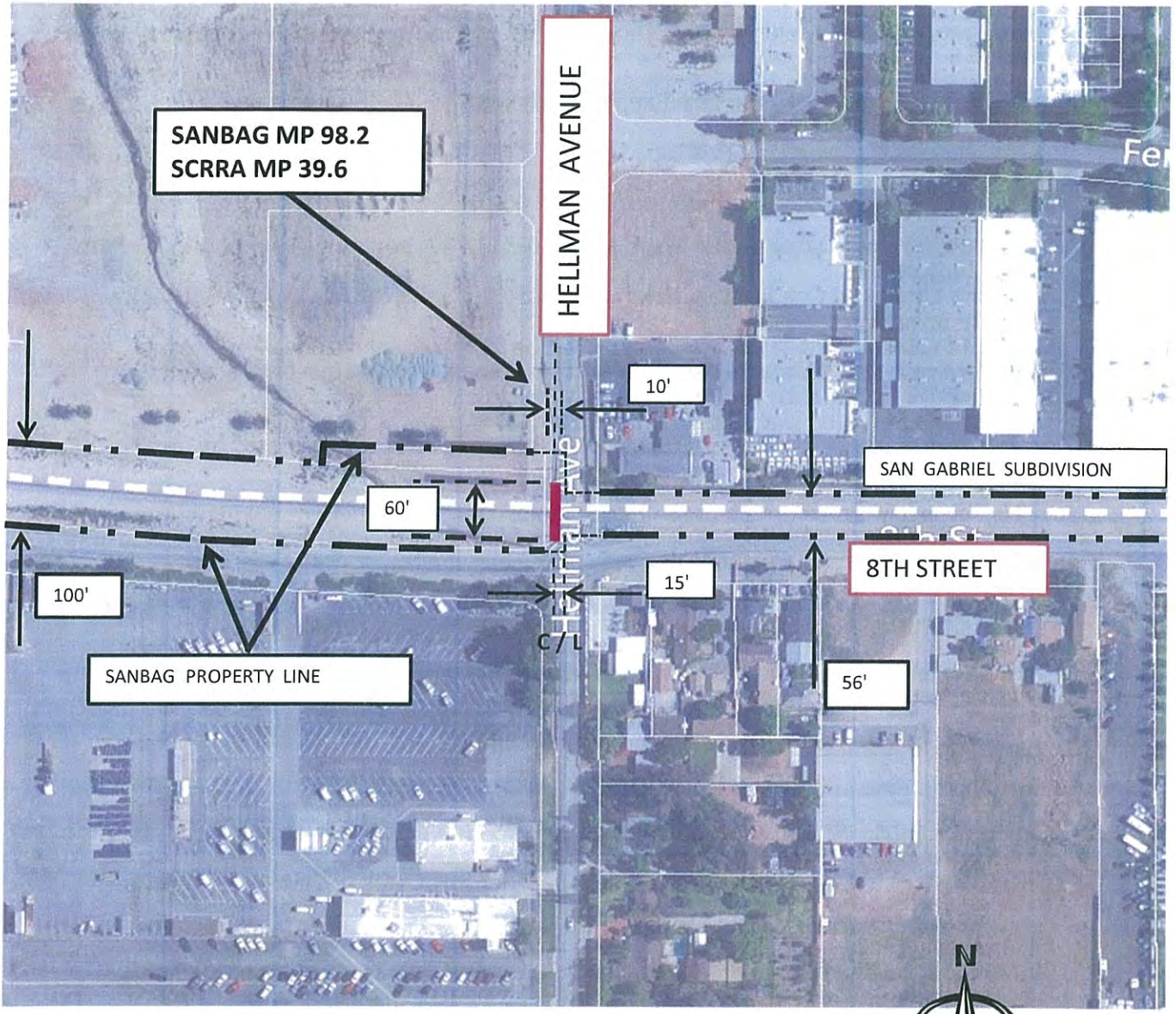
26.22. Additional Provisions. Those additional provisions set forth in Exhibit "D", if any, are hereby incorporated by this reference as if fully set forth herein. To the extent that any additional provisions in Exhibit "D" conflict with the provisions contained in this Part II, Standard License Provisions, the provisions in Exhibit "D" shall control.

Exhibit "A"

Premises

[To Be Inserted]

EXHIBIT "A"



ONE 12 INCH PVC CASING ENCASED IN CONCRETE SLURRY

SEE ALSO RSSB003770 FOR EASTERN CASING

APN: 0209-013-21, 0209-013-22

Date **10/11/2013**		
Branch/Line **SSB**	Mile Post **39.59** **SANBAG 98.2**	Lessee/Licensee **RANCHO CUCAMONGA**
County **SAN BERNARDINO**	Nearest Cross Street **8TH STREET**	SANBAG File Number **RSSB003771 R14082**
Area **1,250 SQ. FT.**	City **RANCHO CUCAMONGA**	Scale **1"=200'**
Map Reference **SSB6**	Use **12" PVC CASING**	Thomas Guide Grid **604 H4**

Governments SANBAG Working Together

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

Exhibit "B"

INSURANCE REQUIREMENTS FOR LICENSES

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, its 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, members, affiliated entities, contractors, consultants, authorized rail operators and agents ("Related Parties"); 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 and Related Parties 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, or its Related Parties.

2. For any claims related to this project, the Licensee's insurance coverage shall be primary insurance as respects SANBAG, and its Related Parties. Any insurance or self-insurance maintained by SANBAG, or its Related Parties 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 and its Related Parties.

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.

All insurance policies, including without limitation, Workers' Compensation and Employer's Liability policies, shall contain or be endorsed to include a waiver of subrogation in favor of SANBAG and its Related Parties.

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, 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 Material

No hazardous material is permitted to be used or stored on Premises.

Exhibit "D"

ADDITIONAL REQUIREMENTS

The following Additional Requirements are imposed on the Tenant/Licensee/Permittee and all of its contractors, subcontractors, employees, laborers or other persons performing any work upon SANBAG property on behalf of Tenant/Licensee/Permittee, and are made part of the terms of the Lease/License/Permit to which this Exhibit D is attached ("Agreement").

As used hereinafter, the term "Contractor" shall include the Tenant/Licensee/Permittee and each and every one of its contractors, subcontractors, employees, laborers, agents or other persons performing any work upon SANBAG property on behalf of Tenant/Licensee/Permittee; and the term "railroad operator" or "operating railroad" shall mean Southern California Regional Rail Authority (SCRRA), Burlington Northern Santa Fe Railroad Railway Company (BNSF) and/or any other railroad company or rail carrier having operating rights over rail lines owned or controlled by SANBAG.

Contractor shall fully comply with each and every one of the Additional Requirements below which is in any way applicable to the type of use, construction, installation or facility allowed under the Contractor's Agreement and approved by SANBAG as required thereunder ("Permitted Use"). The inclusion of an Additional Requirement below that is not in any way applicable to the Contractor's Permitted Use shall not imply any right, permission or consent to expand the Permitted Use in any way.

1. Contractor agrees to execute and deliver to each railroad operator prior to commencing any work within the rail right-of-way, a railroad Right of Entry Agreement which will include agreement to abide by each railroad operator's rules and requirements for construction on railway property. Contractor shall secure approval from SANBAG and each railroad operator of the design of any structures and facilities prior to commencing work on their construction or installation.

2. Contractor will acquire and comply with any and all additional permits required by the railroad operator(s), affected public utilities and/or by any government agency having jurisdiction. Any permit fees, inspection fees, flagging 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 Contractor's sole responsibility. Fully conformed copies of all permits are to be provided to SANBAG. Additional permits required of the Contractor may include but are not limited to encroachment permits, Storm Water Pollution Prevention Plans, environmental permits, temporary use permits, regulatory permits and third party utility permits. Contractors shall have all original executed agreements and permits on hand while on site and will present them on demand of representative of SANBAG and/or the railroad operator(s). Prior to the commencement of work, the contractor shall submit to SANBAG for review and approval, a description of the work process including a detailed schedule of all work activities to be carried out on SANBAG property.

   [For convenience only, SANBAG provides the following telephone numbers for inquiries and information: SCRRA's Right of Way Engineers Office - (909) 394-3418;BNSF's Roadmaster Office - (909) 386-4061]

3. Contractor at its sole cost and expense shall obtain and maintain, in full force and effect, insurance, as required by SANBAG and the railroad operator(s) during the entire construction period. The Contractor shall furnish copies of the insurance certificates to SANBAG and all affected railroad operators.

4. Contractor agrees to comply with instructions of SANBAG and each railroad operator's Employee-In-Charge (EIC) and other representatives in relation to the proper manner of

protection of the tracks and the traffic moving theron, pole lines, signals and other property of SANBAG or its member agencies, 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 operations of railroad operators or of SANBAG's track and other facilities.

5. Contractor will call the appropriate operating railroad to arrange for flagging services a minimum of fifteen (15) working days prior to beginning work. Although every effort is made to accommodate schedules, prior notification does not guarantee the availability of protective/flaggingservices for the proposed date of work. The SCRRA/BNSF flagman/EIC has sole authority to protect safe railroad operations and infrastructure , therefore, only they and their representatives are permitted to perform flagging operations within the railroad right-of-way. At all times the contractor shall follow the flagman/EIC's direction. Contractor's work may not proceed in the absence of a flagman in accordance with applicable rules. At no time shall any contractor be permitted to cross any track or place or maintain any personnel or equipment within the railroad right-of-way without the permission of the railroad flagman.

   SCRRA's Flagging Office (213) 305-8424
   BNSF's Flagging Office (909) 386-4061

6. Prior to the start of construction and at the contractor's expense, all personnel including subcontractors and third parties shall complete SCRRA's/BNSF's Third Party Safety Training course, which is required for all work near or within the railroad right-of-way. Evidence of training must be supplied upon request of SANBAG and its representatives. No work may commence on the railroad right-of-way until this training has been completed. 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/BNSF flagman/EIC.

7. Contractor shall be responsible for the location and protection of any and all surface, sub-surface, and overhead lines, structures and improvements. Contractor 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. It shall be the Contractor's responsibility to contact Underground Alert and locate all underground facilities prior to the commencement of construction. At the same time, the contractor shall notify the operating railroad for signal and communications cables and conduits mark-outs. Contractor shall obtain permission from the owners of any fiber optic, gas, electrical, water, oil or other lines which may be impacted by work on or any use of the Premises by Contractor.

   SCRRA Signal Department (909) 592-1346
   BNSF Signal Department (909) 386-4051

8. **In case of signal emergencies or grade crossing problems, the contractor shall call the following emergency numbers.**

   SCRRA Signal Emergency Department (888) 446-9721
   BNSF Signal Emergency Department (909) 386-4051

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

10. If SANBAG or any of its associated rail entities or railroad operators deem it necessary in the future, to modify, or to build additional, track or tracks or other facilities in connection with the

operation of its railroad, at the request of SANBAG, contractor shall modify, at its own expense, any or all of its permitted facilities to conform to the rail facilities.

11. Both Contractor 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 Contractor's needs will be the sole responsibility and at the sole cost of the Contractor and subject to SANBAG's and any affected operating railroad's prior review and approval, which may be withheld in SANBAG's or the affected operating railroad's sole and absolute discretion. SANBAG or the affected operating railroad may require that any track removal and/or other work within the right-of-way be done by SANBAG or the railroad operator, respectively, but all such work shall remain at the sole cost of the Contractor, who may be required to deposit the estimated cost plus 25% in advance of the work, subject to refund or additional charge at the conclusion of the work. No permanent structures may be constructed on the premises without SANBAG's prior written approval. Contractor will be responsible for the removal of any or all permitted improvements upon termination of Agreement as directed by SANBAG.

12. Contractor shall pay for any and all utilities for its benefit, security and use.

13. SANBAG makes no warranties as to the suitability of the location for Contractor's intended use, and Contractor assumes all risks as to environmental compliance, zoning, visibility, or any other factors which may affect Contractor's intended use of the premises.

14. Boring of carrier or direct burial utilities by directional boring methods is prohibited.

15. Signs are not permitted on or along the perimeter of the Premises unless such signs were requested and approved under Contractor's original proposal and covered by the required insurance. The contractor shall install permanent signs identifying the location of pipes at the edge of the railroad right-of-way unless within a public grade crossing.

16. Contractor shall construct a temporary fence along the railroad right–of-way, or along the edge of pits closest to the track, on both sides of the pit, extending 50-feet in both directions from the pit, and measuring a minimum of 6-feet high. Fences are not required for work at grade crossings. Contractor shall pave the Premises area with asphalt or concrete, when requested, around the entire perimeter of the property as described in the Agreement in Part I and Exhibit "A". Contractor shall be responsible for total expense of fencing and asphalt.

17. Contractor shall not bring upon or use any import ioil 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. Additionally, any soil currently existing on the Premises may not be spread on the Premises unless and until it is characterized as clean coil to the reasonable satisfaction of SANBAG. All soil piles are to be placed on a barrier to prevent intermingling with surface soils.

18. Contractor 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. Contractor shall by fully responsible for all maintenance and maintenance of adjoining SANBAG property that is required or necessary in connection with Contractor's use of Premises.

19. Prior to commencement of construction, the contractor shall submit to SANBAG / SCRRA a plan showing the proposed method of casing installation, construction access, stockpile locations, SWPPP control measures, fencing type and location and a milestone schedule.

20. For pipelines carrying flammable or hazardous materials, the contractor shall adhere to special conditions stated in the Right of Entry (ROE) Agreement.

21. The jacking and receiving pits shall be constructed outside of the railroad right of way unless shown on the SANBAG approved plans and shall not be located between any track and the automatic signal gate arms. The contractor shall layout the proposed jack and bore pits prior to the commencement of work. Only after the SANBAG/SCRRA inspector has approved the layout will the Contractor be allowed to begin work.

22. 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 SCRRA/BNSF flagman and SCRRA/BNSF 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 SANBAG.

23. The contractor shall submit to SANBAG/SCRRA for review, drawings and calculations for any shoring that may affect or be influenced by the railroad tracks. All shoring designs shall comply with the requirements of, and be approved by, SANBAG and/or the affected operating railroad. All drawings and calculations shall be signed and stamped by a California licensed Civil or Structural Professional Engineer.

24. Prior to commencement of work, the contractor shall submit to SANBAG/SCRRA 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.

25. Should ground water or loose or unstable soils conditions be encountered during construction, the contractor shall immediately stop work, notify the railroad flagman, provide necessary structural support to track and other railroad structures, and notify the affected operating railroads and SANBAG. It shall be the responsibility of the contractor to make necessary corrections to the construction process to allow for said conditions.

26. All underground utilities under railroad tracks shall be encased in a larger pipe or conduit called the "casing pipe". Said 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. The top of the 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. All ends of the casing pipe shall be sealed unless otherwise authorized by SANBAG. 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. All casing pipes shall be installed with a minimum slope of 1%. Installation of casing pipes by open trenching is prohibited.

27. Abandoned pipes shall be removed from their casing pipes. The empty casing pipe shall be pressure grouted full for the entire length of the pipe. Should there be no casing pipe; the abandoned pipe shall be pressure grouted full the entire length of the pipe. A SANBAG / SCRRA inspector must be present during the grouting process.

28. 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 and jacks shall be designed and used with sufficient rating 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 non-stop, 24-hour per day basis until the jacking operation is completed.

29. 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 replacement, 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 there will be no unsupported excavation ahead of the casing. The auger 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 / SCRRA 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/SCRRA.

30. 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.

31. 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/SCRRA shall be employed to fill such voids.

32. 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/SCRRA prior to the commencement of work. Proof of experience and competency shall accompany the submission.

33. When water is known 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/SCRRA 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.

34. 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 well 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.

35. The proposed methods of dewatering shall be submitted to SANBAG/SCRRA 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, pollutants, or hazardous materials or fluids be observed at any time during the dewatering process, the dewatering shall be halted immediately and cannot resume until the unsatisfactory condition is remedied to the satisfaction of the SANBAG/SCRRA inspector.

36. 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.

37. 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 and any affected operating railroad 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 it holds. Contractor shall be responsible to arrange refunds due from any affected operating railroads.

38. A minimum of five feet (5') clearance is required above signal and communication lines for overhead crossings.

39. Poles for any use within the railroad right-of-way must be located fifty-feet (50') out from the centerline of the railroad main, branch and running tracks, CTC sidings, and heavy tonnage spurs. Pole locations adjacent to industry track must provide at least a ten foot (10') clearance from the centerline of track, when measured at right angles. If located adjacent to curved track, then said clearance must be increased at the rate of 1.5 inches per degree of curved track.

40. Regardless of the voltage, un-guyed poles shall be located a minimum distance from the centerline of any track, equal to the height of the pole above the ground–line plus ten feet (10'). If guying is required, the guys shall be placed in such a manner as to keep the pole from leaning/falling in the direction of the tracks.

41. Poles must be located a minimum distance from the railroad signal and communication line equal to the height of the pole above the ground-line or else be guyed at right angles to the lines. High voltage towers (34.5 kV and higher) must be located off railroad right-of-way.

42. Grade crossings or temporary grade crossing must not be installed under or within five-hundred feet (500') of the end of any railroad bridge, or three hundred feet (300') from the centerline of any culvert or switch area.

43. For overhead crossings, complete spanning of the property is encouraged with supportive structures and appurtenances located outside of the railroad property. For electric supply and communication lines, normally the crossing span shall not exceed one-hundred fifty-feet (150') with adjacent span not exceeding 1.5 times the crossing span length. For heavier type construction, longer spans will be considered.

44. To ensure that overhead crossings are clear from contact with any equipment passing under such wires, communication lines shall be constructed with a minimum clearance above top of rail of twenty-eight feet (28').. Electric lines must have a florescent ball marker on low wire over centerline track.

45. The utility owner will label the poles closest to the crossing with the owner's name and telephone number for emergency contact.

46. Overhead flammable and hazardous material lines are prohibited.

47. Because inductive interference from certain types of lines have the potential to disrupt the railroad signal and communication systems causing failures with the signals, communication, and at-grade crossing warning devices, . SANBAG may require that an inductive coordination study be performed prior to approval of the permitted use at the expense of the utility owner for proposed electrical lines crossing tracks.

48. Joint-use construction is encouraged at locations where more than one utility or type of facility is involved. However, electricity and petroleum, natural gas or other flammable materials shall not be combined.

Contractor	SANBAG

Initials

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. R 14083 Amendment No. _____

By and Between

San Bernardino Associated Government acting in its capacity as San Bernardino County Transportation Commission and City of Rancho Cucamonga

Contract Description License Agreement

Board of Director's Meeting Date: December 4, 2013

Overview of BOD Action: 2. Approve Contract No. R14083 with the City of Rancho Cucamonga granting a license agreement on the San Gabriel Subdivision railroad right-of-way, City of Rancho Cucamonga mile post 98.2;

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**
12/4/13	NA	

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

FINANCIAL INFORMATION

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

☐ A Budget Amendment is required. How are we funding current FY? Rail Assets

☐ 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 _____ %

Monica M Morales	Monica M. Morales 11.5.13	
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

SANBAG Contract No.: R14083
Epic File No.: RSSB003770
Subdivision: San Gabriel Subdivision
Milepost(s): 98.2

SANBAG Contract No. R14083

LICENSE AGREEMENT

BETWEEN

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

CITY OF RANCHO CUCAMONGA

LICENSE AGREEMENT

This LICENSE AGREEMENT ("License") is made and entered into as of _____, 20___, by and between **SAN BERNARDINO ASSOCIATED GOVERNMENTS**, a public agency existing under the authority of the laws of the State of California and acting in its capacity as **SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION** ("SANBAG"), and, **CITY OF RANCHO CUCAMONGA**, a corporate municipality ("LICENSEE"), upon and in consideration of the agreements, covenants, terms and conditions below.

PART I – BASIC LICENSE PROVISIONS

The Basic License Provisions provided in this Part I and the Standard License Provisions set forth in Part II of this License, together with all Exhibits and Attachments referenced in either, are incorporated into and made part of this License. In the event of conflict between Part I and Part II or of any Exhibits and Attachments, Part I shall control.

Basic License Provisions	***Part II Section Cross Reference***

1. **Parties.**

SANBAG's Address:
SAN BERNARDINO ASSOCIATED GOVERNMENTS
1170 West 3rd Street, 2nd Floor
San Bernardino, California 92410-1715

Licensee's Address:

CITY OF RANCHO CUCAMONGA
10500 Civic Center Drive
Rancho Cucamonga, California 91730

Attn: Romeo David

Telephone: 909-477-2740 x 4070

E-mail: Romeo.David@cityofrc.us

Basic License Provisions

Part II Section Cross Reference

2. **Description of the Premises.** § 1.1
City/County: City of Rancho Cucamonga, County of San Bernardino
Subdivision: San Gabriel Subdivision

Address or Milepost Location:
SANBAG Mile Post 98.2
SCRRA Mile Post 39.59

Approximate area:
480 square feet; 0.011 acres

See map/diagram in Exhibit "A". In the event of any discrepancies between the description contained in this Part I and Exhibit "A", Part I shall control.)

Description and Dimensions of Premises Area:
An underground crossing located approximately seventeen feet (17') easterly of the center line of Hellman Avenue in the City of Rancho Cucamonga, measuring 10'x 48'.

3. **Allowable Improvements, Facilities and Uses. Licensee shall construct only the following improvements and/or facilities and conduct or permit only the following uses on the premises:** § 1.3

Description of Improvements and/or Facilities ("Improvements"):
Installation, operation, maintenance and repair of one (1) underground twelve inch (12") PVC casing extending forty eight feet (48') across the Right of Way only, and no other uses.

Use of the Premises:
Casing to hold future conduits for third party use. Upon determination that conduits or casings are to be installed, all documentation and specific design for said installation shall be submitted to SANBAG, 90 days prior to scheduling installation. Licensee agrees to pay for an additional amount to cover additional installations at the request of SANBAG.

4. **Term.**
Commencement Date: December 4, 2013 or upon execution of SANBAG's Board of Directors § 2.1
Term (check one):

- ☒ A. Month-to-month
- ☐ B. Until End Date:_____ (subject to termination pursuant to the terms of this License – see especially Standard License Provisions §2.2).

Basic License Provisions	*Part II Section Cross Reference*
5. **License Fees.**	§ 3
A. Administrative Fee: One-time fee: $1,500.00	§ 3.1.1
B. Base License Fee (check one):	
☐ i. $_____ per month, payable monthly in advance	
☒ ii. $1,500.00 per year, payable annually in advance	§ 3.1.2
C. Additional License Fee (check one):	
☐ i. One-time fee: $_____	
☐ ii. Other fees: $_____, payable _____	§3.1.3
D. Base License Fee Adjustment Dates (check if applicable):	
☒ i. Annually, effective on the first day of the anniversary month of the Commencement Date, based on the published Consumer Price Index (or its successor) ("CPI") as defined in Section 3.2.1 of the General License Provisions.	§ 3.2 § 3.2.1
☒ ii. At intervals of not less than three (3) years, based on the then current fair market rental value of the Premises as set forth in Section 3.2.2 of the General License Provisions.	§ 3.2.2
☐ iii. Other: _____	
_____	§ 3.2.3
6. **Security Deposit (if any).** $_____	§ 4
7. **Insurance Amount.** See Exhibit "B"	§§ 10, 13

IN WITNESS WHEREOF, the Parties identified in Item 1 of this Part I have duly executed this License on the date below, and effective as of the Commencement Date set forth above in Item 4 of this Part I.

LICENSEE: CITY OF RANCHO CUCAMONGA
A municipal corporation

By: _____
L. Dennis Michael
Mayor

Date: _____

APPROVED AS TO FORM

By: _____
James L. Markman
City Attorney

CONCURRENCE

By: _____
Janice C. Reynolds
City Clerk

SAN BERNARDINO ASSOCIATED GOVERNMENTS, acting in its capacity as SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

By: _____
W.E. Jahn,
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____
Jeffery Hill
Contract Administrator

PART II – STANDARD LICENSE PROVISIONS

TABLE OF CONTENTS

Section		Page
1.	GRANT AND SCOPE OF LICENSE	1
2.	TERM, TERMINATION AND SURRENDER	2
3.	PAYMENTS	4
4.	SECURITY DEPOSIT	6
5.	TAXES	6
6.	LIENS	6
7.	ASSUMPTION OF RISK AND WAIVER	7
8.	DEFAULT, BREACH AND REMEDIES	7
9.	INDEMNIFICATION	9
10.	INSURANCE	10
11.	MAINTENANCE AND REPAIR	10
12.	ALTERATIONS AND CONSTRUCTION	11
13.	CONTRACTORS; APPROVAL AND INSURANCE	11
14.	REIMBURSEMENT	12
15.	LANDSCAPING	12
16.	MARKERS	12
17.	COMPLIANCE WITH LAWS	12
18.	SANBAG'S RIGHT OF ACCESS	13
19.	ENVIRONMENTAL ASSESSMENT	13
20.	HAZARDOUS/TOXIC MATERIAL USE AND INDEMNITY	13
21.	UNDERGROUND STORAGE TANKS	14
22.	CONDEMNATION	15
23.	BROKER'S FEES	15
24.	SUBORDINATE RIGHTS	15
25.	ABANDONMENT	15
26.	GENERAL PROVISIONS	16

Exhibits:

"A" Premises
"B" Insurance Requirements
"C" Permitted Hazardous Material
"D" Additional Provisions

PART II - STANDARD LICENSE PROVISIONS

1. GRANT AND SCOPE OF LICENSE

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 2 of the Basic License Provisions (the "Premises"), for construction, installation, operation, alteration, maintenance, reconstruction and/or removal of the Improvements described in Item 3 of the Basic License Provisions, and any usual and necessary related appurtenances thereto (the "Improvements"), for the purposes described in Item 3 of the Basic License Provisions, together with rights for access and entry onto the Premises as necessary or convenient for the use of the Improvement and for no other purpose. In connection with this grant of license, Licensee, its employees, agents, customers, visitors, invitees, licensees, consultants 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 Improvements or the Premises, with the time and manner of such entry and access to be subject to SANBAG's prior written approval. The Premises, adjoining real property of SANBAG and personal property of SANBAG located thereon shall hereinafter collectively be referred to as "SANBAG Property."

1.2. Condition of Premises. Licensee acknowledges that it has inspected the Premises in its present condition, including without limitation, all existing environmental conditions. Licensee accepts the Premises "as is" as suitable for the purpose for which the Premises are licensed and assumes all risk with respect to all present conditions of the Premises, including, without limitation, existing environmental conditions. Taking of possession by Licensee shall be conclusive to establish that the Premises are in good and satisfactory condition when possession is taken.

1.3. Use. The Premises and the Improvements shall be used only for the purposes specified in Item 3 of the Basic License Provisions and for such lawful purposes as may be directly incidental thereto, and no other purpose. No change shall be made by Licensee in the use of the Premises, the Improvements or the commodity or product being conveyed through the Improvements (if any) without SANBAG's prior written approval.

1.4. Non-exclusive and Revocable Nature of License. The license granted herein is not exclusive and SANBAG specifically reserves the right to grant other licenses within the Premises. Licensee agrees that notwithstanding the Improvements made by Licensee to the Premises or other sums expended by Licensee in furtherance of this License, the license granted herein is fully revocable by SANBAG in accordance with the terms of this License.

1.5. Easements. SANBAG reserves to itself the right, from time to time, to grant such easements, rights and dedications that SANBAG deems necessary or desirable, and to cause the recordation of parcel maps, easement agreements and covenants, conditions

and restrictions, so long as such easements, rights, dedications, maps and covenants, conditions and restrictions do not unreasonably interfere with the permitted use of the Premises by Licensee. Licensee shall sign any of the aforementioned documents upon request of SANBAG and failure to do so shall constitute a material breach of this License.

2. TERM, TERMINATION AND SURRENDER

2.1. Term of License. The term of this License shall commence on the "Commencement Date" specified in Item 4 of the Basic License Provisions. If Item 4.A of the Basic License Provisions is checked, this License shall continue in full force and effect on a month-to-month basis as provided in Item 4.A of the Basic License Provisions. If Item 4.B of the Basic License Provisions is checked, then this License shall be a license for the term specified in said Item 4.B. The term of this License as provided above is referred to as the "Term."

2.2. Termination.

2.2.1. Convenience. If Item 4.A is checked, this License shall continue in full force and effect on a month-to-month basis until terminated by either Party on thirty (30) days' prior written notice. If Item 4.B is checked, this License shall continue in full force and effect until the End Date, unless SANBAG, acting by its Executive Directory or his or her designee, for any reason and in its sole and absolute discretion, determines that this License is no longer in SANBAG's best interests. In which case, SANBAG may terminate this License on thirty (30) days' prior written notice, but SANBAG shall also return to Licensee, within thirty (30) days after the termination, the pro-rata portion of any annual license fee paid by the Licensee for the portion of the agreed term that will not be used by Licensee.

2.2.2. Cause. SANBAG may terminate this License for cause in accordance with the provisions hereof, including, without limitation, Sections 24 (Abandonment), 8 (Default, Breach and Remedies) and 25.11 (Assignment). In addition, SANBAG shall have the right to immediately, without notice and at Tenant's expense, terminate this License upon discovery of any default set forth in Section 8.1(d) and abate any such public nuisance and/or dangerous condition.

2.2.3. Public Use. In addition to any and all other termination rights of SANBAG described herein, Licensee hereby expressly recognizes and agrees that the Premises are 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, roadways, parking facilities, flood control and drainage facilities, and/or any other public or other governmental uses (collectively and individually "Public Use"); and that Licensee's use of the Premises 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 that may be terminated by SANBAG by thirty (30) days written notice to Licensee as set forth in Section 2.2.1 above. Accordingly, as a

condition to entering into this License, Licensee expressly acknowledges and agrees that:

(a) SANBAG may terminate this License as set forth above for any Public Use, to be determined in the sole and absolute discretion of SANBAG's Executive Director, or designee;

(b) Licensee shall **NOT** object to, oppose,or protest at any approval proceeding; nor file suit to prevent or delay any Public Use when planned or implemented on or adjacent to the Premises;

(c) If SANBAG's Executive Director, or designee, at any time, or from time to time, determines in his or her sole and absolute discretion, that there is a need for the Premises or any adjoining property for a Public Use and such Public Use requires relocation or removal of the Improvements, Licensee shall reconstruct, alter, modify, relocate or remove its Improvements, as directed by SANBAG or any parties having operating rights over the Premises, at Licensee's sole cost and expense, within thirty (30) days after written notice from SANBAG; and

(d) 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 Premises for any Public Use, Licensee shall not, as a result of such termination and vacation of the Premises, be entitled to receive any:

(i) 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

(ii) compensation under any eminent domain or inverse condemnation law.

2.2.4. **Holdover Fee:** If Licensee fails to terminate use of the Premises and/or restore the Premises as required in Item 2.3 below, on or before the End Date specified in Item 4.B of the Basic License Provisions or the termination date established as otherwise provided in this License ("Termination Date"), then, in addition to any and all other remedies available to SANBAG under the terms of this License or at law or equity, Licensee shall pay a Holdover Fee equal to twice the Base License Fee in effect on the day prior to the Termination Date, calculated and payable on a monthly basis, for the number of months (partial months counting as whole months) from the Termination Date to the date that Licensee has terminated use and restored the Premises to the required condition. Licensee shall indemnify SANBAG against all liabilities, costs and damages sustained by SANBAG by reason of such holding over.

2.3. Termination of Use and Restoration of Premises. Upon termination of this License in accordance with the terms hereof, unless otherwise requested in writing by SANBAG prior to the date of termination, Licensee, at its own cost and expense, shall immediately remove all alterations additions and Improvements made by Licensee to the Premises 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

Improvements. 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 (including costs, interest, and fees), which Licensee agrees to pay to SANBAG on demand, or (ii) assume title and ownership of said Improvements. 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 Improvements are removed and the SANBAG Property is restored.

3. PAYMENTS

3.1. Fees. As consideration for the rights herein granted, Licensee agrees to pay to SANBAG the Administrative and License Fees specified in Item 5 of the Basic License Provisions, adjusted as set forth in Section 3.2.

3.1.1. Administrative Fee. The one time Administrative Fee set forth in Item 5.A shall be due and payable upon execution of this License.

[Note: SANBAG may require deposit in advance of preparing the License Agreement, in which case the amount deposited will be applied to the Administrative Fee at the time of execution or shall be forfeited to SANBAG to pay for SANBAG's administrative costs in negotiating, preparing and/or processing the License Agreement in the event that the License Agreement is not consummated, per SANBAG's adopted policies and procedures.]

3.1.2. Base License Fee. If Item 5.B.i 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 License. Thereafter, the Base License Fee, as such fee may be adjusted pursuant to the provisions of Section 3.2, 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. If Item 5.B.ii of the Basic License Provisions is checked, the annual License Fee amount, as such fee may be adjusted pursuant to the provisions of Section 3.2, shall be due and payable, without demand, annually in advance on or before the anniversary month of the Commencement Date for the convenience of both Parties, without affecting the Term of this License as specified in Section 2.1.

3.1.3. Additional License Fee. If Item 5.C.i of the Basic License Provisions is checked, the one-time fee noted therein shall be due and payable upon execution of this License. If Item 5.C.ii of the Basic License Provisions is checked, the fee noted therein shall be due and payable as indicated in Item 5.C.ii.

3.2. License Fee Adjustment.

3.2.1. Annual CPI Adjustment. If Item 5.D.i 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 is provided in Item 5 of the Basic License Provisions (the "Adjustment Date"). If no adjustment is made at the annual

anniversary date, an adjustment may nevertheless be made at a subsequent date and thereafter at not less than annual intervals. 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 month that is three (3) months prior to 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, three (3) months prior to the first day of the anniversary month of 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.

3.2.2. Fair Market Adjustment. If Item 5.D.ii 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 3.2.1, above) payable under this Section 3 shall be increased, but not decreased, in order to adjust the fee to the then fair market rental value of the Premises 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.

3.2.3. Other Adjustment. If Item 5.D.iii of the Basic License Provisions is checked, then, in addition to any adjustments required under Items 5.D.i and 5.D.ii, the adjustment set forth in 5.D.iii shall be applied in accordance with its terms.

3.3. Late Charge. Licensee acknowledges that late payment by Licensee of any payment owed to SANBAG under this License will cause SANBAG to incur costs not contemplated by this License, 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 License, at law or in

equity. In addition, any payment not made within 15 days of when due shall bear interest at the rate of eighteen percent (18%) per annum, or the highest legally allowable rate, whichever is lower, until paid in full.

4. SECURITY DEPOSIT

Upon execution of this License and in addition to the payment described in Section 3, SANBAG may require Licensee to pay SANBAG a security deposit in the amount set forth in Item 6 of the Basic License Provisions ("Security Deposit"), which sum shall be held by SANBAG in its general fund, without obligation for interest, as security for the faithful performance by Licensee of all of the terms, covenants, conditions and obligations of this License. If at any time Licensee fails to keep and perform any of the term, covenants, and conditions of this License, including making any payment required hereunder, SANBAG may, at its sole option, apply all or any portion of the Security Deposit to any overdue payment and/or any loss or damage incurred by SANBAG by reason of Licensee's default or breach. Within a reasonable time after termination of this License and after Licensee has vacated the Premises, SANBAG shall return, without interest, said deposit or portion remaining, if any, after deductions for any unpaid payments and any losses or damage sustained by SANBAG due to any breach or default by Licensee or any damage to the Premises or any failure to restore the Premises to the required condition.

5. 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 Improvements, the Premises and/or any personal property, fixtures or equipment located on or placed on the Premises, whether owned by Licensee or any person or entity acting for or at the request of Licensee; or (b) as a result of the Licensee's or the Improvements' operations.

6. LIENS

Licensee will fully and promptly pay for all materials joined or affixed to the Improvements or Premises, and fully and promptly pay all persons who perform labor upon said Improvements or Premises. Licensee shall not suffer or permit to be filed or enforced against the Premises or the Improvements, or any part thereof, any mechanics', material men'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. The term "Work" under this License means any construction, reconstruction, installation, restoration, alteration, repair, replacement, or removal, other than normal maintenance. Licensee shall provide SANBAG with immediate written notice of any such liens, claims, demands, or stop notices that are placed against the Premises or the Improvements. 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, including attomey'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, as well as any associated costs and fees, within ten (10) business days after billing. In such circumstances, SANBAG may, in its reasonable discretion, impose a fee on Licensee of twenty five percent (25%) of the costs of the discharge of the mechanic's lien or stop notice in order to cover administrative costs. SANBAG reserves the right at any time to post and maintain on the Premises 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 License.

7. 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 Improvements, the SANBAG Property and any other property of, or under the control or custody of, Licensee, which is on or near the Premises. 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 officers, directors, affiliates, employees, agents, independent contractors and subcontractors anyone directly or indirectly employed by or for whose acts Licensee is liable (collectively, "Personnel"), as a material part of the consideration for this License, 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 License.

8. DEFAULT, BREACH AND REMEDIES

8.1. Licensee Default. Licensee shall be deemed to have breached and be in default under this License when any of the following occurs:

(a) Licensee shall fail to make any payment herein reserved when due, or any reimbursement to SANBAG required herein when due;

(b) Licensee shall vacate all or a substantial portion of the Premises, whether or not Licensee is in default of the payment or other charges due under this License; or

(c) Licensee shall fail to comply with any other term, provision or covenant of this License, and shall not cure such failure within three (3) days after written notice thereof to Licensee.

(d) Licensee shall create or maintain, or allow any other person or entity to create or maintain, any public nuisance or any condition that fails to comply with any federal, state, SANBAG or rail operator specifications or safety regulations or that presents a danger to public safety or a safety hazard to any operations, personnel, passengers or property of SANBAG or any rail carrier operating upon the affected rail line(s) on the Premises or SANBAG's adjacent right of way.

8.2. SANBAG's Remedies.

8.2.1. Termination. Upon the occurrence of Licensee's default and breach, SANBAG shall have the right, at any time, with or without notice or demand, to terminate this License, and at any time thereafter to recover possession of the Premises or any part thereof and expel and remove therefrom Licensee and any other person occupying the same, by any lawful means, and again repossess and enjoy the Premises without prejudice to any of the remedies that SANBAG may have under this License, at law or equity by reason of Licensee's default or of such termination.

8.2.2. Corrective Measures. Should Licensee default on, 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 perform any corrective measures deemed by SANBAG in its sole and absolute discretion to be necessary or appropriate to protect public health or safety, or SANBAG's legitimate governmental or proprietary interests or the interests of its railroad operators ,s at Licensee's expense (including fees, costs and interest) which Licensee agrees to pay to SANBAG upon demand.

8.2.3. Costs. If SANBAG incurs any cost or expense occasioned by the default of Licensee (including but not limited to attorneys' fees and costs), then SANBAG shall be entitled to receive such costs together with interest on all funds SANBAG expends at the lesser of eighteen percent (18%) per annum or the maximum rate allowed by law, whichever is lower, including without limitation, brokers' fees incurred by SANBAG in connection with relicensing the whole or any part of the Premises; the costs of removing and storing Licensee's or other occupant's property; the costs of repairing, altering, and/or otherwise restoring the Premises to a safe and suitable condition, useable and acceptable to SANBAG, rail operators and future licensees; and all reasonable expenses incurred by SANBAG in enforcing or defending SANBAG's right and/or remedies, including reasonable attorneys' fees whether or not suit is actually filed.

8.2.4. Remedies Cumulative. All rights, privileges and remedies of the parties are cumulative and not alternative or exclusive to the extent permitted by law except as otherwise provided herein

8.3. SANBAG Default and Licensee's Remedies. SANBAG shall not be in default under this License unless SANBAG fails to perform obligations required of SANBAG within sixty (60) days after written notice is delivered by Licensee to SANBAG specifying the obligation which SANBAG has failed to perform; provided, however, that if the nature of SANBAG's obligation is such that more than sixty (60) days are required for performance, then SANBAG shall not be in default if SANBAG commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion. Licensee's exclusive remedies shall be an action for specific performance or action for damages.

9. INDEMNIFICATION

9.1. Licensee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless SANBAG, in all of its capacities, and its members, commissioners, officers, directors, employees, agents, consultants, contractors, partners, affiliated entities, subsidiaries, permittees, licensees, 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 Personnel (as defined in Section 7, Assumption of Risk and Waiver) 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 License, in each case whether occurring during the Term of this License or thereafter.

9.2. The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, gross, derivative, sole, joint, concurring or comparative) on the part of Indemnitees and is in addition to any other rights or remedies which Indemnitees may have under the law or under this License. Upon request of SANBAG, Licensee shall provide insurance coverage for possible claims or losses covered by the indemnification and defense provisions of this License.

9.3. 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 Licensee or its Personnel under workers' compensation acts, disability benefit acts or other employee benefit acts or insurance.

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

10. INSURANCE

10.1. SANBAG's Insurance. SANBAG may maintain insurance covering the Premises and SANBAG's ownership and operation thereof in such types and amounts as it deems necessary in its sole discretion. Such insurance shall be for the sole benefit of SANBAG and under its sole control. Licensee's insurance policies shall provide primary coverage to SANBAG; when any such policy issued to SANBAG provides duplicate coverage or is similar in coverage, SANBAG's policy will be excess over Licensee's policies.

10.2. Licensee's Insurance. Licensee, at its sole cost and expense, shall obtain and maintain in full force and effect during the Term of this License 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 License, to review and change the amount and type of insurance coverage it requires in connection with this License or the Work to be performed on the Premises. Prior to (i) entering the Premises or (ii) performing any Work or maintenance on the Premises, Licensee shall furnish SANBAG with insurance endorsements or certificates evidencing the existence, amounts and coverages of the insurance required to be maintained hereunder. SANBAG shall not be liable for the payment of any premiums or assessments for insurance required to be maintained by Licensee under this License. Self-insurance is not permitted. However, SANBAG may, in its sole and absolute discretion, permit self-insurance on a case by case, coverage by coverage, basis where the Licensee has documented, to SANBAG's sole satisfaction sufficient available assets and/or available funds and sufficient legal security in those assets to assure SANBAG that its risk is not greater than it would have been with acceptable insurance coverage, and otherwise meeting SANBAG's self-insurance requirements. The privilege 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 at any time. Upon revocation of self-insurance privilege, Licensee shall immediately provide all required insurances.

10.3. Increases to Insurance. If any increase in the fire and extended coverage insurance premiums paid by SANBAG is caused by Licensee's use and occupancy of the Premises, or if Licensee vacates the Premises and causes any increase in such premiums, then Licensee shall pay as an additional fee the amount of such increase to SANBAG, and, upon demand by SANBAG, the amount required to correct at Licensee's expense the cause of such disallowance, penalty or surcharge to the satisfaction of the particular insurance authority.

11. MAINTENANCE AND REPAIR

Licensee, at Licensee's sole expense, shall during the term of this License maintain the Improvements in a first-class condition, shall maintain the Premises in a good condition, free from weeds, litter, debris, refuse or other nuisance, and shall perform all maintenance and clean-up of the Premises and the Improvements as necessary to keep the Premises and the

Improvements 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 Premises by Licensee or Licensee's Parties, including but not limited to damage arising from any tests or investigations conducted upon the Premises, 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. Licensee shall not perform any maintenance on railroad tracks and facilities without express prior written approval of and direction from SANBAG or the railroads with valid operating authority over SANBAG's lines and compliance with all applicable standards, specification and safety requirements.

12. ALTERATIONS AND CONSTRUCTION

Except as otherwise provided herein, Licensee shall make no alterations, additions or Improvements to the Premises without obtaining the prior written consent of SANBAG in each instance. Any Work performed or caused to be performed by Licensee on the Improvements or the Premises shall be performed (a) at Licensee's sole cost and expense; (b) in accordance with any and all applicable permit requirements, laws, rules, regulations and safety requirements (including 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 Work on the Premises, 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 14 calendar days' written notice prior to commencement of any Work on the Premises or the Improvements, except in cases of emergency, in which event Licensee shall notify SANBAG's representative personally or by phone prior to commencing any Work. SANBAG shall have the right at any time and from time to time to post and maintain notices of non-responsibility 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.

13. CONTRACTORS; APPROVAL AND INSURANCE

Any contractors of Licensee performing Work on the Improvements or the Premises shall first be approved in writing by SANBAG and acquire all required right of entry permits and authorizations from SANBAG and any rail operator utilizing affected or adjacent railroad tracks. 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 coverage 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 Premises, to obtain and maintain in full force and effect during the Term of this License, or throughout the term of such Work (as applicable), insurance, as required by SANBAG, in the amounts and coverage specified on, and issued by insurance companies as described on, Exhibit "B". SANBAG reserves the right, throughout the Term of this License, to review and change the amount and type of insurance coverage it requires in connection with this License or the Work to be performed on the Premises.

14. REIMBURSEMENT

Licensee agrees to reimburse SANBAG for all reasonable costs and expenses that SANBAG incurs in connection with Work on or maintenance of the Premises or the Improvements, 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 License, protect the safety of, and railway operations upon, its tracks and right-of-way, and to otherwise protect its interests. The costs and expenses addressed in this Section 14 shall include all costs that SANBAG incurs in complying with the Work or maintenance requirements of the railroads with valid operating authority over SANBAG's lines.

15. LANDSCAPING

If required by SANBAG, then Licensee, at its sole cost and expense, shall install barrier landscaping to shield the Improvements from public view. SANBAG shall have the right to review and approve landscaping plans prior to installation. All landscaping activities shall be done in accordance with the provisions of Section 12 above (Alterations and Construction).

16. MARKERS

Except as modified by any additional provisions attached at Exhibit "D", project markers in form and size satisfactory to SANBAG, identifying the Improvements and their owner(s), shall 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.

17. 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 SANBAG Property, and shall furnish satisfactory evidence of such compliance promptly upon request of SANBAG. Licensee shall obtain all required permits or leases required by any governmental authority for its use of the Premises, at its sole cost and expense. Subject to SANBAG's approval, Licensee shall at its own cost and expense install and construct all physical improvements to or needed to serve the Premises that are required by any federal, state or local building code or other law or regulation applicable to the Premises, or that are made necessary by the nature of Licensee's use of the Premises. Licensee shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with, the Premises, all at Licensee's sole expense.

18. SANBAG'S RIGHT OF ACCESS

18.1. Inspections. SANBAG shall have the right at any time (upon provision of reasonable notice of inspection to Licensee) or in case of emergency (without notice), to inspect the Premises in order to protect SANBAG's interests therein and to monitor compliance with this License and all applicable federal, state and local laws, regulations, rules and orders.

18.2. Tests. 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 or SANBAG's 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. Licensee shall cooperate with SANBAG in any tests or inspections deemed necessary by SANBAG.

18.3. Costs. Licensee shall pay or reimburse SANBAG, as appropriate, for all reasonable costs and expenses incurred due to tests, inspections or any necessary corrective Work, maintenance and inspections thereafter.

18.4. Sale or Lease of Premises. SANBAG may at any time place on or about the Premises (including the Improvements) any ordinary "for sale" and "for lease" signs. Licensee shall also permit SANBAG and its agents, upon request, to enter the Premises or any part thereof, at reasonable times during normal business hours, to show the Premises to prospective tenants, purchasers or mortgagees.

19. ENVIRONMENTAL ASSESSMENT

Upon execution of this License, SANBAG may, in its sole discretion and if applicable, require Licensee to retain a duly licensed environmental consultant acceptable to SANBAG who shall perform an environmental assessment of the Premises and Licensee's and Licensee's Parties' business activities and prepare a report on Licensee's and/or Licensee's Parties' compliance with the provisions of this section. SANBAG may, if applicable, require Licensee to cause a similar environmental assessment to be conducted on an annual basis, and/or upon or within one (1) year after the expiration or earlier termination of this License, the cost of which shall be the sole responsibility of Licensee. Licensee shall provide a copy of the report or reports from the consultant(s) promptly to SANBAG upon receipt, and upon request shall promptly provide to SANBAG a copy of all data, documents and other information prepared or gathered in connection therewith.

20. HAZARDOUS/TOXIC MATERIAL USE AND INDEMNITY

20.1. Licensee shall operate and maintain the Premises in compliance with all, and shall not cause or permit the Premises to be in violation of any, Environmental Law which is now or may hereafter become applicable to Licensee or the Premises. 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 permit conditions, currently existing or as amended or adopted in the future. Except for any

Hazardous Material 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 Material to be brought upon, stored, used, generated, treated or disposed of on or about the SANBAG Property. Any Hazardous Material on the site shall be stored, used, generated and disposed of in accordance with all applicable Environmental Laws. As used herein, "Hazardous Material" 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 a hazardous or dangerous material or substance.

20.2. Licensee shall indemnify, defend (by counsel acceptable to SANBAG) and hold harmless the Indemnitees (as defined in Section 9, Indemnification) 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 Material upon or from the Improvements or the Premises or contamination of the SANBAG Property (i) which occurs due to the use and occupancy of the Improvements or the Premises 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.

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

20.4. In addition, in the event of any release on or contamination of the Premises, 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.

21. UNDERGROUND STORAGE TANKS

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

21.2. At SANBAG's option, upon the termination of this License 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 Material in, on, under and about the Premises, 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.

22. CONDEMNATION

In the event all or any portion of the Premises shall be taken or condemned for public use by a governmental agency or any other party having the power of eminent domain (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 Improvements. Any other compensation or damages arising out of such taking or condemnation awarded to Licensee are hereby assigned by Licensee to SANBAG.

23. BROKER'S FEES

Licensee agrees to indemnify and hold SANBAG harmless from and against any claims by any broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Licensee with regard to obtaining this License.

24. SUBORDINATE RIGHTS

This License 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, operate, 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 or any portion thereof, and in connection therewith the right to grant and convey to others, rights and interests to the SANBAG Property on the Premises and in the vicinity of the Improvements, regardless of any effect or impact on the Improvements. Licensee shall bear all costs and losses it incurs associated with any modifications to the Improvements necessary to accommodate SANBAG's exercise of any right hereunder. This License 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. This License 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 a covenant against the existence of any such title exceptions.

25. ABANDONMENT

Should Licensee at any time abandon the use of the Improvements or the Premises, 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 License 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 License

26. GENERAL PROVISIONS

26.1. Notices. All notices and demands which either of the Parties 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 the other Party at its address set forth in the Basic License Provisions. Either of the Parties 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.

26.2. Governing Law. This License shall be governed by the laws of the State of California.

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

26.4. No Third Party Beneficiaries. This License is not intended by either party to confer any benefit on any third party other than the constituent members of SANBAG, including without limitations any broker, finder, or brokerage firm.

26.5. Severability. If any term, covenant, condition or provision of this License, 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 License, 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.

26.6. 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 License, provided, however, that interest shall not be payable on late charges incurred by Licensee.

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

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

26.9. Waiver of Covenants or Conditions. The waiver by either Party of any term, covenant, agreement or condition under this License shall not invalidate this License, nor shall it be considered a waiver by it of any other covenant or condition or of the same covenant or condition in another instance. To the extent patterns of practice between the Parties are inconsistent with the terms of this License, such patterns of practice shall not waive in part or in full SANBAG's right to insist upon strict accordance with any of the provisions of this License. The subsequent acceptance of payments hereunder by SANBAG shall not be deemed to be a waiver of any preceding breach by Licensee of any provisions, covenant, agreement or condition of this License, other than the failure of Licensee to pay the particular payment so accepted, regardless of SANBAG's knowledge of such proceeding breach at the time of acceptance of such payment.

26.10. 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.

26.11. Assignment. This License and the license granted herein are personal to the Licensee. Licensee shall not assign or transfer (whether voluntary or involuntary) this License 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 be a material breach of this License, which gives SANBAG the right to immediately terminate this License and seek all other available remedies for breach.

26.12. Entire Agreement; Amendments. This License, including all attached Exhibits, constitutes the entire agreement between the Parties and supersedes all prior verbal or written agreements and understandings between the Parties with respect to the items set forth in this License. The Parties each acknowledge that no representations, inducements, promises or agreements, oral or written, have been made by either SANBAG or Licensee, or anyone acting on behalf of SANBAG or Licensee, other than those contained in this License. No amendments, changes, revisions, or discharges, at any time in whole or in part, of this License shall be binding upon the Parties unless they are in writing and executed by the Parties.

26.13. Attorneys' Fees. If either SANBAG or Licensee commences or engages in, or threatens to commence or engage in, an action by or against the other party arising out of or in connection with this License or the Premises, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and other costs incurred in connection with the action, preparation for such action, any appeals relating thereto and enforcing any judgments rendered in connection therewith. If SANBAG becomes involved in any action, threatened or actual, by or against anyone not a party to this License, but arising by reason of or related to any act or omission of Licensee or Licensee's Parties, Licensee agrees to pay SANBAG's reasonable

attorneys' fees and other costs incurred in connection with the action, preparation for such action, any appeals relating thereto and enforcing any judgments rendered in connection therewith.

26.14. Nondiscrimination. Licensee certifies and agrees that all persons employed by Licensee and/or Licensee's affiliates, subsidiaries, or holding companies, and any contractors retained by Licensee 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.

26.15. 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 License, including, at SANBAG's sole discretion, the relocation of the Improvements and the license granted hereby.

26.16. Time of Essence. Time is of the essence for this License.

26.17. Certificates. Licensee agrees from time to time within ten (10) days after request of SANBAG, to deliver to SANBAG, or SANBAG's designee, all financial statements for the previous three (3) fiscal years of Licensee, and an estoppel certificate stating that this License is in full force and effect, the date to which all applicable payments have been paid, the unexpired Term of this License and such other matters pertaining to this License as may be requested by SANBAG.

26.18. Security Measures. Licensee hereby acknowledges that the payments payable to SANBAG hereunder do not include the cost of guard service or other security measures, and that SANBAG shall have no obligation whatsoever to provide same. Licensee assumes all responsibility for the protection of Licensee, Licensee's Parties and their property from acts of third parties.

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

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

26.21. Flagmen. Where applicable, as a part of or in addition to all other safety obligations, Licensee shall maintain, at Licensee's expense, competent flagmen to protect and control movement of vehicles and equipment of Licensee or any other user of the Premises while upon the Premises, consistent with any applicable laws and regulations regarding work protection, including the rules and policies of SANBAG and/or any railroad operator having rights to utilize any affected or adjacent railroad tracks.

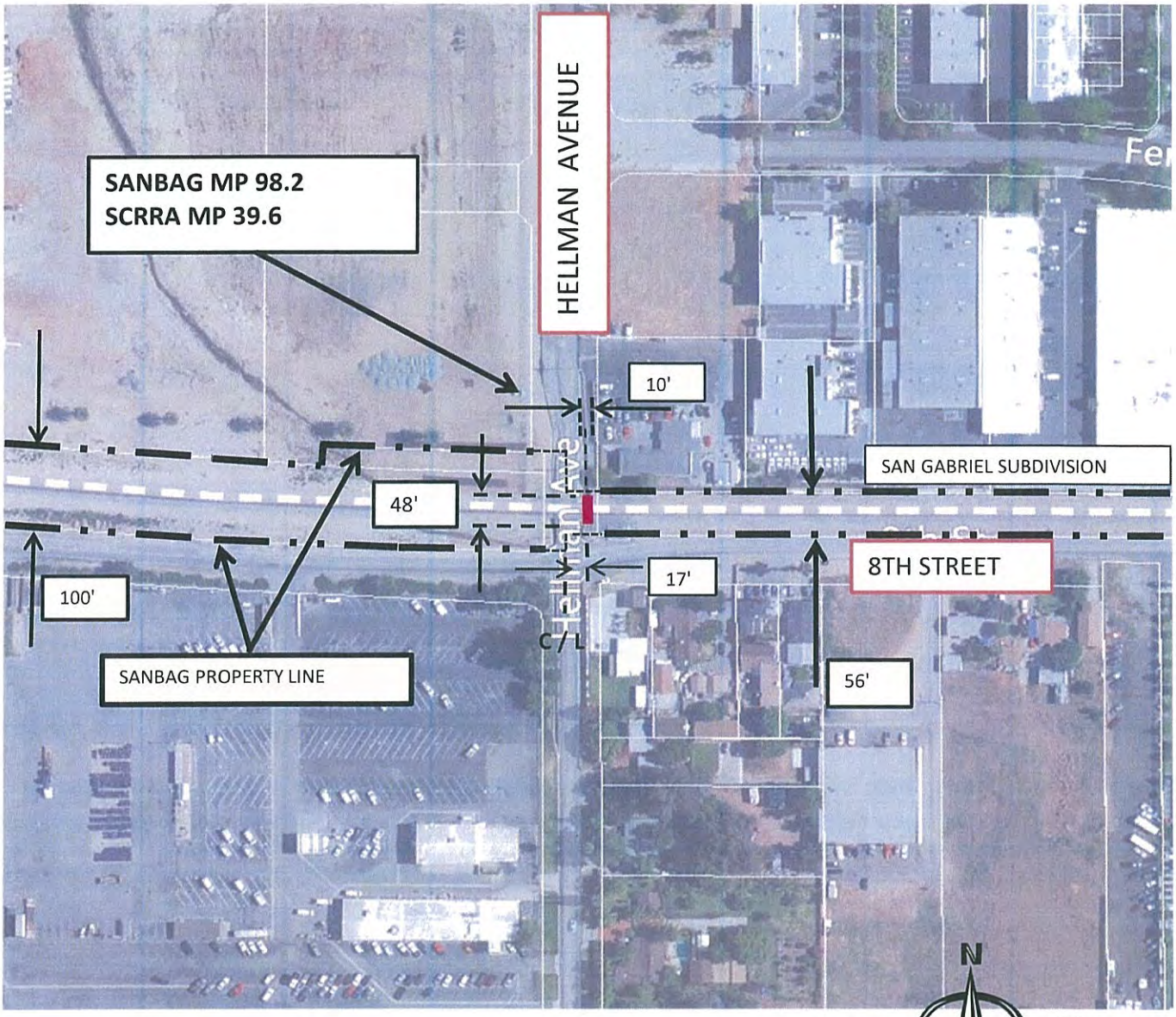
26.22. Additional Provisions. Those additional provisions set forth in Exhibit "D", if any, are hereby incorporated by this reference as if fully set forth herein. To the extent that any additional provisions in Exhibit "D" conflict with the provisions contained in this Part II, Standard License Provisions, the provisions in Exhibit "D" shall control.

Exhibit "A"

Premises

[To Be Inserted]

EXHIBIT "A"



ONE 12 INCH PVC CASING ENCASED IN CONCRETE SLURRY

SEE ALSO RSSB003771 FOR WESTERN CASING IN HELLMAN AVE

APN: 0209-032-44		
Date **10/11/213**		
Branch/Line **SSB**	Mile Post **39.59** **SANBAG 98.2**	Lessee/Licensee **RANCHO CUCAMONGA**
County **SAN BERNARDINO**	Nearest Cross Street **8TH STREET**	SANBAG File Number **RSSB003770 R14083**
Area **480 SQ. FT.**	City **RANCHO CUCAMONGA**	Scale **1"=200'**
Map Reference **SSB6**	Use **12" PVC CASING**	Thomas Guide Grid **604 H4**

Governments SANBAG Working Together

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

Exhibit "B"

INSURANCE REQUIREMENTS FOR LICENSES

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, its 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, members, affiliated entities, contractors, consultants, authorized rail operators and agents ("Related Parties"); 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 and Related Parties 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, or its Related Parties.

2. For any claims related to this project, the Licensee's insurance coverage shall be primary insurance as respects SANBAG, and its Related Parties. Any insurance or self-insurance maintained by SANBAG, or its Related Parties 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 and its Related Parties.

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.

All insurance policies, including without limitation, Workers' Compensation and Employer's Liability policies, shall contain or be endorsed to include a waiver of subrogation in favor of SANBAG and its Related Parties.

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, 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 Material

No hazardous material is permitted to be used or stored on Premises.

Exhibit "D"

ADDITIONAL REQUIREMENTS

The following Additional Requirements are imposed on the Tenant/Licensee/Permittee and all of its contractors, subcontractors, employees, laborers or other persons performing any work upon SANBAG property on behalf of Tenant/Licensee/Permittee, and are made part of the terms of the Lease/License/Permit to which this Exhibit D is attached ("Agreement").

As used hereinafter, the term "Contractor" shall include the Tenant/Licensee/Permittee and each and every one of its contractors, subcontractors, employees, laborers, agents or other persons performing any work upon SANBAG property on behalf of Tenant/Licensee/Permittee; and the term "railroad operator" or "operating railroad" shall mean Southern California Regional Rail Authority (SCRRA), Burlington Northern Santa Fe Railroad Railway Company (BNSF) and/or any other railroad company or rail carrier having operating rights over rail lines owned or controlled by SANBAG.

Contractor shall fully comply with each and every one of the Additional Requirements below which is in any way applicable to the type of use, construction, installation or facility allowed under the Contractor's Agreement and approved by SANBAG as required thereunder ("Permitted Use"). The inclusion of an Additional Requirement below that is not in any way applicable to the Contractor's Permitted Use shall not imply any right, permission or consent to expand the Permitted Use in any way.

1. Contractor agrees to execute and deliver to each railroad operator prior to commencing any work within the rail right-of-way, a railroad Right of Entry Agreement which will include agreement to abide by each railroad operator's rules and requirements for construction on railway property. Contractor shall secure approval from SANBAG and each railroad operator of the design of any structures and facilities prior to commencing work on their construction or installation.

2. Contractor will acquire and comply with any and all additional permits required by the railroad operator(s), affected public utilities and/or by any government agency having jurisdiction. Any permit fees, inspection fees, flagging 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 Contractor's sole responsibility. Fully conformed copies of all permits are to be provided to SANBAG. Additional permits required of the Contractor may include but are not limited to encroachment permits, Storm Water Pollution Prevention Plans, environmental permits, temporary use permits, regulatory permits and third party utility permits. Contractors shall have all original executed agreements and permits on hand while on site and will present them on demand of representative of SANBAG and/or the railroad operator(s). Prior to the commencement of work, the contractor shall submit to SANBAG for review and approval, a description of the work process including a detailed schedule of all work activities to be carried out on SANBAG property.

   [For convenience only, SANBAG provides the following telephone numbers for inquiries and information: SCRRA's Right of Way Engineers Office - (909) 394-3418;BNSF's Roadmaster Office - (909) 386-4061]

3. Contractor at its sole cost and expense shall obtain and maintain, in full force and effect, insurance, as required by SANBAG and the railroad operator(s) during the entire construction period. The Contractor shall furnish copies of the insurance certificates to SANBAG and all affected railroad operators.

4. Contractor agrees to comply with instructions of SANBAG and each railroad operator's Employee-In-Charge (EIC) and other representatives in relation to the proper manner of

protection of the tracks and the traffic moving theron, pole lines, signals and other property of SANBAG or its member agencies, 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 operations of railroad operators or of SANBAG's track and other facilities.

5. Contractor will call the appropriate operating railroad to arrange for flagging services a minimum of fifteen (15) working days prior to beginning work. Although every effort is made to accommodate schedules, prior notification does not guarantee the availability of protective/flaggingservices for the proposed date of work. The SCRRA/BNSF flagman/EIC has sole authority to protect safe railroad operations and infrastructure , therefore, only they and their representatives are permitted to perform flagging operations within the railroad right-of-way. At all times the contractor shall follow the flagman/EIC's direction. Contractor's work may not proceed in the absence of a flagman in accordance with applicable rules. At no time shall any contractor be permitted to cross any track or place or maintain any personnel or equipment within the railroad right-of-way without the permission of the railroad flagman.

   SCRRA's Flagging Office (213) 305-8424
   BNSF's Flagging Office (909) 386-4061

6. Prior to the start of construction and at the contractor's expense, all personnel including subcontractors and third parties shall complete SCRRA's/BNSF's Third Party Safety Training course, which is required for all work near or within the railroad right-of-way. Evidence of training must be supplied upon request of SANBAG and its representatives. No work may commence on the railroad right-of-way until this training has been completed. 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/BNSF flagman/EIC.

7. Contractor shall be responsible for the location and protection of any and all surface, sub-surface, and overhead lines, structures and improvements. Contractor 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. It shall be the Contractor's responsibility to contact Underground Alert and locate all underground facilities prior to the commencement of construction. At the same time, the contractor shall notify the operating railroad for signal and communications cables and conduits mark-outs. Contractor shall obtain permission from the owners of any fiber optic, gas, electrical, water, oil or other lines which may be impacted by work on or any use of the Premises by Contractor.

   SCRRA Signal Department (909) 592-1346
   BNSF Signal Department (909) 386-4051

8. **In case of signal emergencies or grade crossing problems, the contractor shall call the following emergency numbers.**

   SCRRA Signal Emergency Department (888) 446-9721
   BNSF Signal Emergency Department (909) 386-4051

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

10. If SANBAG or any of its associated rail entities or railroad operators deem it necessary in the future, to modify, or to build additional, track or tracks or other facilities in connection with the

operation of its railroad, at the request of SANBAG, contractor shall modify, at its own expense, any or all of its permitted facilities to conform to the rail facilities.

11. Both Contractor 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 Contractor's needs will be the sole responsibility and at the sole cost of the Contractor and subject to SANBAG's and any affected operating railroad's prior review and approval, which may be withheld in SANBAG's or the affected operating railroad's sole and absolute discretion. SANBAG or the affected operating railroad may require that any track removal and/or other work within the right-of-way be done by SANBAG or the railroad operator, respectively, but all such work shall remain at the sole cost of the Contractor, who may be required to deposit the estimated cost plus 25% in advance of the work, subject to refund or additional charge at the conclusion of the work. No permanent structures may be constructed on the premises without SANBAG's prior written approval. Contractor will be responsible for the removal of any or all permitted improvements upon termination of Agreement as directed by SANBAG.

12. Contractor shall pay for any and all utilities for its benefit, security and use.

13. SANBAG makes no warranties as to the suitability of the location for Contractor's intended use, and Contractor assumes all risks as to environmental compliance, zoning, visibility, or any other factors which may affect Contractor's intended use of the premises.

14. Boring of carrier or direct burial utilities by directional boring methods is prohibited.

15. Signs are not permitted on or along the perimeter of the Premises unless such signs were requested and approved under Contractor's original proposal and covered by the required insurance. The contractor shall install permanent signs identifying the location of pipes at the edge of the railroad right-of-way unless within a public grade crossing.

16. Contractor shall construct a temporary fence along the railroad right–of-way, or along the edge of pits closest to the track, on both sides of the pit, extending 50-feet in both directions from the pit, and measuring a minimum of 6-feet high. Fences are not required for work at grade crossings. Contractor shall pave the Premises area with asphalt or concrete, when requested, around the entire perimeter of the property as described in the Agreement in Part I and Exhibit "A". Contractor shall be responsible for total expense of fencing and asphalt.

17. Contractor shall not bring upon or use any import ioil 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. Additionally, any soil currently existing on the Premises may not be spread on the Premises unless and until it is characterized as clean coil to the reasonable satisfaction of SANBAG. All soil piles are to be placed on a barrier to prevent intermingling with surface soils.

18. Contractor 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. Contractor shall by fully responsible for all maintenance and maintenance of adjoining SANBAG property that is required or necessary in connection with Contractor's use of Premises.

19. Prior to commencement of construction, the contractor shall submit to SANBAG / SCRRA a plan showing the proposed method of casing installation, construction access, stockpile locations, SWPPP control measures, fencing type and location and a milestone schedule.

20. For pipelines carrying flammable or hazardous materials, the contractor shall adhere to special conditions stated in the Right of Entry (ROE) Agreement.

21. The jacking and receiving pits shall be constructed outside of the railroad right of way unless shown on the SANBAG approved plans and shall not be located between any track and the automatic signal gate arms. The contractor shall layout the proposed jack and bore pits prior to the commencement of work. Only after the SANBAG/SCRRA inspector has approved the layout will the Contractor be allowed to begin work.

22. 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 SCRRA/BNSF flagman and SCRRA/BNSF 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 SANBAG.

23. The contractor shall submit to SANBAG/SCRRA for review, drawings and calculations for any shoring that may affect or be influenced by the railroad tracks. All shoring designs shall comply with the requirements of, and be approved by, SANBAG and/or the affected operating railroad. All drawings and calculations shall be signed and stamped by a California licensed Civil or Structural Professional Engineer.

24. Prior to commencement of work, the contractor shall submit to SANBAG/SCRRA 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.

25. Should ground water or loose or unstable soils conditions be encountered during construction, the contractor shall immediately stop work, notify the railroad flagman, provide necessary structural support to track and other railroad structures, and notify the affected operating railroads and SANBAG. It shall be the responsibility of the contractor to make necessary corrections to the construction process to allow for said conditions.

26. All underground utilities under railroad tracks shall be encased in a larger pipe or conduit called the "casing pipe". Said 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. The top of the 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. All ends of the casing pipe shall be sealed unless otherwise authorized by SANBAG. 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. All casing pipes shall be installed with a minimum slope of 1%. Installation of casing pipes by open trenching is prohibited.

27. Abandoned pipes shall be removed from their casing pipes. The empty casing pipe shall be pressure grouted full for the entire length of the pipe. Should there be no casing pipe; the abandoned pipe shall be pressure grouted full the entire length of the pipe. A SANBAG / SCRRA inspector must be present during the grouting process.

28. 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 and jacks shall be designed and used with sufficient rating 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 non-stop, 24-hour per day basis until the jacking operation is completed.

29. 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 replacement, 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 there will be no unsupported excavation ahead of the casing. The auger 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 / SCRRA 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/SCRRA.

30. 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.

31. 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/SCRRA shall be employed to fill such voids.

32. 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/SCRRA prior to the commencement of work. Proof of experience and competency shall accompany the submission.

33. When water is known 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/SCRRA 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.

34. 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 well 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.

35. The proposed methods of dewatering shall be submitted to SANBAG/SCRRA 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, pollutants, or hazardous materials or fluids be observed at any time during the dewatering process, the dewatering shall be halted immediately and cannot resume until the unsatisfactory condition is remedied to the satisfaction of the SANBAG/SCRRA inspector.

36. 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.

37. 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 and any affected operating railroad 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 it holds. Contractor shall be responsible to arrange refunds due from any affected operating railroads.

38. A minimum of five feet (5') clearance is required above signal and communication lines for overhead crossings.

39. Poles for any use within the railroad right-of-way must be located fifty-feet (50') out from the centerline of the railroad main, branch and running tracks, CTC sidings, and heavy tonnage spurs. Pole locations adjacent to industry track must provide at least a ten foot (10') clearance from the centerline of track, when measured at right angles. If located adjacent to curved track, then said clearance must be increased at the rate of 1.5 inches per degree of curved track.

40. Regardless of the voltage, un-guyed poles shall be located a minimum distance from the centerline of any track, equal to the height of the pole above the ground–line plus ten feet (10'). If guying is required, the guys shall be placed in such a manner as to keep the pole from leaning/falling in the direction of the tracks.

41. Poles must be located a minimum distance from the railroad signal and communication line equal to the height of the pole above the ground-line or else be guyed at right angles to the lines. High voltage towers (34.5 kV and higher) must be located off railroad right-of-way.

Exhibit "D"

42. Grade crossings or temporary grade crossing must not be installed under or within five-hundred feet (500') of the end of any railroad bridge, or three hundred feet (300') from the centerline of any culvert or switch area.

43. For overhead crossings, complete spanning of the property is encouraged with supportive structures and appurtenances located outside of the railroad property. For electric supply and communication lines, normally the crossing span shall not exceed one-hundred fifty-feet (150') with adjacent span not exceeding 1.5 times the crossing span length. For heavier type construction, longer spans will be considered.

44. To ensure that overhead crossings are clear from contact with any equipment passing under such wires, communication lines shall be constructed with a minimum clearance above top of rail of twenty-eight feet (28').. Electric lines must have a florescent ball marker on low wire over centerline track.

45. The utility owner will label the poles closest to the crossing with the owner's name and telephone number for emergency contact.

46. Overhead flammable and hazardous material lines are prohibited.

47. Because inductive interference from certain types of lines have the potential to disrupt the railroad signal and communication systems causing failures with the signals, communication, and at-grade crossing warning devices, . SANBAG may require that an inductive coordination study be performed prior to approval of the permitted use at the expense of the utility owner for proposed electrical lines crossing tracks.

48. Joint-use construction is encouraged at locations where more than one utility or type of facility is involved. However, electricity and petroleum, natural gas or other flammable materials shall not be combined.

Contractor	SANBAG

Initials

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. R 14084 Amendment No. _____

By and Between

San Bernardino Associated Governments acting in its capacity as San Bernardino County Transportation Commission and City of Rancho Cucamonga

Contract Description License Agreement

Board of Director's Meeting Date: December 4, 2013

Overview of BOD Action: 3. Approve Contract No. R14084 with the City of Rancho Cucamonga granting a license agreement on the San Gabriel Subdivision railroad right-of-way, City of Rancho Cucamonga mile post 93.7;

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**
12/4/13	NA	

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

FINANCIAL INFORMATION

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

☐ A Budget Amendment is required. How are we funding current FY? Rail Assets

☐ 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 _____ %

Monica M Morales	Monica M. Morales	11.5.13
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

SANBAG Contract No.: R14084
Epic File No.: RSSB003768
Subdivision: San Gabriel Subdivision
Milepost(s): 93.4

SANBAG Contract No. R14084

LICENSE AGREEMENT

BETWEEN

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

CITY OF RANCHO CUCAMONGA

LICENSE AGREEMENT

This LICENSE AGREEMENT ("License") is made and entered into as of _____, 20___, by and between **SAN BERNARDINO ASSOCIATED GOVERNMENTS**, a public agency existing under the authority of the laws of the State of California and acting in its capacity as **SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION** ("SANBAG"), and, **CITY OF RANCHO CUCAMONGA**, a corporate municipality ("LICENSEE"), upon and in consideration of the agreements, covenants, terms and conditions below.

PART I – BASIC LICENSE PROVISIONS

The Basic License Provisions provided in this Part I and the Standard License Provisions set forth in Part II of this License, together with all Exhibits and Attachments referenced in either, are incorporated into and made part of this License. In the event of conflict between Part I and Part II or of any Exhibits and Attachments, Part I shall control.

Basic License Provisions	***Part II Section Cross Reference***

1. **Parties.**

SANBAG's Address:
SAN BERNARDINO ASSOCIATED GOVERNMENTS
1170 West 3rd Street, 2nd Floor
San Bernardino, California 92410-1715

Licensee's Address:

CITY OF RANCHO CUCAMONGA
10500 Civic Center Drive
Rancho Cucamonga, California 91730

Attn: Betty Miller, Associate Engineer

Telephone: 909-477-2740 x 4021

E-mail: Betty.Miller@cityofrc.us

Basic License Provisions	*Part II Section Cross Reference*

2. **Description of the Premises.** § 1.1

City/County: City of Rancho Cucamonga, County of San Bernardino
Subdivision: San Gabriel Subdivision

Address or Milepost Location:
SANBAG Mile Post 93.4
SCRRA Mile Post 44.1

Approximate area:
1,000 square feet; 0.022 acres

See map/diagram in Exhibit "A". In the event of any discrepancies between the description contained in this Part I and Exhibit "A", Part I shall control.)

Description and Dimensions of Premises Area:

An underground crossing located approximately fifteen feet (15') easterly of the center line of Etiwanda Avenue in the City of Rancho Cucamonga, measuring 10'x 100'.

3. **Allowable Improvements, Facilities and Uses. Licensee shall construct only the following improvements and/or facilities and conduct or permit only the following uses on the premises:** § 1.3

Description of Improvements and/or Facilities ("Improvements"):

Installation, operation, maintenance and repair of one (1) underground thirty six inch (36") storm drain encased in a sixty inch (60") steel casing only, and no other uses.

Use of the Premises:
Storm drain

4. **Term.**
Commencement Date: December 4, 2013 or upon execution of SANBAG's Board of Directors § 2.1
Term (check one):

- ☒ A. Month-to-month
- ☐ B. Until End Date:_____ (subject to termination pursuant to the terms of this License – see especially Standard License Provisions §2.2).

Basic License Provisions	*Part II Section Cross Reference*
5. **License Fees.**	§ 3
A. Administrative Fee: One time fee: $1,500.00	§ 3.1.1
B. Base License Fee (check one):	
☐ i. $_____ per month, payable monthly in advance	
☐ ii. $_____ per year, payable annually in advance	§ 3.1.2
C. Additional License Fee (check one):	
☐ i. One-time fee: $_____	
☐ ii. Other fees: $_____, payable _____	§3.1.3
D. Base License Fee Adjustment Dates (check if applicable):	
☐ i. Annually, effective on the first day of the anniversary month of the Commencement Date, based on the published Consumer Price Index (or its successor) ("CPI") as defined in Section 3.2.1 of the General License Provisions.	§ 3.2 § 3.2.1
☐ ii. At intervals of not less than three (3) years, based on the then current fair market rental value of the Premises as set forth in Section 3.2.2 of the General License Provisions.	§ 3.2.2
☐ iii. Other: _____ _____	§ 3.2.3
6. **Security Deposit (if any).** $_____	§ 4
7. **Insurance Amount.** See Exhibit "B"	§§ 10, 13

IN WITNESS WHEREOF, the Parties identified in Item 1 of this Part I have duly executed this License on the date below, and effective as of the Commencement Date set forth above in Item 4 of this Part I.

LICENSEE: CITY OF RANCHO CUCAMONGA
A municipal corporation

By: _____
L. Dennis Michael
Mayor

Date: _____

APPROVED AS TO FORM

By: _____
James L. Markman
City Attorney

CONCURRENCE

By: _____
Janice C. Reynolds
City Clerk

SAN BERNARDINO ASSOCIATED GOVERNMENTS, acting in its capacity as SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

By: _____
W.E. Jahn,
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____
Jeffery Hill
Contract Administrator

PART II – STANDARD LICENSE PROVISIONS

TABLE OF CONTENTS

Section		Page
1.	GRANT AND SCOPE OF LICENSE	1
2.	TERM, TERMINATION AND SURRENDER	2
3.	PAYMENTS	4
4.	SECURITY DEPOSIT	6
5.	TAXES	6
6.	LIENS	6
7.	ASSUMPTION OF RISK AND WAIVER	7
8.	DEFAULT, BREACH AND REMEDIES	7
9.	INDEMNIFICATION	9
10.	INSURANCE	10
11.	MAINTENANCE AND REPAIR	10
12.	ALTERATIONS AND CONSTRUCTION	11
13.	CONTRACTORS; APPROVAL AND INSURANCE	11
14.	REIMBURSEMENT	12
15.	LANDSCAPING	12
16.	MARKERS	12
17.	COMPLIANCE WITH LAWS	12
18.	SANBAG'S RIGHT OF ACCESS	13
19.	ENVIRONMENTAL ASSESSMENT	13
20.	HAZARDOUS/TOXIC MATERIAL USE AND INDEMNITY	13
21.	UNDERGROUND STORAGE TANKS	14
22.	CONDEMNATION	15
23.	BROKER'S FEES	15
24.	SUBORDINATE RIGHTS	15
25.	ABANDONMENT	15
26.	GENERAL PROVISIONS	16

Exhibits:

"A" Premises
"B" Insurance Requirements
"C" Permitted Hazardous Material
"D" Additional Provisions

PART II - STANDARD LICENSE PROVISIONS

1. GRANT AND SCOPE OF LICENSE

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 2 of the Basic License Provisions (the "Premises"), for construction, installation, operation, alteration, maintenance, reconstruction and/or removal of the Improvements described in Item 3 of the Basic License Provisions, and any usual and necessary related appurtenances thereto (the "Improvements"), for the purposes described in Item 3 of the Basic License Provisions, together with rights for access and entry onto the Premises as necessary or convenient for the use of the Improvement and for no other purpose. In connection with this grant of license, Licensee, its employees, agents, customers, visitors, invitees, licensees, consultants 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 Improvements or the Premises, with the time and manner of such entry and access to be subject to SANBAG's prior written approval. The Premises, adjoining real property of SANBAG and personal property of SANBAG located thereon shall hereinafter collectively be referred to as "SANBAG Property."

1.2. Condition of Premises. Licensee acknowledges that it has inspected the Premises in its present condition, including without limitation, all existing environmental conditions. Licensee accepts the Premises "as is" as suitable for the purpose for which the Premises are licensed and assumes all risk with respect to all present conditions of the Premises, including, without limitation, existing environmental conditions. Taking of possession by Licensee shall be conclusive to establish that the Premises are in good and satisfactory condition when possession is taken.

1.3. Use. The Premises and the Improvements shall be used only for the purposes specified in Item 3 of the Basic License Provisions and for such lawful purposes as may be directly incidental thereto, and no other purpose. No change shall be made by Licensee in the use of the Premises, the Improvements or the commodity or product being conveyed through the Improvements (if any) without SANBAG's prior written approval.

1.4. Non-exclusive and Revocable Nature of License. The license granted herein is not exclusive and SANBAG specifically reserves the right to grant other licenses within the Premises. Licensee agrees that notwithstanding the Improvements made by Licensee to the Premises or other sums expended by Licensee in furtherance of this License, the license granted herein is fully revocable by SANBAG in accordance with the terms of this License.

1.5. Easements. SANBAG reserves to itself the right, from time to time, to grant such easements, rights and dedications that SANBAG deems necessary or desirable, and to cause the recordation of parcel maps, easement agreements and covenants, conditions

and restrictions, so long as such easements, rights, dedications, maps and covenants, conditions and restrictions do not unreasonably interfere with the permitted use of the Premises by Licensee. Licensee shall sign any of the aforementioned documents upon request of SANBAG and failure to do so shall constitute a material breach of this License.

2. TERM, TERMINATION AND SURRENDER

2.1. Term of License. The term of this License shall commence on the "Commencement Date" specified in Item 4 of the Basic License Provisions. If Item 4.A of the Basic License Provisions is checked, this License shall continue in full force and effect on a month-to-month basis as provided in Item 4.A of the Basic License Provisions. If Item 4.B of the Basic License Provisions is checked, then this License shall be a license for the term specified in said Item 4.B. The term of this License as provided above is referred to as the "Term."

2.2. Termination.

2.2.1. Convenience. If Item 4.A is checked, this License shall continue in full force and effect on a month-to-month basis until terminated by either Party on thirty (30) days' prior written notice. If Item 4.B is checked, this License shall continue in full force and effect until the End Date, unless SANBAG, acting by its Executive Directory or his or her designee, for any reason and in its sole and absolute discretion, determines that this License is no longer in SANBAG's best interests. In which case, SANBAG may terminate this License on thirty (30) days' prior written notice, but SANBAG shall also return to Licensee, within thirty (30) days after the termination, the pro-rata portion of any annual license fee paid by the Licensee for the portion of the agreed term that will not be used by Licensee.

2.2.2. Cause. SANBAG may terminate this License for cause in accordance with the provisions hereof, including, without limitation, Sections 24 (Abandonment), 8 (Default, Breach and Remedies) and 25.11 (Assignment). In addition, SANBAG shall have the right to immediately, without notice and at Tenant's expense, terminate this License upon discovery of any default set forth in Section 8.1(d) and abate any such public nuisance and/or dangerous condition.

2.2.3. Public Use. In addition to any and all other termination rights of SANBAG described herein, Licensee hereby expressly recognizes and agrees that the Premises are 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, roadways, parking facilities, flood control and drainage facilities, and/or any other public or other governmental uses (collectively and individually "Public Use"); and that Licensee's use of the Premises 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 that may be terminated by SANBAG by thirty (30) days written notice to Licensee as set forth in Section 2.2.1 above. Accordingly, as a

condition to entering into this License, Licensee expressly acknowledges and agrees that:

(a) SANBAG may terminate this License as set forth above for any Public Use, to be determined in the sole and absolute discretion of SANBAG's Executive Director, or designee;

(b) Licensee shall **NOT** object to, oppose,or protest at any approval proceeding; nor file suit to prevent or delay any Public Use when planned or implemented on or adjacent to the Premises;

(c) If SANBAG's Executive Director, or designee, at any time, or from time to time, determines in his or her sole and absolute discretion, that there is a need for the Premises or any adjoining property for a Public Use and such Public Use requires relocation or removal of the Improvements, Licensee shall reconstruct, alter, modify, relocate or remove its Improvements, as directed by SANBAG or any parties having operating rights over the Premises, at Licensee's sole cost and expense, within thirty (30) days after written notice from SANBAG; and

(d) 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 Premises for any Public Use, Licensee shall not, as a result of such termination and vacation of the Premises, be entitled to receive any:

(i) 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

(ii) compensation under any eminent domain or inverse condemnation law.

2.2.4. **Holdover Fee:** If Licensee fails to terminate use of the Premises and/or restore the Premises as required in Item 2.3 below, on or before the End Date specified in Item 4.B of the Basic License Provisions or the termination date established as otherwise provided in this License ("Termination Date"), then, in addition to any and all other remedies available to SANBAG under the terms of this License or at law or equity, Licensee shall pay a Holdover Fee equal to twice the Base License Fee in effect on the day prior to the Termination Date, calculated and payable on a monthly basis, for the number of months (partial months counting as whole months) from the Termination Date to the date that Licensee has terminated use and restored the Premises to the required condition. Licensee shall indemnify SANBAG against all liabilities, costs and damages sustained by SANBAG by reason of such holding over.

2.3. Termination of Use and Restoration of Premises. Upon termination of this License in accordance with the terms hereof, unless otherwise requested in writing by SANBAG prior to the date of termination, Licensee, at its own cost and expense, shall immediately remove all alterations additions and Improvements made by Licensee to the Premises 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

Improvements. 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 (including costs, interest, and fees), which Licensee agrees to pay to SANBAG on demand, or (ii) assume title and ownership of said Improvements. 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 Improvements are removed and the SANBAG Property is restored.

3. PAYMENTS

3.1. Fees. As consideration for the rights herein granted, Licensee agrees to pay to SANBAG the Administrative and License Fees specified in Item 5 of the Basic License Provisions, adjusted as set forth in Section 3.2.

3.1.1. Administrative Fee. The one time Administrative Fee set forth in Item 5.A shall be due and payable upon execution of this License.

[Note: SANBAG may require deposit in advance of preparing the License Agreement, in which case the amount deposited will be applied to the Administrative Fee at the time of execution or shall be forfeited to SANBAG to pay for SANBAG's administrative costs in negotiating, preparing and/or processing the License Agreement in the event that the License Agreement is not consummated, per SANBAG's adopted policies and procedures.]

3.1.2. Base License Fee. If Item 5.B.i 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 License. Thereafter, the Base License Fee, as such fee may be adjusted pursuant to the provisions of Section 3.2, 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. If Item 5.B.ii of the Basic License Provisions is checked, the annual License Fee amount, as such fee may be adjusted pursuant to the provisions of Section 3.2, shall be due and payable, without demand, annually in advance on or before the anniversary month of the Commencement Date for the convenience of both Parties, without affecting the Term of this License as specified in Section 2.1.

3.1.3. Additional License Fee. If Item 5.C.i of the Basic License Provisions is checked, the one-time fee noted therein shall be due and payable upon execution of this License. If Item 5.C.ii of the Basic License Provisions is checked, the fee noted therein shall be due and payable as indicated in Item 5.C.ii.

3.2. License Fee Adjustment.

3.2.1. Annual CPI Adjustment. If Item 5.D.i 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 is provided in Item 5 of the Basic License Provisions (the "Adjustment Date"). If no adjustment is made at the annual

anniversary date, an adjustment may nevertheless be made at a subsequent date and thereafter at not less than annual intervals. 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 month that is three (3) months prior to 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, three (3) months prior to the first day of the anniversary month of 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.

3.2.2. Fair Market Adjustment. If Item 5.D.ii 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 3.2.1, above) payable under this Section 3 shall be increased, but not decreased, in order to adjust the fee to the then fair market rental value of the Premises 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.

3.2.3. Other Adjustment. If Item 5.D.iii of the Basic License Provisions is checked, then, in addition to any adjustments required under Items 5.D.i and 5.D.ii, the adjustment set forth in 5.D.iii shall be applied in accordance with its terms.

3.3. Late Charge. Licensee acknowledges that late payment by Licensee of any payment owed to SANBAG under this License will cause SANBAG to incur costs not contemplated by this License, 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 License, at law or in

equity. In addition, any payment not made within 15 days of when due shall bear interest at the rate of eighteen percent (18%) per annum, or the highest legally allowable rate, whichever is lower, until paid in full.

4. SECURITY DEPOSIT

Upon execution of this License and in addition to the payment described in Section 3, SANBAG may require Licensee to pay SANBAG a security deposit in the amount set forth in Item 6 of the Basic License Provisions ("Security Deposit"), which sum shall be held by SANBAG in its general fund, without obligation for interest, as security for the faithful performance by Licensee of all of the terms, covenants, conditions and obligations of this License. If at any time Licensee fails to keep and perform any of the term, covenants, and conditions of this License, including making any payment required hereunder, SANBAG may, at its sole option, apply all or any portion of the Security Deposit to any overdue payment and/or any loss or damage incurred by SANBAG by reason of Licensee's default or breach. Within a reasonable time after termination of this License and after Licensee has vacated the Premises, SANBAG shall return, without interest, said deposit or portion remaining, if any, after deductions for any unpaid payments and any losses or damage sustained by SANBAG due to any breach or default by Licensee or any damage to the Premises or any failure to restore the Premises to the required condition.

5. 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 Improvements, the Premises and/or any personal property, fixtures or equipment located on or placed on the Premises, whether owned by Licensee or any person or entity acting for or at the request of Licensee; or (b) as a result of the Licensee's or the Improvements' operations.

6. LIENS

Licensee will fully and promptly pay for all materials joined or affixed to the Improvements or Premises, and fully and promptly pay all persons who perform labor upon said Improvements or Premises. Licensee shall not suffer or permit to be filed or enforced against the Premises or the Improvements, or any part thereof, any mechanics', material men'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. The term "Work" under this License means any construction, reconstruction, installation, restoration, alteration, repair, replacement, or removal, other than normal maintenance. Licensee shall provide SANBAG with immediate written notice of any such liens, claims, demands, or stop notices that are placed against the Premises or the Improvements. 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, 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, as well as any associated costs and fees, within ten (10) business days after billing. In such circumstances, SANBAG may, in its reasonable discretion, impose a fee on Licensee of twenty five percent (25%) of the costs of the discharge of the mechanic's lien or stop notice in order to cover administrative costs. SANBAG reserves the right at any time to post and maintain on the Premises 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 License.

7. 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 Improvements, the SANBAG Property and any other property of, or under the control or custody of, Licensee, which is on or near the Premises. 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 officers, directors, affiliates, employees, agents, independent contractors and subcontractors anyone directly or indirectly employed by or for whose acts Licensee is liable (collectively, "Personnel"), as a material part of the consideration for this License, 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 License.

8. DEFAULT, BREACH AND REMEDIES

8.1. Licensee Default. Licensee shall be deemed to have breached and be in default under this License when any of the following occurs:

(a) Licensee shall fail to make any payment herein reserved when due, or any reimbursement to SANBAG required herein when due;

(b) Licensee shall vacate all or a substantial portion of the Premises, whether or not Licensee is in default of the payment or other charges due under this License; or

(c) Licensee shall fail to comply with any other term, provision or covenant of this License, and shall not cure such failure within three (3) days after written notice thereof to Licensee.

(d) Licensee shall create or maintain, or allow any other person or entity to create or maintain, any public nuisance or any condition that fails to comply with any federal, state, SANBAG or rail operator specifications or safety regulations or that presents a danger to public safety or a safety hazard to any operations, personnel, passengers or property of SANBAG or any rail carrier operating upon the affected rail line(s) on the Premises or SANBAG's adjacent right of way.

8.2. SANBAG's Remedies.

8.2.1. Termination. Upon the occurrence of Licensee's default and breach, SANBAG shall have the right, at any time, with or without notice or demand, to terminate this License, and at any time thereafter to recover possession of the Premises or any part thereof and expel and remove therefrom Licensee and any other person occupying the same, by any lawful means, and again repossess and enjoy the Premises without prejudice to any of the remedies that SANBAG may have under this License, at law or equity by reason of Licensee's default or of such termination.

8.2.2. Corrective Measures. Should Licensee default on, 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 perform any corrective measures deemed by SANBAG in its sole and absolute discretion to be necessary or appropriate to protect public health or safety, or SANBAG's legitimate governmental or proprietary interests or the interests of its railroad operators ,s at Licensee's expense (including fees, costs and interest) which Licensee agrees to pay to SANBAG upon demand.

8.2.3. Costs. If SANBAG incurs any cost or expense occasioned by the default of Licensee (including but not limited to attorneys' fees and costs), then SANBAG shall be entitled to receive such costs together with interest on all funds SANBAG expends at the lesser of eighteen percent (18%) per annum or the maximum rate allowed by law, whichever is lower, including without limitation, brokers' fees incurred by SANBAG in connection with relicensing the whole or any part of the Premises; the costs of removing and storing Licensee's or other occupant's property; the costs of repairing, altering, and/or otherwise restoring the Premises to a safe and suitable condition, useable and acceptable to SANBAG, rail operators and future licensees; and all reasonable expenses incurred by SANBAG in enforcing or defending SANBAG's right and/or remedies, including reasonable attorneys' fees whether or not suit is actually filed.

8.2.4. Remedies Cumulative. All rights, privileges and remedies of the parties are cumulative and not alternative or exclusive to the extent permitted by law except as otherwise provided herein

8.3. SANBAG Default and Licensee's Remedies. SANBAG shall not be in default under this License unless SANBAG fails to perform obligations required of SANBAG within sixty (60) days after written notice is delivered by Licensee to SANBAG specifying the obligation which SANBAG has failed to perform; provided, however, that if the nature of SANBAG's obligation is such that more than sixty (60) days are required for performance, then SANBAG shall not be in default if SANBAG commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion. Licensee's exclusive remedies shall be an action for specific performance or action for damages.

9. INDEMNIFICATION

9.1. Licensee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless SANBAG, in all of its capacities, and its members, commissioners, officers, directors, employees, agents, consultants, contractors, partners, affiliated entities, subsidiaries, permittees, licensees, 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 Personnel (as defined in Section 7, Assumption of Risk and Waiver) 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 License, in each case whether occurring during the Term of this License or thereafter.

9.2. The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, gross, derivative, sole, joint, concurring or comparative) on the part of Indemnitees and is in addition to any other rights or remedies which Indemnitees may have under the law or under this License. Upon request of SANBAG, Licensee shall provide insurance coverage for possible claims or losses covered by the indemnification and defense provisions of this License.

9.3. 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 Licensee or its Personnel under workers' compensation acts, disability benefit acts or other employee benefit acts or insurance.

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

10. INSURANCE

10.1. SANBAG's Insurance. SANBAG may maintain insurance covering the Premises and SANBAG's ownership and operation thereof in such types and amounts as it deems necessary in its sole discretion. Such insurance shall be for the sole benefit of SANBAG and under its sole control. Licensee's insurance policies shall provide primary coverage to SANBAG; when any such policy issued to SANBAG provides duplicate coverage or is similar in coverage, SANBAG's policy will be excess over Licensee's policies.

10.2. Licensee's Insurance. Licensee, at its sole cost and expense, shall obtain and maintain in full force and effect during the Term of this License 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 License, to review and change the amount and type of insurance coverage it requires in connection with this License or the Work to be performed on the Premises. Prior to (i) entering the Premises or (ii) performing any Work or maintenance on the Premises, Licensee shall furnish SANBAG with insurance endorsements or certificates evidencing the existence, amounts and coverages of the insurance required to be maintained hereunder. SANBAG shall not be liable for the payment of any premiums or assessments for insurance required to be maintained by Licensee under this License. Self-insurance is not permitted. However, SANBAG may, in its sole and absolute discretion, permit self-insurance on a case by case, coverage by coverage, basis where the Licensee has documented, to SANBAG's sole satisfaction sufficient available assets and/or available funds and sufficient legal security in those assets to assure SANBAG that its risk is not greater than it would have been with acceptable insurance coverage, and otherwise meeting SANBAG's self-insurance requirements. The privilege 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 at any time. Upon revocation of self-insurance privilege, Licensee shall immediately provide all required insurances.

10.3. Increases to Insurance. If any increase in the fire and extended coverage insurance premiums paid by SANBAG is caused by Licensee's use and occupancy of the Premises, or if Licensee vacates the Premises and causes any increase in such premiums, then Licensee shall pay as an additional fee the amount of such increase to SANBAG, and, upon demand by SANBAG, the amount required to correct at Licensee's expense the cause of such disallowance, penalty or surcharge to the satisfaction of the particular insurance authority.

11. MAINTENANCE AND REPAIR

Licensee, at Licensee's sole expense, shall during the term of this License maintain the Improvements in a first-class condition, shall maintain the Premises in a good condition, free from weeds, litter, debris, refuse or other nuisance, and shall perform all maintenance and clean-up of the Premises and the Improvements as necessary to keep the Premises and the

Improvements 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 Premises by Licensee or Licensee's Parties, including but not limited to damage arising from any tests or investigations conducted upon the Premises, 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. Licensee shall not perform any maintenance on railroad tracks and facilities without express prior written approval of and direction from SANBAG or the railroads with valid operating authority over SANBAG's lines and compliance with all applicable standards, specification and safety requirements.

12. ALTERATIONS AND CONSTRUCTION

Except as otherwise provided herein, Licensee shall make no alterations, additions or Improvements to the Premises without obtaining the prior written consent of SANBAG in each instance. Any Work performed or caused to be performed by Licensee on the Improvements or the Premises shall be performed (a) at Licensee's sole cost and expense; (b) in accordance with any and all applicable permit requirements, laws, rules, regulations and safety requirements (including 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 Work on the Premises, 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 14 calendar days' written notice prior to commencement of any Work on the Premises or the Improvements, except in cases of emergency, in which event Licensee shall notify SANBAG's representative personally or by phone prior to commencing any Work. SANBAG shall have the right at any time and from time to time to post and maintain notices of non-responsibility 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.

13. CONTRACTORS; APPROVAL AND INSURANCE

Any contractors of Licensee performing Work on the Improvements or the Premises shall first be approved in writing by SANBAG and acquire all required right of entry permits and authorizations from SANBAG and any rail operator utilizing affected or adjacent railroad tracks. 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 coverage 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 Premises, to obtain and maintain in full force and effect during the Term of this License, or throughout the term of such Work (as applicable), insurance, as required by SANBAG, in the amounts and coverage specified on, and issued by insurance companies as described on, Exhibit "B". SANBAG reserves the right, throughout the Term of this License, to review and change the amount and type of insurance coverage it requires in connection with this License or the Work to be performed on the Premises.

14. REIMBURSEMENT

Licensee agrees to reimburse SANBAG for all reasonable costs and expenses that SANBAG incurs in connection with Work on or maintenance of the Premises or the Improvements, 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 License, protect the safety of, and railway operations upon, its tracks and right-of-way, and to otherwise protect its interests. The costs and expenses addressed in this Section 14 shall include all costs that SANBAG incurs in complying with the Work or maintenance requirements of the railroads with valid operating authority over SANBAG's lines.

15. LANDSCAPING

If required by SANBAG, then Licensee, at its sole cost and expense, shall install barrier landscaping to shield the Improvements from public view. SANBAG shall have the right to review and approve landscaping plans prior to installation. All landscaping activities shall be done in accordance with the provisions of Section 12 above (Alterations and Construction).

16. MARKERS

Except as modified by any additional provisions attached at Exhibit "D", project markers in form and size satisfactory to SANBAG, identifying the Improvements and their owner(s), shall 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.

17. 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 SANBAG Property, and shall furnish satisfactory evidence of such compliance promptly upon request of SANBAG. Licensee shall obtain all required permits or leases required by any governmental authority for its use of the Premises, at its sole cost and expense. Subject to SANBAG's approval, Licensee shall at its own cost and expense install and construct all physical improvements to or needed to serve the Premises that are required by any federal, state or local building code or other law or regulation applicable to the Premises, or that are made necessary by the nature of Licensee's use of the Premises. Licensee shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with, the Premises, all at Licensee's sole expense.

18. SANBAG'S RIGHT OF ACCESS

18.1. Inspections. SANBAG shall have the right at any time (upon provision of reasonable notice of inspection to Licensee) or in case of emergency (without notice), to inspect the Premises in order to protect SANBAG's interests therein and to monitor compliance with this License and all applicable federal, state and local laws, regulations, rules and orders.

18.2. Tests. 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 or SANBAG's 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. Licensee shall cooperate with SANBAG in any tests or inspections deemed necessary by SANBAG.

18.3. Costs. Licensee shall pay or reimburse SANBAG, as appropriate, for all reasonable costs and expenses incurred due to tests, inspections or any necessary corrective Work, maintenance and inspections thereafter.

18.4. Sale or Lease of Premises. SANBAG may at any time place on or about the Premises (including the Improvements) any ordinary "for sale" and "for lease" signs. Licensee shall also permit SANBAG and its agents, upon request, to enter the Premises or any part thereof, at reasonable times during normal business hours, to show the Premises to prospective tenants, purchasers or mortgagees.

19. ENVIRONMENTAL ASSESSMENT

Upon execution of this License, SANBAG may, in its sole discretion and if applicable, require Licensee to retain a duly licensed environmental consultant acceptable to SANBAG who shall perform an environmental assessment of the Premises and Licensee's and Licensee's Parties' business activities and prepare a report on Licensee's and/or Licensee's Parties' compliance with the provisions of this section. SANBAG may, if applicable, require Licensee to cause a similar environmental assessment to be conducted on an annual basis, and/or upon or within one (1) year after the expiration or earlier termination of this License, the cost of which shall be the sole responsibility of Licensee. Licensee shall provide a copy of the report or reports from the consultant(s) promptly to SANBAG upon receipt, and upon request shall promptly provide to SANBAG a copy of all data, documents and other information prepared or gathered in connection therewith.

20. HAZARDOUS/TOXIC MATERIAL USE AND INDEMNITY

20.1. Licensee shall operate and maintain the Premises in compliance with all, and shall not cause or permit the Premises to be in violation of any, Environmental Law which is now or may hereafter become applicable to Licensee or the Premises. 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 permit conditions, currently existing or as amended or adopted in the future. Except for any

Hazardous Material 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 Material to be brought upon, stored, used, generated, treated or disposed of on or about the SANBAG Property. Any Hazardous Material on the site shall be stored, used, generated and disposed of in accordance with all applicable Environmental Laws. As used herein, "Hazardous Material" 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 a hazardous or dangerous material or substance.

20.2. Licensee shall indemnify, defend (by counsel acceptable to SANBAG) and hold harmless the Indemnitees (as defined in Section 9, Indemnification) 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 Material upon or from the Improvements or the Premises or contamination of the SANBAG Property (i) which occurs due to the use and occupancy of the Improvements or the Premises 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.

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

20.4. In addition, in the event of any release on or contamination of the Premises, 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.

21. UNDERGROUND STORAGE TANKS

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

21.2. At SANBAG's option, upon the termination of this License 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 Material in, on, under and about the Premises, 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.

22. CONDEMNATION

In the event all or any portion of the Premises shall be taken or condemned for public use by a governmental agency or any other party having the power of eminent domain (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 Improvements. Any other compensation or damages arising out of such taking or condemnation awarded to Licensee are hereby assigned by Licensee to SANBAG.

23. BROKER'S FEES

Licensee agrees to indemnify and hold SANBAG harmless from and against any claims by any broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Licensee with regard to obtaining this License.

24. SUBORDINATE RIGHTS

This License 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, operate, 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 or any portion thereof, and in connection therewith the right to grant and convey to others, rights and interests to the SANBAG Property on the Premises and in the vicinity of the Improvements, regardless of any effect or impact on the Improvements. Licensee shall bear all costs and losses it incurs associated with any modifications to the Improvements necessary to accommodate SANBAG's exercise of any right hereunder. This License 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. This License 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 a covenant against the existence of any such title exceptions.

25. ABANDONMENT

Should Licensee at any time abandon the use of the Improvements or the Premises, 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 License 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 License

26. GENERAL PROVISIONS

26.1. Notices. All notices and demands which either of the Parties 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 the other Party at its address set forth in the Basic License Provisions. Either of the Parties 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.

26.2. Governing Law. This License shall be governed by the laws of the State of California.

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

26.4. No Third Party Beneficiaries. This License is not intended by either party to confer any benefit on any third party other than the constituent members of SANBAG, including without limitations any broker, finder, or brokerage firm.

26.5. Severability. If any term, covenant, condition or provision of this License, 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 License, 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.

26.6. 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 License, provided, however, that interest shall not be payable on late charges incurred by Licensee.

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

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

26.9. Waiver of Covenants or Conditions. The waiver by either Party of any term, covenant, agreement or condition under this License shall not invalidate this License, nor shall it be considered a waiver by it of any other covenant or condition or of the same covenant or condition in another instance. To the extent patterns of practice between the Parties are inconsistent with the terms of this License, such patterns of practice shall not waive in part or in full SANBAG's right to insist upon strict accordance with any of the provisions of this License. The subsequent acceptance of payments hereunder by SANBAG shall not be deemed to be a waiver of any preceding breach by Licensee of any provisions, covenant, agreement or condition of this License, other than the failure of Licensee to pay the particular payment so accepted, regardless of SANBAG's knowledge of such proceeding breach at the time of acceptance of such payment.

26.10. 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.

26.11. Assignment. This License and the license granted herein are personal to the Licensee. Licensee shall not assign or transfer (whether voluntary or involuntary) this License 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 be a material breach of this License, which gives SANBAG the right to immediately terminate this License and seek all other available remedies for breach.

26.12. Entire Agreement; Amendments. This License, including all attached Exhibits, constitutes the entire agreement between the Parties and supersedes all prior verbal or written agreements and understandings between the Parties with respect to the items set forth in this License. The Parties each acknowledge that no representations, inducements, promises or agreements, oral or written, have been made by either SANBAG or Licensee, or anyone acting on behalf of SANBAG or Licensee, other than those contained in this License. No amendments, changes, revisions, or discharges, at any time in whole or in part, of this License shall be binding upon the Parties unless they are in writing and executed by the Parties.

26.13. Attorneys' Fees. If either SANBAG or Licensee commences or engages in, or threatens to commence or engage in, an action by or against the other party arising out of or in connection with this License or the Premises, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and other costs incurred in connection with the action, preparation for such action, any appeals relating thereto and enforcing any judgments rendered in connection therewith. If SANBAG becomes involved in any action, threatened or actual, by or against anyone not a party to this License, but arising by reason of or related to any act or omission of Licensee or Licensee's Parties, Licensee agrees to pay SANBAG's reasonable

attorneys' fees and other costs incurred in connection with the action, preparation for such action, any appeals relating thereto and enforcing any judgments rendered in connection therewith.

26.14. Nondiscrimination. Licensee certifies and agrees that all persons employed by Licensee and/or Licensee's affiliates, subsidiaries, or holding companies, and any contractors retained by Licensee 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.

26.15. 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 License, including, at SANBAG's sole discretion, the relocation of the Improvements and the license granted hereby.

26.16. Time of Essence. Time is of the essence for this License.

26.17. Certificates. Licensee agrees from time to time within ten (10) days after request of SANBAG, to deliver to SANBAG, or SANBAG's designee, all financial statements for the previous three (3) fiscal years of Licensee, and an estoppel certificate stating that this License is in full force and effect, the date to which all applicable payments have been paid, the unexpired Term of this License and such other matters pertaining to this License as may be requested by SANBAG.

26.18. Security Measures. Licensee hereby acknowledges that the payments payable to SANBAG hereunder do not include the cost of guard service or other security measures, and that SANBAG shall have no obligation whatsoever to provide same. Licensee assumes all responsibility for the protection of Licensee, Licensee's Parties and their property from acts of third parties.

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

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

26.21. Flagmen. Where applicable, as a part of or in addition to all other safety obligations, Licensee shall maintain, at Licensee's expense, competent flagmen to protect and control movement of vehicles and equipment of Licensee or any other user of the Premises while upon the Premises, consistent with any applicable laws and regulations regarding work protection, including the rules and policies of SANBAG and/or any railroad operator having rights to utilize any affected or adjacent railroad tracks.

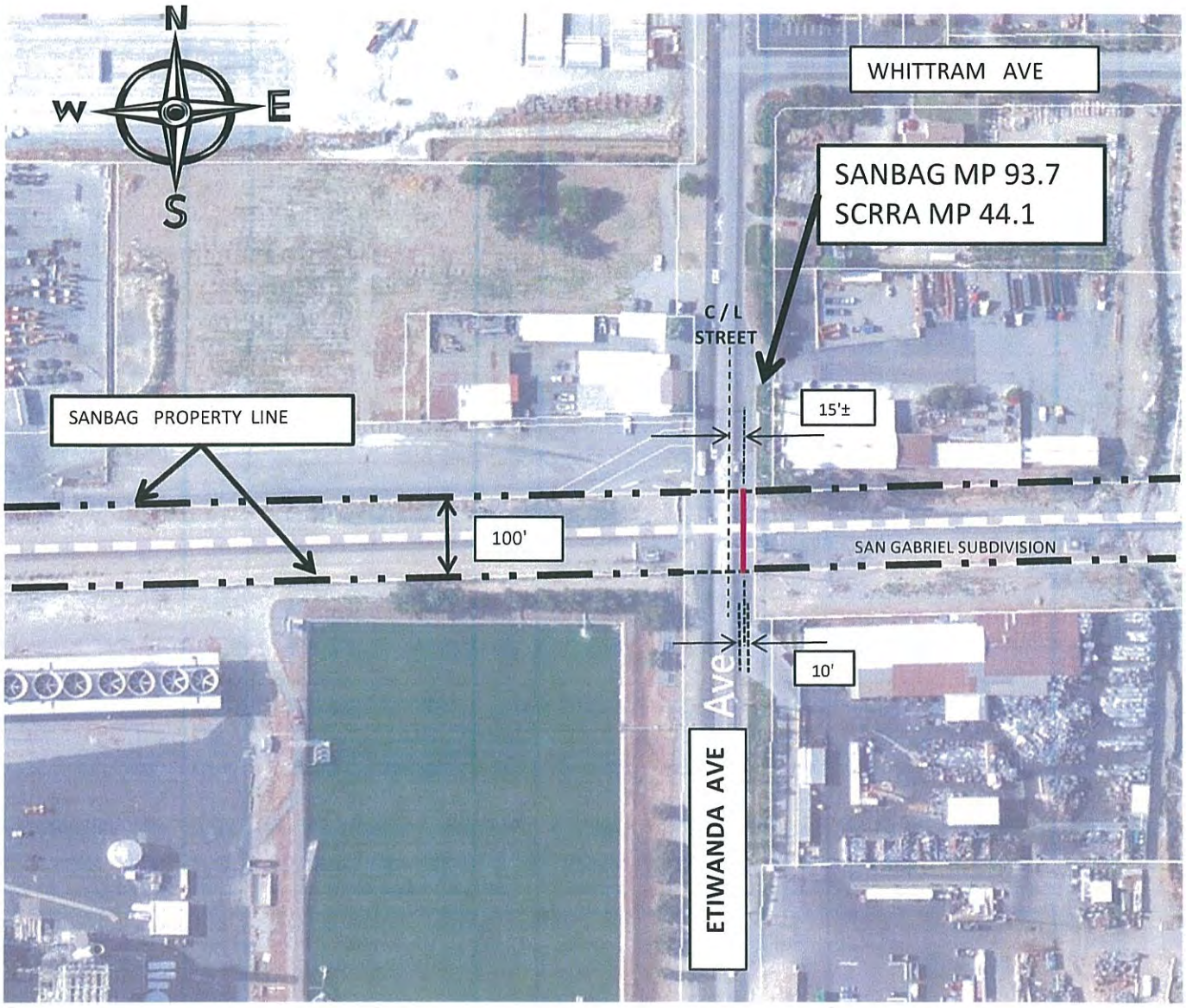
26.22. Additional Provisions. Those additional provisions set forth in Exhibit "D", if any, are hereby incorporated by this reference as if fully set forth herein. To the extent that any additional provisions in Exhibit "D" conflict with the provisions contained in this Part II, Standard License Provisions, the provisions in Exhibit "D" shall control.

Exhibit "A"

Premises

[To Be Inserted]

EXHIBIT "A"



INSTALLATION OF ONE 36" STORM WATER PIPELINE IN A 60" STEEL CASING

APN:	**0229-162-09, 0229-162-10**	
Date **10/7/2013 rev. 11/16/2013**		
Branch/Line **SSB**	Mile Post **SCRRA 44.1 SANBAG 93.4**	Lessee/Licensee **CITY OF RANCHO CUCAMONGA**
County **SAN BERNARDINO**	Nearest Cross Street **WHITTRAM**	SANBAG File Number **RSSB003768 R14084**
Area **1,000 SQ. FT.**	City **RANCHO CUCAMONGA**	Scale **1"=200'**
Map Reference **SSB6**	Use **STORM DRAIN**	Thomas Guide Grid **603 H3**

Governments SANBAG Working Together

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

Exhibit "B"

INSURANCE REQUIREMENTS FOR LICENSES

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, its 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, members, affiliated entities, contractors, consultants, authorized rail operators and agents ("Related Parties"); 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 and Related Parties 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, or its Related Parties.

2. For any claims related to this project, the Licensee's insurance coverage shall be primary insurance as respects SANBAG, and its Related Parties. Any insurance or self-insurance maintained by SANBAG, or its Related Parties 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 and its Related Parties.

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.

All insurance policies, including without limitation, Workers' Compensation and Employer's Liability policies, shall contain or be endorsed to include a waiver of subrogation in favor of SANBAG and its Related Parties.

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, 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 Material

No hazardous material is permitted to be used or stored on Premises.

Exhibit "D"

ADDITIONAL REQUIREMENTS

The following Additional Requirements are imposed on the Tenant/Licensee/Permittee and all of its contractors, subcontractors, employees, laborers or other persons performing any work upon SANBAG property on behalf of Tenant/Licensee/Permittee, and are made part of the terms of the Lease/License/Permit to which this Exhibit D is attached ("Agreement").

As used hereinafter, the term "Contractor" shall include the Tenant/Licensee/Permittee and each and every one of its contractors, subcontractors, employees, laborers, agents or other persons performing any work upon SANBAG property on behalf of Tenant/Licensee/Permittee; and the term "railroad operator" or "operating railroad" shall mean Southern California Regional Rail Authority (SCRRA), Burlington Northern Santa Fe Railroad Railway Company (BNSF) and/or any other railroad company or rail carrier having operating rights over rail lines owned or controlled by SANBAG.

Contractor shall fully comply with each and every one of the Additional Requirements below which is in any way applicable to the type of use, construction, installation or facility allowed under the Contractor's Agreement and approved by SANBAG as required thereunder ("Permitted Use"). The inclusion of an Additional Requirement below that is not in any way applicable to the Contractor's Permitted Use shall not imply any right, permission or consent to expand the Permitted Use in any way.

1. Contractor agrees to execute and deliver to each railroad operator prior to commencing any work within the rail right-of-way, a railroad Right of Entry Agreement which will include agreement to abide by each railroad operator's rules and requirements for construction on railway property. Contractor shall secure approval from SANBAG and each railroad operator of the design of any structures and facilities prior to commencing work on their construction or installation.

2. Contractor will acquire and comply with any and all additional permits required by the railroad operator(s), affected public utilities and/or by any government agency having jurisdiction. Any permit fees, inspection fees, flagging 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 Contractor's sole responsibility. Fully conformed copies of all permits are to be provided to SANBAG. Additional permits required of the Contractor may include but are not limited to encroachment permits, Storm Water Pollution Prevention Plans, environmental permits, temporary use permits, regulatory permits and third party utility permits. Contractors shall have all original executed agreements and permits on hand while on site and will present them on demand of representative of SANBAG and/or the railroad operator(s). Prior to the commencement of work, the contractor shall submit to SANBAG for review and approval, a description of the work process including a detailed schedule of all work activities to be carried out on SANBAG property.

   [For convenience only, SANBAG provides the following telephone numbers for inquiries and information: SCRRA's Right of Way Engineers Office - (909) 394-3418;BNSF's Roadmaster Office - (909) 386-4061]

3. Contractor at its sole cost and expense shall obtain and maintain, in full force and effect, insurance, as required by SANBAG and the railroad operator(s) during the entire construction period. The Contractor shall furnish copies of the insurance certificates to SANBAG and all affected railroad operators.

4. Contractor agrees to comply with instructions of SANBAG and each railroad operator's Employee-In-Charge (EIC) and other representatives in relation to the proper manner of

protection of the tracks and the traffic moving theron, pole lines, signals and other property of SANBAG or its member agencies, 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 operations of railroad operators or of SANBAG's track and other facilities.

5. Contractor will call the appropriate operating railroad to arrange for flagging services a minimum of fifteen (15) working days prior to beginning work. Although every effort is made to accommodate schedules, prior notification does not guarantee the availability of protective/flaggingservices for the proposed date of work. The SCRRA/BNSF flagman/EIC has sole authority to protect safe railroad operations and infrastructure , therefore, only they and their representatives are permitted to perform flagging operations within the railroad right-of-way. At all times the contractor shall follow the flagman/EIC's direction. Contractor's work may not proceed in the absence of a flagman in accordance with applicable rules. At no time shall any contractor be permitted to cross any track or place or maintain any personnel or equipment within the railroad right-of-way without the permission of the railroad flagman.

   SCRRA's Flagging Office (213) 305-8424
   BNSF's Flagging Office (909) 386-4061

6. Prior to the start of construction and at the contractor's expense, all personnel including subcontractors and third parties shall complete SCRRA's/BNSF's Third Party Safety Training course, which is required for all work near or within the railroad right-of-way. Evidence of training must be supplied upon request of SANBAG and its representatives. No work may commence on the railroad right-of-way until this training has been completed. 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/BNSF flagman/EIC.

7. Contractor shall be responsible for the location and protection of any and all surface, sub-surface, and overhead lines, structures and improvements. Contractor 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. It shall be the Contractor's responsibility to contact Underground Alert and locate all underground facilities prior to the commencement of construction. At the same time, the contractor shall notify the operating railroad for signal and communications cables and conduits mark-outs. Contractor shall obtain permission from the owners of any fiber optic, gas, electrical, water, oil or other lines which may be impacted by work on or any use of the Premises by Contractor.

   SCRRA Signal Department (909) 592-1346
   BNSF Signal Department (909) 386-4051

8. **In case of signal emergencies or grade crossing problems, the contractor shall call the following emergency numbers.**

   SCRRA Signal Emergency Department (888) 446-9721
   BNSF Signal Emergency Department (909) 386-4051

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

10. If SANBAG or any of its associated rail entities or railroad operators deem it necessary in the future, to modify, or to build additional, track or tracks or other facilities in connection with the

operation of its railroad, at the request of SANBAG, contractor shall modify, at its own expense, any or all of its permitted facilities to conform to the rail facilities.

11. Both Contractor 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 Contractor's needs will be the sole responsibility and at the sole cost of the Contractor and subject to SANBAG's and any affected operating railroad's prior review and approval, which may be withheld in SANBAG's or the affected operating railroad's sole and absolute discretion. SANBAG or the affected operating railroad may require that any track removal and/or other work within the right-of-way be done by SANBAG or the railroad operator, respectively, but all such work shall remain at the sole cost of the Contractor, who may be required to deposit the estimated cost plus 25% in advance of the work, subject to refund or additional charge at the conclusion of the work. No permanent structures may be constructed on the premises without SANBAG's prior written approval. Contractor will be responsible for the removal of any or all permitted improvements upon termination of Agreement as directed by SANBAG.

12. Contractor shall pay for any and all utilities for its benefit, security and use.

13. SANBAG makes no warranties as to the suitability of the location for Contractor's intended use, and Contractor assumes all risks as to environmental compliance, zoning, visibility, or any other factors which may affect Contractor's intended use of the premises.

14. Boring of carrier or direct burial utilities by directional boring methods is prohibited.

15. Signs are not permitted on or along the perimeter of the Premises unless such signs were requested and approved under Contractor's original proposal and covered by the required insurance. The contractor shall install permanent signs identifying the location of pipes at the edge of the railroad right-of-way unless within a public grade crossing.

16. Contractor shall construct a temporary fence along the railroad right–of-way, or along the edge of pits closest to the track, on both sides of the pit, extending 50-feet in both directions from the pit, and measuring a minimum of 6-feet high. Fences are not required for work at grade crossings. Contractor shall pave the Premises area with asphalt or concrete, when requested, around the entire perimeter of the property as described in the Agreement in Part I and Exhibit "A". Contractor shall be responsible for total expense of fencing and asphalt.

17. Contractor shall not bring upon or use any import ioil 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. Additionally, any soil currently existing on the Premises may not be spread on the Premises unless and until it is characterized as clean coil to the reasonable satisfaction of SANBAG. All soil piles are to be placed on a barrier to prevent intermingling with surface soils.

18. Contractor 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. Contractor shall by fully responsible for all maintenance and maintenance of adjoining SANBAG property that is required or necessary in connection with Contractor's use of Premises.

19. Prior to commencement of construction, the contractor shall submit to SANBAG / SCRRA a plan showing the proposed method of casing installation, construction access, stockpile locations, SWPPP control measures, fencing type and location and a milestone schedule.

20. For pipelines carrying flammable or hazardous materials, the contractor shall adhere to special conditions stated in the Right of Entry (ROE) Agreement.

21. The jacking and receiving pits shall be constructed outside of the railroad right of way unless shown on the SANBAG approved plans and shall not be located between any track and the automatic signal gate arms. The contractor shall layout the proposed jack and bore pits prior to the commencement of work. Only after the SANBAG/SCRRA inspector has approved the layout will the Contractor be allowed to begin work.

22. 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 SCRRA/BNSF flagman and SCRRA/BNSF 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 SANBAG.

23. The contractor shall submit to SANBAG/SCRRA for review, drawings and calculations for any shoring that may affect or be influenced by the railroad tracks. All shoring designs shall comply with the requirements of, and be approved by, SANBAG and/or the affected operating railroad. All drawings and calculations shall be signed and stamped by a California licensed Civil or Structural Professional Engineer.

24. Prior to commencement of work, the contractor shall submit to SANBAG/SCRRA 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.

25. Should ground water or loose or unstable soils conditions be encountered during construction, the contractor shall immediately stop work, notify the railroad flagman, provide necessary structural support to track and other railroad structures, and notify the affected operating railroads and SANBAG. It shall be the responsibility of the contractor to make necessary corrections to the construction process to allow for said conditions.

26. All underground utilities under railroad tracks shall be encased in a larger pipe or conduit called the "casing pipe". Said 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. The top of the 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. All ends of the casing pipe shall be sealed unless otherwise authorized by SANBAG. 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. All casing pipes shall be installed with a minimum slope of 1%. Installation of casing pipes by open trenching is prohibited.

27. Abandoned pipes shall be removed from their casing pipes. The empty casing pipe shall be pressure grouted full for the entire length of the pipe. Should there be no casing pipe; the abandoned pipe shall be pressure grouted full the entire length of the pipe. A SANBAG / SCRRA inspector must be present during the grouting process.

28. 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 and jacks shall be designed and used with sufficient rating 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 non-stop, 24-hour per day basis until the jacking operation is completed.

29. 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 replacement, 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 there will be no unsupported excavation ahead of the casing. The auger 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 / SCRRA 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/SCRRA.

30. 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.

31. 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/SCRRA shall be employed to fill such voids.

32. 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/SCRRA prior to the commencement of work. Proof of experience and competency shall accompany the submission.

33. When water is known 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/SCRRA 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.

34. 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 well 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.

35. The proposed methods of dewatering shall be submitted to SANBAG/SCRRA 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, pollutants, or hazardous materials or fluids be observed at any time during the dewatering process, the dewatering shall be halted immediately and cannot resume until the unsatisfactory condition is remedied to the satisfaction of the SANBAG/SCRRA inspector.

36. 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.

37. 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 and any affected operating railroad 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 it holds. Contractor shall be responsible to arrange refunds due from any affected operating railroads.

38. A minimum of five feet (5') clearance is required above signal and communication lines for overhead crossings.

39. Poles for any use within the railroad right-of-way must be located fifty-feet (50') out from the centerline of the railroad main, branch and running tracks, CTC sidings, and heavy tonnage spurs. Pole locations adjacent to industry track must provide at least a ten foot (10') clearance from the centerline of track, when measured at right angles. If located adjacent to curved track, then said clearance must be increased at the rate of 1.5 inches per degree of curved track.

40. Regardless of the voltage, un-guyed poles shall be located a minimum distance from the centerline of any track, equal to the height of the pole above the ground–line plus ten feet (10'). If guying is required, the guys shall be placed in such a manner as to keep the pole from leaning/falling in the direction of the tracks.

41. Poles must be located a minimum distance from the railroad signal and communication line equal to the height of the pole above the ground-line or else be guyed at right angles to the lines. High voltage towers (34.5 kV and higher) must be located off railroad right-of-way.

Exhibit "D"

42. Grade crossings or temporary grade crossing must not be installed under or within five-hundred feet (500') of the end of any railroad bridge, or three hundred feet (300') from the centerline of any culvert or switch area.

43. For overhead crossings, complete spanning of the property is encouraged with supportive structures and appurtenances located outside of the railroad property. For electric supply and communication lines, normally the crossing span shall not exceed one-hundred fifty-feet (150') with adjacent span not exceeding 1.5 times the crossing span length. For heavier type construction, longer spans will be considered.

44. To ensure that overhead crossings are clear from contact with any equipment passing under such wires, communication lines shall be constructed with a minimum clearance above top of rail of twenty-eight feet (28').. Electric lines must have a florescent ball marker on low wire over centerline track.

45. The utility owner will label the poles closest to the crossing with the owner's name and telephone number for emergency contact.

46. Overhead flammable and hazardous material lines are prohibited.

47. Because inductive interference from certain types of lines have the potential to disrupt the railroad signal and communication systems causing failures with the signals, communication, and at-grade crossing warning devices, . SANBAG may require that an inductive coordination study be performed prior to approval of the permitted use at the expense of the utility owner for proposed electrical lines crossing tracks.

48. Joint-use construction is encouraged at locations where more than one utility or type of facility is involved. However, electricity and petroleum, natural gas or other flammable materials shall not be combined.

Contractor	SANBAG

Initials

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. R 14085 Amendment No. _____

By and Between

San Bernardino Associated Governments acting in its capacity as San Bernardino County Transportation Commission and Charter Communications

Contract Description License Agreement

Board of Director's Meeting Date: December 4, 2013

Overview of BOD Action: 4. Approve Contract No. R14085 with Charter Communications granting a license agreement on the San Gabriel Subdivision railroad right-of-way, City of Rancho Cucamonga mile post 98.2;

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

CONTRACT OVERVIEW

Original Contract Amount	$	5,500	**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	$	5,500	**TOTAL CONTINGENCY VALUE**	$	
TOTAL BUDGET AUTHORITY *(contract value + contingency)*				$	5,500

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
12/4/13	NA	

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

FINANCIAL INFORMATION

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

☐ A Budget Amendment is required. How are we funding current FY? Rail Assets

☐ 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 _____ %

Monica M. Morales	Monica M. Morales 11.5.13	
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

SANBAG Contract No.: R14085
Epic File No.: RSSB003769
Subdivision: San Gabriel Subdivision
Milepost(s): 98.2

SANBAG Contract No. R14085

LICENSE AGREEMENT

BETWEEN

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

CHARTER COMMUNICATIONS

LICENSE AGREEMENT

This LICENSE AGREEMENT ("License") is made and entered into as of _____, 20___, by and between **SAN BERNARDINO ASSOCIATED GOVERNMENTS**, a public agency existing under the authority of the laws of the State of California and acting in its capacity as **SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION** ("SANBAG"), and, **CHARTER COMMUNICATIONS**, a corporate municipality ("LICENSEE"), upon and in consideration of the agreements, covenants, terms and conditions below.

PART I – BASIC LICENSE PROVISIONS

The Basic License Provisions provided in this Part I and the Standard License Provisions set forth in Part II of this License, together with all Exhibits and Attachments referenced in either, are incorporated into and made part of this License. In the event of conflict between Part I and Part II or of any Exhibits and Attachments, Part I shall control.

Basic License Provisions	***Part II Section Cross Reference***

1. **Parties.**

SANBAG's Address:
SAN BERNARDINO ASSOCIATED GOVERNMENTS
1170 West 3rd Street, 2nd Floor
San Bernardino, California 92410-1715

Licensee's Address:

CHARTER COMMUNICATIONS
4781 Irwindale Avenue
Irwindale, California 91706

Attn: Beth Thompson

Telephone: 626-430-3305

E-mail: beth.thompson@chartercom.com

Basic License Provisions

Part II Section Cross Reference

2. **Description of the Premises.** § 1.1
City/County: City of Rancho Cucamonga, County of San Bernardino
Subdivision: San Gabriel Subdivision

Address or Milepost Location:
SANBAG Mile Post 98.2
SCRRA Mile Post 39.6

Approximate area:
560 square feet; 0.013 acres

See map/diagram in Exhibit "A". In the event of any discrepancies between the description contained in this Part I and Exhibit "A", Part I shall control.)

Description and Dimensions of Premises Area:
An underground crossing located approximately seventeen feet (17') easterly of the center line of Hellman Avenue in the City of Rancho Cucamonga, measuring 10'x 56'.

3. **Allowable Improvements, Facilities and Uses. Licensee shall construct only the following improvements and/or facilities and conduct or permit only the following uses on the premises:** § 1.3

Description of Improvements and/or Facilities ("Improvements"):
Installation, operation, maintenance and repair of two (2) underground conduits for fiber optic cable containing up to forty eight (48) fibers each encased in two (2) PVC casings, to be inserted into previously installed twelve inch (12") PVC casing licensed under R14083 (RSSB003770) only, and no other uses.

Use of the Premises:
Fiber Optic Cable

4. **Term.**
Commencement Date: December 4, 2013 or upon execution of SANBAG's Board of Directors
Term (check one): § 2.1

☒ A. Month-to-month
☐ B. Until End Date:_____ (subject to termination pursuant to the terms of this License – see especially Standard License Provisions §2.2).

Basic License Provisions		*Part II Section Cross Reference*
5.	**License Fees.**	§ 3
A.	Administrative Fee: One time fee: $1,500.00	§ 3.1.1
B.	Base License Fee (check one):	
☐	i. $_____ per month, payable monthly in advance	
☒	ii. $1,500.00 per year, payable annually in advance	§ 3.1.2
C.	Additional License Fee (check one):	
☐	i. One-time fee: $_____	
☐	ii. Other fees: $_____, payable _____	§3.1.3
D.	Base License Fee Adjustment Dates (check if applicable):	
☒	i. Annually, effective on the first day of the anniversary month of the Commencement Date, based on the published Consumer Price Index (or its successor) ("CPI") as defined in Section 3.2.1 of the General License Provisions.	§ 3.2 § 3.2.1
☒	ii. At intervals of not less than three (3) years, based on the then current fair market rental value of the Premises as set forth in Section 3.2.2 of the General License Provisions.	§ 3.2.2
☐	iii. Other: _____ _____	§ 3.2.3
6.	**Security Deposit (if any).** $_____	§ 4
7.	**Insurance Amount.** See Exhibit "B"	§§ 10, 13

IN WITNESS WHEREOF, the Parties identified in Item 1 of this Part I have duly executed this License on the date below, and effective as of the Commencement Date set forth above in Item 4 of this Part I.

LICENSEE: CHARTER COMMUNICATIONS
A California corporation

By: _____
Beth Thompson
Finance – Business Planning

Date: _____

SAN BERNARDINO ASSOCIATED GOVERNMENTS, acting in its capacity as SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

By: _____
W.E. Jahn,
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____
Jeffery Hill
Contract Administrator

PART II – STANDARD LICENSE PROVISIONS

TABLE OF CONTENTS

Section		Page
1.	GRANT AND SCOPE OF LICENSE	1
2.	TERM, TERMINATION AND SURRENDER	2
3.	PAYMENTS	4
4.	SECURITY DEPOSIT	6
5.	TAXES	6
6.	LIENS	6
7.	ASSUMPTION OF RISK AND WAIVER	7
8.	DEFAULT, BREACH AND REMEDIES	7
9.	INDEMNIFICATION	9
10.	INSURANCE	10
11.	MAINTENANCE AND REPAIR	10
12.	ALTERATIONS AND CONSTRUCTION	11
13.	CONTRACTORS; APPROVAL AND INSURANCE	11
14.	REIMBURSEMENT	12
15.	LANDSCAPING	12
16.	MARKERS	12
17.	COMPLIANCE WITH LAWS	12
18.	SANBAG'S RIGHT OF ACCESS	13
19.	ENVIRONMENTAL ASSESSMENT	13
20.	HAZARDOUS/TOXIC MATERIAL USE AND INDEMNITY	13
21.	UNDERGROUND STORAGE TANKS	14
22.	CONDEMNATION	15
23.	BROKER'S FEES	15
24.	SUBORDINATE RIGHTS	15
25.	ABANDONMENT	15
26.	GENERAL PROVISIONS	16

Exhibits:

"A" Premises
"B" Insurance Requirements
"C" Permitted Hazardous Material
"D" Additional Provisions

PART II - STANDARD LICENSE PROVISIONS

1. GRANT AND SCOPE OF LICENSE

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 2 of the Basic License Provisions (the "Premises"), for construction, installation, operation, alteration, maintenance, reconstruction and/or removal of the Improvements described in Item 3 of the Basic License Provisions, and any usual and necessary related appurtenances thereto (the "Improvements"), for the purposes described in Item 3 of the Basic License Provisions, together with rights for access and entry onto the Premises as necessary or convenient for the use of the Improvement and for no other purpose. In connection with this grant of license, Licensee, its employees, agents, customers, visitors, invitees, licensees, consultants 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 Improvements or the Premises, with the time and manner of such entry and access to be subject to SANBAG's prior written approval. The Premises, adjoining real property of SANBAG and personal property of SANBAG located thereon shall hereinafter collectively be referred to as "SANBAG Property."

1.2. Condition of Premises. Licensee acknowledges that it has inspected the Premises in its present condition, including without limitation, all existing environmental conditions. Licensee accepts the Premises "as is" as suitable for the purpose for which the Premises are licensed and assumes all risk with respect to all present conditions of the Premises, including, without limitation, existing environmental conditions. Taking of possession by Licensee shall be conclusive to establish that the Premises are in good and satisfactory condition when possession is taken.

1.3. Use. The Premises and the Improvements shall be used only for the purposes specified in Item 3 of the Basic License Provisions and for such lawful purposes as may be directly incidental thereto, and no other purpose. No change shall be made by Licensee in the use of the Premises, the Improvements or the commodity or product being conveyed through the Improvements (if any) without SANBAG's prior written approval.

1.4. Non-exclusive and Revocable Nature of License. The license granted herein is not exclusive and SANBAG specifically reserves the right to grant other licenses within the Premises. Licensee agrees that notwithstanding the Improvements made by Licensee to the Premises or other sums expended by Licensee in furtherance of this License, the license granted herein is fully revocable by SANBAG in accordance with the terms of this License.

1.5. Easements. SANBAG reserves to itself the right, from time to time, to grant such easements, rights and dedications that SANBAG deems necessary or desirable, and to cause the recordation of parcel maps, easement agreements and covenants, conditions

and restrictions, so long as such easements, rights, dedications, maps and covenants, conditions and restrictions do not unreasonably interfere with the permitted use of the Premises by Licensee. Licensee shall sign any of the aforementioned documents upon request of SANBAG and failure to do so shall constitute a material breach of this License.

2. TERM, TERMINATION AND SURRENDER

2.1. Term of License. The term of this License shall commence on the "Commencement Date" specified in Item 4 of the Basic License Provisions. If Item 4.A of the Basic License Provisions is checked, this License shall continue in full force and effect on a month-to-month basis as provided in Item 4.A of the Basic License Provisions. If Item 4.B of the Basic License Provisions is checked, then this License shall be a license for the term specified in said Item 4.B. The term of this License as provided above is referred to as the "Term."

2.2. Termination.

2.2.1. Convenience. If Item 4.A is checked, this License shall continue in full force and effect on a month-to-month basis until terminated by either Party on thirty (30) days' prior written notice. If Item 4.B is checked, this License shall continue in full force and effect until the End Date, unless SANBAG, acting by its Executive Directory or his or her designee, for any reason and in its sole and absolute discretion, determines that this License is no longer in SANBAG's best interests. In which case, SANBAG may terminate this License on thirty (30) days' prior written notice, but SANBAG shall also return to Licensee, within thirty (30) days after the termination, the pro-rata portion of any annual license fee paid by the Licensee for the portion of the agreed term that will not be used by Licensee.

2.2.2. Cause. SANBAG may terminate this License for cause in accordance with the provisions hereof, including, without limitation, Sections 24 (Abandonment), 8 (Default, Breach and Remedies) and 25.11 (Assignment). In addition, SANBAG shall have the right to immediately, without notice and at Tenant's expense, terminate this License upon discovery of any default set forth in Section 8.1(d) and abate any such public nuisance and/or dangerous condition.

2.2.3. Public Use. In addition to any and all other termination rights of SANBAG described herein, Licensee hereby expressly recognizes and agrees that the Premises are 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, roadways, parking facilities, flood control and drainage facilities, and/or any other public or other governmental uses (collectively and individually "Public Use"); and that Licensee's use of the Premises 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 that may be terminated by SANBAG by thirty (30) days written notice to Licensee as set forth in Section 2.2.1 above. Accordingly, as a

condition to entering into this License, Licensee expressly acknowledges and agrees that:

(a) SANBAG may terminate this License as set forth above for any Public Use, to be determined in the sole and absolute discretion of SANBAG's Executive Director, or designee;

(b) Licensee shall **NOT** object to, oppose,or protest at any approval proceeding; nor file suit to prevent or delay any Public Use when planned or implemented on or adjacent to the Premises;

(c) If SANBAG's Executive Director, or designee, at any time, or from time to time, determines in his or her sole and absolute discretion, that there is a need for the Premises or any adjoining property for a Public Use and such Public Use requires relocation or removal of the Improvements, Licensee shall reconstruct, alter, modify, relocate or remove its Improvements, as directed by SANBAG or any parties having operating rights over the Premises, at Licensee's sole cost and expense, within thirty (30) days after written notice from SANBAG; and

(d) 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 Premises for any Public Use, Licensee shall not, as a result of such termination and vacation of the Premises, be entitled to receive any:

(i) 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

(ii) compensation under any eminent domain or inverse condemnation law.

2.2.4. **Holdover Fee:** If Licensee fails to terminate use of the Premises and/or restore the Premises as required in Item 2.3 below, on or before the End Date specified in Item 4.B of the Basic License Provisions or the termination date established as otherwise provided in this License ("Termination Date"), then, in addition to any and all other remedies available to SANBAG under the terms of this License or at law or equity, Licensee shall pay a Holdover Fee equal to twice the Base License Fee in effect on the day prior to the Termination Date, calculated and payable on a monthly basis, for the number of months (partial months counting as whole months) from the Termination Date to the date that Licensee has terminated use and restored the Premises to the required condition. Licensee shall indemnify SANBAG against all liabilities, costs and damages sustained by SANBAG by reason of such holding over.

2.3. Termination of Use and Restoration of Premises. Upon termination of this License in accordance with the terms hereof, unless otherwise requested in writing by SANBAG prior to the date of termination, Licensee, at its own cost and expense, shall immediately remove all alterations additions and Improvements made by Licensee to the Premises 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

Improvements. 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 (including costs, interest, and fees), which Licensee agrees to pay to SANBAG on demand, or (ii) assume title and ownership of said Improvements. 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 Improvements are removed and the SANBAG Property is restored.

3. PAYMENTS

3.1. Fees. As consideration for the rights herein granted, Licensee agrees to pay to SANBAG the Administrative and License Fees specified in Item 5 of the Basic License Provisions, adjusted as set forth in Section 3.2.

3.1.1. Administrative Fee. The one time Administrative Fee set forth in Item 5.A shall be due and payable upon execution of this License.

[Note: SANBAG may require deposit in advance of preparing the License Agreement, in which case the amount deposited will be applied to the Administrative Fee at the time of execution or shall be forfeited to SANBAG to pay for SANBAG's administrative costs in negotiating, preparing and/or processing the License Agreement in the event that the License Agreement is not consummated, per SANBAG's adopted policies and procedures.]

3.1.2. Base License Fee. If Item 5.B.i 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 License. Thereafter, the Base License Fee, as such fee may be adjusted pursuant to the provisions of Section 3.2, 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. If Item 5.B.ii of the Basic License Provisions is checked, the annual License Fee amount, as such fee may be adjusted pursuant to the provisions of Section 3.2, shall be due and payable, without demand, annually in advance on or before the anniversary month of the Commencement Date for the convenience of both Parties, without affecting the Term of this License as specified in Section 2.1.

3.1.3. Additional License Fee. If Item 5.C.i of the Basic License Provisions is checked, the one-time fee noted therein shall be due and payable upon execution of this License. If Item 5.C.ii of the Basic License Provisions is checked, the fee noted therein shall be due and payable as indicated in Item 5.C.ii.

3.2. License Fee Adjustment.

3.2.1. Annual CPI Adjustment. If Item 5.D.i 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 is provided in Item 5 of the Basic License Provisions (the "Adjustment Date"). If no adjustment is made at the annual

anniversary date, an adjustment may nevertheless be made at a subsequent date and thereafter at not less than annual intervals. 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 month that is three (3) months prior to 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, three (3) months prior to the first day of the anniversary month of 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.

3.2.2. Fair Market Adjustment. If Item 5.D.ii 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 3.2.1, above) payable under this Section 3 shall be increased, but not decreased, in order to adjust the fee to the then fair market rental value of the Premises 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.

3.2.3. Other Adjustment. If Item 5.D.iii of the Basic License Provisions is checked, then, in addition to any adjustments required under Items 5.D.i and 5.D.ii, the adjustment set forth in 5.D.iii shall be applied in accordance with its terms.

3.3. Late Charge. Licensee acknowledges that late payment by Licensee of any payment owed to SANBAG under this License will cause SANBAG to incur costs not contemplated by this License, 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 License, at law or in

equity. In addition, any payment not made within 15 days of when due shall bear interest at the rate of eighteen percent (18%) per annum, or the highest legally allowable rate, whichever is lower, until paid in full.

4. SECURITY DEPOSIT

Upon execution of this License and in addition to the payment described in Section 3, SANBAG may require Licensee to pay SANBAG a security deposit in the amount set forth in Item 6 of the Basic License Provisions ("Security Deposit"), which sum shall be held by SANBAG in its general fund, without obligation for interest, as security for the faithful performance by Licensee of all of the terms, covenants, conditions and obligations of this License. If at any time Licensee fails to keep and perform any of the term, covenants, and conditions of this License, including making any payment required hereunder, SANBAG may, at its sole option, apply all or any portion of the Security Deposit to any overdue payment and/or any loss or damage incurred by SANBAG by reason of Licensee's default or breach. Within a reasonable time after termination of this License and after Licensee has vacated the Premises, SANBAG shall return, without interest, said deposit or portion remaining, if any, after deductions for any unpaid payments and any losses or damage sustained by SANBAG due to any breach or default by Licensee or any damage to the Premises or any failure to restore the Premises to the required condition.

5. 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 Improvements, the Premises and/or any personal property, fixtures or equipment located on or placed on the Premises, whether owned by Licensee or any person or entity acting for or at the request of Licensee; or (b) as a result of the Licensee's or the Improvements' operations.

6. LIENS

Licensee will fully and promptly pay for all materials joined or affixed to the Improvements or Premises, and fully and promptly pay all persons who perform labor upon said Improvements or Premises. Licensee shall not suffer or permit to be filed or enforced against the Premises or the Improvements, or any part thereof, any mechanics', material men'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. The term "Work" under this License means any construction, reconstruction, installation, restoration, alteration, repair, replacement, or removal, other than normal maintenance. Licensee shall provide SANBAG with immediate written notice of any such liens, claims, demands, or stop notices that are placed against the Premises or the Improvements. 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, 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, as well as any associated costs and fees, within ten (10) business days after billing. In such circumstances, SANBAG may, in its reasonable discretion, impose a fee on Licensee of twenty five percent (25%) of the costs of the discharge of the mechanic's lien or stop notice in order to cover administrative costs. SANBAG reserves the right at any time to post and maintain on the Premises 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 License.

7. 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 Improvements, the SANBAG Property and any other property of, or under the control or custody of, Licensee, which is on or near the Premises. 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 officers, directors, affiliates, employees, agents, independent contractors and subcontractors anyone directly or indirectly employed by or for whose acts Licensee is liable (collectively, "Personnel"), as a material part of the consideration for this License, 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 License.

8. DEFAULT, BREACH AND REMEDIES

8.1. Licensee Default. Licensee shall be deemed to have breached and be in default under this License when any of the following occurs:

(a) Licensee shall fail to make any payment herein reserved when due, or any reimbursement to SANBAG required herein when due;

(b) Licensee shall vacate all or a substantial portion of the Premises, whether or not Licensee is in default of the payment or other charges due under this License; or

(c) Licensee shall fail to comply with any other term, provision or covenant of this License, and shall not cure such failure within three (3) days after written notice thereof to Licensee.

(d) Licensee shall create or maintain, or allow any other person or entity to create or maintain, any public nuisance or any condition that fails to comply with any federal, state, SANBAG or rail operator specifications or safety regulations or that presents a danger to public safety or a safety hazard to any operations, personnel, passengers or property of SANBAG or any rail carrier operating upon the affected rail line(s) on the Premises or SANBAG's adjacent right of way.

8.2. SANBAG's Remedies.

8.2.1. Termination. Upon the occurrence of Licensee's default and breach, SANBAG shall have the right, at any time, with or without notice or demand, to terminate this License, and at any time thereafter to recover possession of the Premises or any part thereof and expel and remove therefrom Licensee and any other person occupying the same, by any lawful means, and again repossess and enjoy the Premises without prejudice to any of the remedies that SANBAG may have under this License, at law or equity by reason of Licensee's default or of such termination.

8.2.2. Corrective Measures. Should Licensee default on, 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 perform any corrective measures deemed by SANBAG in its sole and absolute discretion to be necessary or appropriate to protect public health or safety, or SANBAG's legitimate governmental or proprietary interests or the interests of its railroad operators ,s at Licensee's expense (including fees, costs and interest) which Licensee agrees to pay to SANBAG upon demand.

8.2.3. Costs. If SANBAG incurs any cost or expense occasioned by the default of Licensee (including but not limited to attorneys' fees and costs), then SANBAG shall be entitled to receive such costs together with interest on all funds SANBAG expends at the lesser of eighteen percent (18%) per annum or the maximum rate allowed by law, whichever is lower, including without limitation, brokers' fees incurred by SANBAG in connection with relicensing the whole or any part of the Premises; the costs of removing and storing Licensee's or other occupant's property; the costs of repairing, altering, and/or otherwise restoring the Premises to a safe and suitable condition, useable and acceptable to SANBAG, rail operators and future licensees; and all reasonable expenses incurred by SANBAG in enforcing or defending SANBAG's right and/or remedies, including reasonable attorneys' fees whether or not suit is actually filed.

8.2.4. Remedies Cumulative. All rights, privileges and remedies of the parties are cumulative and not alternative or exclusive to the extent permitted by law except as otherwise provided herein

8.3. SANBAG Default and Licensee's Remedies. SANBAG shall not be in default under this License unless SANBAG fails to perform obligations required of SANBAG within sixty (60) days after written notice is delivered by Licensee to SANBAG specifying the obligation which SANBAG has failed to perform; provided, however, that if the nature of SANBAG's obligation is such that more than sixty (60) days are required for performance, then SANBAG shall not be in default if SANBAG commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion. Licensee's exclusive remedies shall be an action for specific performance or action for damages.

9. INDEMNIFICATION

9.1. Licensee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless SANBAG, in all of its capacities, and its members, commissioners, officers, directors, employees, agents, consultants, contractors, partners, affiliated entities, subsidiaries, permittees, licensees, 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 Personnel (as defined in Section 7, Assumption of Risk and Waiver) 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 License, in each case whether occurring during the Term of this License or thereafter.

9.2. The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, gross, derivative, sole, joint, concurring or comparative) on the part of Indemnitees and is in addition to any other rights or remedies which Indemnitees may have under the law or under this License. Upon request of SANBAG, Licensee shall provide insurance coverage for possible claims or losses covered by the indemnification and defense provisions of this License.

9.3. 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 Licensee or its Personnel under workers' compensation acts, disability benefit acts or other employee benefit acts or insurance.

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

10. INSURANCE

10.1. SANBAG's Insurance. SANBAG may maintain insurance covering the Premises and SANBAG's ownership and operation thereof in such types and amounts as it deems necessary in its sole discretion. Such insurance shall be for the sole benefit of SANBAG and under its sole control. Licensee's insurance policies shall provide primary coverage to SANBAG; when any such policy issued to SANBAG provides duplicate coverage or is similar in coverage, SANBAG's policy will be excess over Licensee's policies.

10.2. Licensee's Insurance. Licensee, at its sole cost and expense, shall obtain and maintain in full force and effect during the Term of this License 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 License, to review and change the amount and type of insurance coverage it requires in connection with this License or the Work to be performed on the Premises. Prior to (i) entering the Premises or (ii) performing any Work or maintenance on the Premises, Licensee shall furnish SANBAG with insurance endorsements or certificates evidencing the existence, amounts and coverages of the insurance required to be maintained hereunder. SANBAG shall not be liable for the payment of any premiums or assessments for insurance required to be maintained by Licensee under this License. Self-insurance is not permitted. However, SANBAG may, in its sole and absolute discretion, permit self-insurance on a case by case, coverage by coverage, basis where the Licensee has documented, to SANBAG's sole satisfaction sufficient available assets and/or available funds and sufficient legal security in those assets to assure SANBAG that its risk is not greater than it would have been with acceptable insurance coverage, and otherwise meeting SANBAG's self-insurance requirements. The privilege 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 at any time. Upon revocation of self-insurance privilege, Licensee shall immediately provide all required insurances.

10.3. Increases to Insurance. If any increase in the fire and extended coverage insurance premiums paid by SANBAG is caused by Licensee's use and occupancy of the Premises, or if Licensee vacates the Premises and causes any increase in such premiums, then Licensee shall pay as an additional fee the amount of such increase to SANBAG, and, upon demand by SANBAG, the amount required to correct at Licensee's expense the cause of such disallowance, penalty or surcharge to the satisfaction of the particular insurance authority.

11. MAINTENANCE AND REPAIR

Licensee, at Licensee's sole expense, shall during the term of this License maintain the Improvements in a first-class condition, shall maintain the Premises in a good condition, free from weeds, litter, debris, refuse or other nuisance, and shall perform all maintenance and clean-up of the Premises and the Improvements as necessary to keep the Premises and the

Improvements 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 Premises by Licensee or Licensee's Parties, including but not limited to damage arising from any tests or investigations conducted upon the Premises, 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. Licensee shall not perform any maintenance on railroad tracks and facilities without express prior written approval of and direction from SANBAG or the railroads with valid operating authority over SANBAG's lines and compliance with all applicable standards, specification and safety requirements.

12. ALTERATIONS AND CONSTRUCTION

Except as otherwise provided herein, Licensee shall make no alterations, additions or Improvements to the Premises without obtaining the prior written consent of SANBAG in each instance. Any Work performed or caused to be performed by Licensee on the Improvements or the Premises shall be performed (a) at Licensee's sole cost and expense; (b) in accordance with any and all applicable permit requirements, laws, rules, regulations and safety requirements (including 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 Work on the Premises, 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 14 calendar days' written notice prior to commencement of any Work on the Premises or the Improvements, except in cases of emergency, in which event Licensee shall notify SANBAG's representative personally or by phone prior to commencing any Work. SANBAG shall have the right at any time and from time to time to post and maintain notices of non-responsibility 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.

13. CONTRACTORS; APPROVAL AND INSURANCE

Any contractors of Licensee performing Work on the Improvements or the Premises shall first be approved in writing by SANBAG and acquire all required right of entry permits and authorizations from SANBAG and any rail operator utilizing affected or adjacent railroad tracks. 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 coverage 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 Premises, to obtain and maintain in full force and effect during the Term of this License, or throughout the term of such Work (as applicable), insurance, as required by SANBAG, in the amounts and coverage specified on, and issued by insurance companies as described on, Exhibit "B". SANBAG reserves the right, throughout the Term of this License, to review and change the amount and type of insurance coverage it requires in connection with this License or the Work to be performed on the Premises.

14. REIMBURSEMENT

Licensee agrees to reimburse SANBAG for all reasonable costs and expenses that SANBAG incurs in connection with Work on or maintenance of the Premises or the Improvements, 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 License, protect the safety of, and railway operations upon, its tracks and right-of-way, and to otherwise protect its interests. The costs and expenses addressed in this Section 14 shall include all costs that SANBAG incurs in complying with the Work or maintenance requirements of the railroads with valid operating authority over SANBAG's lines.

15. LANDSCAPING

If required by SANBAG, then Licensee, at its sole cost and expense, shall install barrier landscaping to shield the Improvements from public view. SANBAG shall have the right to review and approve landscaping plans prior to installation. All landscaping activities shall be done in accordance with the provisions of Section 12 above (Alterations and Construction).

16. MARKERS

Except as modified by any additional provisions attached at Exhibit "D", project markers in form and size satisfactory to SANBAG, identifying the Improvements and their owner(s), shall 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.

17. 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 SANBAG Property, and shall furnish satisfactory evidence of such compliance promptly upon request of SANBAG. Licensee shall obtain all required permits or leases required by any governmental authority for its use of the Premises, at its sole cost and expense. Subject to SANBAG's approval, Licensee shall at its own cost and expense install and construct all physical improvements to or needed to serve the Premises that are required by any federal, state or local building code or other law or regulation applicable to the Premises, or that are made necessary by the nature of Licensee's use of the Premises. Licensee shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with, the Premises, all at Licensee's sole expense.

18. SANBAG'S RIGHT OF ACCESS

18.1. Inspections. SANBAG shall have the right at any time (upon provision of reasonable notice of inspection to Licensee) or in case of emergency (without notice), to inspect the Premises in order to protect SANBAG's interests therein and to monitor compliance with this License and all applicable federal, state and local laws, regulations, rules and orders.

18.2. Tests. 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 or SANBAG's 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. Licensee shall cooperate with SANBAG in any tests or inspections deemed necessary by SANBAG.

18.3. Costs. Licensee shall pay or reimburse SANBAG, as appropriate, for all reasonable costs and expenses incurred due to tests, inspections or any necessary corrective Work, maintenance and inspections thereafter.

18.4. Sale or Lease of Premises. SANBAG may at any time place on or about the Premises (including the Improvements) any ordinary "for sale" and "for lease" signs. Licensee shall also permit SANBAG and its agents, upon request, to enter the Premises or any part thereof, at reasonable times during normal business hours, to show the Premises to prospective tenants, purchasers or mortgagees.

19. ENVIRONMENTAL ASSESSMENT

Upon execution of this License, SANBAG may, in its sole discretion and if applicable, require Licensee to retain a duly licensed environmental consultant acceptable to SANBAG who shall perform an environmental assessment of the Premises and Licensee's and Licensee's Parties' business activities and prepare a report on Licensee's and/or Licensee's Parties' compliance with the provisions of this section. SANBAG may, if applicable, require Licensee to cause a similar environmental assessment to be conducted on an annual basis, and/or upon or within one (1) year after the expiration or earlier termination of this License, the cost of which shall be the sole responsibility of Licensee. Licensee shall provide a copy of the report or reports from the consultant(s) promptly to SANBAG upon receipt, and upon request shall promptly provide to SANBAG a copy of all data, documents and other information prepared or gathered in connection therewith.

20. HAZARDOUS/TOXIC MATERIAL USE AND INDEMNITY

20.1. Licensee shall operate and maintain the Premises in compliance with all, and shall not cause or permit the Premises to be in violation of any, Environmental Law which is now or may hereafter become applicable to Licensee or the Premises. 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 permit conditions, currently existing or as amended or adopted in the future. Except for any

Hazardous Material 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 Material to be brought upon, stored, used, generated, treated or disposed of on or about the SANBAG Property. Any Hazardous Material on the site shall be stored, used, generated and disposed of in accordance with all applicable Environmental Laws. As used herein, "Hazardous Material" 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 a hazardous or dangerous material or substance.

20.2. Licensee shall indemnify, defend (by counsel acceptable to SANBAG) and hold harmless the Indemnitees (as defined in Section 9, Indemnification) 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 Material upon or from the Improvements or the Premises or contamination of the SANBAG Property (i) which occurs due to the use and occupancy of the Improvements or the Premises 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.

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

20.4. In addition, in the event of any release on or contamination of the Premises, 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.

21. UNDERGROUND STORAGE TANKS

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

21.2. At SANBAG's option, upon the termination of this License 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 Material in, on, under and about the Premises, 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.

22. CONDEMNATION

In the event all or any portion of the Premises shall be taken or condemned for public use by a governmental agency or any other party having the power of eminent domain (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 Improvements. Any other compensation or damages arising out of such taking or condemnation awarded to Licensee are hereby assigned by Licensee to SANBAG.

23. BROKER'S FEES

Licensee agrees to indemnify and hold SANBAG harmless from and against any claims by any broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Licensee with regard to obtaining this License.

24. SUBORDINATE RIGHTS

This License 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, operate, 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 or any portion thereof, and in connection therewith the right to grant and convey to others, rights and interests to the SANBAG Property on the Premises and in the vicinity of the Improvements, regardless of any effect or impact on the Improvements. Licensee shall bear all costs and losses it incurs associated with any modifications to the Improvements necessary to accommodate SANBAG's exercise of any right hereunder. This License 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. This License 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 a covenant against the existence of any such title exceptions.

25. ABANDONMENT

Should Licensee at any time abandon the use of the Improvements or the Premises, 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 License 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 License

26. GENERAL PROVISIONS

26.1. Notices. All notices and demands which either of the Parties 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 the other Party at its address set forth in the Basic License Provisions. Either of the Parties 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.

26.2. Governing Law. This License shall be governed by the laws of the State of California.

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

26.4. No Third Party Beneficiaries. This License is not intended by either party to confer any benefit on any third party other than the constituent members of SANBAG, including without limitations any broker, finder, or brokerage firm.

26.5. Severability. If any term, covenant, condition or provision of this License, 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 License, 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.

26.6. 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 License, provided, however, that interest shall not be payable on late charges incurred by Licensee.

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

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

26.9. Waiver of Covenants or Conditions. The waiver by either Party of any term, covenant, agreement or condition under this License shall not invalidate this License, nor shall it be considered a waiver by it of any other covenant or condition or of the same covenant or condition in another instance. To the extent patterns of practice between the Parties are inconsistent with the terms of this License, such patterns of practice shall not waive in part or in full SANBAG's right to insist upon strict accordance with any of the provisions of this License. The subsequent acceptance of payments hereunder by SANBAG shall not be deemed to be a waiver of any preceding breach by Licensee of any provisions, covenant, agreement or condition of this License, other than the failure of Licensee to pay the particular payment so accepted, regardless of SANBAG's knowledge of such proceeding breach at the time of acceptance of such payment.

26.10. 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.

26.11. Assignment. This License and the license granted herein are personal to the Licensee. Licensee shall not assign or transfer (whether voluntary or involuntary) this License 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 be a material breach of this License, which gives SANBAG the right to immediately terminate this License and seek all other available remedies for breach.

26.12. Entire Agreement; Amendments. This License, including all attached Exhibits, constitutes the entire agreement between the Parties and supersedes all prior verbal or written agreements and understandings between the Parties with respect to the items set forth in this License. The Parties each acknowledge that no representations, inducements, promises or agreements, oral or written, have been made by either SANBAG or Licensee, or anyone acting on behalf of SANBAG or Licensee, other than those contained in this License. No amendments, changes, revisions, or discharges, at any time in whole or in part, of this License shall be binding upon the Parties unless they are in writing and executed by the Parties.

26.13. Attorneys' Fees. If either SANBAG or Licensee commences or engages in, or threatens to commence or engage in, an action by or against the other party arising out of or in connection with this License or the Premises, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and other costs incurred in connection with the action, preparation for such action, any appeals relating thereto and enforcing any judgments rendered in connection therewith. If SANBAG becomes involved in any action, threatened or actual, by or against anyone not a party to this License, but arising by reason of or related to any act or omission of Licensee or Licensee's Parties, Licensee agrees to pay SANBAG's reasonable

attorneys' fees and other costs incurred in connection with the action, preparation for such action, any appeals relating thereto and enforcing any judgments rendered in connection therewith.

26.14. Nondiscrimination. Licensee certifies and agrees that all persons employed by Licensee and/or Licensee's affiliates, subsidiaries, or holding companies, and any contractors retained by Licensee 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.

26.15. 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 License, including, at SANBAG's sole discretion, the relocation of the Improvements and the license granted hereby.

26.16. Time of Essence. Time is of the essence for this License.

26.17. Certificates. Licensee agrees from time to time within ten (10) days after request of SANBAG, to deliver to SANBAG, or SANBAG's designee, all financial statements for the previous three (3) fiscal years of Licensee, and an estoppel certificate stating that this License is in full force and effect, the date to which all applicable payments have been paid, the unexpired Term of this License and such other matters pertaining to this License as may be requested by SANBAG.

26.18. Security Measures. Licensee hereby acknowledges that the payments payable to SANBAG hereunder do not include the cost of guard service or other security measures, and that SANBAG shall have no obligation whatsoever to provide same. Licensee assumes all responsibility for the protection of Licensee, Licensee's Parties and their property from acts of third parties.

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

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

26.21. Flagmen. Where applicable, as a part of or in addition to all other safety obligations, Licensee shall maintain, at Licensee's expense, competent flagmen to protect and control movement of vehicles and equipment of Licensee or any other user of the Premises while upon the Premises, consistent with any applicable laws and regulations regarding work protection, including the rules and policies of SANBAG and/or any railroad operator having rights to utilize any affected or adjacent railroad tracks.

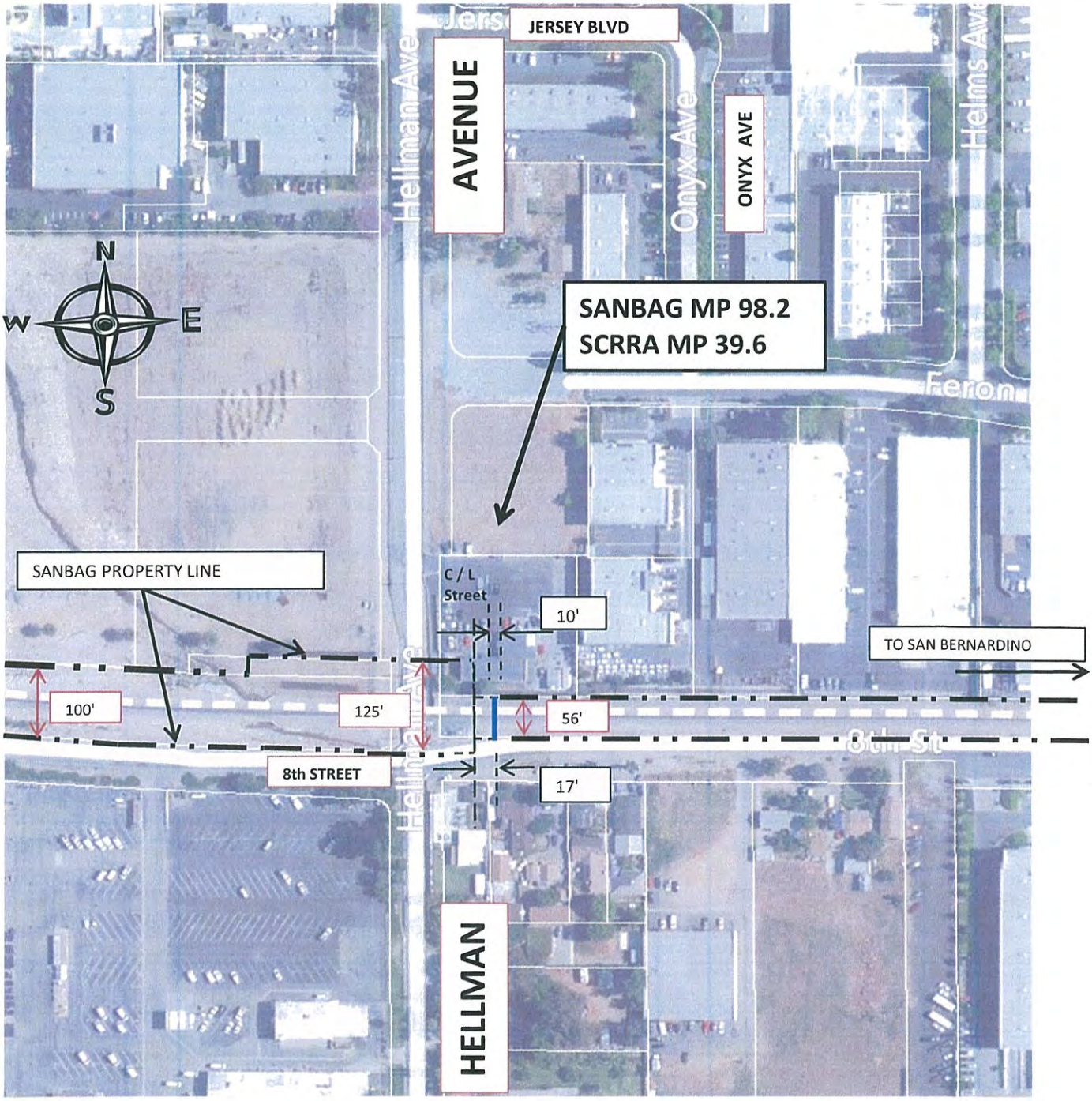
26.22. Additional Provisions. Those additional provisions set forth in Exhibit "D", if any, are hereby incorporated by this reference as if fully set forth herein. To the extent that any additional provisions in Exhibit "D" conflict with the provisions contained in this Part II, Standard License Provisions, the provisions in Exhibit "D" shall control.

Exhibit "A"

Premises

[To Be Inserted]

EXHIBIT "A"



2-2" FIBER OPTIC CABLE WITH UP TO 48 FIBERS EACH IN A CASING OWNED BY CITY OF RANCHO CUCAMONGA SEE RSSB003770 FOR CASING INFORMATION

APN: 0209-032-44		
Date **09/17/2013**		
Branch/Line **San Gabriel Sub**	Mile Post **SCRRA 39.6** **SANBAG 98.2**	Lessee/Licensee **CHARTER COMMUNICATIONS**
County **SAN BERNARDINO**	Nearest Cross Street **HELLMAN AVE**	SANBAG File Number **RSSB003769 R14085**
Area **560 SQ. FT.**	City **RANCHO CUCAMONGA**	Scale **1"=200'**
Map Reference **SSB6**	Use **UG FIBER OPTIC**	Thomas Guide Grid **602 H4**

Governments SANBAG Working Together

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

Exhibit "B"

INSURANCE REQUIREMENTS FOR LICENSES

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, its 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, members, affiliated entities, contractors, consultants, authorized rail operators and agents ("Related Parties"); 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 and Related Parties 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, or its Related Parties.

2. For any claims related to this project, the Licensee's insurance coverage shall be primary insurance as respects SANBAG, and its Related Parties. Any insurance or self-insurance maintained by SANBAG, or its Related Parties 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 and its Related Parties.

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.

All insurance policies, including without limitation, Workers' Compensation and Employer's Liability policies, shall contain or be endorsed to include a waiver of subrogation in favor of SANBAG and its Related Parties.

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, 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 Material

No hazardous material is permitted to be used or stored on Premises.

Exhibit "D"

ADDITIONAL REQUIREMENTS

The following Additional Requirements are imposed on the Tenant/Licensee/Permittee and all of its contractors, subcontractors, employees, laborers or other persons performing any work upon SANBAG property on behalf of Tenant/Licensee/Permittee, and are made part of the terms of the Lease/License/Permit to which this Exhibit D is attached ("Agreement").

As used hereinafter, the term "Contractor" shall include the Tenant/Licensee/Permittee and each and every one of its contractors, subcontractors, employees, laborers, agents or other persons performing any work upon SANBAG property on behalf of Tenant/Licensee/Permittee; and the term "railroad operator" or "operating railroad" shall mean Southern California Regional Rail Authority (SCRRA), Burlington Northern Santa Fe Railroad Railway Company (BNSF) and/or any other railroad company or rail carrier having operating rights over rail lines owned or controlled by SANBAG.

Contractor shall fully comply with each and every one of the Additional Requirements below which is in any way applicable to the type of use, construction, installation or facility allowed under the Contractor's Agreement and approved by SANBAG as required thereunder ("Permitted Use"). The inclusion of an Additional Requirement below that is not in any way applicable to the Contractor's Permitted Use shall not imply any right, permission or consent to expand the Permitted Use in any way.

1. Contractor agrees to execute and deliver to each railroad operator prior to commencing any work within the rail right-of-way, a railroad Right of Entry Agreement which will include agreement to abide by each railroad operator's rules and requirements for construction on railway property. Contractor shall secure approval from SANBAG and each railroad operator of the design of any structures and facilities prior to commencing work on their construction or installation.

2. Contractor will acquire and comply with any and all additional permits required by the railroad operator(s), affected public utilities and/or by any government agency having jurisdiction. Any permit fees, inspection fees, flagging 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 Contractor's sole responsibility. Fully conformed copies of all permits are to be provided to SANBAG. Additional permits required of the Contractor may include but are not limited to encroachment permits, Storm Water Pollution Prevention Plans, environmental permits, temporary use permits, regulatory permits and third party utility permits. Contractors shall have all original executed agreements and permits on hand while on site and will present them on demand of representative of SANBAG and/or the railroad operator(s). Prior to the commencement of work, the contractor shall submit to SANBAG for review and approval, a description of the work process including a detailed schedule of all work activities to be carried out on SANBAG property.

   [For convenience only, SANBAG provides the following telephone numbers for inquiries and information: SCRRA's Right of Way Engineers Office - (909) 394-3418;BNSF's Roadmaster Office - (909) 386-4061]

3. Contractor at its sole cost and expense shall obtain and maintain, in full force and effect, insurance, as required by SANBAG and the railroad operator(s) during the entire construction period. The Contractor shall furnish copies of the insurance certificates to SANBAG and all affected railroad operators.

4. Contractor agrees to comply with instructions of SANBAG and each railroad operator's Employee-In-Charge (EIC) and other representatives in relation to the proper manner of

protection of the tracks and the traffic moving theron, pole lines, signals and other property of SANBAG or its member agencies, 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 operations of railroad operators or of SANBAG's track and other facilities.

5. Contractor will call the appropriate operating railroad to arrange for flagging services a minimum of fifteen (15) working days prior to beginning work. Although every effort is made to accommodate schedules, prior notification does not guarantee the availability of protective/flaggingservices for the proposed date of work. The SCRRA/BNSF flagman/EIC has sole authority to protect safe railroad operations and infrastructure , therefore, only they and their representatives are permitted to perform flagging operations within the railroad right-of-way. At all times the contractor shall follow the flagman/EIC's direction. Contractor's work may not proceed in the absence of a flagman in accordance with applicable rules. At no time shall any contractor be permitted to cross any track or place or maintain any personnel or equipment within the railroad right-of-way without the permission of the railroad flagman.

   SCRRA's Flagging Office (213) 305-8424
   BNSF's Flagging Office (909) 386-4061

6. Prior to the start of construction and at the contractor's expense, all personnel including subcontractors and third parties shall complete SCRRA's/BNSF's Third Party Safety Training course, which is required for all work near or within the railroad right-of-way. Evidence of training must be supplied upon request of SANBAG and its representatives. No work may commence on the railroad right-of-way until this training has been completed. 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/BNSF flagman/EIC.

7. Contractor shall be responsible for the location and protection of any and all surface, sub-surface, and overhead lines, structures and improvements. Contractor 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. It shall be the Contractor's responsibility to contact Underground Alert and locate all underground facilities prior to the commencement of construction. At the same time, the contractor shall notify the operating railroad for signal and communications cables and conduits mark-outs. Contractor shall obtain permission from the owners of any fiber optic, gas, electrical, water, oil or other lines which may be impacted by work on or any use of the Premises by Contractor.

   SCRRA Signal Department (909) 592-1346
   BNSF Signal Department (909) 386-4051

8. **In case of signal emergencies or grade crossing problems, the contractor shall call the following emergency numbers.**

   SCRRA Signal Emergency Department (888) 446-9721
   BNSF Signal Emergency Department (909) 386-4051

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

10. If SANBAG or any of its associated rail entities or railroad operators deem it necessary in the future, to modify, or to build additional, track or tracks or other facilities in connection with the

operation of its railroad, at the request of SANBAG, contractor shall modify, at its own expense, any or all of its permitted facilities to conform to the rail facilities.

11. Both Contractor 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 Contractor's needs will be the sole responsibility and at the sole cost of the Contractor and subject to SANBAG's and any affected operating railroad's prior review and approval, which may be withheld in SANBAG's or the affected operating railroad's sole and absolute discretion. SANBAG or the affected operating railroad may require that any track removal and/or other work within the right-of-way be done by SANBAG or the railroad operator, respectively, but all such work shall remain at the sole cost of the Contractor, who may be required to deposit the estimated cost plus 25% in advance of the work, subject to refund or additional charge at the conclusion of the work. No permanent structures may be constructed on the premises without SANBAG's prior written approval. Contractor will be responsible for the removal of any or all permitted improvements upon termination of Agreement as directed by SANBAG.

12. Contractor shall pay for any and all utilities for its benefit, security and use.

13. SANBAG makes no warranties as to the suitability of the location for Contractor's intended use, and Contractor assumes all risks as to environmental compliance, zoning, visibility, or any other factors which may affect Contractor's intended use of the premises.

14. Boring of carrier or direct burial utilities by directional boring methods is prohibited.

15. Signs are not permitted on or along the perimeter of the Premises unless such signs were requested and approved under Contractor's original proposal and covered by the required insurance. The contractor shall install permanent signs identifying the location of pipes at the edge of the railroad right-of-way unless within a public grade crossing.

16. Contractor shall construct a temporary fence along the railroad right–of-way, or along the edge of pits closest to the track, on both sides of the pit, extending 50-feet in both directions from the pit, and measuring a minimum of 6-feet high. Fences are not required for work at grade crossings. Contractor shall pave the Premises area with asphalt or concrete, when requested, around the entire perimeter of the property as described in the Agreement in Part I and Exhibit "A". Contractor shall be responsible for total expense of fencing and asphalt.

17. Contractor shall not bring upon or use any import ioil 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. Additionally, any soil currently existing on the Premises may not be spread on the Premises unless and until it is characterized as clean coil to the reasonable satisfaction of SANBAG. All soil piles are to be placed on a barrier to prevent intermingling with surface soils.

18. Contractor 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. Contractor shall by fully responsible for all maintenance and maintenance of adjoining SANBAG property that is required or necessary in connection with Contractor's use of Premises.

19. Prior to commencement of construction, the contractor shall submit to SANBAG / SCRRA a plan showing the proposed method of casing installation, construction access, stockpile locations, SWPPP control measures, fencing type and location and a milestone schedule.

20. For pipelines carrying flammable or hazardous materials, the contractor shall adhere to special conditions stated in the Right of Entry (ROE) Agreement.

21. The jacking and receiving pits shall be constructed outside of the railroad right of way unless shown on the SANBAG approved plans and shall not be located between any track and the automatic signal gate arms. The contractor shall layout the proposed jack and bore pits prior to the commencement of work. Only after the SANBAG/SCRRA inspector has approved the layout will the Contractor be allowed to begin work.

22. 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 SCRRA/BNSF flagman and SCRRA/BNSF 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 SANBAG.

23. The contractor shall submit to SANBAG/SCRRA for review, drawings and calculations for any shoring that may affect or be influenced by the railroad tracks. All shoring designs shall comply with the requirements of, and be approved by, SANBAG and/or the affected operating railroad. All drawings and calculations shall be signed and stamped by a California licensed Civil or Structural Professional Engineer.

24. Prior to commencement of work, the contractor shall submit to SANBAG/SCRRA 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.

25. Should ground water or loose or unstable soils conditions be encountered during construction, the contractor shall immediately stop work, notify the railroad flagman, provide necessary structural support to track and other railroad structures, and notify the affected operating railroads and SANBAG. It shall be the responsibility of the contractor to make necessary corrections to the construction process to allow for said conditions.

26. All underground utilities under railroad tracks shall be encased in a larger pipe or conduit called the "casing pipe". Said 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. The top of the 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. All ends of the casing pipe shall be sealed unless otherwise authorized by SANBAG. 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. All casing pipes shall be installed with a minimum slope of 1%. Installation of casing pipes by open trenching is prohibited.

27. Abandoned pipes shall be removed from their casing pipes. The empty casing pipe shall be pressure grouted full for the entire length of the pipe. Should there be no casing pipe; the abandoned pipe shall be pressure grouted full the entire length of the pipe. A SANBAG / SCRRA inspector must be present during the grouting process.

28. 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 and jacks shall be designed and used with sufficient rating 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 non-stop, 24-hour per day basis until the jacking operation is completed.

29. 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 replacement, 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 there will be no unsupported excavation ahead of the casing. The auger 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 / SCRRA 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/SCRRA.

30. 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.

31. 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/SCRRA shall be employed to fill such voids.

32. 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/SCRRA prior to the commencement of work. Proof of experience and competency shall accompany the submission.

33. When water is known 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/SCRRA 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.

34. 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 well 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.

35. The proposed methods of dewatering shall be submitted to SANBAG/SCRRA 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, pollutants, or hazardous materials or fluids be observed at any time during the dewatering process, the dewatering shall be halted immediately and cannot resume until the unsatisfactory condition is remedied to the satisfaction of the SANBAG/SCRRA inspector.

36. 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.

37. 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 and any affected operating railroad 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 it holds. Contractor shall be responsible to arrange refunds due from any affected operating railroads.

38. A minimum of five feet (5') clearance is required above signal and communication lines for overhead crossings.

39. Poles for any use within the railroad right-of-way must be located fifty-feet (50') out from the centerline of the railroad main, branch and running tracks, CTC sidings, and heavy tonnage spurs. Pole locations adjacent to industry track must provide at least a ten foot (10') clearance from the centerline of track, when measured at right angles. If located adjacent to curved track, then said clearance must be increased at the rate of 1.5 inches per degree of curved track.

40. Regardless of the voltage, un-guyed poles shall be located a minimum distance from the centerline of any track, equal to the height of the pole above the ground–line plus ten feet (10'). If guying is required, the guys shall be placed in such a manner as to keep the pole from leaning/falling in the direction of the tracks.

41. Poles must be located a minimum distance from the railroad signal and communication line equal to the height of the pole above the ground-line or else be guyed at right angles to the lines. High voltage towers (34.5 kV and higher) must be located off railroad right-of-way.

42. Grade crossings or temporary grade crossing must not be installed under or within five-hundred feet (500') of the end of any railroad bridge, or three hundred feet (300') from the centerline of any culvert or switch area.

43. For overhead crossings, complete spanning of the property is encouraged with supportive structures and appurtenances located outside of the railroad property. For electric supply and communication lines, normally the crossing span shall not exceed one-hundred fifty-feet (150') with adjacent span not exceeding 1.5 times the crossing span length. For heavier type construction, longer spans will be considered.

44. To ensure that overhead crossings are clear from contact with any equipment passing under such wires, communication lines shall be constructed with a minimum clearance above top of rail of twenty-eight feet (28').. Electric lines must have a florescent ball marker on low wire over centerline track.

45. The utility owner will label the poles closest to the crossing with the owner's name and telephone number for emergency contact.

46. Overhead flammable and hazardous material lines are prohibited.

47. Because inductive interference from certain types of lines have the potential to disrupt the railroad signal and communication systems causing failures with the signals, communication, and at-grade crossing warning devices, . SANBAG may require that an inductive coordination study be performed prior to approval of the permitted use at the expense of the utility owner for proposed electrical lines crossing tracks.

48. Joint-use construction is encouraged at locations where more than one utility or type of facility is involved. However, electricity and petroleum, natural gas or other flammable materials shall not be combined.

Contractor	SANBAG

Initials

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: 9

Date: November 14, 2013

Subject: Agreement with Omnitrans for the receipt of Federal Transit Administration (FTA) Section 5307 and Congestion Mitigation and Air Quality (CMAQ) Improvement Program funds for the Downtown San Bernardino Passenger Rail Project.

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

1. Approve San Bernardino Associated Governments Contract No. R14038, with Omnitrans for the receipt of FTA Section 5307 and CMAQ funds totaling $22,306,000 for the Downtown San Bernardino Passenger Rail Project; and

2. Authorize the Executive Director or designee to execute such certifications and other documents as required to fulfill SANBAG's obligations under this Agreement; and

3. Approve a budget amendment in Task No. 0379 Commuter Rail Capital to increase State Local Partnership Program funds in the amount of $615,226 for a new fund total of $10,921,226; and

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA		SAFE		CMA	

Check all that apply.

CRTC1311a-ns
Attachment: http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/R14038.doc

4. Approve a budget amendment in Task No. 0379 Commuter Rail Capital to decrease CMAQ by $10,921,226 for a new fund total of $0; and

5. Approve a budget amendment in Task No. 0379 Commuter Rail Capital to increase FTA Section 5307 by $22,306,000 for a new fund total of $22,306,000.

Background: Omnitrans is the designated FTA grantee for the San Bernardino Valley. In order for San Bernardino Associated Governments (SANBAG) to receive these funds for the Downtown San Bernardino Passenger Rail Project (DSBPRP), the funds need to be included in an Omnitrans FTA grant for Section 5307 Urbanized Formula Funds. The attached Contract has been prepared to establish SANBAG as a Subgrantee for the funds authorized for the DSBPRP. During the budgeting process SANBAG staff budgeted CMAQ for the DSBPRP. However, in recent discussions with finance staff, it was determined that CMAQ funds are funded through Federal Highway Administration (FHWA) and are flexed over to become FTA Section 5307 funds. Due to this fact and requirements by FTA, the financial reporting for these funds would need to be adjusted to now reflect FTA. Recommendations four (4) and five (5) correct this reporting issue. Additionally, FTA Section 5307 funds (not flexed) were anticipated to be spent during the Fiscal Year 2014/2015 and were not budgeted in this current budget year.

This funding will be used for the construction of the DSBPRP. SANBAG is proposing to extend Metrolink commuter passenger rail service approximately one mile east from its current terminus at the existing San Bernardino Metrolink Station/Santa Fe Depot (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. The project will consist of double tracking from the Depot to the SBTC, relocation of station platforms at the Depot, construction of a pedestrian bridge at the Depot, reconfiguration of the Depot parking lot and two station platforms at the SBTC.

Staff asks that the Committee recommend the Board approve Contract No. R14038, with Omnitrans for the receipt of FTA Section 5307 ($12,000,000), and CMAQ ($10,306,000) funds for the DSBPRP, authorize the Executive Director or designee to execute such certifications and other documents as required to fulfill SANBAG's obligations under this Agreement, approve a budget amendment in Task No. 0379 Commuter Rail Capital to increase State Local Partnership Program funds in the amount of $615,226 for a new fund total of $10,921,226, approve a budget amendment in Task No. 0379 Commuter Rail Capital to decrease CMAQ by $10,921,226 for a new fund total of $0, and approve a budget amendment in Task No. 0379 Commuter Rail Capital to increase FTA Section 5307 by $22,306,000 for a new fund total of $22,306,000

Financial Impact: This item is not consistent with the approved Fiscal Year 2013/2014 budget. This item requires budget amendments outlined in recommendations 3-5.

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 Contract.

Responsible Staff: Nancy Strickert, Transit Analyst

Governments
SANBAG
Working Together

CONTRACT SUMMARY SHEET

Contract No. R 14038 Amendment No. _____

By and Between

San Bernardino County Transportation Commission and Omnitrans

Contract Description Pass through funds - Downtown San Bernardino Passenger Rail Project

Board of Director's Meeting Date: December 4, 2013
Overview of BOD Action:

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

CONTRACT OVERVIEW

Original Contract Amount	$	22,306,000	**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	$	22,306,000	**TOTAL CONTINGENCY VALUE**	$	
			TOTAL BUDGET AUTHORITY *(contract value + contingency)*	$	22,306,000

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
November 6, 2013	June 30, 2019	

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

FINANCIAL INFORMATION

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

☐ A Budget Amendment is required.

How are we funding current FY? Through local funding but will be reimbursed through this contract

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

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

This funding from Section 5307 & CMAQ will be used for construction of the DSBPRP.

☐ Payable ☒ Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

☐ Retention? If yes, indicate % _____.

☐ Disadvantaged Business Enterprise (DBE) Goal _____ %

Nancy Strickert		10/30/13
Project Manager (Print Name)	Signature	Date
Mitchell A Alderman,	M. A. Alderman	10/30/13
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

CONTRACT No. R14038

The San Bernardino County Transportation Commission (SANBAG)
1170 West 3rd Street, 2nd Floor
San Bernardino, California 92410-1715
DUNS 78-299-1368
CFDA 20.507
And

OMNITRANS
1700 West 5th Street
San Bernardino, California 92411

FEDERAL FUNDING SUBGRANTEE AGREEMENT

FOR THE DOWNTOWN SAN BERNARDINO PASSENGER RAIL PROJECT

I. PARTIES AND TERM

A. This Federal Funding Subgrantee Agreement ("AGREEMENT") is entered by and between SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION ("SANBAG") and OMNITRANS, a joint powers authority ("OMNITRANS") (together, the "PARTIES").

B. The Term of this AGREEMENT will commence on the Effective Date and, terminate upon the completion of the disbursement of the funds obtained from the grants and the completion of all reports, updates or any other documentation or responsibility of OMNITRANS related to the grants or June 30, 2019, whichever is earlier.

II. RECITALS

A. WHEREAS, the purpose of the AGREEMENT is to outline the roles and responsibilities related to administration of the federal funding grants for federal funds SANBAG has allocated to the Downtown San Bernardino Passenger Rail Project ("DSBPRP").

B. WHEREAS, SANBAG will use federal funding for construction of DSBPRP. The DSBPRP will extend Metrolink commuter passenger rail service approximately one mile east from the current terminus at the existing San Bernardino Metrolink/Santa Fe Depot ("DEPOT") located at 1170 West 3rd Street, San Bernardino to E Street in the City of San Bernardino. The project will consist of double tracking, relocation of station platforms at the DEPOT, construction of a pedestrian bridge, reconfiguration of the DEPOT parking as well as construction of two station platforms at the San Bernardino Transit Center; and

C. WHEREAS, OMNITRANS, as the Federal Transit Administration grantee, pursuant to the terms of this Agreement, will submit a §5307 grant application to the Federal Transit Administration ("FTA") for Fiscal Year 2014 with respect to obtaining funding for the DSBPRP; and

D. WHEREAS, work that will be reimbursed under the terms of this Agreement may not be invoiced until the grant application is approved and funding is made available to OMNITRANS by the FTA; and

E. WHEREAS, SANBAG will be considered the Subgrantee for purposes of the grant agreement, and SANBAG and its Contractors will be responsible for complying with all provisions of the grants and of applicable federal, state and local laws and regulations ("APPLICABLE LAW") necessary in order to qualify for the funding for, and to undertake, the DSBPRP.

NOW THEREFORE, in consideration of the foregoing recitals and the terms and conditions herein, the parties agree as follows:

III. OMNITRANS' RESPONSIBILITIES.

A. OMNITRANS, as the FTA Grantee, will submit a Fiscal Year 2014 §5307 grant application to the FTA with respect to obtaining funding for the DSBPRP ($12,000,000 in § 5307 funds and $10,306,000 in Congestion Mitigation Air Quality funds).

B. OMNITRANS will sign the grant documents resulting from the foregoing grant application submittal, upon the receipt of such assurances from SANBAG as OMNITRANS may reasonably require.

C. OMNITRANS, as the FTA Grantee responsible for subgrantee oversight, will conduct site visits at least annually, and attend pertinent meetings related to the DSBPRP.

D OMNITRANS will reimburse SANBAG for the DSBPRP expenditures up to the amount available from any grant received for the DSBPRP, in conformity with the following procedure:

a. SANBAG shall submit a Disbursement Request to OMNITRANS by the fifteenth day of each month which consists of a written invoice to OMNITRANS specifying the amount requested to be disbursed, the purpose of the disbursement, and such additional supporting documentation and background information as OMNITRANS may reasonably require ("Disbursement Request"), including the following:

1. The total amount incurred and a statement that 80% of the total amount expended in each billing period is being billed to OMNITRANS to be paid with FTA funds;

2. A detailed breakdown of work tasks completed; and

3. A detailed breakdown of labor, material, direct, and indirect costs, including backup information such as time sheets, copies of

checks, and copies of receipts, as necessary to satisfy FTA audit requirements.

b. Each Disbursement Request shall be accompanied by a written certification by SANBAG's Director of Transit and Rail that such Disbursement will not constitute any violation of the terms of the grant, or of APPLICABLE LAW, and that SANBAG will use the Disbursement for the purpose indicated in the Disbursement Request.

c. Within five (5) business days of the receipt of a Disbursement Request and accompanying certification, OMNITRANS shall notify SANBAG as to any additional supporting documentation and background information it requires.

d. First week of the following month, after receiving a Disbursement Request, OMNITRANS shall: (i) disburse (including through electronic transfer of funds, if so requested, and if SANBAG provides the necessary information by the date of execution of this Agreement) all or that portion of the requested funds which it reasonably believes it can disburse without violating the terms of either the grant or APPLICABLE LAW; and (ii) if applicable, notify SANBAG why it reasonably believes that it is unable to disburse some or all of the requested funds without violating the terms of either the grant or APPLICABLE LAW.

e. To the extent that the FTA advises OMNITRANS that a disbursement of funds would constitute a violation of the terms of either the grant or of APPLICABLE LAW, OMNITRANS shall have no obligation to disburse such funds. If OMNITRANS has any question as to whether any disbursement will be in violation of any provision of either the grant or of APPLICABLE LAW, notwithstanding SANBAG's certification, it shall be entitled to receive at SANBAG's expense, a legal opinion from competent counsel of its choice to resolve any such question.

f. OMNITRANS shall have no liability to SANBAG for any refusal to disburse funds so long as OMNITRANS has acted in good faith and reasonable belief that such disbursement of funds would constitute a

violation of the terms of the grant or of APPLICABLE LAW. OMNITRANS, upon receipt of a legal opinion supporting the disbursement, will release the requested funds within five (5) days.

E. OMNITRANS shall prepare and submit to the FTA on a timely basis all required periodic reports and milestone updates, so long as it timely receives all necessary information from SANBAG.

F. OMNITRANS shall conduct itself so that any aspect of OMNITRANS' participation in this Agreement and the actions required of it hereunder, will be in compliance with the terms of the grant which is being sought and with APPLICABLE LAW.

G. OMNITRANS shall comply with all requirements of the FTA 2013 Master Agreement, found at http://ftateamweb.fta.dot.gov/static/Agreements/2012-19-MASTER.pdf, including submission to FTA on a quarterly basis, of reports that document the status of the DSBPRP's implementation progress, including task completion status and budget status.

IV. SANBAG's RESPONSIBILITIES.

A. SANBAG has or will have, prior to the necessity of expending them, all funds necessary to provide the local matching funds required to receive a FTA §5307 grant (the "Match Obligation"). The approximate amount of the Match Obligation for the DSBPRP is $5,576,500. SANBAG will submit evidence of the dollar amount and source(s) of the Match Obligation funds, as OMNITRANS may reasonably require. SANBAG may utilize its payment of staff salaries, benefits and expenses in administrative support for the DSBPRP to satisfy its Match Obligation.

B. SANBAG shall provide to OMNITRANS all information that is reasonably needed for the §5307 grant application submission. Additionally, to the best of SANBAG's knowledge, the submittal of the contemplated FTA §5307

application by OMNITRANS on behalf of the SANBAG will not constitute any violation of APPLICABLE LAW.

C. SANBAG shall conduct itself so that all aspects of the DSBPRP, and any aspect of SANBAG's participation in this Agreement and the actions contemplated of it by this Agreement, will be in compliance with the terms of the grant and with APPLICABLE LAW, including laws or regulations related to planning studies.

D. SANBAG will use the disbursements for the purposes indicated in its Disbursement Requests and will certify to OMNITRANS for each Disbursement Request, that to the best of its knowledge such Disbursement will not constitute any violation of either the provisions of the grant or of APPLICABLE LAW.

E. SANBAG shall be responsible for all duties relative to the construction phase of the DSBPRP, including complying with all bidding and contract administration requirements relative to construction of a public works project, with all due diligence and in a skillful and competent manner. SANBAG represents and warrants to OMNITRANS that it and/or its contractors has or will have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work required to complete the DSBPRP. SANBAG further represents and warrants that it and/or its contractors shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.

F. SANBAG and its contractor(s) shall comply with all requirements of the FTA 2013 Master Agreement, found at http://ftateamweb.fta.dot.gov/static/Agreements/2012-19-MASTER.pdf, including submission to OMNITRANS on a quarterly basis, of reports that document the status of the DSBPRP's implementation progress, including task completion status, budget status, and adherence to project schedule.

G. SANBAG and its contractor(s) shall agree to comply with 49 U.S.C. § 5323(j) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and any amendments thereto.

H. SANBAG and its contractor(s) shall agree to comply with 31 U.S.C. §1352(a) and "New Restrictions on Lobbying" 49 C.F.R. Part 20, and any amendments thereto, pertaining to the use of Federal funds for lobbying.

I. SANBAG and its contractor(s) will provide Omnitrans the required signed Self-Certification Form by July 31 of each year, in accordance with FTA audit requirements.

J. SANBAG and its contractor(s) will provide Omnitrans a copy of its annual single audit for each fiscal year, in accordance with FTA audit requirements.

K. SANBAG shall notify OMNITRANS of any changes in the scope or description of the DSBPRP.

L. SANBAG shall claim full ownership of the DSBPRP, and maintain and perform upkeep of all portions of the completed DSBPRP in accordance with FTA requirements.

M. SANBAG shall provide to OMNITRANS all information needed for quarterly DSBPRP reporting and milestone updates in a timely manner to allow OMNITRANS enough time to prepare and submit to the FTA on a timely basis all required or requested FTA reports and updates, but in no event to be received later than fifteen (15) days prior to the required date of submission to the FTA of such report or update.

N. SANBAG shall maintain all books, papers, records, and accounting records including but not limited to all direct and indirect costs allocated to the

DSBPRP, cost proposals with backup data, and all other material relating to the DSBPRP. SANBAG shall, upon request, make all such materials available to OMNITRANS or its designee at any reasonable time during the term of the Agreement and for three (3) years from the date of final payment by SANBAG for DSBPRP expenses and costs, for auditing, inspection, and copying. Any contract entered into as a result of this Agreement, shall contain all of the provisions of this paragraph.

O. SANBAG shall insure that all aspects of the DSBPRP and any aspect of SANBAG's participation in this Agreement and the actions contemplated of it by this Agreement will be in compliance with the terms of the grants which are being sought and with all APPLICABLE LAW.

V. MISCELLANEOUS

A. Designation of Authority. The CEO/General Manager of OMNITRANS, or his/her designee, shall exercise the rights of OMNITRANS under this Agreement including, without limit, accepting the certifications of SANBAG required under the terms of this Agreement. The Executive Director of SANBAG, or his/her designee, shall exercise the rights of SANBAG under this Agreement; however, any certifications of SANBAG required under the terms of this Agreement shall be provided only by the Executive Director or such other representative of SANBAG as specified by action of SANBAG's governing body.

B. Insurance and Bonding Requirements. SANBAG shall require that any contractor providing services with respect to the DSBPRP obtain and maintain insurance of the type and in the amounts that OMNITRANS would require of its contractors performing similar services for a project similar to DSBPRP for the longer period of: 1) the duration of this Agreement; or 2) for the duration of such contractor's involvement in the DSBPRP. All insurance policies shall name OMNITRANS and its directors, officers,

employees and volunteers as additional named insureds, as appropriate for the type of policy. Further, SANBAG will require that any contractors provide bid, performance and payment bonds as are required by applicable Federal, State or local law.

C. Mutual Indemnity. The PARTIES agree that each Party shall responsible for its own actions, and the actions of its officers, employees, agents, and volunteers in the performance of the construction of the DSBPRP and Agreement. Each Party shall indemnify, defend and hold harmless all other Parties and their officers, employees, agents, and volunteers from any cost, expense, fine, penalty, claim, demand, judgment, loss, injury and/or liability of any kind or nature, including personal injury, death or property damage, or regulatory violation(s) asserted or otherwise, whether in contract or in tort, that may arise from, directly or indirectly, or be in any way caused by any wrongful or negligent act, error, or omission of the indemnifying Party, its officers, employees, agents, or volunteers in the performance of the construction of the DSBPRP or this Agreement, including without limitation the payment of all consequential damages and reasonable attorneys' fees, expert witness fees and other related costs and expenses of defense. The sole exception to the indemnifying Party's obligation to indemnify shall be for acts of negligence or willful misconduct of the indemnified Party, its officers, employees, agents, or volunteers. This is a comparative negligence provision and each Party shall bear their own costs to the extent to which they are each negligent. The indemnifying Party shall defend, at its own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the indemnified Party, its officers, employees, agents, or volunteers. The indemnifying Party shall pay and satisfy any judgment, award or decree that may be rendered against the indemnified Party, its officers, employees, agents, or volunteers in any such suits, actions or other legal proceedings. Each PARTIES obligation to indemnify shall not be restricted to the terms

or limitations of its self-insurance coverage or to any insurance proceeds, if any, received.

D. Loss of Funding. In the event that none of the funding identified in Section III is available due to a complete loss in funding for the PROJECT, OMNITRANS will have no obligation to make payment to SANBAG for any services performed.

E. Legal Fees. The PARTIES shall be responsible for all legal fees associated with this agreement and the DSBPRP.

F. Force Majeure.

a. An "Uncontrollable Force" (force majeure) is any occurrence beyond the control of a Party which causes that Party to be unable to perform its obligations hereunder and which a Party has been unable to overcome by the exercise of due diligence, including but not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, action or inaction of legislative bodies, judicial bodies, or regulatory agencies, or other proper authority, excepting the governing body of the Party asserting the Uncontrollable Force, which may conflict with the terms of this Agreement.

b. Subject to Section G (a), neither Party shall be considered to be in default in the performance of any of the agreements contained in this Agreement when and to the extent failure of performance shall be caused by an Uncontrollable Force.

c. If either Party because of an Uncontrollable Force is rendered wholly or partly unable to perform its obligations under this Agreement, the Party shall be excused from whatever performance is affected by the Uncontrollable Force to the extent so affected provided that: (i) the nonperforming Party within one week after the occurrence of the

Uncontrollable Force, gives the other Party written notice describing the particulars of the occurrence; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Uncontrollable Force; (iii) the nonperforming Party uses its best efforts to remedy its inability to perform (this subsection shall not require the settlement of any strike, walkout, lockout, other labor disputes or any other dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest, it being understood and agreed that the settlement of any disputes shall be at the sole discretion of the Party having the difficulty); and (iv) when the nonperforming Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

d. If either Party's ability to perform cannot be corrected when the Uncontrollable Force is caused by the actions or inactions of legislative bodies, judicial bodies, or regulatory agencies or other proper authority, the Parties agree to meet in good faith to determine if this Agreement may be amended to comply with the legal or regulatory change which caused the nonperformance of the Parties.

G. Authorization. OMNITRANS represents that the terms and execution of this Agreement have been duly authorized by OMNITRANS' governing Board and that the persons signing this Agreement on its behalf have the necessary authority to do so. SANBAG represents that the terms and execution of this Agreement have been duly authorized by SANBAG's governing body and that the persons signing this Agreement on its behalf have the necessary authority to do so.

H. Headings. All paragraph headings throughout this Agreement are for convenience of reference only.

I. Additional Documents. Each of the Parties shall execute such additional documents as the other Party may reasonably request in order to carry out or implement any of the provisions of this Agreement, which request shall not be unreasonably refused.

J. Litigation Expenses. If after this Agreement is in effect, any action or proceeding of any nature shall be commenced seeking to enforce, construe or rescind, or otherwise relating to this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to all other sums recoverable, its reasonable litigation expenses, including reasonable attorney's fees, expert witness fees and other related expenses and costs.

K. Entire Agreement. This Agreement constitutes the sole and entire agreement between the parties hereto, and no modification, alteration or amendment shall be binding unless expressed in writing signed by the Parties. No representation, warranty, covenant, inducement or obligation not included in this Agreement shall be binding, and this Agreement supersedes all prior negotiations, agreements, arrangements and undertakings among the Parties hereto with respect to the matters set forth in this Agreement. It is the intent of the Parties that this Agreement is an integrated agreement and that no evidence may be introduced to vary in any manner its terms and conditions.

L. Accuracy of Representations. As of the date each signed this Agreement, the representations herein of both Parties are true and correct in all material respects.

M. Originals and Copies. This Agreement with the Exhibits attached hereto may be executed in counterparts, each of which shall be deemed an original. In any action or proceeding, an exact and correct copy may be used in lieu of an original.

N. Construction of Agreement.

a. Equal Construction. This Agreement shall not be construed in favor of or against a Party by reason of participation or lack of participation of that Party or its counsel in the drafting of this Agreement. This Agreement shall be interpreted and construed as drafted by all Parties with equal participation in the drafting hereof.

b. Internal Consistency. The Parties intend that the terms of this Agreement are all internally consistent with each other and should be construed to that end.

O. Notices. All notices hereunder shall be in writing and shall be effective upon receipt. All notices and communications, including invoices, between the Parties to this Agreement shall be either personally delivered, sent by first-class mail, return receipt requested, or sent by overnight express delivery service, postage or other charges fully prepaid, as follows:

OMNITRANS 1700 West Fifth Street San Bernardino, CA 92411 Attention: Anna Rahtz	SANBAG San Bernardino Associated Governments 1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715 Attention: Mitchell A. Alderman, PE

P. No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. Other than the Parties, no person, political subdivision, agency, board, department, division or commission shall be entitled to bring an administrative or judicial proceeding to enforce or interpret its terms.

Q. Amendments. In the event that the PARTIES determine that the provisions of the AGREEMENT should be altered, the PARTIES may execute an amendment to add, delete, or amend any provisions of this AGREEMENT. All such amendments must be in the form of a written instrument signed by the original signatories of the AGREEMENT, or their successors or authorized designees.

----------SIGNATURES ON FOLLOWING PAGE----------

In witness whereof the PARTIES have executed this AGREEMENT on the dates written below and this AGREEMENT is effective upon execution of the AGREEMENT by SANBAG ("Effective Date").

OMNITRANSOMNITRANS

By: _____

P. Scott Graham, Interim CEO/General Manager

Date: _____

SANBAG

By: _____

W.E. Jahn, SANBAG Board President

Date: _____

APPROVED AS TO FORM:

By: _____

Carol Greene, OMNITRANS

OMNITRANS Legal Counsel

Date: _____

APPROVED AS TO FORM:

By: _____

Eileen Monaghan Teichert,

SANBAG General Counsel

Date: _____

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: **10**

Date: November 14, 2013

Subject: Ten-Year Delivery Plan Update

Recommendation:* Receive report on the planned update to the Ten-Year Delivery Plan.

Background: In January 2012, the SANBAG Board adopted the first Measure I 2010-2040 Ten-Year Delivery Plan (Delivery Plan). The Delivery Plan provides a transparent list of projects that will be developed during the ten year period and defines the current assumptions related to scope, schedule, and budget. Additionally, it enables SANBAG to meet the requirements of bond rating agencies for the future sale of bonds and provides the basis for the preparation of SANBAG's annual budget for capital projects. The Delivery Plan is intended to be a living document that is updated at least every two years to capture revisions to projects and assumptions, actual revenue received, and actions taken by the SANBAG Board. This discussion will provide background information to inform discussion over the next several months as staff is preparing for the biennial update.

The Delivery Plan was developed within the policy framework established by the voter-approved Measure I Expenditure Plan and the Measure I 2010-2040 Strategic Plan. The analysis to develop the Delivery Plan began with obtaining a detailed definition of projects from the various Measure I programs that can be delivered within the first ten years of the Measure. The project costs, estimated in escalated dollars, were balanced against projected revenues. To obtain this

*

Approved
Commuter Rail and Transit Committee

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC		CTA	X	SAFE		CMA	

Check all that apply.

CRTC1311a-az

balance, the project costs and revenue data were entered into EcoSys, a software tool that was customized to evaluate fund management scenarios in a web-based live environment. The analysis cycle continued until a reasonable balance was reached between project costs and available revenue, while applying ordinance and policy criteria. The last step was completing a bonding analysis to accelerate project delivery in the programs specified in the Strategic Plan.

The Delivery Plan analysis determined that many of the critical projects that will bring congestion relief and improved mobility and safety can be delivered in the first ten years of the Measure I 2010-2040. Additionally, there were several policy decisions made by the Board during development of the Delivery Plan that enabled some of these projects to move forward:

- SANBAG and Valley subarea jurisdictions received almost $65 million in Proposition 1B Trade Corridors Improvement Funds (TCIF) for priority grade separations in the Measure I grade separation subprogram. To be able to meet the delivery commitments for these projects, it was determined that bonding was required, Proposition 1B funds would have to be maximized on grade separation projects, and the percentage of Valley Major Street Program funds going to the grade separation subprogram would have to be increased from the 20% identified in the Strategic Plan. As of the June 2013 California Transportation Commission meeting, all of the TCIF had been allocated and most of the construction contracts have been awarded.
- SANBAG policy states that Congestion Mitigation and Air Quality (CMAQ) funds will be prioritized in the Valley for 1) regional programs such as rideshare and signal synchronization, 2) transit capital projects, and 3) freeway High Occupancy Vehicle (HOV) projects. The Board directed staff to assign CMAQ necessary to develop the I-10 Corridor Improvement Project alternatives and to assign the balance of the CMAQ funds to the Metrolink/Rail Program to reduce bonding costs for implementing Redlands Rail and provide additional funding flexibility for unforeseen transit and Metrolink needs. This decision was made at the cost of the I-15 Express Lane alternative; however further analysis indicated that the I-15 Express Lane alternative could still be financially feasible, and that project remained in the Delivery Plan.
- The Mountain/Desert subareas identified priority projects for the Major Local Highway Program and authorized bonding to meet these project needs in the Victor Valley and North Desert subareas. The other Mountain/Desert subareas will deliver projects on a pay as you go basis.
- The Delivery Plan included two delivery scenarios for the Valley Freeway Program: 1) HOV lanes on I-10 or 2) express lanes on both I-10 and I-15.

The Delivery Plan will continue to include both scenarios until a preferred alternative is selected or an alternative is removed.

- The Delivery Plan recognized the need to commence project development work on the I-10 Truck Climbing Lane from Live Oak Road to the Riverside County Line so that SANBAG remains competitive for any goods movement funds that might become available in the future.

Revenue Forecast

The Delivery Plan assumed a combination of inflation and real growth in calculating Measure I revenue growth that ranged from a total of 3.3% in the first year up to 4.8% for the last seven years of the Delivery Plan. Staff is analyzing whether the growth rates should be adjusted to be slightly less aggressive, but because growth will be based on a higher actual to date, the total Measure anticipated over the ten year period is anticipated to be higher than was originally forecast. A comparison of the assumptions to actuals for the first three years of the Delivery Plan is shown in Table 1.

Table 1. Revenue Comparison – Forecast to Actual
Fiscal Year 2010/2011-2012/2013 ($1,000s)

Revenue Source	Forecast	Actual
Measure I		
Cajon Pass	$9,309	$10,777
Valley	$262,906	$300,493
Colorado River	$749	$591
Morongo Basin	$6,961	$6,013
Mountains	$5,311	$5,216
North Desert	$8,528	$16,052
Victor Valley	$38,101	$42,945
Total Measure I	**$331,865**	**$382,087**

State and Federal funds were assumed to remain at current funding levels. Looking forward, most assumptions from the Delivery Plan will remain valid in the Update with the exception of the revenue forecast for the Federal Transportation Enhancement funds, which is now a competitive program under the new Federal Transportation Act, and State Transportation Improvement Program (STIP) projections that were slightly lower in the latest Fund Estimate approved by the CTC than had been expected.

Bonding Analysis

Staff will be building on the bonding strategy of the Delivery Plan. The bonding analysis used the following criteria:

- Minimum agency-wide debt coverage ratio: 1.5
- Individual programs must have positive cash flow over the term of the bond
- Latest bond issuance: 2022

The Delivery Plan anticipated bonding opportunities for the following Programs:

- Cajon Pass
- Valley Freeway Program
- Valley Major Street Program (Grade Separation Subprogram)
- Valley Metrolink-Rail Program
- Victor Valley Major Local Highway Program
- North Desert Major Local Highway Program

The Cajon Pass, Valley Major Street, and Victor Valley Major Local Highway Programs were included in the 2012 bond issuance. Since adoption of the Delivery Plan, the Board has been supportive bonding for the Valley Freeway Interchange Program to advance delivery of the priority interchanges. Staff will be evaluating the need and timing for future bonding in the Delivery Plan update.

Program Status

The following tables provide a brief overview of the projects that were identified for development and the current status of the project relative to that forecast in the Delivery Plan for construction completion and for total project cost.

Cajon Pass – The Cajon Pass Program receives 3% of the revenue generated in the Valley and Victor Valley subareas. The Measure I Strategic Plan identified the I-15/I-215 (Devore) interchange project as the only project that forecast Measure I revenue in this program could fund.

Table 2. Cajon Pass Delivery Plan Project Status

Project	Schedule	Cost	Phase
Devore IC	✓	✓	Const

Valley Freeway Program – The Valley Freeway Program receives 29% of the revenue generated in the Valley subarea. The Delivery Plan analyzed the Freeway Program through 2025 because of the long duration of the projects. Additionally, two alternatives were analyzed: an HOV alternative on I-10 and an express lane alternative on I-10 and I-15. Both the I-215 Barton and I-215 Mt. Vernon/Washington interchanges are included in the Freeway Program because they were originally included in the scope of the I-215 Bi-County project.

Although the costs for the express lane alternatives have increased significantly, financial analysis presented to the Board at previous meetings has shown them to be feasible alternatives. Additionally, the Delivery Plan identified the importance of beginning project development for the eastbound I-10 Truck Climbing Lane project from Live Oak Canyon Road to the Riverside County Line.

Table 3. Valley Freeway Program Delivery Plan Project Status

Project	Schedule	Cost	Phase
I-215 Bi-County HOV	+1 yr	+ $13M	Const
I-215 Barton IC	+2 yr	+ $1M	PA/ED
I-215 Mt Vernon IC	+2 yr	+ $13M	PA/ED
SR-210 Widening	+1 yr	✓	PA/ED
I-10 HOV Alt.	+5 yr	+ $4M	PA/ED
I-10 Express Lane Alt.	+5 yr	+ $709M	PA/ED
I-15 Express Lane Alt.	+1 yr	- $14M	PSR

Valley Freeway Interchange Program – The Valley Freeway Interchange Program receives 11% of revenues generated in the Valley subarea. The Delivery Plan included three interchanges that were already under development and the top seven interchanges from the Nexus Study. The schedules were adjusted so that the projects could be delivered without need for bonding. However since that time, the Board has been supportive of plans to advance delivery of the top interchanges, which may require bonding.

Table 4. Valley Freeway Interchange Program Delivery Plan Project Status

Project	Schedule	Cost	Phase
I-10/Cherry IC	✓	+ $7M	Const
I-10/Citrus IC	✓	+ $5M	Const
I-10/Tippecanoe IC	✓	✓	Const/ROW
I-10/Cedar IC	+1 yr	+ $4M	PS&E
SR-210/Baseline IC	✓	+ $5M	PA/ED
SR-60/Central IC	-1 yr	- $22M	PA/ED
I-10/University IC	-3 yr	- $2M	PA/ED
I-215/University IC	+1 yr	+ $10M	PSR
I-10/Alabama IC*	✓	✓	PA/ED
I-15/Baseline IC	+2 yr	+ $11M	Const

* Included in I-10 Corridor PA/ED

Valley Major Streets Program – The Valley Major Streets Program receives 20% of the revenue generated in the Valley subarea. Of this, 40% is first apportioned to repayment of Project Advancement Agreements (PAA), which are

currently anticipated to be fully repaid by 2018. After this 40% set-aside for PAAs, the Strategic Plan further divided the Major Streets Program into an arterial subprogram (80%) and a grade separation subprogram (20%). The Delivery Plan included six grade separations in the grade separation subprogram and modified distribution of Major Street funds between the arterial and grade separation subprograms to front-load the grade separation subprogram so that the TCIF program could be delivered. The grade separation subprogram is not to receive funds for any projects outside of the six identified until the arterial subprogram reaches 80% of the Major Street Program apportionments. Bonding is required to deliver the grade separation subprogram, and depending on the results of contract awards for construction, additional adjustment between the subprograms may be required to fully fund the grade separations listed below. The arterial subprogram is a pay as you go, reimbursement program with project selection consistent with the Nexus Study but at the local level.

Table 5. Valley Grade Separation Subprogram Delivery Plan Project Status

Project	Schedule	Cost	Phase
North Vineyard Ave	✓	- $17M	Const
S Milliken Ave	+1 yr	- $9M	Const
N Milliken Ave	✓	+ $20M	Complete
Glen Helen Pkwy	✓	✓	Const
Palm Ave	✓	+ $1M	Const
Laurel Ave	- 1 yr	+ $9M	Const

Valley Metrolink-Rail Program – The Valley Metrolink-Rail Program receives 8% of the revenue generated in the Valley subarea. The Strategic Plan prioritized the extension of passenger rail to Redlands over the extension of the Gold Line to Montclair. The Delivery Plan identified full funding for the Metrolink extension to San Bernardino and passenger rail from San Bernardino to Redlands, preliminary engineering to define a conceptual scope of the Gold Line extension to Montclair, and funds necessary to meet ongoing transit needs. It was anticipated that bonding would be necessary for delivery of these projects. The Delivery Plan noted that the Gold Line extension would need to be developed in conjunction with the Los Angeles County portion of the Gold Line extension from Azusa to Montclair. Although the final environmental document for the Los Angeles County portion was certified in March 2013, no funding has been secured for final design or construction, which is estimated to cost $850 million and take four years to complete.

Table 6. – Valley Metrolink-Rail Program Delivery Plan Project Status

Project	Schedule	Cost	Phase
Metrolink Extension	+1 yr	+ $4M	Const
Redlands Rail	+2 yr	+ $80M	PA/ED
Gold Line Prelim Eng			N/A

Valley Express Bus-Bus Rapid Transit Program – The Valley Express Bus-BRT Program receives 2% of the revenue collected in the Valley. With Board approval, this increases to at least 5% and no more than 10% in 2020 with the Major Streets Program being reduced by a like amount. This program is administered on a pay as you go basis, and the only project that was identified in the Delivery Plan was the E Street BRT. The Board recently voted to delay development of any future corridors until Fiscal Year 2018/2019 because of the high capital cost to implement BRT service and the concern with availability of operating revenue. The full range of available service improvements, such as signal prioritization and skip stop service, will be analyzed as the Board considers the appropriate path forward.

Table 7. – Valley Express Bus-BRT Program Delivery Plan Project Status

Project	Schedule	Cost	Phase
E Street BRT	✓	✓	Const

Victor Valley Major Local Highway Program – The Victor Valley Major Local Highway Program receives 25% of the revenue generated in the Victor Valley subarea. During development of the Delivery Plan, the Victor Valley subarea representatives, Mountain/Desert Policy Committee, and SANBAG Board developed a list of priority projects identified in Table 8. It was anticipated that bonding would be required to meet the project delivery schedules.

Table 8. – Victor Valley Major Local Highway Program Delivery Plan Project Status

Project	Schedule	Cost	Phase
I-15/La Mesa Nisqualli IC	✓	+ $9M	Complete
Yucca Loma Bridge	✓	✓	Const
I-15/Ranchero IC	✓	- $12M	Const
Yates/Green Tree	+2 yr	✓	Const/PS&E
US-395 Widening	+2 yr	+ $2M	PS&E
Ranchero Rd Corridor	+2 yr	✓	Various

Rural Major Local Highway Program – The Rural Major Local Highway Program receives 25% of the revenue generated within each individual subarea. With the exception of the North Desert subarea as needed for the Lenwood grade separation project, the Rural Mountain-Desert subareas anticipate administering the Major Local Highway Program on a pay as you go basis. The subareas have developed priority projects but have not identified schedules or costs for most projects. Allocations to projects have been occurring at the request of the jurisdiction with concurrence by the subarea representatives and approval by the Mountain/Desert Policy Committee and the Board.

Table 9. North Desert Major Local Highway Program Delivery Plan Project Status

Project	Schedule	Cost	Phase
Lenwood GS	+1 yr	✓	Const

Table 10. Rural Mountain/Desert Subareas Major Local Highway Program Allocations

Subarea/Project	Allocation	Phase
Mountain		
Village L Project	$1,200,000/$1,200,000 AEA	Complete
Morongo Basin		
SR-62/Rotary Way Signal	$552,340	Complete
SR-62/Canyon to Sunrise	$300,000	Complete
National Park Dr	$200,000	Const
SR-62/Apache to Palm	$135,000	Const
SR-62/LaHonda to Dumosa	$90,000	Const
SR-62/Dumosa Signal	$471,000	Pre-Const
Colorado River		
J St Connector	$140,290	R/W

As is usually the case, projects have generally experienced delays in progress toward construction and the funding picture has not changed significantly over the past two years. Therefore, staff does not anticipate that the update to the Delivery Plan will include many new projects or new funding strategies but will instead be an update to project costs and schedules and provide the data necessary to develop the 2014 bonding strategy. To meet the data needs for the 2014 bond issuance, staff anticipates presenting draft results for the update to the Delivery Plan at the December Committee meetings and final recommendations in January for approval by the Board in February.

Financial Impact: This item does not impact the adopted SANBAG budget.

Reviewed By: This item is scheduled for review by the Board Metro Valley Study Session on November 13, 2013, and the Mountain Desert Policy Committee on November 15, 2013.

Responsible Staff: Andrea Zureick, Director of Fund Administration and Programming

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

Governments
SANBAG
Working Together

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