Governments
SANBAG
Working Together

San Bernardino Associated Governments

1170 W. 3rd Street, 2nd Floor, San Bernardino, CA 92410
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TRANSPORTATION MEASURE I

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

AGENDA
Board of Directors Meeting
December 4, 2013

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

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

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

Board of Directors

President
Bill Jahn, Council Member
City of Big Bear Lake

Vice-President
L. Dennis Michael, Mayor
City of Rancho Cucamonga

Cari Thomas, Mayor
City of Adelanto

Curt Emick, Mayor
Town of Apple Valley

Julie McIntyre, Mayor
City of Barstow

Dennis Yates, Mayor
City of Chino

Ed Graham, Vice Mayor
City of Chino Hills

Frank Navarro, Council Member
City of Colton

Michael Tahan, Council Member
City of Fontana

Walt Stanckiewitz, Mayor
City of Grand Terrace

Mike Leonard, Council Member
City of Hesperia

Larry McCallon, Mayor
City of Highland

Rhodes "Dusty" Rigsby, Mayor
City of Loma Linda

Paul Eaton, Mayor
City of Montclair

Edward Paget, Mayor
City of Needles

Alan Wapner, Council Member
City of Ontario

Pete Aguilar, Mayor
City of Redlands

Deborah Robertson, Mayor
City of Rialto

Patrick Morris, Mayor
City of San Bernardino

Jim Harris, Council Member
City of Twentynine Palms

Ray Musser, Mayor
City of Upland

Ryan McEachron, Mayor Pro Tem
City of Victorville

Dick Riddell, Council Member
City of Yucaipa

George Huntington, Council Member
Town of Yucca Valley

Robert A. Lovingood, Supervisor
County of San Bernardino

Janice Rutherford, Supervisor
County of San Bernardino

James Ramos, Supervisor
County of San Bernardino

Gary Ovitt, Supervisor
County of San Bernardino

Josie Gonzales, Supervisor
County of San Bernardino

Basem Muallem, Caltrans
Ex-Officio Member

Ray Wolfe, *Executive Director*

Eileen Teichert, *SANBAG Counsel*

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

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

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

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

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

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

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

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

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

AGENDA

Board of Directors
December 4, 2013

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

CLOSED SESSION

1. **CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION**

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

Case Name and Number
SANBAG v. World Oil Marketing Company, **San Bernardino County Superior Court Case No. CIVDS 1104963**
SANBAG v. F&C Jara, **San Bernardino County Superior Court Case No. CIVDS 1104964**
SANBAG v. RM El Torito, **San Bernardino County Superior Court Case No. CIVDS 1103202**
San Bernardino County Flood Control District v. San Bernardino Associated Governments, San Bernardino County Transportation Authority, State of California ex rel Department of Transportation, and City of Rialto. **San Diego County Superior Court Case No. 37-2009-00082535-CU-EI-CTL.**

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

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

Call to Order 10:30 a.m. by Council Member Bill Jahn

I. Pledge of Allegiance
II. Attendance
III. Announcements:
- Calendar of Events (Pg. 16)

IV. Agenda Notices/Modifications – Vicki Watson

Notes/Actions:

1. Possible Conflict of Interest Issues for the Board Meeting of December 4, 2013 Pg. 17

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

Consent Calendar

Items listed on the Consent Calendar are expected to be routine and non-controversial. These items have been discussed at SANBAG Policy Committee meetings and made available for public review as noted in the agenda. The Consent Calendar will be acted upon as a single motion. Items on the Consent Calendar may be removed for discussion by Board Member Request. Items pulled from the consent calendar will be brought up under **Agenda Item 23.**

Administrative Matters

2. Board of Directors Attendance Roster Pg. 19

3. October 2013 Procurement Report Pg. 23

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

This item was received by the General Policy Committee on November 13, 2013.

4. Measure I Revenue Pg. 29

Receive report on Measure I receipts for Measure I 2010-2040. **William Stawarski**

This item was received by the General Policy Committee on November 13, 2013.

5. 2014 Board of Directors and SANBAG Policy Committee Meeting Schedule Pg. 31

Approve the 2014 Board of Directors and Policy Committee meeting schedules. **Duane Baker**

The individual policy committee schedules were approved by the respective policy committees during the month of November.

Consent Calendar Continued....

Notes/Actions:

Administrative Matters (Cont.)

6. Amendment No. 2 to Contract No. C13052 with Meyers Nave for Legal Services – Regional GHG Reduction Plan EIR Pg. 45

Approve Amendment No. 2 to Contract No. C13052 with Meyers Nave, increasing the contract amount by $25,000 for a total of $100,000 for legal services associated with the Regional Greenhouse Gas Reduction Plan Environmental Impact Report. **Eileen Monaghan Teichert**

This item was reviewed and unanimously approved by the General Policy Committee on November 13, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and Amendment as to form.

Air Quality/Traveler

7. Amendment No. 2 to Freeway Service Patrol (FSP) Contract C11213 with Pepe's Towing Services, Inc., for additional work Pg. 51

Approve Amendment No. 2 to Contract No. C11213 with Pepe's Towing Services, Inc., for additional Freeway Service Patrol services along the 215 Bi-County HOV project, during the mid-day when Freeway Service Patrol is not typically in service, through December 31, 2014. This action will increase the contract amount by $200,800.00 for a revised not-to-exceed amount of $824,581.00. This action shall revise the original scope of work to revise the hours of operation for Beat 6, but shall not revise the original contract end date which is December 31, 2014. **Duane Baker**

This item was reviewed and unanimously recommended for approval by the General Policy Committee on November 13, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and the amendment.

Regional/Subregional Planning

8. 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) Socioeconomic Projections Data Pg. 76

Approve SANBAG assuming responsibility for San Bernardino County growth forecasts for population, housing and employment as part of the development of Southern California Association of Governments (SCAG) 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS), including coordination with local jurisdictions. **Steve Smith**

The information in this agenda item has been discussed with the SANBAG Planning and Development Technical Forum (local Planning/Community Development Directors) on October 23, 2013. This item was reviewed and unanimously recommended for approval by the General Policy Committee on November 13, 2013.

Notes/Actions:

Consent Calendar Continued....

Council of Governments

9. Proposed Final State and Federal Legislative Platforms Pg. 81

Adopt Final State and Federal Legislative Platforms. **Wendy Strack**

This item was reviewed and unanimously recommended for approval by the General Policy Committee on October 9, 2013.

10. End of Session State Legislative Report Pg. 94

Receive End of Session State Legislative Report. **Wendy Strack**

This item was reviewed by the General Policy Committee on November 13, 2013.

11. Representation on the South Coast Air Quality Management District Pg. 159

Receive and file. **Duane Baker**

This item was received by the Board Metro Valley Study Session on November 14, 2013.

Project Delivery

12. Reimbursement Agreement for the Palm Avenue Grade Separation Project Pg. 161

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

1. Approve Contract No. R14071 with Caltrans to receive $5,000,000 for project cost reimbursement from the California Public Utilities Commission (CPUC) Grade Separation Fund for Section 190 funds for the Palm Avenue Grade Separation Project.

2. Approve Amendment to the SANBAG Fiscal Year 2013/2014 Budget modifying revenue sources funding Task No. 0874 (Palm Avenue Grade Separation) adding $4 million of CPUC Section 190 Grade Separation funds and reducing $1 million of Valley Major Street Bond Funds as detailed in the Financial Impact Section below to increase the task budget to a new total of $12,129,369. **Garry Cohoe**

This item was reviewed and recommended for approval (16-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on November 14, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item.

Consent Calendar Continued....

Project Delivery (Cont.)

13. Cooperative Agreement with the Colton Unified School District for bus services during construction of the Laurel Street Grade Separation Project Pg. 180

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

1. Approve Cooperative Agreement No. C14087 with the Colton Unified School District in an estimated amount of $389,805.24 for bus services for Colton Middle School during construction of the Laurel Street Grade Separation Project.

2. Approve a contingency amount of $38,980.52 and authorize the Executive Director, or his designee, to release contingency as required for Cooperative Agreement No. C14087. **Garry Cohoe**

This item was reviewed and recommended for approval (16-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on November 14, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item.

Transit/Commuter Rail

14. On-call Transit and Rail Services Contract No. C14003 and No. C14086 Pg. 188

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 was reviewed and unanimously recommended for approval by the Commuter Rail and Transit Committee on November 14, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and the Contracts.

Notes/Actions:

Consent Calendar Continued....

Transit/Commuter Rail (Cont.)

15. County-Wide Transit Efficiency Study Scope of Work Pg. 260

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

This item was reviewed and unanimously recommended for approval by the Commuter Rail and Transit Committee on November 14, 2013. The Transit Review Ad Hoc Committee and the Transit Review Technical Advisory Committee have reviewed and accepted this Scope of Work.

16. 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. 269

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. **Mitch Alderman**

This item was reviewed and unanimously recommended for approval by the Commuter Rail and Transit Committee on November 14, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and the License Agreements.

Notes/Actions:

Consent Calendar Continued....

Transit/Commuter Rail (Cont.)

Notes/Actions:

17. Award Contract No. C14043 to Unlimited Environmental, Inc. for the Demolition, Abatement and Removal of Structures Pg. 428

That 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. **Mitch Alderman**

This item was reviewed and unanimously recommended for approval by the Commuter Rail and Transit Committee on November 14, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and the Contract.

18. 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. 459

That the Board acting in its capacity 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. **Mitch Alderman**

This item was reviewed and unanimously recommended for approval by the Commuter Rail and Transit Committee on November 14, 2013. SANBAG General Counsel has reviewed this item and the Contract.

Notes/Actions:

Consent Calendar Continued....

Transportation Fund Administration

19. Ten-Year Delivery Plan Update Pg. 477

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

This item was reviewed with a quorum of the Board present at the Board of Directors Metro Valley Study Session on November 14, 2013. This item was also reviewed by the Commuter Rail and Transit Committee on November 14, 2013 and the Mountain Desert Policy Committee on November 15, 2013.

20. State and Federal Fund Proportional Distribution Principles Pg. 486

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

Authorize SANBAG staff to develop a draft policy concerning the monitoring of State and Federal funds distribution between Subareas based on the following principles:

a. The Measure I 2010-2040 Expenditure Plan says that a proportional share of State and Federal funds shall be reserved for each subarea;

b. To monitor compliance with the Expenditure Plan, the Board must define a proportional distribution;

c. The policy should not impact the deliverability of the Expenditure Plan;

d. The policy should maximize flexibility in the funding and delivery of projects by allowing for monitoring the overall distribution of State and Federal funds rather than the distribution of each individual fund source; and

e. The policy should not impact current Board-adopted policies on the distribution of individual State and Federal fund sources, nor should it restrict the authority of the Board to adopt fund-specific distributions of future fund sources. **Andrea Zureick**

The material in this agenda item was reviewed and concurred with by the Transportation Technical Advisory Committee on September 30, 2013 and the City/County Managers Technical Advisory Committee on October 5, 2013. This item was reviewed and recommended for approval (16-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on November 14, 2013. This item was reviewed and unanimously recommended for approval by the Mountain/Desert Policy Committee on November 15, 2013.

Consent Calendar Continued....

Transportation Fund Administration (Cont.)

Notes/Actions:

21. La Mesa/Nisqualli Interchange Construction Cooperative Agreement Pg. 519

That the Board, acting as the San Bernardino Transportation Authority:

Approve Amendment No. 2 to Construction Cooperative Agreement No. C11200 with the City of Victorville for the La Mesa/Nisqualli Interchange Project. **Andrea Zureick**

This item was reviewed and unanimously recommended for approval by the Mountain/Desert Policy Committee on November 15, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and the amendment.

22. Measure I Valley Freeway Interchange Program Term Loan Agreement with the City of Colton for the Interstate 10 (I-10) Pepper Interchange Improvement Project Pg. 528

That the Board, acting in its capacity as the San Bernardino County Transportation Authority, at a regularly scheduled Board meeting:

1. Approve Contract No. C14060, a term loan agreement in an amount not to exceed $164,267, with the City of Colton for the I-10 Pepper Interchange Project.

2. Waive the five-year contract term limitation set forth in Policy 11000.

3. Approve use of Term Loan Agreement Form Dated December 4, 2013, for Measure I Local Streets Funds loans made pursuant to Measure I Strategic Plan Policy 40005/VFI-23.1. **Andrea Zureick**

This item was reviewed and recommended for approval (16-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on November 14, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item, the Term Loan Agreement and the Template.

Consent Calendar Items Pulled for Discussion

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

Notes/Actions:

DISCUSSION ITEMS

Administrative

24. Red Tape to Red Carpet Pg. 558
10 Min.

Receive a presentation from Paul Granillo, the President and CEO of the Inland Empire Economic Partnership, on a collaborative effort to support job creation and eliminate barriers to economic growth in the Inland Empire. **Duane Baker**

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

25. Overview of San Bernardino Associated Governments "Doing Business With SANBAG" Vendor Event Pg. 559
10 Min

Receive and File. **Kathleen Murphy-Perez**

This item has not received prior policy committee or technical advisory committee review. SANBAG General Counsel and Contract Administrator have approved this item as to form.

26. Announcement of Appointments and Vacancies to External Boards Pg. 561

1) Note the appointment of Council Member Frank Navarro, City of Colton, as a member of the Southern California Association of Governments (SCAG) Transportation Committee.

2) Note the following vacancies and request Board Members to express their interest in serving for the following:

- Metro Gold Line Foothill Extension Construction Authority – Alternate Member
- Metro Gold Line Phase II JPA – Alternate Member
- SCAG Energy and Environment Committee. **Duane Baker**

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

Project Delivery

27. Award Construction Contract No. C13149 for Lenwood Road Grade Separation Project Pg. 563

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

1. Award Construction Contract No. C13149 to the lowest responsive and responsible bidder for the Lenwood Road Grade Separation Project for an amount to be determined after bids are opened on November 13, 2013.

2. Approve Allowances/Contingency for Contract No. C13149 on the Lenwood Road Grade Separation Project in the amount to be determined after bids are opened on November 13, 2013. **Garry Cohoe**

At the April 2013, Board meeting, approval was given to take award of Contract No. C13149 directly to the Board without prior Committee review. SANBAG General Counsel and Contract Administrator have reviewed this item.

Notes/Actions:

Discussion Items Continued

Transit/Commuter Rail

28. Award Construction Contract No. C14002 for the San Bernardino Transit Center Pg. 565

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

1. Award Construction Contract No. C14002 to the lowest responsive and responsible bidder for the San Bernardino Transit Center for an amount to be determined after bids are opened on December 2, 2013.

2. Approve Allowances/Contingency for Contract No. C14002 on the San Bernardino Transit Center in the amount to be determined after bids are opened on December 2, 2013. **Mitch Alderman**

This item has not received prior policy committee or technical advisory committee review. SANBAG General Counsel and Contract Administrator have reviewed this item.

29. Award Contract No. C14072 for the Demolition, Abatement and Removal of Commercial and Residential Structures Pg. 567

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

1. Award Contract No. C14072 to the lowest responsive and responsible bidder for an amount to be determined after bids are opened on November 20, 2013, for the demolition, abatement and removal of commercial and residential structures located in the City of San Bernardino.

2. Approve Allowances/Contingency for Contract No. C14072 for a not-to-exceed amount to be determined after bids are opened and authorize the Executive Director, or his designee to release contingency as necessary for completion of the project. **Mitch Alderman**

This item has not received prior committee or technical advisory committee review. SANBAG General Counsel and Contract Administrator will review and approve the contract prior to contract execution.

Notes/Actions:

Discussion Items Continued

Transit/Commuter Rail (Cont.)

30. Award Contract No. C14001 for the Construction of the Downtown San Bernardino Passenger Rail Project Pg. 569

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

1. Award Construction Contract No. C14001 to the lowest responsive and responsible bidder for the Downtown San Bernardino Passenger Rail Project for an amount to be determined after bids are opened on November 26, 2013.

2. Approve Allowances/Contingency for Contract No. C14001 on the Downtown San Bernardino Passenger Rail Project in the amount to be determined after bids are opened on November 26, 2013. **Mitch Alderman**

This item has not received prior policy committee or technical advisory committee review. SANBAG General Counsel and Contract Administrator have reviewed this item.

31. San Bernardino Transit Center Federal Funding Subgrantee Agreement Pg. 571

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

1. Approve Contract No. R14070, "San Bernardino Transit Center Federal Funding Subgrantee Agreement" between Omnitrans and the San Bernardino Associated Governments, acting in the capacity of the San Bernardino County Transportation Commission, providing for Omnitrans' contribution to reimburse SANBAG for costs of the project, in an amount not to exceed $19,769,690 (which includes $6,943,261 previously committed by Omnitrans in Contract C12117) and, providing for SANBAG to contribute an amount not exceed $3,747,593 to the project.

2. Approve a budget amendment for Task No. 0311 Transit Capital in Transit Center Project fund in the amount of $2,590,336 for a new fund total of $13,150,482; and

3. Approve an administrative budget amendment to the Transit Center Project fund should it be required for tracking purposes. The administrative amendment will not increase the overall budget total of $13,150,482, but will solely reclassify the names of the funds within the budget. **Mitch Alderman**

This item has not received prior policy committee or technical advisory committee review. SANBAG General Counsel and Contract Administrator have reviewed this item.

Notes/Actions:

Comments from Board Members

Brief Comments from Board of Directors

Executive Director's Comments

Brief Comments from the Executive Director

Public Comment

Brief Comments by the General Public

ADJOURNMENT

Additional Information

Agency Reports/Committee Memberships
South Coast Air Quality Management Report — Pg. 605
Mayor Dennis Yates
Mobile Source Air Pollution Reduction Review Committee — Pg. 606
Mayor Larry McCallon
SCAG Committees — Pg. 609
SCAG Regional Council
SCAG Policy Committees
Community, Economic and Human Development
Energy and Environment
Transportation and Communications
SANBAG Policy Committees — Pg. 610
Acronym List — Pg. 616

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

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

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

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

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

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

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

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

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

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

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

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

Basic Agenda Item Discussion.

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

The Vote as specified in the SANBAG Bylaws.

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

Amendment or Substitute Motion.

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

Call for the Question.

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

The Chair.

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

Courtesy and Decorum.

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

Adopted By SANBAG Board of Directors January 2008

Important Dates to Remember...

December 2013

SANBAG Meetings – Cancelled: None

SANBAG Meetings – Scheduled:			
General Policy Committee	Dec. 11	9:00 am	The Super Chief
Metro Valley Board Study Session	Dec. 12	9:00 am	First Floor Lobby
Commuter Rail/ Transit Committee	Dec. 12	10:00 am	The Super Chief
Mountain/Desert Committee	Dec. 13	9:30 am	Town of Apple Valley

Other Meetings/Events:			
I-215/Barton Road Interchange Project Public Hearing regarding the Environmental Document	Dec. 12	5:00-8:00 pm	Grand Terrace Civic Center Community Room, 22795 Barton Rd.

SANBAG Offices will be CLOSED:

- **Monday, December 23, 2013, through Wednesday, January 1, 2014.**

  The office will reopen on Thursday, January 2, 2014.

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

CalenDec2013- jd

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 1

Date: December 4, 2013

Subject: Information Relative to Possible Conflict of Interest

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

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

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

POTENTIAL CONFLICTS OF INTEREST
WORLD OIL MARKETING COMPANY, a California corporation (Officers/Directors: Bernard B. Roth; Toshiko G. Chan; Robert S. Roth; Florence Roth; Richard N. Roth; Steven F. Roth)
F & C JARA PROPERTIES FOURTH LIMITED PARTNERSHIP, a California limited partnership; THE JARA MEXICAN FOOD, INC., a Nevada corporation, dba PANCHO VILLA'S RESTAURANT MEXICAN GRILL (Officers/Directors: Francisco J. Jara; Carmen Y. Jara)
EL TORITO RESTAURANTS, INC., a California corporation (Officers/Directors: Richard Edwin Rivera; Madelaine Louise Morrow; Richard Paul Dutkiewicz)
County of San Bernardino, San Bernardino County Flood Control District, City of Rialto, Caltrans

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG	X	CTC	X	CTA	X	SAFE	X	CMA	X

Check all that apply
BRD1312z-aa

Consent/Discussion Calendar Items

Item No.	Contract No.	Principals & Agents	Subcontractors
6	C13052	Meyers Nave	N/A
7	C11213	Pepe's Towing Service, Inc. *Manuel Acosta*	N/A
14	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.
14	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
16	C14043	Unlimited Environmental, Inc. *Jill Dupleich*	None
18	R14085	Charter Communications *Beth Thompson*	None

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

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

BRD1312z-aa

BOARD OF DIRECTORS ATTENDANCE RECORD – 2013

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

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

BOARD OF DIRECTORS ATTENDANCE RECORD – 2013

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

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

BOARD OF DIRECTORS ATTENDANCE RECORD – 2012

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Gary Ovitt Board of Supervisors	X	X	X	X	X	X	X	X	X	X	X	
Brad Mitzelfelt Board of Supervisors	X	X		X	X		X	X			X	
James Ramos Board of Supervisors												X
Janice Rutherford Board of Supervisors	X	X	X	X	X	X	X	X	X	X	X	X
Josie Gonzales Board of Supervisors	X	X		X	X	X	X	X		X		X
Neil Derry Board of Supervisors	Self-Suspension as of 5/3/2011	X	X	X	X		X					
Robert A. Lovingood Board of Supervisors												X
Cari Thomas City of Adelanto	X	X	X	X	X	X	X	X	X	X	X	X
Rick Roelle Town of Apple Valley	*	X	X / *	X	X		X	X	X	X	*	*
Julie McIntyre City of Barstow	X	X	X		X		X	X	X	X	X	X
Bill Jahn City of Big Bear Lake	X	X	X	X	X			X		X		X
Dennis Yates City of Chino	X	X	X	X	X	X	X	X	X	X		X
Ed Graham City of Chino Hills	X	X	X	X	X	X	X	X	X	X	X	X
Sarah Zamora City of Colton	X	*	X	X	X	X	X	X	X	X	*	X
Michael Tahan City of Fontana	X	X		X	X	X		X	X	X	X	X
Walt Stanckiewitz City of Grand Terrace	X	X	X	X	X	X			X	X	X	X
Mike Leonard City of Hesperia	X	X	X	X	X	X	X	X		X	X	X

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

BOARD OF DIRECTORS ATTENDANCE RECORD – 2012

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

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

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 3

Date: December 4, 2013

Subject: October 2013 Procurement Report

Recommendation:* Receive October 2013 Procurement Report

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

On July 11, 2012, the Board of Directors authorized SANBAG's General Counsel to award and execute legal services contracts up to $50,000 with outside counsel

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG	X	CTC	X	CTA	X	SAFE	X	CMA	X

Check all that apply.
BRD1312a-wws
Attachments:
http://portal.sanbag.ca.gov/mgmt/committee/directors/brd2013/brd1312/AgendaItems/BRD1312a1-wws.docx
http://portal.sanbag.ca.gov/mgmt/committee/directors/brd2013/brd1312/AgendaItems/BRD1312a2-wws.docx

as needed on behalf of SANBAG and its authorities organized under the umbrella of the Council of Governments. Also, periodically notify the Board after exercising such authority.

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

Financial Impact: This item imposes no impact on the Fiscal Year 2013/2014 budget. Presentation of the monthly procurement report demonstrates compliance with the Contracting and Procurement Policy (Policy No. 11000).

Reviewed By: This item was received by the General Policy Committee on November 13, 2013.

Responsible Staff: William Stawarski, Chief Financial Officer

Attachment A

October Contract/Purchase Order Actions

Contracts Executed:

Contract No.	Description of Specific Services	Vendor Name	Dollar Amount	Description of Overall Program
C14042	Master Agreement with Caltrans for State-funded Transit Projects	Caltrans	$0.00	Caltrans includes basic provisions to ensure state and federal laws and regulations are met for state-funded projects. SANBAG accepts funding for projects through Program Supplements to the Master Agreement; however, no funds are obligated by the execution of this agreement alone.
C14067	For mid-day construction FSP service along the Bi-County 215 project from 09/23/2013 – 12/04/2013.	Pepe's Towing Services, Inc.	$35,800.00	Freeway Service Patrol for a specified location.
R14056	Program Supplement	Caltrans	$4,803,839.50*	Program Supplement Agreement for Palm Ave Grade Separation.

*The Executive Director was authorized to execute Program Supplements associated with the Master Agreement between Caltrans and SANBAG on March 7, 2007. There are no dollar limits associated to the Executive Director's authorization for these Program Supplements.

Attachment A

October Contract Amendment Actions

Contract Amendments Executed:

Contract No. & Amendment No.	Reason for Amendment (include a description of the amendment	Vendor Name	Amended Contract Total	Dollar Amount of Amendment
C06058 Amendment 3	This amendment extends the completion date; there is no change in amount.	Caltrans	$25,410,595.00	$0.00
C12027 Amendment 1	Amend the Scope of Work to allow for purchase of traffic signal communication equipment, there is no change in amount.	Advantec Consulting Engineers	$799,331.00	$0.00
C13126 Amendment 1	Amended the square footage of the lease space, there is no change in amount.	SCAG	$101,232.00	$0.00

Attachment A
October 7 - October 11, 2013 Contract/Purchase Order Actions

Purchase Orders:

PO No.	PO Issue Date	Vendor Name	Description of Services	Dollar Amount
4001073	10/07/2013	WTS-Inland Empire	WTS will assist SANBAG in the planning, organizing, and hosting of its 4th annual General Assembly for 06/19/14.	$20,000.00
4001074	10/11/2013	Sigmanet, Inc.	Sigmanet, SANBAG's information technology contractor, has recommended workstation and monitor models and their prices are competitive as compared to other vendors. Purchase price includes 15 HP desktop computers, 26 HP LED LCD monitors, two back-up units, shipping, and sales tax.	$16,266.30
4001075	10/11/2013	Verizon Wireless Billing	Tiers 3 and 4 of the Traffic Signal Synchronization project were designed to utilize cellular modems to provide communication from traffic signal controllers to various cities central traffic management system. After construction was completed in January 2012, the service was to be transferred to various cities, but it did not occur. If service is interrupted, it would create extra work to reestablish communication and the signal systems would lose coordination. Since it is in the best interest of the local agencies, general public, and SANBAG, the cost of unpaid billings and future bills will be paid using old MSI funds until all transfers have been completed.	$10,000.00
**Note: Sole Source justification is noted in the Purpose statement, if applicable.*			**Total**	**$46,266.30**

Attachment B
October RFPs and IFBs

Release of RFP's and IFB's

Release Date	RFP/IFB No.	Description of Services	Anticipated Dollar Amount	Anticipated Award Date	Description of Overall Program and Program Budget
				Total	**$0.00**

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 4

Date: December 4, 2013

Subject: Measure I Revenue

Recommendation:* Receive report on Measure I receipts for Measure I 2010-2040.

Background: Sales tax revenue collections for Measure I 2010 through 2040 began on April 1, 2010. Cumulative total receipts for Fiscal Year 2013/2014 as of September 30, 2013 were $35,430,012.

Included is a summary of the current Measure I receipts by quarter and cumulative total since its inception. The quarterly receipts represent sales tax collection from the previous quarter taxable sales. For example, receipts for July through September represent sales tax collections from April through June.

Measure I revenue for the 2013/2014 Fiscal Year budget was estimated to be $139,400,000. Actual Measure I receipts for Fiscal Year 2013/2014 July through September are $35,430,012, in comparison to $34,279,449 received during the quarter ending September 2012/2013, with an increase of 3.36%.

Financial Impact: Measure I revenues exceed both the budgeted amount and prior years collections.

Reviewed By: This item was received by the General Policy Committee on November 13, 2013.

Responsible Staff: William Stawarski, Chief Financial Officer

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	X

Check all that apply.

BRD1312b-wws

ATTACHMENT A

Summary of SANBAG Measure I Receipts 2010-2040

Fiscal Year	July-September	October-December	January-March	April- June	Fiscal Year Total	Cumulative Total To Date
Receipts Prior to FY 2010/11						**$7,158,800**
Fiscal Year 2010/11	28,188,907	29,207,950	28,808,766	29,397,456	115,603,079	**$122,761,879**
Fiscal Year 2011/12	31,027,319	33,547,956	32,757,419	33,476,051	130,808,745	**$253,570,624**
Fiscal Year 2012/13	34,279,449	35,076,980	34,675,280	34,309,171	138,340,881	**$391,911,504**
Fiscal Year 2013/14	35,430,012				35,430,012	**$427,341,516**
% Increase Over 12/13	3.36%					

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 5

Date: December 4, 2013

Subject: 2014 Board of Directors and SANBAG Policy Committee Meeting Schedule

Recommendation:* Approve the 2014 Board of Directors and Policy Committee meeting schedules.

Background: The proposed Board of Directors 2014 meeting schedule conforms to the Board adopted regular meeting date of the first Wednesday of each month, beginning at 10:00 a.m. with the exception of the January meeting date. The proposed calendar requests approval to move the January Board meeting to January 8, the second Wednesday, due to the New Year's Day Holiday. The Commuter Rail and Transit Committee has recommended a change to their meeting schedule. The Committee is proposing to meet on the 2nd Thursday of each month at 10:00 a.m. immediately following the Metro Valley Study Session. All other SANBAG policy committees and Metro Valley Study Session have established regular meeting dates. However, as noted in the attached Master Calendar there are some exceptions due to conflicts with other meetings or events. The regular meeting dates and times are listed below (all meetings are at the SANBAG offices unless otherwise noted):

- General Policy Committee - 2nd Wednesday of each month at 9:00 a.m.
- Metro Valley Study Session – 2nd Thursday of each month following the SANBAG Board meeting at 9:00 a.m.
- Commuter Rail & Transit Committee - 2rd Thursday every month at 10:00 a.m. following the Metro Valley Study Session. (Proposed)
- Mountain/Desert Committee – 3rd Friday of each month at 9:30 a.m. in Apple Valley

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG	X	CTC	X	CTA	X	SAFE	X	CMA	X

Check all that apply.

BRD1213A-VW

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

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 SANBAG Board 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 2014 meeting schedule is attached and was approved by each policy committee Please note as stated earlier in this item that the Board meeting for January 1, 2013 has been moved to January 8, 2014 due to the New Year's Day Holiday, and as approved by the Board last year we will not schedule policy committees in July. As a result we will not schedule an August Board meeting unless absolutely critical.

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 2014 Board of Directors schedules are as follows:

Board of Directors
January 8, 2014 – (adjusted)
February 5, 2014
March 5, 2014
April 2, 2014
May 7, 2014
June 4, 2014
July 2, 2014
August 6, 2014 – NO MEETING
September 3, 2014
October 1, 2014
November 5, 2014
December 3, 2014

Financial Impact: Approval of the regular meeting schedule has no impact upon the SANBAG budget. Activities to support the Board of Directors and committee meetings are in the approved SANBAG budget.

Reviewed By: The individual policy committee schedules were approved by the respective policy committees during the month of November.

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

BRD1312A-VW

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	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 Commuter Rail/Transit Committee (Proposed Date)	14	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** **Commuter Rail/Transit Committee (Proposed Date)**	14	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** **Commuter Rail/Transit Committee (Proposed Date)**	11	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	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 Commuter Rail/Transit Committee (Proposed Date)	13	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)** **Commuter Rail/Transit Committee (DARK)**	11 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	9
10	11	12	13 General Policy Committee	14 Metro Valley Study Session Commuter Rail/Transit Committee (Proposed Date)	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** **Commuter Rail/Transit Committee (Proposed Date)**	12	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** **Commuter Rail/Transit Committee (Proposed Date)** Sukkot Jewish HOLIDAY (10/9-10/15)	10	11
12 APTA Annual Meeting	13 APTA Annual Meeting Columbus Day HOLIDAY	14 APTA Annual Meeting	15 APTA Annual Meeting	16 ~~**Commuter 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 Date)**	14 **Mt/Desert Committee (Proposed)**	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 Date)	12 Mt/Desert Committee (Proposed)	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: 6

Date: December 4, 2013

Subject: Amendment No. 2 to Contract No. C13052 with Meyers Nave for Legal Services – Regional GHG Reduction Plan EIR

Recommendation:* Approve Amendment No. 2 to Contract No. C13052 with Meyers Nave, increasing the contract amount by $25,000 for a total of $100,000 for legal services associated with the Regional Greenhouse Gas Reduction Plan Environmental Impact Report.

Background: In 2006, the California legislature passed Assembly Bill (AB) 32. The law establishes a limit on Greenhouse Gas (GHG) emissions for the State of California to reduce statewide emissions to 1990 levels by 2020. The law directed the California Air Resources Board (CARB) to develop a plan (AB 32 Scoping Plan) that charts a path towards the GHG reduction goal using all technologically feasible and cost effective means. The AB 32 Scoping Plan recommends that California cities and counties seek to reduce their GHG emissions consistent with statewide reductions. Senate Bill (SB) 375, passed in 2008, requires regional transportation planning to promote reductions in passenger and light duty vehicle GHG emissions.

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG	X	CTC		CTA		SAFE		CMA	

Check all that apply.

BRD1312a-emt
http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C13052-02.docx

In response to these initiatives, twenty-one of SANBAG's member cities entered into contracts with SANBAG that provide for SANBAG to lead a cooperative effort in preparing a Regional Greenhouse Gas Reduction Plan that compiles an inventory of GHG emissions and evaluates GHG reduction measures that could be adopted by the 21 Partnership cities within San Bernardino County. The 21 cities participating in this project are Adelanto, Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Grand Terrace, Hesperia, Highland, Loma Linda, Montclair, Needles, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Twentynine Palms, Victorville, Yucaipa, and Yucca Valley.

SANBAG serves as the Lead Agency under the California Environmental Quality Act (CEQA) and has prepared a Draft Environmental Impact Report analyzing environmental impacts of the Regional Greenhouse Gas Reduction Plan. Under General Counsel's contracting authority, SANBAG entered into a legal services agreement C13052 in the amount of $50,000 with the Meyers Nave law firm to provide CEQA advice and counsel. Legal review of the administrative draft Environmental Impact Report (EIR) by Meyers Nave has been proceeding over the last several months and is being coordinated with Atkins North America and participating cities desiring to have review by their own CEQA counsel.

At the October 2, 2013 Board meeting, the Board approved a budget amendment for the Regional GHG Reduction Plan project. That budget amendment item discussed the need to amend Contract C13052 with Meyers Nave. Since that date, SANBAG entered into a first amendment to C13052 increasing the contract amount by $25,000, consistent with the Executive Director's contract amendment authority. However, due to the volume of CEQA legal services SANBAG anticipates it will need through the date the Board considers approval of the Regional GHG Reduction Plan and certification of the EIR, an additional increase in the contract amount is necessary. This second amendment will increase the contract amount by another $25,000 up to a maximum of $100,000, an amount expected to be sufficient to provide these legal services.

The contract amendment is being requested for the following reasons:

- Meyers Nave needs to continue providing legal services through adoption of the Plan and certification of the EIR. SANBAG General Counsel and Meyers Nave have attempted to make the legal review as efficient and cost-effective as possible.

- The legal review has proven to be more complex because of both the number of cities involved and the unique nature of SANBAG's role as CEQA lead agency and the cities' roles as responsible agencies. This programmatic approach, with SANBAG as lead agency, has been

viewed to be logical from the beginning and consistent with CEQA guidelines, but it is the first time that this regional approach has been used for a greenhouse gas reduction plan in the State of California.

- Additional legal review may be required for responses to comments and review of any modifications to the EIR. The extent of the comments and the effort required to respond to them cannot be known until the completion of the 60-day review period.

General Counsel recommends approval of Amendment No. 2 to Meyers Nave Contract No. C13052, and the Director of Planning (lead for the Regional GHG Reduction Plan) concurs.

Financial Impact: This item is consistent with the approved SANBAG Fiscal Year 2013/2014 budget-Task No. 0495, Greenhouse Gas.

Reviewed By: This item was reviewed and unanimously approved by the General Policy Committee on November 13, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and Amendment as to form.

Responsible Staff: Eileen Monaghan Teichert, General Counsel

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. C 13052 Amendment No. 02

By and Between

SANBAG and Meyers Nave

Contract Description Legal Services – Regional GHG Reduction Plan (Plan) & EIR

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

Overview of BOD Action: Approve Amendment No. 2 increasing contract amount by $25,000 up to $100,000 for legal services through Board approval of Plan and certification of EIR.

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

CONTRACT OVERVIEW

Original Contract Amount	$	50,000	**Original Contingency Amount**	$	0
Revised Contract Amount *Inclusive of prior amendments*	$	75,000	**Revised Contingency Amount** *Inclusive of prior amendments*	$	0
Current Amendment Amount	$	25,000	**Contingency Amendment**	$	0
TOTAL CONTRACT VALUE	$	100,000	**TOTAL CONTINGENCY VALUE**	$	0
TOTAL BUDGET AUTHORITY *(contract value + contingency)*				$	100,000

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
December 10, 2012	December 31, 2014	

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

FINANCIAL INFORMATION

x☒ Budget authority for this contract currently exists in Task No. 0495.

☐ 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:*

MSI TMEE

☒ Payable ☐ Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

☐ Retention? If yes, indicate % _____.

☐ Disadvantaged Business Enterprise (DBE) Goal _____ %

Eileen Monaghan Teichert Project Manager (Print Name)	Signature	10/31/13 Date
Steven Smith Task Manager (Print Name)	Signature	10/31/13 Date
Andrea Zureick Dir. of Fund Admin. & Programming (Print Name)	Signature	10/31/13 Date
Jeffery Hill Contract Administrator (Print Name)	Signature	10/31/13 Date
William Stawarski Chief Financial Officer (Print Name)	Signature	10/31/13 Date

AMENDMENT NO. 2 TO

CONTRACT NO. C13052

BY AND BETWEEN

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

MEYERS NAVE

(LEGAL SERVICES—REGIONAL GHG PLAN & EIR)

This AMENDMENT No. 2 to Contract No. C13052 is made by and between the San Bernardino Associated Governments ("SANBAG"), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715, and Meyers Nave ("ATTORNEY"), whose address is 633 W. 5th Street, Suite 1700, Los Angeles, CA 90071. SANBAG and ATTORNEY are each a "Party" and collectively the "Parties" herein.

RECITALS:

WHEREAS, SANBAG and ATTORNEY are parties to Contract No. C13052 ("Contract"), setting forth the terms and conditions for ATTORNEY's provision of legal services associated with SANBAG's preparation of an Environmental Impact Report ("EIR") for a Regional Greenhouse Gas Inventory and Reduction Plan; and

WHEREAS, the parties amended the Contract November 6, 2013 ("Amendment No. 1"), increasing the Contract amount to $75,000; and

WHEREAS, ATTORNEY has provided SANBAG with significant legal services during the preparation of the draft EIR that is currently being circulated for public comment; and

WHEREAS, the Parties recognize that many additional hours of legal services are required associated with responding to public comments about the draft EIR and with the Board's adoption of the final EIR; and

WHEREAS, the Parties desire to further amend the Contract to increase the Contract amount up to $100,000 due to the need for such further legal services by ATTORNEY.

NOW, THEREFORE, the Parties agree to amend the Contract as follows:

1. The first sentence of Subsection 3.2 is deleted and replaced with the following:
   "The total Not-To-Exceed Amount is One Hundred Thousand Dollars ($100,000) for Services to be provided under this Contract."

2. Except as amended by this AMENDMENT No. 2, all other terms and conditions of the Contract shall remain in full force and effect.

3. The Contract, Amendment No. 1 and the Recitals are incorporated into this AMENDMENT No. 2.

4. The Effective Date of this AMENDMENT No. 2 is the date it is approved and signed by SANBAG.

IN WITNESS WHEREOF, this Amendment No. 2 is executed by the Parties below.

SAN BERNARDINO ASSOCIATED GOVERNMENTS

By: _____
W.E. Jahn
Board President

Date: _____

MEYERS NAVE

By: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Eileen Monaghan Teichert
General Counsel

Date: _____

CONCURRENCE:

By: _____
Jeffery Hill

Date: _____

Governments SANBAG Working Together

San Bernardino Associated Governments

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 7

Date: December 4, 2013

Subject: Amendment No. 2 to Freeway Service Patrol (FSP) Contract C11213 with Pepe's Towing Services, Inc., for additional work.

Recommendation:* Approve Amendment No. 2 to Contract No. C11213 with Pepe's Towing Services, Inc., for additional Freeway Service Patrol services along the Interstate 215 Bi-County HOV project, during the mid-day when Freeway Service Patrol is not typically in service, through December 31, 2014. This action will increase the contract amount by $200,800.00 for a revised not-to-exceed amount of $824,581.00. This action shall revise the original scope of work to revise the hours of operation for Beat 6, but shall not revise the original contract end date which is December 31, 2014.

Background: In August of 2013, it was determined through various sources that the congestion levels through this project area were extremely high during the mid-day hours when Freeway Service Patrol (FSP) was not providing service. Stalled cars and accidents create hours of back-up as well as unsafe zones for those whom are stranded. It was decided to avoid secondary incidents and unsafe conditions, the FSP would patrol the entire stretch of this project during the mid-day hours. Currently, FSP operates on this stretch of highway from 5:30 a.m. to 8:30 a.m. and then in the afternoon from 3:00 p.m. to 7:00 p.m. Monday through Friday. This item action shall allow for FSP to continue patrolling this busy project area Monday through Friday from 5:30 a.m. through 7:00 p.m. with no service interruption. The FSP tow operators shall continue to be supervised by the

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA		SAFE	X	CMA	X

Check all that apply.

BRD1312a-jh

http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C11213_02.doc

California Highway Patrol FSP Officers. Pepe's Towing currently operates Beat 6 which is the project area. Typically, construction FSP work is given to the tow operator that has the Beat within closest proximity to the work area. Pepe's operates three FSP Beats and has provided excellent service to the FSP Program throughout the past six years as they have assisted stranded motorists quickly, professionally and safely. In addition to their excellent service, they are performing well within their contract budgets.

It is anticipated that patrolling of FSP through this construction area during the mid-day shall assist in providing relief of congestion. It will also minimize the amount of time a motorist is stranded in an area with no shoulders or call boxes for assistance. Thus, creating less back-up, less accidents, and more movement through the Inland Empire. Staff recommends that the Board approve Amendment No. 2 to Contract C11213 with Pepe's Towing Services, Inc., for additional work to cover FSP services during the mid-day along the Interstate 215 Bi-County HOV project through December 31, 2014.

Financial Impact: This item is consistent with the adopted Fiscal Year (FY) 2013/2014 budget for task 0839, totaling $100,800. This action will increase the contract amount by $200,800 for a revised not-to-exceed amount of $824,581.00, this includes the original contract amount budgeted for task 0704 in the amount of $623,781. The source of funds is from MSI-Valley Freeway Projects fund.

Reviewed By: This item was reviewed and unanimously recommended for approval by the General Policy Committee on November 13, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and the amendment.

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

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. C 11213 Amendment No. 2

By and Between

San Bernardino Associated Governments and Pepe's Towing Service, Inc.

Contract Description Mid-Day FSP Services along the Bi-County HOV Project

Board of Director's Meeting Date: 12/4/13

Overview of BOD Action: Approve Amendment 2 to C11213 for Mid-Day FSP Services along the Bi-County HOV Project and increase contract amount by $200,800.

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

CONTRACT OVERVIEW

Original Contract Amount	$	560,252	**Original Contingency Amount**	$	
Revised Contract Amount *Inclusive of prior amendments*	$	623,781	**Revised Contingency Amount** *Inclusive of prior amendments*	$	
Current Amendment Amount	$	200,800	**Contingency Amendment**	$	
TOTAL CONTRACT VALUE	$	824,581	**TOTAL CONTINGENCY VALUE**	$	0
TOTAL BUDGET AUTHORITY *(contract value + contingency)*				$	824,581

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
1/2/2012	12/31/2014	

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

FINANCIAL INFORMATION

☒ Budget authority for this contract currently exists in Task No. 0839.

☐ A Budget Amendment is required.

How are we funding current FY? Measure I Valley Freeway Projects

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

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

The amendment increase of $200,800 shall be paid for by MSI Valley Freeway Projects Fund.

☒ Payable ☐ Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

☐ Retention? If yes, indicate % _____.

☐ Disadvantaged Business Enterprise (DBE) Goal _____ %

PAUL MELOCOTON JENNY HERRERA Project Manager (Print Name)	[signature] Signature	11/18/13 10/31/13 Date
DUANE BAKER Task Manager (Print Name)	[signature] Signature	10-31-13 Date
Andrea Wrecik Dir. of Fund Admin. & Programming (Print Name)	[signature] Signature	10/31/13 Date
Jeffery Hill Contract Administrator (Print Name)	[signature] Signature	11/18/13 Date
W S Hawksley Chief Financial Officer (Print Name)	[signature] Signature	11/21/13 Date

Amendment No. 2 to Contract No. 11213

By and Between

SAN BERNARDINO ASSOCIATED GOVERNMENTS

And

PEPE'S TOWING SERVICES, INC.

For

FREEWAY SERVICE PATROL MID-DAY CONSTRUCTION AREA SERVICE FOR BEAT #6 WITHIN SAN BERNARDINO COUNTY

This Amendment No. 2 ("Amendment") to Contract for Freeway Service Patrol for Beat #6 is made and entered into on the Effective Date by and between San Bernardino Associated Governments, acting in its capacity as the San Bernardino County Transportation Commission ("SANBAG") and Pepe's Towing Services, Inc. ("Contractor").

A. SANBAG and CONTRACTOR are parties to Contract No. C11213 effective March 2012 (the "Contract"), wherein SANBAG engaged CONTRACTOR to provide freeway service patrol ("FSP") services along Beat #6 within San Bernardino County ("SERVICES"); and

B. Contract grants SANBAG two one-year options to extend the term of the Contract at the same rate of compensation as provided for under the original Contract term; and

C. SANBAG and CONTRACTOR desire to amend the Contract to reflect SANBAG's exercise of its rights under Article 4.10 to require extra work be performed by the CONTRACTOR. This action shall allow CONTRACTOR to patrol along Beat #6 during the mid-day shift (8:30 a.m. – 3:00 p.m.) in the Interstate 215 Bi-County HOV project zone, which is outside of FSP hours as detailed in the revised Scope of Work.

NOW THEREFORE, SANBAG and CONTRACTOR agree to amend the Contract as follows:

1. ARTICLE 3: SECTION 3.2 Price. The first sentence of the first paragraph is deleted and amended to read as follows:

   "The total Not-To-Exceed or (Firm Fixed) amount is Eight Hundred Twenty-Four Thousand, Five Hundred and Eighty-One Dollars and no cents. ($824,581.00)."

2. Delete Exhibit A "Scope of Work" to the original Contract and replace it with the Exhibit A attached to and incorporated into this Amendment.

3. Delete Exhibit B "Compensation and Payment" to the original Contract and replace it with Exhibit B attached to and incorporated into this Amendment.

4. The Contract is incorporated into this Amendment.

5. Except as amended by this Amendment, all other provisions of the Contract shall remain in full force and effect.

6. The Recitals above are true and correct and are incorporated into and made a part of this Amendment.

7. Amendment No. 2 is effective on the date executed by SANBAG.

IN WITNESS WHEREOF, the authorized parties have below signed and executed this Amendment to the Contract, and shall be effective on the date set forth above.

PEPE'S TOWING SERVICES, INC.

By: _____
Manuel Acosta
President

Date: _____

SAN BERNARDINO ASSOCIATED GOVERNMENTS

By: _____
W.E. Jahn
SANBAG President

Date: _____

APPROVED AS TO FORM:

By: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE:

By: _____
Jeffery Hill
Contract Administrator

EXHIBIT A
"SCOPE OF SERVICES"

1.0 Scope of Services:

San Bernardino Associated Governments (hereinafter referred to as Commission), is issuing this RFP to provide for the rapid removal of disabled vehicles and those involved in minor accidents from the freeway. Where conditions permit, safe removal of small debris will be required. Contractor tow trucks shall be exclusively dedicated to the service during the hours of operation. All tow truck maintenance activities shall be conducted during non-service hours.

The Contractor's FSP Tow Truck Drivers shall assist motorists involved in minor accidents and those with disabled vehicles. They shall be responsible for clearing the freeway of automobiles, small trucks and small debris. When and where conditions warrant, service may be executed on the freeway shoulders. Where conditions do not warrant, FSP Tow Truck Drivers will remove the vehicles from the freeway to provide service. The FSP Tow Truck Drivers shall continuously patrol their assigned Beat, respond to CHP dispatched calls for service, and use the designated turnaround locations and use the CHP designated drop locations.

FSP Tow Truck Drivers may be required to change flat tires, provide "jump" starts, provide one gallon of gasoline or diesel fuel, temporarily tape cooling system hoses and refill radiators. FSP Tow Truck Drivers may spend a maximum of ten (10) minutes per disablement in attempting to mobilize a vehicle.

All FSP services shall be provided at no cost to the motorist. FSP Tow Truck Drivers shall not accept gratuities, perform secondary towing services, recommend secondary tows, or recommend repair/body shop businesses. The scope of services in this RFP is derived from the Standard Operating Procedures Manual (SOP), which is issued by the California Highway Patrol (CHP). The CHP is responsible for the day-to-day supervision of the program, therefore all policies and procedures are outlined in the SOP manual. To promote a safe work environment and to maintain a level of professionalism, the Contractor and their FSP Tow Truck Drivers must follow the SOP manual as this document and all updates will be incorporated into the Contractor's agreement. Please note that the SOP is updated as needed, and that the Contractor is responsible to operate and adhere to the most recent version of the SOP at all times. **FSP Tow Truck Drivers found not to be in compliance with FSP procedures defined in the SOP may be suspended or terminated from the FSP program and the Contractor may be fined three (3) times the hourly contract rate in one (1) minute increments until a FSP Certified back-up driver is provided.**

These same rules apply to FSP Certified Back-up tow trucks, if a tow truck is found to not be in compliance; the contractor must provide a FSP Certified Back-up tow truck within 45 minutes or they may be fined three times the hourly contract rate in one minute increments. The FSP Tow Truck Driver and tow truck must return to Beat compliant with all FSP requirements, or the Contractor may be fined for the entire shift at three (3) times the hourly rate at the discretion of the FSP CHP.

Please refer to Attachment F for further details on violations and penalties.

If a disabled vehicle cannot be mobilized within the ten-minute (10) time limit, it shall be towed to a designated drop location identified by the CHP. The motorist can request the FSP Driver to call the CHP Communications Center to request a CHP rotational tow or other services. FSP Tow Truck Drivers shall not be allowed to tow as an independent Contractor from an incident that occurred during the FSP shift unless called as a rotation tow by CHP. If called as a rotation tow after a FSP shift, the FSP Tow Truck Driver must remove all FSP markings such as vests, uniforms and magnetic tow truck signage.

There may be some instances where the FSP Tow Truck Driver may be requested to provide assistance to CHP officers. FSP Tow Truck Drivers shall follow the instructions of the CHP officer at the scene of any incident within the scope of the FSP program.

2.0 Contract Representatives

Commission, Caltrans and the CHP will jointly oversee the service (hereinafter singularly or jointly referred to as "FSP Management"). CHP is responsible for dispatch services to incident locations within the tow truck's patrol limits, otherwise referred to as "Beats". The dispatching will be done in accordance with the contract for the service. A Standard Operating Procedures (SOP) manual will be given to the successful Contractor explaining the types of incidents to which his/her FSP Tow Truck Drivers may be dispatched. **Please note that this manual, also known as the Standard Operating Procedures (SOP) is updated as needed, and that the Contractor is responsible to operate and adhere to the most current version of the SOP.** Also note that the successful Proposer(s) which enters into an agreement with Commission for these services will have the SOP and any updates referenced into the agreement and therefore the SOP has contractual requirements associated with it as well.

3.0 Service Location

The FSP operates on selected freeway segments referred to as "Beats". Each Beat has specific turnaround locations and designated drop locations identified by the CHP. Attachment "A" Page 28 shows the specific limits, number of tow trucks, number of back-up trucks, hours of operation and tentative holidays on which the cost of each beat shall be based. Commission reserves the right to add or delete holidays to the work schedule. Travel time to and from the Beat will be at the expense of the Contractor.

At any time during the contract's term, Commission reserves the right to adjust Beat specifications and Beat hours to better accommodate demand for the service. These changes can occur during the course of the contract through written change orders. If warranted a Contractor may be requested by CHP, this will be on a case-by-case basis, to go beyond the limits of their assigned Beat area to assist a motorist in an adjacent beat area. FSP Tow Truck Drivers may be permitted to do this only upon CHP approval.

4.0 Speaking to the Media

At times the media has inquired about the Freeway Service Patrol Program. FSP Tow Truck Drivers must never discuss FSP Program details to the media (electronic or press). In addition, if the Contractor receives a complaint from a citizen or the community, the Contractor shall inform the Commission immediately regarding the situation. All media inquiries and complaints must immediately be directed to Commission or FSP CHP Supervisors please utilize the contact list below to notify a person of FSP Management:

FSP CHP Supervisors: (909) 388-8040

COMMISSION:

Ms. Kelly Lynn: klynn@sanbag.ca.gov
Phone: 909-884-8276

Ms. Jenny Herrera: jherrera@sanbag.ca.gov
Phone: 909-884-8276

5.0 Equipment Requirements:

A. Tow Truck Requirements:

Tow Truck's will be exclusively dedicated to the FSP during its hours of operation.

The FSP will utilize at a minimum, Class A tow trucks with a minimum gross vehicle weight rating of 14,000 pounds, dual wheel chassis and four (4) ton recovery equipment rating. All trucks proposed for use in the FSP Program must be less than a year old with a maximum of 50,000 miles. The chassis and working parts of the truck must be free of any mechanical defects or physical damage at the onset of the contract.

The CHP, in conjunction with the California Department of Transportation (Caltrans) and the regional transportation agency, will verify the original purchase dates to ensure compliance.

Any exceptions to these specifications must be submitted in advance, and in writing to Commission.

All FSP tow trucks must be Department of Transportation (DOT) compliant, as well as California Air Resources Board (CARB) compliant. This includes an engine that has been certified by CARB, as required by law in the State of California. With any tow truck that is utilized for the FSP Program, it must comply with emission standards set forth by DOT and CARB as well as all Local, State and Federal laws associated with that truck, and as outlined in the RFP.

Prior to commencement of service, the CHP will inspect each tow truck designated for the FSP to ensure that it meets the tow truck specifications and to ensure that it meets or exceeds safety requirements. These inspections will occur prior to the start of service. Succeeding inspections will occur periodically as determined by the CHP. Documentation of the vehicle identification number and successful completion of the inspection will be kept on file at the CHP office and Contractor's base office. Any

unsafe or poorly maintained tow truck(s) or improperly equipped tow truck(s) shall not be allowed into service, and if discovered during the shift, shall be removed from service or repaired as directed by the CHP, and **the Contractor shall be fined three (3) times the hourly contract rate in one (1) minute increments.** FSP Certified Back-Up Tow Trucks will be required to complete the shifts of tow trucks removed from service. The Contractor will be required to have a FSP Certified Back-Up Tow Truck available for service at all times.

FSP tow trucks bearing the service patrol title, logo, and vehicle identification number shall be painted white (includes the hood, fenders, doors, boom and bed area – the entire truck is to be painted white). No trim will be allowed. Lettering shall be in block lettering and shall be no less than 2 inches and no greater than 4 inches in height. Lettering can only be black in color (only black will be allowed, no other colors will be permitted) and will be bold style parallel to the ground. Letters shall be placed on the lower body of the truck toward the cab. Names, phone numbers, advertising or any other lettering on the boom shall be prohibited during FSP operational hours. The overall look of the truck must be approved by CHP prior to service implementation; therefore any questions regarding this policy may be discussed with CHP prior to implementing, as truck compliance with current state FSP standards is required. No other accessory equipment or signage (bumper stickers, employment advertisement, and so forth) shall be mounted or installed without prior CHP approval. This includes but is not limited to brass, chrome wheel covers and window tint.

Please refer to Attachment F for further details on violations and penalties.

The Commission follows and relies on the policies procedures put forth in the Standard Operating Procedures Manual (SOP) developed by CHP. Please note that the equipment list below is subject to change at any time. For the most updated equipment list, please refer to the latest Standard Operating Procedures Manual (SOP).

Each tow truck shall be equipped in accordance with the CHP's Freeway Service Patrol Manual and (SOP) Manual and, at minimum shall include the following:

1. Wheel lift towing equipment, with a minimum lift rating of 3,000 pounds. All tow equipment shall include proper safety straps.
2. Boom with a minimum static rating of 5,000 pounds. (NOTE: The Boom must have a minimum static rating of 8,000 pounds, even though The Tow Truck Inspection guide for FSP Contract Operations Manual says that a 5,000 minimum static rating is fine – it still has to meet the required four (4) ton recovery rating regardless of the minimum. You may obtain this manual via the CHP website at: www.chp.ca.gov).
3. Winch Cable - 8,000 pound rating on the first layer of cable.
4. Winch Cable - 100 ft., 3/8-inch diameter, with a working limit of 3500 pounds.
5. Towing slings rated at 3,000 pounds minimum.
6. Two (2) Tow chains **3/8"** alloy or OEM specs. J/T hooks assembly.
7. Rubber faced push bumper.
8. Mounted spotlight capable of directing a beam both front and rear.
9. Amber warning lights with front and rear directional flashing capability, with

on/off switch in cab.

10. Public address system.
11. Power outlets ("hot boxes"), front and rear mounted, with outlets compatible to 12-volt booster cables.
12. Heavy duty, 60+ amp battery.
13. Radios with the ability to communicate with the Contractor's base office.
14. Programmable scanners capable of scanning between the 39 and 48 MHz used by the CHP. Scanners need to be capable of scanning CHP Police frequencies, and must be affixed for safety concerns.
15. Suitable cab lighting.
16. Trailer hitch capable of handling a 1 7/8-inch ball and 2 inch ball.
17. One (1) 1 7/8-inch ball and one (1) 2 inch ball.
18. Rear work lights.
19. Safety chain D-ring or eyelet mounted on rear of truck.
20. Motorcycle Straps (2)
21. Diesel fuel in plastic jerry cans (5 gallons)
22. Unleaded gasoline in plastic jerry cans (5 gallons)
23. Safety chains min. 5 ft. (2)
24. First aid kit (small 5" x 9") (1)
25. Fire extinguisher aggregate rating of at least 4 B-C units (1)
26. Pry bar - 36" or longer (1)
27. Radiator water in plastic container (5 gallons)
28. Sling crossbar spacer blocks (2)
29. 4" x 4" x 48" wooden cross beam (1)
30. 4" x 4" x 60" wooden cross beam (1)
31. 24" wide street broom (1)
32. Square point shovel (1)
33. Fusees (highway flares), 15 minute, or (36)
    Fusees (highway flares), 30 minute (20)
34. Cones 18" (6)
35. Hydraulic jack, **min. 4,000 lbs.** floor (1)
36. Four way lug wrench (1 std.) (1)
37. Four way lug wrench (1 metric) (1)
38. Rechargeable air bottle **or compressor**, hoses and fittings to fit tire valve stems, 100 psi capacity (1)
39. Flashlight and spare batteries (1)
40. Tail lights/brake lights, portable remote with extension cord (1 set)
41. Booster cables, 25 ft. long minimum, 3-gauge copper wire with heavy-duty clamps and one end adapted to truck's power outlets (1 set)
42. Funnel, multi-purpose, flexible spout (1)
43. Pop-Up Dolly **(with tow straps)**, portable for removing otherwise untowable vehicles (1)
44. 5-gallon can with lid filled with clean absorb-all (1)
45. Empty trash can with lid (5 gallon) (1)
46. Lock out set (1)

Each FSP tow truck will be required to have a toolbox with the following minimum number of tools/supplies. A tool kit for small equipment items is required. The list may be supplemented at the Contractor's option and expense.

47. Screwdrivers--	
i. Standard-1/8", 3/16", 1/4", 5/16"	(1 each, min).
ii. Phillips head - #1 and #2	(1 each, min).
48. Needle nose pliers	(1)
49. Adjustable rib joint pliers, 2" min. capacity	(1)
50. Crescent wrench - 8"	(1)
51. Crescent wrench - 12"	(1)
52. 4 lb. hammer	(1)
53. Rubber mallet	(1)
54. Electrical tape, roll	(1)
55. Duct tape, 20 yard roll	(1)
56. Tire pressure gauge	(1)
57. Mechanic's wire (roll)	(1)
58. Bolt cutters	(1)

The FSP Tow Truck Driver shall be required to complete a pre-operation shift inspection log of the vehicle as well as inventory the required equipment prior to the start of each and every shift. A shift inspection/inventory log shall be completed by the FSP Tow Truck Driver prior to the start of each shift and be available for inspection. Any item missing must be replaced prior to the start of the shift. All equipment stored on top of the truck shall be secured to the truck.

Please note that equipment requirements are subject to change at any time. For the most updated equipment list, please refer to the latest Standard Operating Procedures Manual (SOP).

B. FSP Certified Back-Up Tow Truck

The Contractor shall be required to have one FSP Certified Back-Up Tow Truck available per Beat during FSP service hours that is in full compliance with the agreement, unless otherwise authorized by Commission and CHP in writing. The FSP Certified Back-Up Tow Truck should be used when a certified primary FSP tow truck is unavailable. The FSP Certified Back-Up Tow Truck shall meet the same requirements for equipment, set-up and color as a certified primary FSP tow truck. It shall meet all the vehicle equipment specifications. Please refer to Attachment F for further details on violations and penalties.

C. Vehicle Breakdown and Other Missed Service:

A FSP Certified Back-Up Tow Truck must be in service on the Beat within 45 minutes of the time a permanently dedicated vehicle is taken out of service for any reason. The Contractor shall not be paid for the time period that the contractually required trucks are not in service. **If a vehicle is not made available within the 45 minute time period, the Contractor shall be fined three (3) times the hourly contract rate in 1 minute increments until a FSP Certified Back-Up Tow Truck is provided. If a tow truck is not ready due to a breakdown at the start of a shift, the fine time will be calculated from the start of the shift. If the entire shift is missed, the Contractor**

shall be fined for the entire shift at three (3) times the hourly rate. Tow truck maintenance shall be performed during non-FSP service hours.

In the event that a FSP Certified Back-Up Tow Truck is required to continue the shift, the FSP Tow Truck Driver must complete a new inspection worksheet and mileage log prior to the commencement of driving the tow truck. In addition, the FSP Tow Truck Driver must indicate in the "notes" section of the Personal Digital Assistant (PDA) that they have switched to a FSP Certified Back-Up Tow Truck.

In addition, not having a FSP Certified Back- Up Tow Truck Driver available is not an allowable excuse for not having a FSP Certified Back-Up Tow Truck on the Beat within the 45 minute time period. If the Contractor does not have a dedicated or FSP Certified Back-Up Tow Truck on the Beat because a FSP Certified Tow Truck Driver is not available, the Contractor shall be fined three (3) times the hourly contract rate in 1 minute increments until a certified FSP replacement driver is provided. If the entire shift is missed because a FSP Tow Truck Driver was not available, the Contractor shall be fined for the entire shift at three (3) times the hourly rate.

Please refer to Attachment F for further details on violations and penalties.

Please note: Existing FSP tow operator contracts with the Riverside County Transportation Commission (RCTC) or any other neighboring FSP service, does not qualify as meeting the backup requirement noted above. Only existing FSP Contractors with San Bernardino Associated Governments may qualify. It is up to the Evaluation Committee as to whether or not an existing COMMISSION FSP tow operator may use an existing backup truck or not.

For further information see Page 20 of this document, Section C "Vehicle Breakdown and Other Missed Service".

D. Vehicle Identification:

It shall be the FSP Tow Truck Driver's responsibility to place detachable FSP markings on each vehicle during the service hours and to remove the detachable markings immediately upon completion of each shift. Commission will supply each Contractor with the appropriate number of detachable markings for each Beat(s). If a marking is lost or damaged, the Contractor shall be responsible for the cost of the replacement markings. All FSP markings shall be returned at the termination of the contract. The cost of any Commission and/or Caltrans/CHP supplied item and/or equipment not returned shall be deducted from the Contractor's final payment.

Freeway Service Patrol markings as well as vehicle numbers shall be required on both sides of all trucks. The detachable markings (magnetic FSP signage), provided by Commission, must be placed on the center of both doors (driver and passenger doors) of the vehicle. The FSP Tow Truck Driver shall be required to keep the title and logos clean, straight and in readable condition throughout the service patrol's operation. The operator is also required to keep the magnetic signage flat (do not bend in any way) and clean while being stored during non-FSP operational hours.

E. Communications Equipment:

Each FSP vehicle shall be equipped with various communication devices that will enable the FSP Tow Truck Driver to communicate with the CHP Communications Center. All vehicles shall be equipped with an Automatic Vehicle Location (AVL) system, radios, and handheld/PDAs for data collection. The AVL system, radios, GPS, handheld/PDA equipment shall be purchased, owned, and supplied by Commission. Commission shall select the equipment installation vendor.

The Contractor shall be responsible for maintaining the security of the Commission owned vehicle communication equipment. The Contractor shall be liable for any damage other than normal wear and tear to the communication equipment. The Contractor shall also be liable for the full replacement value of the communication equipment installed in the trucks while in the care, custody and control of the equipment. Commission shall pay for repair fees for normal wear and tear to equipment. However, Commission will deduct repair fees as well as the full replacement cost of any Commission equipment due to improper use or negligence by the Contractor from any payment due to the Contractor under this agreement. Commission supplied vehicle equipment shall be returned upon contract termination. The cost of any equipment not returned shall be deducted from the Contractor's final payment.

Programmable scanners capable of scanning between the 39 and 48 MHz used by CHP shall be supplied by the Contractor and shall be installed in all vehicles.

The Contractor is also required to use Nextel cell phones in order to facilitate proper communication with the CHP Communications Center and CHP field supervisors. Nextel cell phones shall be purchased, owned, and maintained by the Contractor. The Contractor will also be responsible for all operating costs of the Nextel cell phones. In addition, FSP Tow Truck Drivers are not permitted to take pictures, video or capture any other images while performing FSP duties during FSP operational hours. These actions will not be tolerated and a FSP Tow Truck Driver that is found doing this will not be permitted to work on the FSP Program.

Any data input into the PDA device shall not be allowed while the vehicle is being operated/driven. Uses of other devices while driving/operating a vehicle such as cell phones are subject to California State Law.

The FSP vehicles shall be equipped with a public address system. The public address system shall have the capability for the driver of the disabled vehicle to hear instructions transmitted from the cab of the FSP vehicle when the FSP vehicle is directly to the rear of the disabled vehicle.

The Contractor shall purchase and maintain a computer workstation (not a laptop) with high speed internet access and email to communicate with Commission staff, and transfer FSP data collected with handheld/PDA units. **Handheld/PDA units shall be downloaded at the end of each shift before the deadlines below** to the computer workstation; therefore the computer workstation will need to be easily accessed by FSP Tow Truck Drivers after each shift. For the AM shift, the deadline to download is **12pm (noon),** for the PM shift, the deadline to download is **12am (midnight). If**

PDA's are not synced prior to the deadlines given, Contractor may be subject to fines as outlined in Attachment F.

The computer workstation shall be a PC Pentium4 2.4Ghz or AMD Athlon XP 2800 or greater based machine with at least 2 GB memory, 20 gig hard drive, network card, CDROM, optical mouse, keyboard and monitor. Computer workstation shall be equipped with the following software; Windows 7, or Windows Vista, Microsoft Active Sync (if Vista), Anti-Virus software (Norton, McAfee, or Trend Micro): if utilizing different Anti-Virus software, please notify Commission prior to purchase or use. The computer must include a 9 pin RS232 serial port. The computer workstation must always be connected to the internet.

It is the Contractor's responsibility to ensure that the computer workstation is working at all times. If the Contractor is having problems with their workstation that would prevent proper syncing of PDA's or would create any negative impact on FSP Program assist data; Contractor must notify Commission and CHP immediately. Computer equipment shall be inspected and cleaned on a quarterly basis by the Contractor; this includes: **updating operating systems with security patches, time patches, loading system updates, and cleaning the interior of the computer work station.**

In addition, it is also the Contractor's responsibility to ensure that all Handheld/PDA units are working at all times. All Handheld/PDA units should have the exterior protective case cleaned (protective outside case) and the stylus and screen protector shall be inspected for functionality and serviceability. **Damaged/Worn items shall be immediately** reported to Commission or CHP.

All workstations and Handheld/PDA's must be kept in a secure location. **During all non-FSP operational hours, Handhelds/PDA's shall not be left in a tow truck or go home with a FSP Tow Truck Driver or anyone else.** All Handhelds/PDA's must be connected to a battery charger in the secure workstation area at the Contractor's facility during non-FSP operational hours. Except for when the PDA is being used during FSP operational service hours, it must be plugged in and being charged at all times, this is required so that data and software "patches" are not lost. PDA's are to be with the FSP Tow Truck Driver in their FSP tow truck during FSP operational hours, or connected to a battery charger in the designated secure workstation of the tow operator's facility during non-FSP operational hours. Any other location shall not be permitted.

Contractor shall immediately report any issues with the work station or the PDAs to Commission or the FSP CHP Officers. Contractor is directly responsible to ensure their computer work station is operating, can interface with PDAs and **has internet access at all times.**

The Contractor shall provide access to the work station and PDAs for Commission staff, or their designated designee, at **any time** during the course of the contract.

In addition, the Contractor shall make the work station available to the Commission, or its designee, **30 calendar days prior to the start of the new service (Beat 6 to start January 2, 2012 and Beat 7 to start March 1, 2012).**

The Contractor shall be available to review data with Commission, or its designee, at any time. Data shall be reviewed using the pre-defined reports created in Microsoft Access on the workstation computer. The Contractor shall review data for accuracy,

and ensure that any errors and/or edits to the data are documented and forwarded to Commission for review.

The Contractor shall provide a quarterly inspection report to Commission indicating the status of all equipment. Commission will provide the submittal form. Contractors should consider the accurate completion and timely return of this form as part of their contract requirements.

The Contractor shall allow Commission staff or its representative access to the workstation and handheld/PDA units at any time. If upon inspection Commission determines that workstation and/or PDA's are not being properly updated/stored; the Contractor will be subject to fines as outlined in Attachment F.

Please note that as mentioned in section 1.0, of the RFP as well as Article 16 of the contract, Contractor must follow the procedures of the most recent Standard Operating Procedures (SOP) Manual.

F. Equipment Tampering

Tampering with FSP communication/tracking equipment so that it does not function properly to Commission's specifications, and/or is disconnected or is moved (without FSP Management authorization) from its original installed location is strictly prohibited. This includes but is not limited to: breaking evidence tape/connection sealer on equipment connections, cutting wires or cable, moving mounted equipment (speakers, microphones, antennas, etc.), rerouting any wiring, not putting radio equipment back in its original installed location, disconnecting any connectors. **Interfering with the operations of the equipment is strictly prohibited.**

If tampering is suspected, FSP Management shall conduct an inspection of the equipment on/near the Beat area or the vehicle may be sent to a designated location determined by FSP Management. Contractor shall not access the AVL equipment in any way until Commission has arranged an inspection.

1) If tampering is found during FSP operational hours, or it is suspected that any of the AVL related equipment owned by Commission was tampered with during non-operational FSP hours; the Contractor shall be fined two complete FSP shifts (7 hours) at their hourly penalty rate (3 times their hourly rate). **The final penalty shall be determined and assessed by FSP Management**.

2) FSP Management determines the designated AVL installer and the designated technician that comes out to the San Bernardino County region to review and repair the AVL systems.

3) In the event of tampering, any transportation, labor, repair, or replacement expenses incurred to repair the AVL equipment/system related to the San Bernardino FSP tow operations will be the responsibility of the Contractor. Costs incurred to repair and document the equipment will be deducted from the tow operator's monthly invoice.

Please refer to Attachment F for further details on violations and penalties.

G. FSP Tow Truck Drivers:

All potential FSP Tow Truck Drivers shall be required to have a safe driving record and current Class C driver's license. All FSP Tow Truck Drivers shall be 18 years of age or older at the time of background check. Potential FSP Tow Truck Drivers shall be subject to driving record and criminal background checks through the California Highway Patrol. Potential FSP Tow Truck Drivers shall be sufficiently experienced in the tasks of tow truck operations and proficient with all required Freeway Service Patrol equipment to provide safe and proper service. Any certified FSP Tow Truck Driver from other FSP areas will be evaluated by the CHP on a case by case basis. All potential FSP Tow Truck Drivers must be capable of demonstrating their tow operating abilities prior to formal CHP training. Additionally, the FSP Tow Truck Drivers will be required to exercise good, sound judgment in carrying out their duties.

FSP Tow Truck Drivers shall be required to inform the CHP Communications Center at any time he/she leaves the assigned Beat. This includes replenishing expendable items such as gasoline, fire extinguisher, breaks, etc. The FSP Tow Truck Driver shall be required to immediately notify the CHP Communications Center upon a tow truck breakdown.

FSP Tow Truck Drivers will be responsible for entering the required data into handheld /PDA device every shift. Each FSP Tow Truck Driver shall complete an inspection worksheet and mileage log prior to the commencement of driving the tow truck. The FSP Tow Truck Driver shall be required to complete assist records for each incident utilizing the handheld/PDA. Each assist record shall be accurate. Contractors providing false or misleading information to FSP Management will be considered in breach of their Contract with Commission. FSP Tow Truck Drivers providing false or misleading information shall be removed as an FSP Tow Truck Driver from the FSP Program..

In addition, FSP Tow Truck Drivers shall always complete the required procedures per the SOP when handing out required forms to the public. FSP Tow Truck Drivers must ensure they hand out a customer survey form at each assist. The customer survey form includes a unique survey number which should differ each time. No duplicate survey numbers should occur. If it is discovered that a Contractor has duplicate numbers in their assist data, Contractor may be subject to penalties as outlined in Attachment F of this RFP.

Other important forms that shall be required for FSP Tow Truck Drivers to complete and turn in are the Liability Release Forms (orange) and Damage Release Forms (neon green). It is critical that these forms are completed and returned to the Commission within thirty (30) business days from the date on the form. Any Contractor in violation of not completing these required forms may be subject to penalties as outlined in Attachment F.

The CHP, Caltrans, and Commission maintain strict drug and alcohol policies. Contractors shall have an alcohol and drug program that includes at a minimum, a drug and alcohol free workplace policy, and an employee alcohol/drug-testing program. Any FSP Tow Truck Driver found working under the influence of drugs or alcohol shall be

immediately removed from the FSP program by the Contractor. The Contractor shall be responsible for providing a certified replacement Tow Truck Driver for that vehicle.

The Contractor shall also be an active participant in the DMV Pull Notice Program and penalties shall apply pursuant to Section 5.0 Equipment Requirements paragraph C.

If a FSP Tow Truck Driver is convicted of a crime involving a stolen vehicle, stolen property, violence, drugs or moral turpitude, fraud related to the towing business, or misdemeanor or felony driving while under the influence of alcohol or a drug, the Contractor shall permanently remove that FSP Tow Truck Driver from duties under the FSP program. If a FSP Tow Truck Driver is charged with any of the above crimes, the Contractor shall immediately suspend that FSP Tow Truck Driver from duties under this program pending the outcome of the criminal case. If the FSP Tow Truck Driver is not convicted, or is ultimately convicted of a lesser crime not described above, Commission retains the right to have the Contractor remove that FSP Tow Truck Driver from the duties under the FSP program.

All FSP Tow Truck Drivers, including back-up FSP Tow Truck Drivers, shall be required at Contractor's expense to complete the CHP two-day training program which costs up to $50.00 (fee is for the DL64 Tow Truck Driver Certificate) per FSP Tow Truck Drivers. Contractors shall pay all FSP Tow Truck Drivers and back-up FSP Tow Truck Drivers for attending the training. No FSP Tow Truck Driver will be allowed to begin patrolling without attending the **MANDATORY** training classes. Any FSP Tow Truck Driver who is found on patrol without completing the **MANDATORY** training classes may be prohibited from further FSP service and the Contractor may be found in default under their contract at the discretion of Commission..

Mandatory CHP refresher training classes shall be scheduled during non-FSP hours. A **minimum** of four (4) hours refresher training per year shall be required (at Contractor's expense). **Contractors shall pay all FSP Tow Truck Drivers and back-up FSP Tow Truck Drivers for attending the required training.**

FSP Tow Truck Drivers will be required to utilize a Handheld/PDA to input the mileage log, inspection worksheet, and each assist; which will include location, vehicle make, model, license number, type of assistance provided, etc. FSP Tow Truck Drivers will be trained on using Handheld/PDA units to enter data using Commission data collection software.

DRIVING RECORD AND CRIMINAL HISTORY CHECK

As required by California Vehicle Code Section 2430, all applicants and owners are required to have a driver's license and criminal history check. Only after a completed CHP 234F and CHP 234 supplemental is received and accepted by CHP, a driver's license and criminal history check will be performed.

The driver's license check will consist of confirming that the applicant has a valid driver's license and the applicant's point count is within standards set forth in the SOP (refer to Chapter 11, Annex A).

The criminal history check will consist of a preliminary background check to see if the applicant meets the criteria for a FSP Tow Truck Driver Certificate as outlined in

California Vehicle Code Section 13377, and the FSP contract. Any Contractor or potential Contractor not meeting the requirements put forth in the following documents will be automatically excluded from the FSP Program. Documents can be found on the CHP website at: http://www.chp.ca.gov/programs/rotation.html.

- Tow Service Agreement for Rotational Tow Operator (HPM 81.2, Vehicle Procedures Manual)
- Element 15 (C and D)Annex GG ("Criminal Conviction Disqualifications for Rotational Tow Operator/Drivers")

In addition, Commission, and/or CHP may, in its sole discretion, require a Contractor to replace any FSP Tow Truck Driver or potential FSP Tow Truck Driver who it determines is not suitable to represent the FSP Program with the public based on the background check. If the applicant passes the preliminary check, then the applicant shall submit to fingerprinting.

Background checks will be completed by CHP within five (5) working days of the acceptance of a CHP 234F.

H. Operator Equipment:

It shall be the responsibility of the Contractor to provide the FSP Tow Truck Driver with specified uniforms, protective toe boots, and other equipment. The equipment includes navy blue jump suits or shirts and pants. If coveralls are worn they shall have two-way zip front with heavy duty brass zipper. Coverall or shirt sleeves shall be half raglan type or set-in sleeve with pleated-action back. Long sleeves may have plain barrel cuff or be equipped with snap or button closure on wrist. The length of the sleeve on short-sleeve coveralls/shirts shall come to within approximately 1 inch of the inside forearm when the wearer's arm is bent at a 90 degree angle.

The coveralls shall have shape holding sanforized waist banding with elastic inserts for trim fit. Legs shall be moderately tapered to avoid excessive fullness. H.D. Lee Company style No. 018-3041 (Navy Blue) or Commercial Uniform Co. style No. 201 (Navy Blue) or equal. All main seams shall be at least double stitched with good quality thread. Shirts or coveralls shall have one or two chest pockets. Single pocket coveralls/shirts shall have the chest pocket placed on the left.

A detachable brass or gold nameplate shall be worn with the first initial of the first name and full last name. Letters shall not exceed ½ inch tall (nameplate must be approved by CHP). The nameplate shall be worn above the right chest pocket.

A safety vest with reflective stripes shall be worn and will be supplied by Commission. The safety vest shall be neon-yellow in color. A small FSP logo (patch) shall be sewn on the front of the safety vest over the left front pocket of the uniform, and a small FSP logo patch shall be sewn on the left sleeve of the vest as well. A large FSP logo (patch) shall be sewn across the middle portion of the back of each safety vest. Commission will supply vests with the FSP logo patches already sewn on per CHP's required patch placement locations. The name of the FSP Tow Truck Driver shall be displayed on the front of the safety vest over the right front pocket of the uniform. The Contractor is responsible for obtaining CHP approval of the FSP Tow Truck Driver name plates, and the Contractor is responsible for the purchase and placement of the FSP Tow Truck

Driver name plate. An FSP logo patch is not required to be sewn on the navy blue FSP Tow Truck Driver uniform.

All FSP Tow Truck Drivers shall wear black work boots with protective (steel or composite) toe.

During cold weather, a navy blue sweater or sweatshirt may be worn under the long sleeve uniform shirt/jumpsuit. A navy blue jacket may also be worn at the FSP Tow Truck Driver's option, if it meets all the uniform specifications, such as patches.

Rain gear shall be waterproofed material, yellow in color. Reflective 2" white tape shall be applied to both sleeve cuffs and both leg cuffs and across the upper back.

Hats, if worn, shall be baseball type cap, navy blue in color. An "FSP" logo patch may be sewn on the hat above the brim. No other logos/names shall be accepted. A picture of the uniform is provided on pages 31-32 of this document titled: FSP Uniform Requirements

Contractor should refer to the most current SOP in making sure they are following the most recent FSP Tow Truck Driver equipment requirements.

I. Local Office:

The Contractor shall provide a local office for contract administration purposes. This office shall be staffed by either the Contractor or a person who has the Commission to conduct business and make decisions on behalf of the Contractor. The office shall have business hours coinciding with Contractor's Beat(s) hours of operation. Through the Proposal document shown in Attachment "C", Contractor Representative Form, the Contractor shall designate representatives who will be available at the office during hours of operation to make decisions on behalf of the Contractor. The office shall be established within close proximity to the Contractor's Beat(s) and be located within Riverside, San Bernardino, Los Angeles or Orange Counties. Also note on page 19, Section C, **a FSP Certified Back-Up Tow Truck and a FSP Certified Back-Up Tow Truck Driver must be available within a 45 minute request of the Beat area.**

This requirement may also determine if the local office is close enough to satisfy the requirements under this section as well.

The Contractor shall also provide **telephone, fax service, and email address** through which he/she or a responsible representative who has the Commission to conduct business and make decisions on behalf of the Contractor and can be contacted during the non-service hours of operation for the length of the contract. During non-business hours, an answering machine provided at the Contractor's expense, shall be available to log calls, take complaints, etc. A **fax machine and an email address that is monitored daily** shall be provided by the Contractor for noticing purposes during operational and non-service hours. The Contractor will be responsible for having a Contractor representative monitor and review messages/notices on a daily basis.

SAN BERNARDINO COUNTY FREEWAY SERVICE PATROL

BEAT DESCRIPTION AND HOURS OF OPERATION

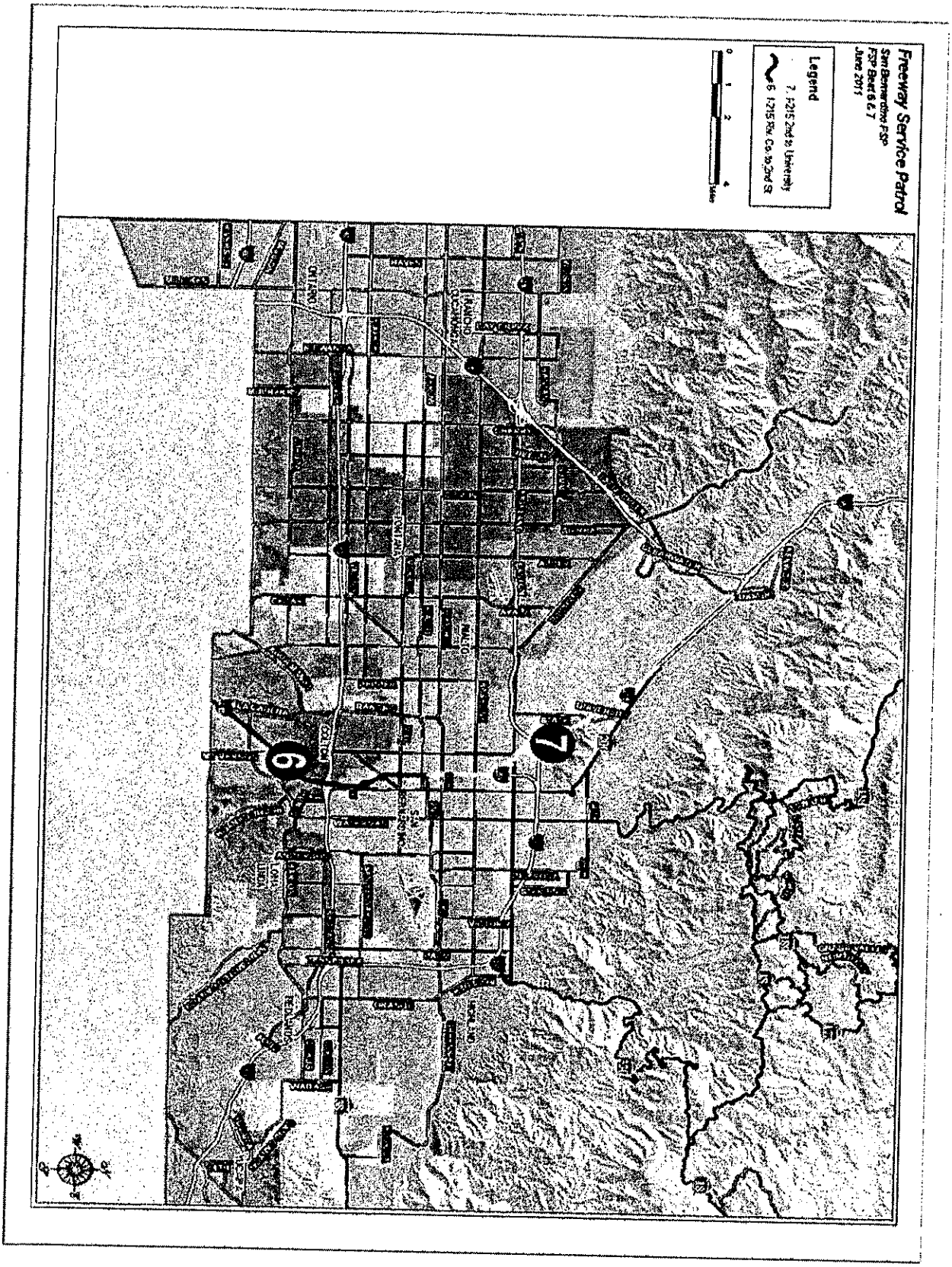
Beat #:	CHP Area Beat #:	Beat Description	One-Way Length in Miles	# FSP Trucks in both AM and PM
Beat 6	14	Interstate (I) 215 from Center St. (Riv. County Line) to 2nd St.	6.79	2
Beat 7	15	Interstate (I) 215 from 2nd St. to Palm/Kendall Ave.	7.30	2

All normal FSP Beats would **operate from 5:30 to 8:30 am (M-F)** and from **3:00 to 7:00 pm (M-F).**

FSP Mid-Day construction Beat 6 shall operate Monday through Friday from 8:30a.m. through 3:00 p.m. in addition to the normal schedule above.

Each Beat requires at least one backup truck available at all times. **Commission reserves the right to change Beat hours and operational requirements during the course of the contract.**

Please refer to Attached Map of Beat areas


Freeway Service Patrol
San Bernardino FSP
FSP Beat 6 & 7
June 2011
Legend
7. I-215 2nd to University
6. I-215 Rte. Co. to 2nd St
0 1 2 4
Miles
6
7

C11213-02

PRELIMINARY LIST OF FREEWAY SERVICE PATROL HOLIDAYS

Freeway Service Patrol tow service is a, five days each week, Monday through Friday of each year during the contract term, except for the following ten holidays:

1. Martin Luther King, Jr. Day (Monday)
2. Presidents' Day (Monday)
3. Memorial Day (Monday)
4. Independence Day (July 4 - varies)
5. Labor Day (Monday)
6. Veterans Day (varies)
7. Thanksgiving Day (Thursday)
8. Day after Thanksgiving (Friday)
9. Christmas Day (December 25 - varies)
10. New Year's Day (January 1 – varies)

Total service hours per vehicle per year: 1,736

In addition to the above service hours, at the discretion of COMMISSION and the CHP, additional service may be requested on certain "high traffic days" on/or following certain holidays (e.g. July 4th, Labor Day, Sunday following Thanksgiving Day, Memorial Day), in the afternoons for four (4) hours. Contractor will be notified at least one week prior to when this service is to be provided.

FSP UNIFORM REQUIREMENTS

No hat:

Hat:

C11213-02

Jacket and beanie: (beanie optional but if chosen must be worn with jacket or long sleeve shirt):

Long Sleeve:

C11213-02

EXHIBIT B

Compensation and Payment

Overview Contract No. 11213 with Pepe's Towing Services, Inc. for Beat 6
Term 1/2/2012-12/31/2014

Hourly Costs (per truck)	No. of Hours	7% More Hours	Total Hours	Cost Per Truck	Total Costs
Beat 6 costs through FY 2012/2013	2,618	183.26	2,801.26	$140,063.00	$280,126.00
FY 2013/2014	1736	121.52	1857.52	$92,876.00	$185,752.00
FY 2014/2015 (7/1/14-12/31/14)	882	61.74	943.74	$47,187.00	$94,374.00
Beat 3 coverage services performed in 2012:					
FY 2012/2013 (1/11/2013-4/30/2013)	588	41	629	$31,764.50	$63,529.00
Add Beat 6 Mid-Day construction Beat 2013					
FY 2013/2014 (12/4/2013-6/30/2014)	1008	n/a	1008	$50,400.00	$100,800.00
FY 2014/2015 (7/1/2014-12/31/2014)	1000	n/a	1000	50,000	$100,000.00
Contract Total:	**7,832**	**407.52**	**8,239.52**	**$412,290.50**	**$824,581.00**

Average Annual Hours Per Truck Per Beat 1,757

Hourly Rate for Initial Contract Term $50.00

Extra time: $0.83 per minute
Non- Penalized Down Time: $0.83 per minute
Penalized Down Time: $2.49 per minute

Note: Two primary FSP Tow Trucks are required
Plus one certified FSP Back – Up Tow truck.

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San Bernardino Associated Governments
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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 8

Date: December 4, 2013

Subject: 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) Socioeconomic Projections Data

Recommendation:* Approve SANBAG assuming responsibility for San Bernardino County growth forecasts for population, housing and employment as part of the development of Southern California Association of Governments (SCAG) 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS), including coordination with local jurisdictions.

Background: SCAG is in the process of developing the 2016-2040 RTP/SCS. The RTP/SCS includes land use and transportation strategies that will support the region's mobility goals while also meeting the established Greenhouse Gas (GHG) reduction targets of 8% per capita by 2020 and 13% per capita by 2035.

SANBAG and the other counties coordinate extensively with SCAG in the process of RTP/SCS development. One of the initial major undertakings for the RTP/SCS is the development of growth forecasts for population, housing and employment at both a city level and at a Transportation Analysis Zone (TAZ) level. SANBAG has a substantial stake in these forecasts, as they are the basis of transportation modeling performed for the planning and design of both regional and local transportation facilities.

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG	X	CTC	X	CTA		SAFE		CMA	

Check all that apply.

BRD1312a-ss

SANBAG was extensively involved in the development of the growth forecasts for the 2012-2035 RTP/SCS, but SANBAG's role was not formalized. SCAG has requested that this role become more formalized so that clear lines of responsibility are delineated. SANBAG staff has drafted a letter, the text of which is included in Attachment 1, which outlines staff responsibilities for the growth forecasts for the 2016-2040 RTP/SCS. In effect, SANBAG staff will work directly with local jurisdictions in San Bernardino County to develop both jurisdiction-level and TAZ-level forecasts that are locally acceptable and that collectively represent a forecast that is geographically consistent. These forecasts will be presented to SCAG prior to the scheduled timeline for completion of the local input in May 2014.

Jurisdictions will be responsible for communicating their approval of the city-level forecasts applicable to their jurisdiction directly to SCAG. TAZ-level forecasts do not need to be approved by jurisdictions for SCAG RTP/SCS purposes. However, the TAZ-level forecasts are very important for planning and transportation modeling in San Bernardino County, and SANBAG wants to make every effort to ensure that the TAZ-level growth forecasts provide the most reasonable data possible for transportation and land use planning for SANBAG, local jurisdictions, and SCAG as well. SANBAG desires to take ownership of the local input growth forecast process because we are closer to the local conditions and are in a better position to provide the quality assurance checks that are needed to ensure the reasonableness of the results.

SANBAG already has been working with SCAG staff to prepare an initial set of growth forecasts for the 2016-2040 RTP/SCS. To begin this process, SCAG provided a preliminary set of projections at the county level, consisting of low-, mid-, and high-level forecast scenarios for population, households, and employment. These projections are provided in Attachment 2 and are an outgrowth of discussions SCAG held with a panel of experts in June 2013. SANBAG staff reviewed a first draft of jurisdiction-level growth data for 2012 and 2040 with the Planning and Development Technical Forum (PDTF) on October 23. Staff is proceeding with the development of a first draft of TAZ-level forecasts as well.

SANBAG will be making appointments with staff from individual local jurisdictions to further discuss individual forecasts at both the jurisdiction

level and TAZ level. A basic principle being used for this round of forecasts is that the TAZ-level and city-level should be developed in parallel, and neither should be finalized until there is a logical relationship between both levels. In other words, the jurisdiction totals should be allowed to float until the TAZ-level is finalized and vice versa.

There will be ample time for review and modification of these initial forecasts through May 2014. SCAG will be communicating directly with jurisdictions about the forecast approval process, but SANBAG will continue to be the point of contact for review and discussion of that information with individual jurisdictions until convergence is achieved on a recommended forecast for the RTP/SCS.

It should also be noted that SCAG will be providing an opportunity for subregions such as SANBAG to assume responsibility for preparation of their own Sustainable Communities Strategy in this RTP/SCS cycle (also referred to as SCS Delegation). Staff will be bringing this information to the SANBAG Board following adoption of the SCS delegation guidelines by the SCAG Regional Council.

Financial Impact: This item has no impact on the current Fiscal Year 2013/2014 budget. All staff activity associated with this item is consistent with Task No. 0110 Regional Planning.

Reviewed By: The information in this agenda item has been discussed with the SANBAG Planning and Development Technical Forum (local Planning/Community Development Directors) on October 23, 2013. This item was reviewed and unanimously recommended for approval by the General Policy Committee on November 13, 2013.

Responsible Staff: Steve Smith, Director of Planning

Attachment 1
Draft Text of a Letter from SANBAG to SCAG Outlining SANBAG Responsibilities in Development of the Growth Forecasts for the 2016-2040 RTP/SCS

Frank Wen
Manager, Research & Analysis
Southern California Association of Governments
818 West Seventh Street, 12th floor
Los Angeles, CA 90017

RE: Growth forecast responsibility for the 2016-2040 Regional Transportation Plan and Sustainable Communities Strategy

Dear Mr. Wen,

This letter indicates SANBAG's desire to manage the development of projections for population, housing and employment for the 2016-2040 Regional Transportation Plan and Sustainable Communities Strategy (2016-2040 RTP/SCS). We will produce forecasts at both the jurisdiction level and Transportation Analysis Zone (TAZ) level, using the city-level forecasts provided to SANBAG by SCAG in mid-October as a starting point. We will be coordinating closely with local jurisdictions and SCAG in that process.

Per discussions with your staff, we will provide forecasts for single family and multi-family households, retail and non-retail employment, and student populations, both by TAZ and jurisdiction. We will work together with SCAG staff to jointly derive the other necessary variables needed for travel demand modeling, as was done for the 2012 RTP/SCS.

Please direct all growth forecast data efforts to Steve Smith, Director of Planning at SANBAG at ssmith@sanbag.ca.gov (Phone 909-889-8611 ext. 134). SANBAG will continue to work with SCAG staff to ensure that all milestones are met regarding growth forecasts for the 2016-2040 RTP/SCS.

SCAG should communicate directly with the cities for formal approval of the growth forecasts, following SANBAG's delivery to SCAG of the proposed city-level totals in Spring 2014. All review and official approvals for the land use variables, General Plan, zoning and existing land use data, should also be coordinated directly with the 25 San Bernardino County jurisdictions. SCAG and SANBAG staff should coordinate together with jurisdictions on activities involving the Scenario Planning Model (SPM) and corresponding data once it is released for use by the jurisdictions in spring 2014.

Thank you for the continued opportunity to coordinate on data development for the 2016-2040 Regional Transportation Plan and Sustainable Communities Strategy (2016-2040 RTP/SCS). Please cc SANBAG on any e-mail or hard copy communication to the jurisdictions of San Bernardino County concerning the growth forecasts.

Sincerely,

BRD1312a-ss

Attachment 2. County-Level Growth Forecast Ranges for Initiation Consideration in the 2016-2040 RTP/SCS

		Low			Mid			High		
Population	**2012**	**2020**	**2035**	**2040**	**2020**	**2035**	**2040**	**2020**	**2035**	**2040**
IMPERIAL COUNTY	179,000	229,000	267,000	276,000	232,000	273,000	283,000	233,000	282,000	293,000
LOS ANGELES COUNTY	9,912,000	10,223,000	11,026,000	11,390,000	10,336,000	11,267,000	11,677,000	10,391,000	11,607,000	12,088,000
ORANGE COUNTY	3,072,000	3,229,000	3,346,000	3,458,000	3,264,000	3,419,000	3,544,000	3,281,000	3,521,000	3,668,000
RIVERSIDE COUNTY	2,244,000	2,498,000	3,169,000	3,274,000	2,526,000	3,240,000	3,358,000	2,540,000	3,339,000	3,478,000
SAN BERNARDINO CO	2,065,000	2,198,000	2,635,000	2,722,000	2,223,000	2,693,000	2,791,000	2,235,000	2,775,000	2,891,000
VENTURA COUNTY	834,000	870,000	923,000	953,000	880,000	943,000	977,000	885,000	972,000	1,012,000
SCAG	18,306,000	19,247,000	21,366,000	22,073,000	19,461,000	21,835,000	22,631,000	19,565,000	22,496,000	23,430,000
		Low			Mid			High		
Households	**2012**	**2020**	**2035**	**2040**	**2020**	**2035**	**2040**	**2020**	**2035**	**2040**
IMPERIAL COUNTY	49,000	70,000	87,000	91,000	71,000	89,000	93,000	71,000	92,000	96,000
LOS ANGELES COUNTY	3,250,000	3,467,000	3,755,000	3,886,000	3,503,000	3,837,000	3,984,000	3,521,000	3,948,000	4,121,000
ORANGE COUNTY	996,000	1,034,000	1,095,000	1,133,000	1,045,000	1,119,000	1,162,000	1,050,000	1,151,000	1,202,000
RIVERSIDE COUNTY	693,000	820,000	1,061,000	1,097,000	829,000	1,084,000	1,125,000	833,000	1,115,000	1,164,000
SAN BERNARDINO CO	615,000	688,000	825,000	853,000	695,000	843,000	875,000	699,000	867,000	905,000
VENTURA COUNTY	268,000	288,000	310,000	321,000	291,000	317,000	329,000	292,000	326,000	340,000
SCAG	5,870,000	6,368,000	7,133,000	7,382,000	6,435,000	7,288,000	7,568,000	6,467,000	7,499,000	7,828,000
		Low			Mid			High		
Employment	**2012**	**2020**	**2035**	**2040**	**2020**	**2035**	**2040**	**2020**	**2035**	**2040**
IMPERIAL COUNTY	59,000	101,000	118,000	121,000	102,000	121,000	125,000	103,000	125,000	130,000
LOS ANGELES COUNTY	4,249,000	4,585,000	4,803,000	4,951,000	4,645,000	4,922,000	5,093,000	4,674,000	5,091,000	5,297,000
ORANGE COUNTY	1,545,000	1,694,000	1,832,000	1,889,000	1,715,000	1,876,000	1,941,000	1,725,000	1,938,000	2,016,000
RIVERSIDE COUNTY	617,000	909,000	1,197,000	1,233,000	921,000	1,228,000	1,270,000	927,000	1,272,000	1,322,000
SAN BERNARDINO CO	659,000	805,000	1,042,000	1,074,000	816,000	1,068,000	1,105,000	821,000	1,105,000	1,150,000
VENTURA COUNTY	332,000	395,000	425,000	438,000	400,000	435,000	450,000	402,000	449,000	467,000
SCAG	7,461,000	8,489,000	9,416,000	9,707,000	8,599,000	9,649,000	9,984,000	8,653,000	9,980,000	10,383,000

Governments SANBAG Working Together

San Bernardino Associated Governments

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 9

Date: December 4, 2013

Subject: Proposed Final State and Federal Legislative Platforms

Recommendation:* Adopt Final State and Federal Legislative Platforms

Background: SANBAG's Legislative Platforms serve as the foundation for understanding the perspective of the Board of Directors on key issues that are anticipated to be considered during the course of each legislative session. The proposed updates to the legislative platforms will guide staff's analysis and recommendations on pending legislative and regulatory items in the upcoming session.

Staff reached out to Local, State and Federal Elected Officials; the City Mangers Technical Advisory Committee; and the Public and Specialized Transportation Advisory and Coordination Council (PASTACC) for feedback on the revised platforms. The feedback process was positive and supportive of the changes included in the revised documents.

At the August 14, 2013 General Policy Committee meeting, the Committee recommended that a provision be added to the platforms related to the Buy America challenges that have been faced by SANBAG. That item is now included in Section I (n) of the State Legislative Platform, stating SANBAG will, "Support the resolution of outstanding Buy America implementation issues to ensure that projects are able to move forward without unreasonable delays and cost increases." This is also reflected in the Federal Legislative Platform in Section IV (h).

*

Approved
Board or Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG	X	CTC	X	CTA	X	SAFE	X	CMA	X

Check all that apply.

BRD1312a-wvs

http://portal.sanbag.ca.gov/mgmt/committee/directors/brd2013/brd1312/AgendaItems/BRD1312a1-wvs.doc
http://portal.sanbag.ca.gov/mgmt/committee/directors/brd2013/brd1312/AgendaItems/BRD1312a2-wvs.doc

The Committee also requested that Section II (d) of the State Legislative Platform, as well as the same section in the Federal document, be revised to include regulatory actions that impact business development in San Bernardino County as well. That change is incorporated in the attachments.

Lastly, the Committee requested that Section IV (i) be revised to include job attraction and retention as part of partnership efforts with the South Coast and Mojave Desert Air Quality Management Districts and that change has been incorporated.

One additional change is included clarifying that not only does SANBAG support the implementation of MAP-21 in a manner that is consistent with traditional funding and project selection roles in the Southern California Associated Government region, but also that any extension or new reauthorization also align these programs with the traditional roles and responsibilities in our region. This edit was included in Section I (h) of the Federal Legislative Platform.

A summary of the major changes previously incorporated into each document is also provided below.

State Legislative Platform Updates

The "key issues" section was added to the platform to highlight the major initiatives that are anticipated to be considered in the legislative session. This section highlights California Environmental Quality Act (CEQA) modernization, Cap and Trade funding distributions, and innovative project delivery mechanisms. The Board of Directors has previously acted on CEQA reform principles proposed by the CEQA Working Group on April 11, 2013 and those principles have been summarized and are now included in the proposed state legislative platform. Also at the April Board of Directors Meeting, the Cap and Trade principles were adopted as part of SANBAG's participation with the Transportation Coalition for Livable Communities. Those principles are also now included in the proposed platform. One additional item was added to address proposals to utilize cap and trade funding for a single or limited set of projects. This will guide SANBAG's advocacy to keep the funding available for a broader set of projects and funding recipients. Lastly, the key issues section uses existing innovative project delivery principles and proposes a few updates including advocacy for additional flexibility, simplification of approval and reporting processes, and references to additional delivery mechanisms and project types.

In the "State/Local Fiscal Issues" section, clarifications were included related to advocacy for the protection of existing funding sources, opposition to diversions or additional mandates or requirements for existing funds, implementation of the

Moving Ahead for Progress in the 21st Century (MAP-21) funding and policy structures, and updated language related to maintaining funding and policy structures present the Southern California region. The platform now includes a separate "Council of Governments" (COG) section to capture advocacy positions that related to SANBAG's COG function including affordable housing, transit-oriented development, and economic development.

In the "Goods Movement" section, language was added to reflect the development of the state freight plan and its relationship to the national freight plan as well as other minor updates. Staff also proposed consolidating previously separate sections into the "Energy, Air Quality, & the Environment" section with minor modifications related to streamlining and ensuring public transit fleet requirements are both technologically and economically feasible.

In the "Highways & Roads" section, the current language related to the delegation of National Environmental Protection Act (NEPA) authority to the California Department of Transportation (Caltrans) was revised to further monitor the use of the authority to ensure that the benefits are achieved on both state and local projects. In addition, with the formation of the new State Transportation Agency in July 2013 and the recent efforts by Caltrans to require local funding for state service, language was added to increase transparency and accountability.

The "Transit & Commuter Rail" section was updated to reflect implementation efforts related to AB 32 (Chapter 488, Statutes of 2006) and SB 375 (Chapter 728, Statutes of 2008), and the need to protect existing funds from diversion and guard against additional operating requirements without proper funding. In addition, high-speed rail language was modified to advocate for a SANBAG role in any proposed Inland Empire route selection and connectivity projects.

Lastly, a "General" section was added to cover Measure I related advocacy, protecting SANBAG's ability to operate effectively, and to monitor changes in state law governing communications related to new technologies and record retention requirements.

Federal Legislative Platform Updates

In the "Funding" section, language has been proposed to cover both federal investments in transit capital and operations and the need to consider long-term investments in maintenance. Items were also included related to MAP-21 implementation to ensure that traditional roles and responsibilities are maintained and that the environmental and process streamlining provisions included in the bill are implemented in a timely manner. A "Council of Governments" section was also added to the document, similar to the state platform.

In the "Goods Movement" section, clarifying language was added related to project selection authority and protection of funding through a designated trust fund. An item was also added to reflect the development of the nation's primary freight network and the need to consider parallel corridors in Southern California rather than centerlane miles.

The "Project Delivery & Innovation" section was updated to reflect support for additional streamlining measures that can reduce project delivery times without sacrificing necessary oversight and environmental protections. An item was also included related to flexibility for the administration of high occupancy vehicle lanes.

In the consolidated "Energy, Air Quality & the Environment" section, similar clarifications on the NEPA delegation authority were included as well as items related to ensuring that federal review and process requirements are streamlined to reduce project delays, protect the environment, and are accompanied by appropriate implementation funding.

Lastly, the "Transit & Commuter Rail" section adds language to support priority funding for the early implementation of Positive Train Control and the need for compatible technologies across jurisdictions. Items are also included related to new and small starts projects as appropriate and commuter tax benefits.

The updated 2013-2014 State Legislative Platform is included as Attachment #1 and the updated 2013-2014 Federal Legislative Platform is included as Attachment #2.

Financial Impact: This item has no fiscal impact on the Fiscal Year 2013/2014 SANBAG Budget.

Reviewed By: This item was reviewed and unanimously recommended for approval by the General Policy Committee on October 9, 2013.

Responsible Staff: Wendy Strack, Director of Legislative and Public Affairs

BRD1312a-wvs

Attachment #1

SANBAG 2014 State Legislative Platform

The annual legislative platform serves as the basis to proactively engage in policy and legislative initiatives that will enable the San Bernardino Associated Governments (SANBAG) to deliver projects and programs that meet the needs of our region. This document also guides staff recommendations to the SANBAG Board of Directors on state legislative, regulatory, and administrative matters that are anticipated to be addressed in the coming legislative session.

SANBAG will collaborate with regional and statewide stakeholder groups to advance the legislative program including, but not limited to, the Southern California Consensus Group, Mobility 21, California Association of Councils of Governments, the Self-Help Counties Coalition, the California Transit Association, the Southern California Regional Rail Authority, and the High Desert Corridor Joint Powers Authority.

Key Issues

In the coming legislative session , SANBAG anticipates that a number of key issues may be considered including initiatives related to California Environmental Quality Act (CEQA) modernization, Cap and Trade funding distributions, and innovative project delivery mechanisms.

CEQA Modernization

a) Support revisions that expedite project delivery while maintaining critical environmental protections.
b) Continue to support public disclosure and accountability provisions providing the important public input component of project review.
c) Support a review of existing state and federal environmental and planning laws to reduce unnecessary and duplicative provisions.
d) Oppose additional review and process requirements that delay projects and increase costs while achieving little to no additional environmental benefits.
e) Oppose provisions that allow the CEQA process to be used to achieve non-environmental goals or to slow or delay projects that otherwise meet adopted environmental standards and include required mitigation measures.

Cap and Trade

a) Auction revenue from fuels should implement the AB 32 regulatory program and Sustainable Communities Strategies as required under SB 375 to reduce greenhouse gas (GHG) emissions from transportation.
b) Favor cost-effective and integrated transportation and land use strategies.
c) Project funding determinations should be done primarily at regional level reflecting each region's transportation funding structures under statewide criteria for evaluating GHG impacts. Criteria for project selection should be uniform statewide and developed by the State of California. Regions shall administer competitive funding processes and select projects based on these criteria.
d) Allow flexibility at the regional and local level to develop most cost effective projects.
e) Assist local governments in meeting regional GHG reduction goals.
f) Create a performance-based approach to maximize regional flexibility with improved modeling and verification systems to ensure effective results.
g) Promote innovation, collaboration, economic development and sustainability.

h) Support co-benefits such as air quality, public health, resource protection, equity, affordable housing, agriculture, and safety.
i) Ensure that the distribution of funds arising from transportation sources fund a broad array of projects that are geographically balanced rather than focus exclusively on a single or limited set of specified projects.

Innovative Project Delivery

SANBAG will advocate that innovative financing opportunities remain available for county transportation commissions to leverage local dollars, accelerate construction and job creation, and provide mobility options for the traveling public.

a) Support the consideration of public-private partnerships (P3s) in the development of transportation improvements.
b) Work to ensure that existing innovative project delivery methods such as design-build, construction manager/general contractor, and other tools are available and effective for a broad variety of projects including highways, transit, and local streets and roads.
c) Support measures that expand the use of design-build and P3s, with expanded flexibility and reduced multi-level approval and reporting requirements for projects that are largely locally funded or locally controlled.
d) Advocate for reforms to ensure projects are delivered faster, with increased flexibility and better coordination.
e) Support legislation and/or administrative reforms to enhance project delivery, including contracting out to the private sector, as appropriate.
f) Oppose efforts to impose additional mandates, hurdles, and requirements, beyond those already in existence, on lead agencies using alternative project delivery mechanisms.

I. State/Local Fiscal Issues

a) SANBAG will advocate for stable State funding, indexed for population growth, for transportation projects in San Bernardino County.
b) Oppose unfunded mandates on local governments.
c) Support priority state funding for projects supported by voter-approved transportation local sales tax measures.
d) Support efforts to maintain and protect transportation and transit funding as approved under the gas tax swap and as protected under Proposition 22. Oppose the diversion of transportation revenues for non-transportation purposes.
e) Oppose efforts to link existing transportation funding sources to the achievement of AB 32 objectives. Such priorities should be funded with new or enhanced funding sources rather than the reprioritization of existing, already oversubscribed sources.
f) Support budget and California Transportation Commission allocations to fully fund projects for San Bernardino County included in the State Transportation Improvement Program, State Highway Operation and Protection Program, bond programs, and the Measure I Expenditure Plan.
g) Support the implementation of Moving Ahead for Progress in the 21st Century (MAP-21) in an equitable manner at established funding levels with respect for the roles and responsibilities in existence in each region guiding project selection and discretion in allocation decisions.
h) Support retention of decision making, project selection, and funding authority at the county transportation commission level governing the use of all related funding sources.
i) Oppose legislative or regulatory actions that rely on regional transportation agencies to raise revenue for transportation or planning purposes.

j) Support legislation to provide funding for innovative, intelligent/advanced transportation, goods movement, demand management, active transportation, and air quality programs which relieve congestion, improve air quality, and enhance economic development.
k) Oppose an unreasonable increase in the administrative fees levied by the Board of Equalization for the collection and administration of county transportation sales tax measures and seek relief if necessary.
l) Support state policies that assure timely allocation of transportation revenue and allow for regions to advance projects with local funds as needed.
m) Support legislation that will incentivize counties without a voter approved tax measure for transportation to become "self-help" counties and recognizes/rewards the investment in the state's transportation system made by self-help counties.
n) Support the resolution of outstanding Buy America implementation issues to ensure that projects are able to move forward without unreasonable delays and cost increases.

II. Council of Governments

a) Support local control of the Ontario International Airport in recognition of the benefits of goods movement and passenger travel to San Bernardino County and the Inland Empire.
b) Support efforts for Council of Government development and funding.
c) Monitor legislation related to incentives for the development of affordable housing and transit-oriented developments
d) Support legislative and regulatory actions that incentivize the attraction, retention, and growth of businesses and employment in San Bernardino County.

III. Goods Movement

a) Support the development of the state freight plan, which recognizes the unique needs of San Bernardino County and its significant role in freight movement. The plan should not only recognize the economic benefits of the freight industry but should also include proposals to mitigate the associated congestion, air quality and community impacts and a recognition of the regions parallel transportation systems through a corridor based approach.
b) Support legislation that reduces freight-related impacts to San Bernardino County, including a particular focus on impacts to disadvantaged communities.
c) Ensure that goods movement project selection and prioritization authority is maintained at the local level.
d) Monitor any state container fee legislation to ensure that San Bernardino County goods movement projects are funded and that San Pedro Bay Ports are not placed at a competitive disadvantage that would harm the overall Southern California economy.
e) Oppose legislation that allows triple trailers in urbanized areas of San Bernardino County because of safety concerns, with the exception of border cities and/or bump stations, or dedicated truck lanes (e.g. Barstow/Needles).
f) Support legislation to reduce road damage from heavy trucks by reduced axle loading rather than an exclusive focus on gross vehicle weight.
g) Support recognition of the importance of inland ports to overall goods movement systems as part of any investment plan.

IV. Energy, Air Quality & the Environment

a) Support incentives to transition to alternative fuels and electric vehicles (EVs), including tax benefits and other incentives.
b) Support cost effective and technologically feasible conversion and replacement of public transit fleets to alternative fuels and EVs.
c) Support programs to provide refueling/recharging infrastructure for alternative fuel or electric

vehicles.

d) Support Property Assessed Clean Energy (PACE) program financing.
e) Support utility planning and upgrades to electrical infrastructure in support of fleet conversion and possible rail electrification programs.
f) Monitor regional proposals aimed at Cap and Trade and its focus on infrastructure impacts.
g) Continue to support the independence of the Mobile Source Air Pollution Reduction Review Committee, and the protection of AB 2766 funding.
h) Oppose legislative action that would reduce SANBAG's discretion in allocating Congestion Mitigation and Air Quality (CMAQ) funds.
i) Work in partnership with the South Coast Air Quality Management District and the Mojave Desert Air Quality Management District to promote job creation and retention, protect the public health, and work to improve the overall quality of life for San Bernardino County residents.
j) Support legislation to streamline the environmental review and project development process to avoid potentially duplicative and unnecessary steps, while maintaining critical environmental protections.

V. Highways & Roads

a) Support current program funding for Freeway Service Patrol, ride-sharing and call boxes, consistent with the level of growth and utilization.
b) Support equitable funding and resources for San Bernardino County freeway landscaping and maintenance.
c) Monitor the use of National Environmental Policy Act oversight authority delegated to the California Department of Transportation to ensure that local and state projects are receiving equal benefits and reduced project review times.
d) Participate in studies of market-based pricing measures to relieve traffic congestion, improve air quality and/or fund transportation alternatives.
e) Encourage the new State Transportation Agency to develop a mechanism for reporting on the performance of the new agency and the quality of the state and local project delivery programs and services, particularly in light of new requirements to locally fund state services such as oversight, project initiation documents, and other items.

VI. Transit & Commuter Rail

a) Advocate that transit operations continue to have a strong state funding role as a vital service that improves mobility and helps meet federal and state mandates.
b) Oppose additional requirements for increased service levels unless they are agreed to by the transit operator or appropriately funded.
c) Advocate for a safe, appropriately funded, and growing bus and rail system in Southern California with equitable distribution of funds and flexibility in the administration of the programs to meet the needs of each region.
d) Support state funding for Positive Train Control.
e) Support legislation and programs that facilitate (or remove obstacles to) transit oriented development near rail and bus rapid transit stations.
f) Advocate for high speed, and higher speed, rail investment in San Bernardino County and connectivity with local and regional transit.
g) Support increased funding for higher speed commuter rail and improved transit connectivity as feeder services for High Speed Rail (HSR).
h) Assure a SANBAG role in the planning for HSR and advocate for the full evaluation of all

viable routes serving San Bernardino County before a final alternative is chosen.

i) Advocate priority for the L.A.-San Diego via the Inland Empire HSR route.
j) Advocate to secure funding for the completion of all connectivity projects complementary to the development of HSR.
k) Support incentives for ridesharing and/or reimbursement for transit passes.
l) Support funding to allow local agencies to properly fund Metrolink service in our region, reflect the high ridership from inland counties.
m) Support appropriate funding levels from state sources to support transit operations that help to achieve AB 32 and SB 375 goals. The state should also recognize that, absent a new source of state funding, agencies will be unable to fully fund the level of service required to meet those goals in the future.

VII. General

a) Oppose legislation that could threaten the timely delivery of projects in the Measure I Expenditure Plan or interferes with the authority to administer any Measure I programs and services.
b) Oppose legislative and regulatory efforts to reduce SANBAG's ability to efficiently and effectively contract for goods and services, conduct business for the good of the organization, and limit or transfer risk or liability.
c) Monitor changes to the Brown Act that relate to the use of new technologies for communication with the public and with members of the Board of Directors, as well as changes to legislation related to public records and information requests.

Attachment #2

SANBAG 2014 Federal Legislative Platform

The annual legislative platform serves as the basis to proactively engage in policy and legislative initiatives that will enable the San Bernardino Associated Governments (SANBAG) to deliver projects and programs that meet the needs of our region. This document also guides staff recommendations to the SANBAG Board of Directors on federal legislative, regulatory, and administrative matters that are anticipated to be addressed.

SANBAG will continue to partner with public and private sector entities to support common objectives in Washington including fostering the unity of the Southern California Consensus Group and collaborating with the Coalition for America's Gateways and Trade Corridors, Mobility 21 on a national freight system, and the High Desert Corridor Joint Powers Authority.

I. Funding

a) Seek the highest level of federal transportation dollars to California and San Bernardino County for SANBAG projects and programs including, but not limited to: interstate highways; transit capital and operations in order to help to meet federal environmental goals; intercity commuter, and higher speed rail; goods movement; intelligent transportation systems and new technologies that maximize existing infrastructure; safety, maintenance, and operations funding for all modes; and regional airport ground access and development needs.
b) Support early action on extending and expanding the federal Surface Transportation bill, Moving Ahead for Progress in the 21st Century (MAP-21).
c) Support regional consensus building efforts for potential new funding strategies for transportation.
d) Oppose efforts to eliminate or erode contract authority for the Highway Trust Fund and support efforts to maintain the principle that transportation-based revenue should be reserved only for transportation purposes.
e) Support the Transportation Infrastructure Finance and Innovation Act program which provides Federal credit assistance in the form of direct Treasury loans, loan guarantees, and lines of credit to finance highway, rail, and green energy projects of national and regional significance.
f) Support Build America Bonds and America Fast Forward programs to help states and localities pursue needed capital for infrastructure.
g) Advocate for the protection of current transportation revenues, additional flexibility for existing revenues, and an accelerated national investment in infrastructure.
h) Support the implementation of MAP-21 at established funding levels with respect for the roles and responsibilities in existence in each region for project selection and discretion in allocation decisions. Additionally ensure that any extension of MAP-21 or any new reauthorization effort align programs with traditional roles and responsibilities for each region with respect to project selection and allocation decisions.
i) Ensure that the streamlining provisions of MAP-21 are implemented in a timely manner and in a manner that provides the maximum benefits to project delivery schedules.

II. Council of Governments

a) Support efforts for Council of Government development and funding.
b) SANBAG will work with the Congressional delegation and local stakeholders to aggressively advocate for legislation, budget actions or proposals that transfer Ontario International Airport to local control in recognition of the benefits of its goods movement and passenger travel to San Bernardino County and the State of California.

c) Support legislation and administrative actions that enable the implementation of the Property Assessed Clean Energy (PACE) program in San Bernardino County.
d) Support initiatives, legislation, and regulatory actions that incentivize the attraction, retention, and growth of businesses and employment in San Bernardino County.

III. Goods Movement

a) SANBAG will advocate for federal investment in goods movement infrastructure, and policies that properly recognize Southern California and San Bernardino County's role as the nation's premier containerized freight gateway.
b) Support targeted funding for goods movement projects of national significance that are beyond the funding capacity of local and state transportation programs and budgets (e.g. dedicated exclusive clean truck lanes).
c) Advocate that any federal goods movement program is funded at a level that is commensurate with national needs and ensure that such funds are protected from diversion for other uses through the designation of a trust fund.
d) Ensure that revenues generated by any fee that is levied on freight be specifically designated to fund projects that mitigate congestion, air quality, and community impacts directly associated with the movement of freight, and a clear causal relationship should exist between the freight system on which fees are levied and the impacts to be mitigated.
e) Ensure that revenue collected on freight be administered in partnership with local and regional elected officials and entities impacted by freight movement. SANBAG should be included in any governance structure dealing with revenue collected from freight moved through San Bernardino County.
f) Support development of a national/regional freight movement plan with clearly defined ports and corridors and inland improvement needs to provide for timely, reliable freight transport, timely implementation of freight-related strategies needed for attainment of federal health-based air quality standards and mitigation of freight-related impacts in communities.
g) Ensure that federal goods movement legislation imposes no unfunded mandates for administration or oversight regarding new revenue mechanisms and to retain control over project implementation at the local level.
h) Oppose legislation that allows triple trailers in urbanized areas of San Bernardino County because of safety concerns with the exception of border cities and/or bump stations, or dedicated truck lanes (e.g. Barstow/Needles).
i) Support legislation to reduce road damage from heavy trucks by reduced axle loading rather than an exclusive focus on gross vehicle weight.
j) Participate in national dialogue on freight policy and its focus on improving the performance of the freight network and advocate for improving Southern California's freight strategy.
k) As part of defining the national freight network, seek recognition of the unique network of parallel corridors in Southern California and recognize the entire corridor as part of the national network rather than focusing on centerlane miles of individual facilities.
l) Support recognition of the importance of inland ports to overall goods movement systems as part of any investment plan.

IV. Project Delivery & Innovation

a) Advocate for reforms that will accelerate project procurement, promote flexibility and innovation in financing, and respect local control.
b) Support the expanded use of design-build project delivery for federally funded highway and surface transportation projects.

c) Support the streamlining of federal reporting/monitoring requirements to reduce project delivery times without eliminating critical oversight mechanisms.
d) Support authority for regional transportation entities to implement pricing measures on federal-aid highways if desired for that region.
e) Support local options to privatize various aspects of transportation that would maximize available federal funding (e.g. P3s).
f) Support measures that would provide regional flexibility in meeting the operational requirements for high occupancy vehicle lanes.
g) Advocate for the implementation and further inclusion of recommendations for project streamlining initiatives as included in the Orange County Transportation Authority's Breaking Down Barriers report.
h) Support the resolution of outstanding Buy America implementation issues to ensure that projects are able to move forward without unreasonable delays and cost increases.

V. Energy, Air Quality, & the Environment

a) Advocate that any federal revenue generated from taxes or fees on energy products used for transportation are utilized for transportation purposes.
b) Support utility planning and upgrades of electrical infrastructure to support fleet conversion and possible rail electrification programs.
c) Monitor national Cap and Trade policies as they relate to infrastructure impacts.
d) Monitor the use of National Environmental Policy Act (NEPA) oversight authority delegated to the California Department of Transportation to ensure that local and state projects are receiving equal benefits and reduced project review times.
e) Protect funding sources for congestion relief and pollution reduction related to the transportation sector.
f) Support efforts to secure funds to facilitate the conversion of public sector fleets to alternative fuels to meet local, state and federal fleet conversion mandates, and provide for the replacement of aging alternative fuel fleets.
g) Support tax benefits and/or incentives for private sector transportation demand management programs and alternative fuel programs.
h) Ensure that federal goods movement legislation considers and underscores federal responsibilities for facilitation of international trade and interstate commerce, and regulation of interstate commerce in ways consistent with attainment of federal air quality standards and NEPA.
i) Support efforts to increase the amount and proportion of Congestion Mitigation and Air Quality (CMAQ) funds received by the State of California and ensure that the funds flow to county transportation commissions such as SANBAG for the appropriate South Coast and Mojave Desert Air Basin areas.
j) Support streamlined environmental revisions that remove duplication of state and federal processes when state regulations and environmental protections exceed federal requirements.
k) Participate in the development of livability and sustainability programs for the citizens of San Bernardino County.
l) Oppose additional review and process requirements that delay projects and increase costs while achieving little to no additional environmental benefits.
m) Monitor federal regulatory efforts to ensure that any new environmental requirements placed on local agencies are accompanied by the funding necessary for implementation.

VI. Transit & Commuter Rail

a) Advocate for policies that keep our rail systems safe and increase federal investment in commuter rail services.
b) Support federal funding of Positive Train Control (PTC) and rail safety programs.
c) Support priority funding for early implementation of PTC technologies and ensure that various technologies are compatible across the nation.
d) Advocate that the appropriate local or regional entity, such as SANBAG, be partners in on-going federal policy discussions to alter the liability cap for commuter rail accidents.
e) Support legislation to change and/or exempt level boarding access requirements for existing commuter rail systems.
f) Support policies that recognize the importance and fund commuter rail and transit connectivity to High Speed Rail.
g) Support the inclusion of San Bernardino County projects in the New and Small Starts programs.
h) Work to secure the greatest commuter tax benefits possible to incentivize the use of transit options.

Governments SANBAG Working Together

San Bernardino Associated Governments

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: **10**

Date: December 4, 2013

Subject: End of Session State Legislative Report

Recommendation:* Receive End of Session State Legislative Report

Background: In the first year of the 2013-2014 Legislative Session, 2,256 bills were introduced. Of those bills, 1,093 bills went to the Governor's desk and 73 percent were signed. This report will provide an overview of SANBAG's major state advocacy initiatives and outcomes in 2013, as well as a comprehensive look at bills of interest that will take effect in the coming months.

SANBAG's state advocacy efforts focused on a number of key topics including California Environmental Quality Act (CEQA) reform, cap and trade, goods movement, sustainable communities' strategy implementation, alternative project delivery authority, and the implementation of the Moving Ahead for Progress in the 21st Century Act (MAP-21).

CEQA Reform
CEQA was enacted in 1970 following the passage of the National Environmental Policy Act (NEPA) the prior year. As originally drafted, a bill that was only three pages in length was followed by decades of legislative and regulatory actions, litigation, and the passage of increasingly stringent environmental policies designed to advance the broad goals of the preservation of critical environment, historical and cultural resources, as well as enhanced public participation and transparency in the process.

*

COG	X	CTC	X	CTA	X	SAFE	X	CMA	X

Check all that apply.

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

BRD1312b-wvs
http://portal.sanbag.ca.gov/mgmt/committee/directors/brd2013/brd1312/AgendaItems/BRD1312b1-wvs.docx

Earlier this year, SANBAG adopted the CEQA Working Group principles and adopted a "Work with Author" position on SB 731 (Steinberg, D-Sacramento). Unfortunately, while many hoped there would be progress towards a significant modernization of CEQA this year, a comprehensive measure did not move forward. Beginning the session with nearly 30 CEQA related bills, only one moved forward in the end, Senate pro Tem Darrell Steinberg's SB 743.

With widespread support for SB 731 lacking, Senator Steinberg gut-and-amended SB 743 to include a number of streamlining provisions for the Sacramento Kings arena. SB 743 also included some of the statewide reform measures that were previously contained in SB 731. SB 731 aims to speed the judicial process for environmental lawsuits brought against the planned arena in downtown Sacramento. It also limits the courts' ability to stop construction of the project if a lawsuit is filed and bolsters the city's ability to use eminent domain. SB 743 also contains statewide provisions designed to avoid delays on urban "infill" projects and seeks to limit opportunities for frivolous lawsuits. Specifically, the bill removes parking and project aesthetic standards as grounds for lawsuits on urban projects; changes the way project traffic impacts are measured, moving away from analyzing congestion at nearby intersections and focusing instead on whether infill projects reduce the need for car usage overall in a metropolitan area; and exempts projects in transit-heavy areas from CEQA lawsuits when the project is inside a larger "specific plan area" that has had an environmental review.

Cap and Trade
In April 2013, SANBAG approved modified principles for, and membership in, the Transportation Coalition for Livable Communities (Coalition). This coalition includes the California Alliance for Jobs, California Transit Association, Transportation California, California State Association of Counties (CSAC), League of California Cities, Self Help Counties Coalition and a variety of local agencies including the Southern California Association of Governments (SCAG) and the Metropolitan Transportation Commission.

AB 574 (Lowenthal, D-Long Beach) was introduced as the vehicle for the cap and trade distribution proposal being advanced by the Coalition. This proposal seeks to outline the distribution of cap and trade funding resulting from the expansion of the program to transportation fuels in 2015. As these funds are to be derived from transportation sources, AB 574 focuses the expenditure of these funds on transportation projects in Sustainable Communities Strategies (SCS) that help meet the greenhouse gas (GHG) emission reduction goals of AB 32 (Chapter 488, Statutes of 2006) and SB 375 (Chapter 728, Statutes of 2008).

This bill was held in the Assembly Appropriations Committee due to the Governor's desire to not only further develop a more comprehensive approach

governing the use of the funds, but the need to borrow the funds in fiscal year (FY) 2013-2014 to balance the state budget. SANBAG will continue to work with our partners on a distribution plan in the next session.

Goods Movement
One of SANBAG's key priorities is to reduce the impacts from goods movement on our local communities. SANBAG supported two bills in the 2013 session which help to prioritize investments in our state, understand the impacts of goods movement on our local communities, and to seek mitigation for those impacts.

AB 14 (Lowenthal, D-Long Beach) requires a comprehensive state freight plan be prepared as part of the MAP-21, including establishing a freight advisory committee. The initial plan is to be submitted to the Legislature, the Governor, and specified state agencies by December 31, 2014 and updated every five years. Our Executive Director, Ray Wolfe, is a member of the California Freight Advisory Committee to represent SANBAG's interest as this plan is developed. This bill was supported in concept by SANBAG and was signed by the Governor.

AB 1081 (Medina, D-Riverside) requires the State's 5-year infrastructure plan to specifically address goods movement related infrastructure needs and includes air, water, land, and sea port of entry facilities, as well as roads, rail, and other projects related to goods movement. AB 1081 also would require the infrastructure plan to include recommendations for bringing private sector financing options to the table. This bill was supported by SANBAG, but is a two-year bill, currently held in the Senate Appropriations Committee.

SCS Implementation
As local agencies move forward with implementing SCS plans required under SB 375, a number of bills following up on that effort emerged in 2013. AB 1290, by Speaker Pérez (D-Los Angeles), proposed a number of changes both to the membership of the California Transportation Commission (CTC) and the responsibilities related to the implementation SCS', which fall under its purview. The expansion of the membership and role of the CTC, as well as the imposition of additional and duplicative reporting and state mandated activities, could have presented potential issues with slowing project delivery and reducing the responsiveness of the CTC.

SANBAG's work with author position on AB 1290 allowed SANBAG to engage in significant conversations with the author on major changes to the approach that would serve to increase the communication and coordination of the SCS implementation without creating a system that dramatically slows project delivery. Ultimately, the bill was vetoed by the Governor, stating that many of the suggested measures can be accomplished without statutory changes. SANBAG will continue to work with the Legislature and the Administration on

SCS related implementation to advocate for a responsible and effective approach to future monitoring.

A number of bills seeking to provide funding for SCS related efforts and projects were also introduced in 2013. In particular, AB 431 (Mullin, D-San Mateo) and AB 1002 (Bloom, D-Santa Monica) were of interest to SANBAG.

AB 431 would have provided Metropolitan Planning Organizations (MPOs) with the option of levying regional taxes for the purposes of achieving the goals of their approved SCS'. SANBAG opposed the bill and it did not advance out of its first policy committee, due to concerns raised not only by SANBAG, but a number of other stakeholders across the state.

AB 1002 would have imposed a vehicle registration tax of $6 for the purpose of implementing SCS related projects, including bicycle and pedestrian projects, safe routes to school, transit programs, transit oriented development, and complete streets projects. SANBAG did not take a position on the bill as it was quickly held in the first policy committee.

Alternative Project Delivery
One of the most significant bill signings in transportation in 2013 came when the Governor signed, AB 401 (Daly, D-Anaheim), sponsored by the Orange County Transportation Authority (OCTA). Initially drafted to provide design-build (DB) authority to OCTA for a project on Interstate 405, once the bill moved to the Senate negotiations began on expanding AB 401's authority for statewide use. The current DB pilot program under SB2X 4 (Chapter 2, Statutes of 2009-10 Second Extraordinary Session) was set to expire on January 1, 2014.

AB 401 now extends DB authority to 2024 to an unlimited number of projects for local agencies (limited to 10 for the California Department of Transportation (Caltrans)), specifically permits local projects on the state highway system and local roads, and also includes language limiting construction inspection authority to Caltrans. This language also continues Proposition 35 requirements that these tasks can be performed by "department employees or consultants under contract with the department."

The use of the DB procurement method rather than the traditional design bid-build method, can allow for an expedited project delivery schedule for selected projects by allowing design and construction activities to proceed concurrently rather than sequentially.

In addition, Public Private Partnership (P3) authority that allows the use of DB in SB 2X 4 currently expires in 2017. This agreement would allow regional

agencies to pursue P3/DB projects after 2017 with the California Transportation Financing Authority, as authorized under AB 798 (Chapter 474, Statutes of 2009).

There was also a great deal of activity related to P3 authority in 2013. In the negotiations over the state budget, the two budget committees had included specific language related to imposing "best practices" on all P3 projects. This could have resulted in adding additional approvals for highway and transit projects. SANBAG, in partnership with a multitude of transportation stakeholders statewide, advocated against the inclusion of broad "best practices' language. This effort resulted in this trailer bill language being limited solely to reporting for the Long Beach Courthouse project in SB 75, a budget trailer bill.

Earlier in the session, AB 749 (Gorell, R-Camarillo) introduced a bill to modify and extend P3 authority through 2019. The SANBAG Board of Directors adopted a work with author position on this bill and requested 3 amendments, which were ultimately included by the author. These amendments included extending the authority through 2021, modifying provisions related to the Public Infrastructure Advisory Commission's ability to approve projects, and more explicitly allowing publicly operated facilities. AB 749 was not supported by the Professional Engineers in California Government and thus the bill was held in the Assembly Transportation Committee for this year.

MAP-21 Implementation
One of the provisions of MAP-21 that required clarifying legislation at the state level included the process for allocating federal Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds. Previously, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) contained a set of weighted factors for the distribution of CMAQ funds to federal non-attainment and maintenance areas. When MAP-21 was approved, these previously described formulas were not included in the federal bill. AB 466 (Quirk-Silva, D-Fullerton) memorializes the process that is currently used to allocate funds across the regions. This bill was supported by SANBAG and was signed by the Governor.

MAP-21 also included provisions to allow for the delegation of NEPA authority for transit projects. NEPA delegation is already in place in California for highway projects. A bill that proposed to extend this authority to transit projects, AB 863 (Torres, D-Chino), was held in the Assembly Transportation Committee due to concerns about Caltrans ability to staff and properly resource such a program. SANBAG had a work with author position on this bill.

Another significant component of MAP-21 included a need to establish a process for implementing the Active Transportation program. SB 99 (Senate Budget and Fiscal Review Committee) was introduced and due to SANBAG's effective

partnership with Legislative Leadership, the Administration, the Federal Highway Administration, Caltrans, and agencies throughout the Southern California Association of Governments (SCAG) region, a number of provisions were included that reflect the unique needs of the SCAG area. SB 99 moves forward with the competitive process envisioned under MAP-21, while still ensuring the funds are distributed in an equitable manner that achieves local, state, and federal goals for these funds. This bill will ensure that county transportation commissions, such as SANBAG, will have a role in the criteria development and project selection processes for this program in Southern California.

HOV Low Emissions

A number of bills related to the expanded use of high occupancy vehicle (HOV) lanes by alternative fuel vehicles and during non-peak hours were considered in 2013. Most notably, AB 266 (Blumenfield, D-San Fernando Valley) and SB 286 (Yee, D-San Francisco) authorized the use of HOV lanes by "white" and "green" permit holders which include plug-in hybrids, hydrogen fuel cell, and pure electric cars through 2019. These provisions would have expired in 2015.

Another HOV related bill, AB 405 (Gatto, D-Burbank), was vetoed by the Governor. This bill would have prohibited any HOV lane facility from moving forward on State Route (SR) 134 between SR 170 and Interstate 5 unless the facility is only operated as an HOV during peak hours.

SANBAG closely monitored these bills as the 2009 Caltrans HOV/Express Lane Business Plan found that nearly 50 percent of the HOV lanes in the state experience periods of degradation in the peak hour according to the federal definition – meaning that average speeds of 45 mph speed or lower have been measured more than 10 percent of the time. Legislation that adds vehicles to the HOV lanes could further exacerbate this growing issue.

Redevelopment

Another key issue that many local agencies hoped would be addressed in the 2013-2014 legislative session was how the Legislature intends to help local agencies move forward under a new structure in the "post redevelopment" landscape. Although neither bill ultimately made it to the Governor's desk this year, key measures were proposed by the League of California Cities and Senate President pro Tem Darrell Steinberg.

AB 1080 (Alejo, D-Salinas), sponsored by the League of California Cities, would have authorized the development of a Community Revitalization and Investment Area in disadvantaged communities, with projects funded by tax increment funds. SB 1 (Steinberg, D-Sacramento) would have authorized specific entities within a Sustainable Communities Investment Area near rail and transit corridors, as

defined, to form a Sustainable Communities Investment Authority and adopt a plan for the area with projects also funded by tax increment funds.

Bills also related to modifying provisions of current infrastructure financing district authority, including SB 33 (Wolk, D-Davis), AB 229 (Perez, D-Los Angeles), AB 662 Atkins (D-San Diego), and SB 628 (Beall, D-San Jose) were also proposed but none moved forward in this session. The Governor has stated he prefers a more comprehensive approach be developed once the dissolution of previous redevelopment authority has sufficiently progressed.

Federal Transit Administration Grants/Pension Reform
The Federal Transit Administration (FTA) provides funding to local agencies through several grant programs for capital projects and operating expenses. These funds must be certified by the U.S. Department of Labor (DOL) to ensure that certain protections are provided to mass transit employees, as specified in Section 13c of the Federal Transit Act, including the preservation of collective bargaining rights. Unions representing transit agencies around the state challenged these grant applications alleging that the passage of the Public Employees Pension Reform Act (PEPRA) in California constituted a violation of Section 13c.

This challenge resulted in the withholding of over $11 million dollars to San Bernardino County's largest transit operator, Omnitrans. Without these critical operating funds, Omnitrans began to consider a plan of to reduce service by up to 40%. This could have resulted in a reduction of 240,000 service hours and the layoff of 222 employees.

In addition, SANBAG was facing the withholding of approximately $20 million in capital grants for the San Bernardino Transit Center and "First Mile" projects. The loss of these funds would have also forced the loss of other federal and state funds for these projects.

AB 1222 (Bloom, D-Santa Monica and Dickinson, D-Sacramento) was gut-and-amended on September 4, 2013 to temporarily exempt mass transit workers from the provisions of PEPRA through January 1, 2015. This will allow a lawsuit to move forward against DOL to challenge the determination that California's pension reform violates 13c. The Governor signed this bill on October 4, 2013.

Concurrently, the Governor also announced that the State, in conjunction with Sacramento Regional Transit, have filed the lawsuit so a final determination can be made in federal court. Should the federal court side with the State, PEPRA will then apply to mass transit employees again. If the federal court sides with the DOL, mass transit employees will be permanently exempt from PEPRA. This

joint action has allowed the DOL and the FTA to begin certifying grants and releasing funds to local agencies.

Other Issues of Interest
In addition, SANBAG considered a number of other issues, the outcomes of which are shown below.

AB 268 (Holden, D-Pasadena) contains language to encourage the extension of the Gold Line to Ontario Airport. The bill further encourages continued cooperation on transportation projects such as the Gold Line that provide broad regional benefits. SANBAG's conceptual support was based on the need for regional cooperation regarding transit connections to Ontario Airport, as long as the connections are financially viable and consistent with the needs and vision of transit service in San Bernardino County. This bill was held in the Assembly Rules Committee.

SB 556 (Corbett, D-East Bay) would have required that services being offered by a private entity on behalf of a public agency be distinctly marked as such by displaying the words "THE OPERATOR OF THIS VEHICLE IS NOT A GOVERNMENT EMPLOYEE" in the same or larger font size of any font otherwise displayed on the vehicle. In addition, the uniforms worn by the contract employees must also contain the disclosure, "NOT A GOVERNMENT EMPLOYEE." The bill was further amended on July 1, 2013 to state that violations of this act shall be subject to the remedies provided in the Consumers Legal Remedies Act, which outlines a process for resolution when consumers are misled about the source of goods and services.

Due to significant opposition by SANBAG and a number of local agencies across the state, the bill was significantly amended near the end of session to only apply to public health and safety services. Although this still carried some impacts for local agencies, the advocacy efforts statewide resulted in strong changes for transit agencies. The bill was ultimately held on the Assembly floor due to remaining opposition by the League of California Cities and CSAC.

Financial Impact: This item has no fiscal impact on the FY2013/2014 SANBAG Budget.

Reviewed By: This item was received by the General Policy Committee on November 13, 2013.

Responsible Staff: Wendy Strack, Director of Legislative and Public Affairs

CA AB 8

AUTHOR: Perea (D)
TITLE: Alternative Fuel: Vehicle Technologies: Funding Program
FISCAL COMMITTEE: no
URGENCY CLAUSE: yes
INTRODUCED: 12/03/2012
ENACTED: 09/28/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 401

SUMMARY: Provides the State Air Resources Board has no authority to enforce any existing clean fuels outlet regulation that requires a person to construct, operate, or provide funding for construction or operation of any publicly available hydrogen-fueling station. Requires public disclosure of vehicle-related and station information. Relates to a smog abatement fee, registration charge, and tire fee. Authorizes an increase in compensation for retired or replacement vehicles for low-income motor vehicle owners.

STATUS:

09/28/2013	Chaptered by Secretary of State. Chapter No. 401

Priority: High

CA AB 14 **SANBAG Position: Support in Concept**

AUTHOR: Lowenthal B (D)
TITLE: State Freight Plan
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 12/03/2012
ENACTED: 09/06/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 223

SUMMARY: Requires the Transportation Agency to prepare a state freight plan with specified elements to govern the immediate and long-range planning activities and capital investments of the state with respect to the movement of freight. Requires the agency to establish a freight advisory committee.

STATUS:

09/06/2013	Signed by GOVERNOR.
09/06/2013	Chaptered by Secretary of State. Chapter No. 223

Priority: High

CA AB 21

AUTHOR: Alejo (D)
TITLE: Safe Drinking Water Small Community Grant Fund
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 12/03/2012
ENACTED: 10/08/2013

DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 628

SUMMARY: Authorizes the assessment of a specified annual charge in lieu of interest on loans for water projects made pursuant to the Safe Drinking Water State Revolving Fund, and the deposit of that money into the Safe Drinking Water State Small Community Emergency Grant Fund and provides a monetary limit to the fund. Authorizes the expending of the money in the fund for grants for specified water projects that serve disadvantaged and severely disadvantaged communities. Limits the amount in the fund.

STATUS:

10/08/2013	Signed by GOVERNOR.
10/08/2013	Chaptered by Secretary of State. Chapter No. 628

Priority: High

CA AB 61

AUTHOR: Gatto (D)
TITLE: Parking: Parking Meters
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 01/07/2013
ENACTED: 08/12/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 71

SUMMARY: Prohibits a local authority from enacting an ordinance or resolution prohibiting or restricting the parking of a vehicle in a parking space that is regulated by an inoperable parking meter or inoperable parking payment center.

STATUS:

08/12/2013	Signed by GOVERNOR.
08/12/2013	Chaptered by Secretary of State. Chapter No. 71

Priority: High

CA AB 66

AUTHOR: Muratsuchi (D)
TITLE: Electricity: System Reliability
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 01/07/2013
ENACTED: 10/05/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 578

SUMMARY: Requires the Public Utilities Commission to require an electrical corporation include in annual reliability reports, information on system reliability, identifying the frequency and duration of interruptions in services and list areas with both the most frequent and longest outages, using local areas. Requires the Commission to use the information to require remediation of reliability deficiencies if the report identifies repeated deficiencies in the local area. Requires posting on certain Web sites.

STATUS:

10/05/2013	Chaptered by Secretary of State. Chapter No. 578

Priority: High

CA AB 92

AUTHOR: Assembly Budget Committee
TITLE: State Government
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 01/10/2013
ENACTED: 06/27/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 26

SUMMARY: Relates to the availability of funds from the Transit-Oriented Development Implementation Fund and from the Regional Planning, Housing and Infill Incentive Account for the liquidation of encumbrances of the State Department of Housing and Community Development. Redefines a county fiscal adjustment period regarding property taxes, the county's Educational Revenue Augmentation Fund, and sales tax revenues. Relates to income tax laws and the gain or loss on the exchange of business property.

STATUS:

06/27/2013	Signed by GOVERNOR.
06/27/2013	Chaptered by Secretary of State. Chapter No. 26

Priority: High

CA AB 93

AUTHOR: Assembly Budget Committee
TITLE: Taxation: Credits, Deductions, and Net Operating Losses
FISCAL COMMITTEE: yes
URGENCY CLAUSE: yes
INTRODUCED: 01/10/2013
ENACTED: 07/11/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 69

SUMMARY: Extends existing law regarding the designation and oversight of economic development areas and incentives to businesses operating in those areas, and provisions of the Personal Income Tax and Corporation Tax laws that provide tax credits for sales and use taxes paid for purchases, and hiring credits, and the interest deduction. Creates a Tax Credit Committee. Limits the number of certain tax credits. Exempts sales taxes for property used in manufacturing and for materials used by a construction contractor.

STATUS:

07/11/2013	Signed by GOVERNOR.
07/11/2013	Chaptered by Secretary of State. Chapter No. 69

Priority: High

CA AB 101

AUTHOR: Assembly Budget Committee
TITLE: Budget Act of 2013
FISCAL COMMITTEE: yes
URGENCY no

CLAUSE:
INTRODUCED: 01/10/2013
ENACTED: 09/26/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 354
SUMMARY: Amends the Budget Act of 2013 by revising items of appropriation and making other changes.
STATUS:

09/26/2013	Signed by GOVERNOR.
09/26/2013	Chaptered by Secretary of State. Chapter No. 354

Priority: High

CA AB 106

AUTHOR: Assembly Budget Committee
TITLE: Economic Development: Taxation: Credits
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 01/10/2013
ENACTED: 09/26/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 355
SUMMARY: Extends tax credits under the Personal Income Tax and Corporation Tax laws that authorize credits for hiring qualified employees within enterprise zones and local agency military base recovery areas subject to specified criteria and requirements. Authorizes a local entity authorized to issue a certification that provides that a qualified employee, qualified disadvantaged individuals, or qualified displaced employee meets specified requirements to continue to accept certification applications.
STATUS:

09/26/2013	Signed by GOVERNOR.
09/26/2013	Chaptered by Secretary of State. Chapter No. 355

Priority: High

CA AB 110

AUTHOR: Blumenfield (D)
TITLE: Budget Act of 2013
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 01/10/2013
LINE ITEM: 06/27/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 20
SUMMARY: Makes appropriations for the support of state government for the 2013-14 fiscal year.
STATUS:

06/27/2013	Chaptered by Secretary of State. Chapter No. 20

Priority: High

CA AB 115

AUTHOR: Perea (D)
TITLE: Safe Drinking Water State Revolving Fund
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 01/14/2013
ENACTED: 10/08/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 630

SUMMARY: Relates to the state Safe Drinking Water Act. Authorizes a legal entity to apply for grant funding on behalf of one or more public water systems serving disadvantaged or severely disadvantaged communities if specified requirements are met, including having a signed agreement with each public water system for which it is applying for funding. Provides for transferring the statutory and regulatory authority for the California Safe Drinking Water Act from the Department of Public Health.

STATUS:

10/08/2013	Signed by GOVERNOR.
10/08/2013	Chaptered by Secretary of State. Chapter No. 630

Priority: High

CA AB 116

AUTHOR: Bocanegra (D)
TITLE: Land Use: Subdivision Maps: Expiration Dates
FISCAL COMMITTEE: yes
URGENCY CLAUSE: yes
INTRODUCED: 01/14/2013
ENACTED: 07/11/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 62

SUMMARY: Extends the expiration date of any approved tentative land use map or vesting tentative map that was approved on or after a specified date. Requires an extension of specified maps approved on or before a specified date, upon application by a subdivider. Provides that a tentative map extended is also subject to the truncated 3-year period, and that the local agency is not prohibited from levying a fee, or imposing a condition that requires the payment of a fee upon the issuance of a building permit.

STATUS:

07/11/2013	Signed by GOVERNOR.
07/11/2013	Chaptered by Secretary of State. Chapter No. 62

Priority: High

CA AB 118

AUTHOR: Assembly Environmental Safety and Toxic Materials Committee
TITLE: Safe Drinking Water State Revolving Fund
FISCAL COMMITTEE: yes
URGENCY no

CLAUSE:
INTRODUCED: 01/14/2013
ENACTED: 10/08/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 631

SUMMARY: Limits loans and grants from the Safe Drinking Water State Revolving Fund for planning and preliminary engineering studies, project design, and construction costs to those incurred by community and not-for-profit public water systems. Specifies that certain water systems have no ability to repay a loan. Authorizes a loan applicant to receive up to the full cost of a project in the form of a loan, subject to specified conditions.

STATUS:

10/08/2013	Signed by GOVERNOR.
10/08/2013	Chaptered by Secretary of State. Chapter No. 631

Priority: High

CA AB 151

AUTHOR: Olsen (R)
TITLE: Local Government: Disabled Veterans: Assistance
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 01/18/2013
ENACTED: 10/10/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 689

SUMMARY: Authorizes the governing board of a county to grant financial assistance, relief, and support to a disabled veteran.

STATUS:

10/10/2013	Signed by GOVERNOR.
10/10/2013	Chaptered by Secretary of State. Chapter No. 689

Priority: High

CA AB 164

AUTHOR: Wieckowski (D)
TITLE: Infrastructure Financing
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 01/23/2013
ENACTED: 08/13/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 94

SUMMARY: Requires a lease agreement between a governmental agency undertaking an infrastructure project and a private entity to include performance bonds as security to ensure the completion of the construction of the facility and payment bonds to secure the payment of claims of laborers, mechanics, and materials suppliers employed on the work under contract.

STATUS:

08/13/2013	Signed by GOVERNOR.

	08/13/2013	Chaptered by Secretary of State. Chapter No. 94
Priority:	High	

CA AB 178

AUTHOR:	Gaines B (R)
TITLE:	Highways: Exit Information Signs
FISCAL COMMITTEE:	yes
URGENCY CLAUSE:	no
INTRODUCED:	01/24/2013
ENACTED:	08/26/2013
DISPOSITION:	Enacted
LOCATION:	Chaptered
CHAPTER:	131
SUMMARY:	Requires the Department of Transportation to allow the placement of information signs along State Highway Route 65 within, or at exits leading to, the City of Lincoln. Requires the department to report to the transportation committees of the Senate and Assembly on the implementation of this provisions and on its recommendations as to whether the period of this authority should be extended, and whether authorization should be expanded to other urban areas.
STATUS:	

08/26/2013	Signed by GOVERNOR.
08/26/2013	Chaptered by Secretary of State. Chapter No. 131

Priority: High

CA AB 179

AUTHOR:	Bocanegra (D)
TITLE:	Electronic Transit Fare Collection Systems
FISCAL COMMITTEE:	no
URGENCY CLAUSE:	no
INTRODUCED:	01/24/2013
ENACTED:	09/27/2013
DISPOSITION:	Enacted
LOCATION:	Chaptered
CHAPTER:	375
SUMMARY:	Makes provisions of existing law regarding the prohibition of a transportation agency selling or providing personally identifiable information from an electronic toll collection system or use of toll facility using such system applicable to an agency that employs an electronic transit fare system. Provides that, with respect to those systems, personally identifiable information does not include, for purposes of existing, photographic or video footage.
STATUS:	

09/27/2013	Signed by GOVERNOR.
09/27/2013	Chaptered by Secretary of State. Chapter No. 375

Priority: High

CA AB 195

AUTHOR:	Hall (D)
TITLE:	Counties: Construction Projects: Design-Build
FISCAL	yes

COMMITTEE:
URGENCY CLAUSE: no
INTRODUCED: 01/28/2013
ENACTED: 08/19/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 121

SUMMARY: Extends provisions of existing law that authorizes counties to use alternative procedures, known as design-build, for bidding on specified types of construction projects in the county in excess of a specified amount, in accordance with specified procedures, and provides that the procedures include a requirement for contracts awarded after a certain date that a county board of supervisors pay a fee into the State Public Works Enforcement Fund.

STATUS:

08/19/2013	Signed by GOVERNOR.
08/19/2013	Chaptered by Secretary of State. Chapter No. 121

Priority: High

CA AB 201

AUTHOR: Holden (D)
TITLE: Small Business Financial Development Corporations
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 01/29/2013
ENACTED: 10/04/2013
DISPOSITION: Enacted
LOCATION: Signed by Governor
CHAPTER: 529

SUMMARY: Requires the Office of Small Business Advocate within the Governor's Office of Business and Economic Development to post information on its Internet Web site regarding the programs administered through statewide network of small business financial development corporations that includes programs of loan guarantees, direct lending surety bond guarantees, and disaster loans. Provides the manner appropriate to the needs of small business and existing and potential financial institutions and companies.

STATUS:

10/04/2013	Signed by GOVERNOR.
10/04/2013	Chaptered by Secretary of State. Chapter No. 529

Priority: High

CA AB 205

AUTHOR: Pan (D)
TITLE: Public Employees' Retirement: Pension Fund
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 01/30/2013
ENACTED: 10/12/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 766

SUMMARY:	Extends the authorization to prioritize investment in an in-state infrastructure project to the board of retirement or the board of investments of a retirement system established pursuant to the County Employees Retirement Law of 1937.
STATUS:	
	10/12/2013 Chaptered by Secretary of State. Chapter No. 766
Priority:	High

CA AB 206

AUTHOR:	Dickinson (D)
TITLE:	Vehicles: Length Limitations: Buses: Bicycle Devices
FISCAL COMMITTEE:	no
URGENCY CLAUSE:	no
INTRODUCED:	01/30/2013
ENACTED:	08/13/2013
DISPOSITION:	Enacted
LOCATION:	Chaptered
CHAPTER:	95
SUMMARY:	Authorizes the Sacramento Regional Transit District to install folding devices attached to the front of its buses that are designed and used exclusively for transporting bicycles if the use of the device meets certain requirements. Establishes a route review committee prior to the installation of the initial folding device on a bus and requires the committee to perform an initial review of the routes.
STATUS:	
	08/13/2013 Signed by GOVERNOR.
	08/13/2013 Chaptered by Secretary of State. Chapter No. 95
Priority:	High

CA AB 210

AUTHOR:	Wieckowski (D)
TITLE:	Transactions and Use Taxes: Alameda and Contra Costa
FISCAL COMMITTEE:	no
URGENCY CLAUSE:	no
INTRODUCED:	01/30/2013
ENACTED:	08/28/2013
DISPOSITION:	Enacted
LOCATION:	Chaptered
CHAPTER:	194
SUMMARY:	Extends the authority of the County of Alameda, and authorizes the County of Contra Costa, to impose the transactions and use tax for countywide transportation programs conditioned upon prior voter approval.
STATUS:	
	08/28/2013 Signed by GOVERNOR.
	08/28/2013 Chaptered by Secretary of State. Chapter No. 194
Priority:	High

CA AB 217

AUTHOR:	Bradford (D)
TITLE:	Electricity: Solar Electricity: Low-Income Households
FISCAL	no

COMMITTEE:
URGENCY CLAUSE: no
INTRODUCED: 01/31/2013
ENACTED: 10/07/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 609

SUMMARY: Provides that, upon the expenditure or reservation of the Single-Family Affordable Solar Homes Program and the Multifamily Affordable Solar Housing Program funds, a surcharge collected by the electrical corporations for the State Solar Initiative is authorized for the administration of the programs. Extends the operation of the programs or until exhaustion of a specified amount of funds. Requires the programs to meet specified requirements. Incorporates additional changes.

STATUS:

10/07/2013	Signed by GOVERNOR.
10/07/2013	Chaptered by Secretary of State. Chapter No. 609

Priority: High

CA AB 218

AUTHOR: Dickinson (D)
TITLE: Employment Applications: Criminal History
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/04/2013
ENACTED: 10/10/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 699

SUMMARY: Prohibits a state or local agency from asking an applicant for employment to disclose information regarding a criminal conviction until the agency has determined the applicant meets the minimum employment qualifications for the position. Includes specified findings and declarations of the Legislature in support of this policy.

STATUS:

10/10/2013	Signed by GOVERNOR.
10/10/2013	Chaptered by Secretary of State. Chapter No. 699

Priority: High

CA AB 246

AUTHOR: Bradford (D)
TITLE: Local Government: Open Meetings
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/06/2013
ENACTED: 06/24/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 11

SUMMARY: Authorizes, under the Ralph M. Brown Act, the legislative body of a local agency to hold closed sessions with the Governor, with regards to matters that pose a threat to the security

of public buildings, a threat to the security of essential public services, or a threat to the public's right of access to public services or public facilities. Makes various other technical nonsubstantive changes to the Ralph M. Brown Act.

STATUS:

06/24/2013	Signed by GOVERNOR.
06/24/2013	Chaptered by Secretary of State. Chapter No. 11

Priority: High

CA AB 250

AUTHOR: Holden (D)
TITLE: State Innovation Initiatives
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/06/2013
ENACTED: 10/04/2013
DISPOSITION: Enacted
LOCATION: Signed by Governor
CHAPTER: 530

SUMMARY: Creates the State Innovation Hub Program, which requires the Governor's Office of Business and Economic Development to designate Innovation Hubs. Authorizes the office to use vacant or underused state-owned or leased property that is controlled by the Department of General Services. Authorizes specified state property, when authorized by law, to be used as matching funds to meet federal funding requirements. Requires the office to issue a request for proposals. Relates to iHub partnerships.

STATUS:

10/04/2013	Signed by GOVERNOR.
10/04/2013	Chaptered by Secretary of State. Chapter No. 530

Priority: High

CA AB 266

AUTHOR: Blumenfield (D)
TITLE: Vehicles: High-Occupancy Vehicle Lanes
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/07/2013
ENACTED: 09/28/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 405

SUMMARY: Extends the operation of existing law that authorizes the Department of Transportation to designate certain lanes for the exclusive use of high-occupancy vehicles to include certain low-emission vehicles. Authorizes until a specified date or a specified condition, the Department to issue a valid identifier to a vehicle that meets the state's transitional zero-emission vehicle standard. Deletes obsolete provisions relating to hybrid vehicles.

STATUS:

09/28/2013	Chaptered by Secretary of State. Chapter No. 405

Priority: High

CA AB 306

AUTHOR: Lowenthal B (D)
TITLE: Vehicles: Motor Carrier
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/12/2013
ENACTED: 08/13/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 96
SUMMARY: Prohibits the retrieval of a vehicle by, or the release of a vehicle to, a motor carrier of property using a tow truck until the carrier provides a copy of its permit to the releasing carrier. Requires the carrier releasing the vehicle to maintain a copy of the permit for a specified time period. Exempts a person licensed under the Collateral Recovery Act.
STATUS:

08/13/2013	Signed by GOVERNOR.
08/13/2013	Chaptered by Secretary of State. Chapter No. 96

Priority: High

CA AB 325

AUTHOR: Alejo (D)
TITLE: Land Use and Planning: Cause of Actions: Time Limits
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/13/2013
ENACTED: 10/12/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 767
SUMMARY: Authorizes notice for an action or proceeding against local zoning and planning decisions of a legislative body to be filed within a specified time period after certain decisions. Sets a time period for notice with respect to adopted or revised housing elements. Establishes a limitations period for the commencement of certain actions or proceedings. Provides that certain remedies shall not interfere with the full exercise of the rights and protections granted to a tentative map application or a developer.
STATUS:

10/12/2013	Chaptered by Secretary of State. Chapter No. 767

Priority: High

CA AB 327

AUTHOR: Perea (D)
TITLE: Electricity: Natural Gas: Rates: Energy Metering
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/13/2013
ENACTED: 10/07/2013
DISPOSITION: Enacted
LOCATION: Chaptered

CHAPTER: 611

SUMMARY: Repeals limitations upon increasing electric service rates of residential customers, including limitations applicable to CARE customers. Provides the requirements for the Public Utilities Commission when establishing rates for electrical corporations. Relates to certain pricing for residential customers. Requires a needs assessment. Authorizes a service option. Relates to a pricing program. Relates to the procurement of renewable energy under the State portfolio program. Relates to fuel cell generation.

STATUS:

10/07/2013	Signed by GOVERNOR.
10/07/2013	Chaptered by Secretary of State. Chapter No. 611

Priority: High

CA AB 341

AUTHOR: Dickinson (D)
TITLE: Green Building Standards
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/13/2013
ENACTED: 10/05/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 585

SUMMARY: Requires the Building Standards Commission and agencies that propose green building standards to allow for input by other state agencies that have expertise in green building subject areas. Requires the process by which these state agencies shall submit suggested changes to be adopted as administrative regulations that include certain elements. Authorizes the expenditure of certain funds in carrying out the updating of green building standards, a guideline update and training for local building officials.

STATUS:

10/05/2013	Chaptered by Secretary of State. Chapter No. 585

Priority: High

CA AB 354

AUTHOR: Dahle (R)
TITLE: Local Ballot Measures: Impartial Analysis
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/13/2013
ENACTED: 09/09/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 265

SUMMARY: Requires an impartial analysis for a county, city, or district ballot measure to include indicating whether the measure was placed on the ballot by a petition signed by the requisite number of voters or by a county, city, or district governing board. Requires such analysis for a school district ballot measure to include a statement indicating that the measure was placed on the ballot by the governing board of the school district.

STATUS:

09/09/2013	Signed by GOVERNOR.
09/09/2013	Chaptered by Secretary of State. Chapter No. 265

Priority: High

CA AB 372

AUTHOR: Eggman (D)
TITLE: Civil Service: Veterans' Preference in Hiring
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/14/2013
ENACTED: 08/12/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 75

SUMMARY: Provides that whenever a veteran, widow or widower of a veteran, or spouse of a 100% disabled veteran achieves a passing score on an entrance examination, he or she is required to be ranked in the top rank of the eligibility list. Provides an exception. Deletes the provision that excludes those examinations for a class having a requirement of both college graduation and 2 or more years of experience from the definition of an entrance examination for purposes of allowing preference points for veterans.

STATUS:

08/12/2013	Signed by GOVERNOR.
08/12/2013	Chaptered by Secretary of State. Chapter No. 75

Priority: High

CA AB 373

AUTHOR: Mullin (D)
TITLE: Public Employees' Long-Term Care Act
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/14/2013
ENACTED: 10/12/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 768

SUMMARY: Amends the Public Employees' Long Term Care Act as regards the Public Employees' Retirement System. Provides that domestic partners and adult children are eligible to enroll in long-term care plans offered under the Public Employees' Long-term Care Act. Provides that eligibility is subject to limitations of federal law. Authorizes the board to expand eligibility for these plans to all classes of persons who meet relevant requirements.

STATUS:

10/12/2013	Chaptered by Secretary of State. Chapter No. 768

Priority: High

CA AB 392

AUTHOR: Jones-Sawyer (D)
TITLE: State Mandates: Prorated Claims
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/15/2013

ENACTED: 08/12/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 77

SUMMARY: Amends existing law requiring the Controller to prorate mandated claims, including school claims, if the amount appropriated for reimbursement is not sufficient to pay all of the claims approved by the Controller, and requiring the controller to report to the Department of Finance when it is necessary to prorate claims. Deletes that reporting requirement. Requires the Controller to determine the most cost-effective allocation method if a specified amount is appropriated. Makes a conforming statutory change.

STATUS:

08/12/2013	Signed by GOVERNOR.
08/12/2013	Chaptered by Secretary of State. Chapter No. 77

Priority: High

CA AB 393

AUTHOR: Cooley (D)
TITLE: Office of Business and Economic Development: Web Site
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/15/2013
ENACTED: 08/19/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 124

SUMMARY: Requires the Director of the Governor's Office of Business and Economic Development to ensure that the office's Internet Web site contains information on the fee requirements and fee schedules of state agencies. Requires a state agency that has licensing, permitting or registration authority to provide accurate updated information about its fee schedule to the Office. Requires the Office to impose that fee.

STATUS:

08/19/2013	Signed by GOVERNOR.
08/19/2013	Chaptered by Secretary of State. Chapter No. 124

Priority: High

CA AB 401

AUTHOR: Daly (D)
TITLE: Transportation: Design-Build: Highways
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/15/2013
ENACTED: 10/05/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 586

SUMMARY: Authorizes the Department of Transportation to utilize design-build procurement for projects on the state highway system, based on either best value or lowest responsible bid. Authorizes regional transportation agencies to utilize such procurement for projects. Provides such authorizations do not include construction inspection services for highway- and expressway-related projects. Requires services to be performed by the Department.

Requires reimbursement for prevailing wage monitoring and enforcement.

STATUS:

10/05/2013 Chaptered by Secretary of State. Chapter No. 586

Priority: High

CA AB 409

AUTHOR: Quirk-Silva (D)
TITLE: Political Reform Act: Statements: Online Filing
FISCAL COMMITTEE: no
URGENCY CLAUSE: yes
INTRODUCED: 02/15/2013
ENACTED: 10/08/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 643

SUMMARY: Authorizes the Fair Political Practices Commission to develop and operate an online system for filing statements of economic interests meeting specified requirements. Provides that with certain exceptions, filers would be authorized to use the system to meet requirements under the Act.

STATUS:

10/08/2013 Signed by GOVERNOR.

10/08/2013 Chaptered by Secretary of State. Chapter No. 643

Priority: High

CA AB 410

AUTHOR: Jones-Sawyer (D)
TITLE: Public Employee Health Benefits: Enrollment
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/15/2013
ENACTED: 10/04/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 525

SUMMARY: Permits an annuitant who reinstates from retirement under the Public Employees' Retirement System for employment by the state or a contracting agency and who subsequently retires again on or after a specified date to enroll in a health benefit plan under the Public Employees' Medical and Hospital Care Act for which they are eligible as an annuitant of the employer from which they retired, upon specified conditions. Requires the person's retirement to occur within a specified time period after separation.

STATUS:

10/04/2013 Signed by GOVERNOR.

10/04/2013 Chaptered by Secretary of State. Chapter No. 525

Priority: High

CA AB 417

AUTHOR: Frazier (D)
TITLE: California Environmental Quality Act
FISCAL yes

COMMITTEE:
URGENCY CLAUSE: no
INTRODUCED: 02/15/2013
ENACTED: 10/07/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 613

SUMMARY: Exempts from the California Environmental Quality Act (CEQA) a bicycle transportation plan for an urbanized area. Requires a local agency that determines that the bicycle transportation plan is exempt under this provision and approves or determines to carry out that project, to file notice of the determination with the county clerk. Prohibits the preparation of an assessment if certain conditions are met, including if measures mitigate certain impacts identified in an impact report or negative declaration.

STATUS:

10/07/2013	Signed by GOVERNOR.
10/07/2013	Chaptered by Secretary of State. Chapter No. 613

Priority: High

CA AB 440

AUTHOR: Gatto (D)
TITLE: Hazardous Materials: Releases: Local Agency Cleanup
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/15/2013
ENACTED: 10/05/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 588

SUMMARY: Requires a local redevelopment agency to submit a plan to the public for approval before taking action. Immunizes a local agency from liability under specified laws. Authorizes designation of another agency for cleanup of hazardous material. Authorizes investigations. Allows the local agency to review and approve a cleanup plan and to oversee the hazardous materials cleanup. Immunizes any such agency that cleans up the materials. Authorizes the agency to recover costs from the responsible party.

STATUS:

10/05/2013	Chaptered by Secretary of State. Chapter No. 588

Priority: High

CA AB 443

AUTHOR: Lowenthal B (D)
TITLE: Vehicles: Delinquent Parking and Traffic Violations
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/19/2013
ENACTED: 08/13/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 101
SUMMARY: Provides that these provisions would not excuse the Department of Motor Vehicles from

attempting collection of parking or toll evasion if the vehicle was sold to a relative. Prohibits the transfer of ownership and registration of a vehicle to a relative or to a revocable trust if delinquent parking or toll violations have been reported, unless the transferee pays the amount of the reported fines and penalties.

STATUS:

08/13/2013	Signed by GOVERNOR.
08/13/2013	Chaptered by Secretary of State. Chapter No. 101

Priority: High

CA AB 466 **SANBAG Position: Support**

AUTHOR: Quirk-Silva (D)
TITLE: Federal Transportation Funds
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/19/2013
ENACTED: 10/11/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 736

SUMMARY: Requires the Department of Transportation to allocate federal transportation funds to regional agencies under the federal Congestion Mitigation and Air Quality Improvement Program based on a weighted formula that considers population and pollution in a given area. Relates to particulate matter.

STATUS:

10/11/2013	Signed by GOVERNOR.
10/11/2013	Chaptered by Secretary of State. Chapter No. 736

Priority: High

CA AB 481

AUTHOR: Lowenthal B (D)
TITLE: High-Speed Rail.
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/19/2013
ENACTED: 08/26/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 132

SUMMARY: Enacts exceptions and authorizations relative to real property obtained for high-speed rail purposes by the High-Speed Rail Authority. Enacts new provisions governing acquisition or disposal of right-of-way property by the authority. Requires payments for leases, sales or other conveyances of property controlled by the authority to be deposited in the High-Speed Rail Property Fund created by the bill. Provide that the funds shall be available to the authority upon appropriation for specified purposes.

STATUS:

08/26/2013	Signed by GOVERNOR.
08/26/2013	Chaptered by Secretary of State. Chapter No. 132

Priority: High

CA AB 483

AUTHOR: Ting (D)
TITLE: Local Government: Taxes, Fees, Assessments, and Charges
FISCAL COMMITTEE: no
URGENCY CLAUSE: yes
INTRODUCED: 02/19/2013
ENACTED: 10/04/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 552

SUMMARY: Amends existing law, which provided a Constitutional amendment that prescribes specific procedures and parameters for local jurisdiction when complying with specified articles thereof regarding the requirement for voter approval of any imposition, extension, or increase of any special tax, and permits the use of the initiative to affect local taxes, assessments, fees, and charges. Defines the terms specific benefit and specific government purpose for purposes of the State Constitution.

STATUS:

10/04/2013	Signed by GOVERNOR.
10/04/2013	Chaptered by Secretary of State. Chapter No. 552

Priority: High

CA AB 493

AUTHOR: Daly (D)
TITLE: Toll Facilities
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/20/2013
ENACTED: 08/12/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 79

SUMMARY: Authorizes operators of toll facilities on federal-aid highways to fully implement technologies or business practices that provide for the interoperability of electronic toll collection programs on and after the date specified in the Moving Ahead for Progress in the 21st Century Act. Limits the information that may be disclosed through participation in an interoperability program.

STATUS:

08/12/2013	Signed by GOVERNOR.
08/12/2013	Chaptered by Secretary of State. Chapter No. 79

Priority: High

CA AB 513

AUTHOR: Frazier (D)
TITLE: Tire Recycling Program: Rubberized Asphalt
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/20/2013
ENACTED: 10/03/2013

DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 499

SUMMARY: Establishes the Rubberized Asphalt Concrete Market Development Act and requires the awarding of grants for public agency projects that utilize rubberized asphalt concrete. Requires the Department of Resources Recycling and Recovery to award the grants using a formula for crumb rubber used in a public works or disability access project, and to adjust the rate if it finds the adjusted amount would further the purposes of the Act.

STATUS:

10/03/2013	Signed by GOVERNOR.
10/03/2013	Chaptered by Secretary of State. Chapter No. 499

Priority: High

CA AB 528

AUTHOR: Lowenthal B (D)
TITLE: State Rail Plan and High-Speed Rail Authority
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/20/2013
ENACTED: 09/06/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 237

SUMMARY: Revises certain items required to be in the elements of the State Rail Plan and the business plan. Provides for the submission of the rail plan to specified transportation agencies, the Legislature, and the Governor. Requires the rail plan to be updated periodically. Relates to the submission of the High-Speed Rail Authority business plan. Repeals provisions regarding identifying certain AMTRAK related decrepit intercity rail passenger stations.

STATUS:

09/06/2013	Signed by GOVERNOR.
09/06/2013	Chaptered by Secretary of State. Chapter No. 237

Priority: High

CA AB 532

AUTHOR: Gordon (D)
TITLE: Local Housing Trust Fund
FISCAL COMMITTEE: no
URGENCY CLAUSE: yes
INTRODUCED: 02/20/2013
ENACTED: 10/12/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 769

SUMMARY: Revises the law applicable to the Local Housing Trust Fund Matching Grant Program. Revises provisions regarding a notice of funds availability, funding priorities for local housing trust funds, deed restrictions and equity sharing agreements for for-sale housing projects or units within for-sale housing projects. Provides an extension for a local housing trust that was under contract on a specified date. Relates to the issuance of notice of funds availability for new trusts. Relates to low income projects.

STATUS:

10/12/2013 Chaptered by Secretary of State. Chapter No. 769

Priority: High

CA AB 537

AUTHOR: Bonta (D)
TITLE: Meyers-Milias-Brown Act: Impasse Procedures
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/20/2013
ENACTED: 10/13/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 785

SUMMARY: Amends existing law requiring the governing body of a local public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of a recognized employee organization. Requires that, if a certain tentative agreement is reached by parties, the governing body shall vote to accept or reject that agreement within a specified time period. Provides that a charge for failure to meet and confer in good faith shall not be barred in certain cases.

STATUS:

10/13/2013 Chaptered by Secretary of State. Chapter No. 785

Priority: High

CA AB 562

AUTHOR: Williams (D)
TITLE: Economic Development Subsidies: Local Agency Review
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/20/2013
ENACTED: 10/11/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 740

SUMMARY: Relates to economic development activities by state and local agencies. Requires each defined local agency to provide information to the public before approving an economic development subsidy, and to hold hearings and report on those subsidies at specified intervals.

STATUS:

10/11/2013 Signed by GOVERNOR.

10/11/2013 Chaptered by Secretary of State. Chapter No. 740

Priority: High

CA AB 630

AUTHOR: Holden (D)
TITLE: Architects
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/20/2013

ENACTED: 10/01/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 453

SUMMARY: Provides that no person may use an architect's instruments of service without the consent of the architect in a written contract, written agreement, or written license specifically authorizing that use. Prohibits an architect from unreasonably withholding consent to use his or her instruments of service from a person from whom the architect provided the services. Provides an exception.

STATUS:

10/01/2013	Signed by GOVERNOR.
10/01/2013	Chaptered by Secretary of State. Chapter No. 453

Priority: High

CA AB 650

AUTHOR: Nazarian (D)
TITLE: General Services: Natural Gas Services Program
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/21/2013
ENACTED: 10/07/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 615

SUMMARY: Requires the Director of the Department of General Services to operate the Natural Gas Services Program and to enter into agreements with cities, counties, cities and counties, districts and other local governmental bodies, and to nonprofit hospitals and educational institutions that expend public funds for the acquisition of natural gas and related services, and enter into interagency agreements for acquisition of natural gas and related services. Requires the use of the program for noncore gas purchases.

STATUS:

10/07/2013	Signed by GOVERNOR.
10/07/2013	Chaptered by Secretary of State. Chapter No. 615

Priority: High

CA AB 664

AUTHOR: Williams (D)
TITLE: Gold Coast Transit District
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/21/2013
ENACTED: 10/03/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 503

SUMMARY: Creates the Gold Coast Transit District in the County of Ventura; provides the jurisdiction of the district would initially include the cities of Oxnard, Ventura, Port Hueneme, and Ojai and the unincorporated areas of the county. Authorizes other cities in the county to subsequently join the district. Authorizes the district to seek voter approval of tax measures and to issue revenue bonds. Authorizes the transfer of the assets from Gold Coast Transit

to the district.

STATUS:

10/03/2013	Signed by GOVERNOR.
10/03/2013	Chaptered by Secretary of State. Chapter No. 503

Priority: High

CA AB 691

AUTHOR: Muratsuchi (D)
TITLE: State Lands: Granted Trust Lands: Sea Level Rise
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/21/2013
ENACTED: 10/05/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 592

SUMMARY: Provides that addressing the impacts of sea level rise for all of its legislatively granted public trust lands shall be among the management priorities of a local trustee. Requires a local trustee whose gross public trust revenues average a specified amount, to prepare and submit to the State Lands Commission, an assessment of how it proposes to address sea level rise. Provides the information to be considered for input into the assessment. Permits already completed assessments to be submitted.

STATUS:

10/05/2013	Chaptered by Secretary of State. Chapter No. 592

Priority: High

CA AB 701

AUTHOR: Quirk-Silva (D)
TITLE: Local Government Finance: Property Tax: License Fee
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/21/2013
ENACTED: 09/27/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 393

SUMMARY: Increases the vehicle license fee adjustment amount for the County of Orange for the 2014-15 fiscal year. Repeals provisions that requires a county auditor to increase the amount of ad valorem property tax revenue required to be allocated to the county by the county equity amount and to reduce the total amount of ad valorem property tax otherwise allocated to the Educational Revenue Augmentation Fund in the county.

STATUS:

09/27/2013	Signed by GOVERNOR.
09/27/2013	Chaptered by Secretary of State. Chapter No. 393

Priority: High

CA AB 707

AUTHOR: Ting (D)
TITLE: Vehicles
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/21/2013
ENACTED: 09/06/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 240

SUMMARY: Permits a local authority to erect a standard specified warning sign when it determines that the proposed signing should be implemented in areas around senior centers or other facilities primarily used by senior citizens. Authorizes the local authority to request grant funding to pay for the erection of those warnings signs from the Pedestrian Safety Account or from any other source of grant funding.

STATUS:

09/06/2013	Signed by GOVERNOR.
09/06/2013	Chaptered by Secretary of State. Chapter No. 240

Priority: High

CA AB 719

AUTHOR: Hernandez R (D)
TITLE: Energy: Energy Efficiency: Street Light Pole
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/21/2013
ENACTED: 10/07/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 616

SUMMARY: Requires the Public Utilities Commission to order electrical corporations to submit a tariff to be used, at the discretion of local governments, to fund energy efficiency improvements in street light poles owned by electric corporations.

STATUS:

10/07/2013	Signed by GOVERNOR.
10/07/2013	Chaptered by Secretary of State. Chapter No. 616

Priority: High

CA AB 730

AUTHOR: Alejo (D)
TITLE: Monterey-Salinas Transit District
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/21/2013
ENACTED: 09/27/2013
DISPOSITION: Enacted

LOCATION: Chaptered
CHAPTER: 394

SUMMARY: Exempts the Monterey-Salinas Transit District from the requirement to seek voter approval prior to issuing revenue bonds. Authorizes the district to pledge revenues from any source, including a transactions and use tax, to payment of those bonds. Imposes a maximum amount on such bonds that may be issued by the District. Limits the use of the bonds to a project or projects not located on or adjacent to the former Fort Ord.

STATUS:

09/27/2013	Signed by GOVERNOR.
09/27/2013	Chaptered by Secretary of State. Chapter No. 394

Priority: High

CA AB 743

AUTHOR: Logue (R)
TITLE: Local Government Reorganization
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/21/2013
ENACTED: 08/26/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 138

SUMMARY: Amends Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. Provides that the authority to initiate, conduct and complete specified changes in organization or reorganizations does not apply to any territory that became surrounded or substantially surrounded by a city to which the annexation is proposed, except for islands that were created as a result of boundary adjustments between two counties.

STATUS:

08/26/2013	Signed by GOVERNOR.
08/26/2013	Chaptered by Secretary of State. Chapter No. 138

Priority: High

CA AB 755

AUTHOR: Ammiano (D)
TITLE: Suicide Barriers
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/21/2013
ENACTED: 10/05/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 593

SUMMARY: Relates to suicide barriers. Requires a project study report prepared for any new or replacement of a bridge with a history of documented suicides, which is included in a regional transportation improvement program, an interrogational transportation improvement program, or the state highway operation and protection program, to include a document demonstrating that a suicide barrier was a feature considered during the project's planning process. Relates to liability.

STATUS:

10/05/2013	Chaptered by Secretary of State. Chapter No. 593

Priority: High

CA AB 767

AUTHOR: Levine (D)
TITLE: Vehicles: Additional Registration Fees: Vehicle-Theft
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/21/2013
ENACTED: 09/06/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 241

SUMMARY: Authorizes every county to increase its motor vehicle fee, and its commercial vehicle service fee, with that revenue being used in anti-vehicle theft crime programs, upon adoption of a resolution by its board of supervisors and the submission of the resolution to the State Department of Motor Vehicles. Authorizes a county to adopt the new fee in the same manner as if a county had not adopted a resolution to impose the base fee. Makes other technical and conforming changes.

STATUS:

09/06/2013	Signed by GOVERNOR.
09/06/2013	Chaptered by Secretary of State. Chapter No. 241

Priority: High

CA AB 797

AUTHOR: Gordon (D)
TITLE: Transit Districts: Contracts
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/21/2013
ENACTED: 09/20/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 320

SUMMARY: Authorizes the Santa Clara County Valley Transportation Authority and the San Mateo County Transit District to utilize the Construction Manager/General Contractor project delivery contract method for transit projects within their jurisdictions. Requires the Authority or the district to reimburse the Department of Industrial Relations for costs of performing wage monitoring and enforcement on projects using such contracting methods. Requires those funds to be for enforcement of prevailing wage requirements.

STATUS:

09/20/2013	Signed by GOVERNOR.
09/20/2013	Chaptered by Secretary of State. Chapter No. 320

Priority: High

CA AB 850

AUTHOR: Nazarian (D)
TITLE: Public Capital Facilities: Water Quality
FISCAL COMMITTEE: yes
URGENCY no

CLAUSE:
INTRODUCED: 02/21/2013
ENACTED: 10/08/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 636

SUMMARY: Authorizes specified joint powers authorities, upon application of a local agency that owns and operates a publicly owned utility, to issue rate reduction bonds for a utility project. Provides the bonds are secured by utility project property. Authorizes a utility project charge to finance such bonds. Requires a bond review for issue qualification. Requires application fees for bond review cost reimbursement. Requires the Pollution Control Financing Authority to establish procedures for expedited review.

STATUS:

10/08/2013	Signed by GOVERNOR.
10/08/2013	Chaptered by Secretary of State. Chapter No. 636

Priority: High

CA AB 906

AUTHOR: Pan (D)
TITLE: Personal Services Contracts
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 10/11/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 744

SUMMARY: Amends the State Civil Service Act to prohibit the execution of proposed personal services contracts permissible under specified conditions, without regard to cost savings, until the state agency proposing to execute the contract has notified all organizations that represent state employees who perform the type of work to be contracted. Requires the Department of General Services to establish a process to certify that notification.

STATUS:

10/11/2013	Signed by GOVERNOR.
10/11/2013	Chaptered by Secretary of State. Chapter No. 744

Priority: High

CA AB 918

AUTHOR: Cooley (D)
TITLE: Emergency Services: Preparedness
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 08/28/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 187

SUMMARY: Requires the Office of Emergency Services to update the State Emergency Plan to include proposed best practices for local governments and nongovernmental entities to use to mobilize and evacuate people with disabilities and others with access and functional needs

during an emergency or natural disaster.

STATUS:

08/28/2013	Signed by GOVERNOR.
08/28/2013	Chaptered by Secretary of State. Chapter No. 187

Priority: High

CA AB 934

AUTHOR: Cooley (D)
TITLE: Local Agencies: Unclaimed Money
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 10/01/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 457

SUMMARY: Requires a local agency to document that it has made a reasonable effort to locate and notify the victim to whom restitution is owed if, at the expiration of a specified time period, the agency elects to use restitution funds for victim services.

STATUS:

10/01/2013	Signed by GOVERNOR.
10/01/2013	Chaptered by Secretary of State. Chapter No. 457

Priority: High

CA AB 946

AUTHOR: Stone (D)
TITLE: Transit Buses: Counties of Monterey and Santa Cruz
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 09/30/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 426

SUMMARY: Authorize the Monterey-Salinas Transit District and the Santa Cruz Metropolitan Transit District to conduct a transit bus-only program using the shoulders of certain state highways as transit bus-only traffic corridors subject to approval of specified entities. Requires the development of guidelines that ensure driver and vehicle safety and the integrity of the infrastructure. Requires monitoring of costs related to repair of the highway shoulders used in the program. Provides repair cost responsibility.

STATUS:

09/30/2013	Signed by GOVERNOR.
09/30/2013	Chaptered by Secretary of State. Chapter No. 426

Priority: High

CA AB 952

AUTHOR: Atkins (D)
TITLE: Low-Income Housing Tax Credits
FISCAL no

COMMITTEE:
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 10/12/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 771

SUMMARY: Relates to a low-income housing tax credit program. Amends the insurance taxation law. Allows a credit for buildings located in designated difficult development areas. Amends the Personal Income Tax Law and the Corporation Tax Law to authorize the Tax Credit Allocation Committee to allocate a credit for buildings located in such areas. Allows a credit under the Insurance Taxation Law for buildings located in designated difficult development areas or qualified census tracks.

STATUS:

10/12/2013	Chaptered by Secretary of State. Chapter No. 771

Priority: High

CA AB 971

AUTHOR: Garcia (D)
TITLE: Public Employers: Paratransit Providers: Crime History
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 10/01/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 458

SUMMARY: Requires the Attorney General to furnish, and would authorize a local criminal justice agency to furnish, summary criminal information to a specified social services paratransit agency with respect to its contracted providers. Makes technical, nonsubstantive, and conforming changes.

STATUS:

10/01/2013	Signed by GOVERNOR.
10/01/2013	Chaptered by Secretary of State. Chapter No. 458

Priority: High

CA AB 1042

AUTHOR: Hall (D)
TITLE: Indian Gambling Special Distribution Fund
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
LINE ITEM: 10/11/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 746

SUMMARY: Requires the Department of Finance to provide a recommendation regarding the total revenue in the Indian Gaming Special Distribution Fund that will be available for the current budget year for the local government agencies. Requires the department to consider

any anticipated revenue from additional tribal gaming operations, and to include certain information including the total amount of payments projected to be received into the fund and the amount of appropriations from the fund to local governments.

STATUS:

10/11/2013	Signed by GOVERNOR. Line Item Veto.
10/11/2013	Chaptered by Secretary of State. Chapter No. 746

Priority: High

CA AB 1067

AUTHOR: Medina (D)
TITLE: Economic Development: Foreign Trade
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 10/04/2013
DISPOSITION: Enacted
LOCATION: Signed by Governor
CHAPTER: 535

SUMMARY: Establishes the State Foreign Investment Program. Authorizes the Governor's Office of Business and Economic Development to serve as the lead state entity for overseeing the state's participation in the federal EB-5 Investment Program. Relates to the designation of targeted employment areas and the posting of same on the Office's Web site. Requires regional offices to report specified information. Authorizes certain public and private corporations to establish, operate and maintain a regional center.

STATUS:

10/04/2013	Signed by GOVERNOR.
10/04/2013	Chaptered by Secretary of State. Chapter No. 535

Priority: High

CA AB 1070

AUTHOR: Frazier (D)
TITLE: California Transportation Financing Authority
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 08/28/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 198

SUMMARY: Relates to the Transportation Financing Authority Act and the Transportation Financing Authority. Provides for the roles of the authority and an issuer of bonds under the act if the project sponsor, rather than the authority, is the issuer of bonds.

STATUS:

08/28/2013	Signed by GOVERNOR.
08/28/2013	Chaptered by Secretary of State. Chapter No. 198

Priority: High

CA AB 1090

AUTHOR: Fong (D)
TITLE: Public Officers: Conflicts of Interest: Contracts
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 10/08/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 650

SUMMARY: Provides that a person who violates the prohibition against being financially interested in a contract, or who causes another person to violate the prohibition, is subject to administrative and civil fines. Establishes certain interests that are not subject. Authorizes the Fair Political Practices Commission to enforce these violations by bringing an administrative or civil action against a person who is subject to the prohibition, upon specified authorization. Relates to requests for advice.

STATUS:

10/08/2013	Signed by GOVERNOR.
10/08/2013	Chaptered by Secretary of State. Chapter No. 650

Priority: High

CA AB 1092

AUTHOR: Levine (D)
TITLE: Building Standards: Electric Vehicle Charging
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 09/28/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 410

SUMMARY: Requires the State Building Standards Commission, commencing with the next triennial edition of the State Building Standards Code, to adopt, codify, and publish mandatory building standards for the installation of future electric vehicle charging infrastructure for parking spaces in multifamily and nonresidential development. Requires the Department of Housing and Community Development to propose those mandatory standards and to submit them to the commission.

STATUS:

09/28/2013	Chaptered by Secretary of State. Chapter No. 410

Priority: High

CA AB 1112

AUTHOR: Ammiano (D)
TITLE: Transportation Transactions and Use Taxes: Bay Area
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 10/05/2013

DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 595
SUMMARY: Deletes a limitation on the total rate of the retail transaction and use tax that may be imposed by a Bay Area county for the purpose of transportation funding under the Bay Area County Traffic and Transportation Funding Act.
STATUS:

10/05/2013	Chaptered by Secretary of State. Chapter No. 595

Priority: High

CA AB 1135

AUTHOR: Mullin (D)
TITLE: Vote by Mail Ballots: Signature Verification
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 09/09/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 271
SUMMARY: Amends existing law that sets forth procedures for processing vote by mail ballots. Provides that a county elections official would also be permitted to compare the signature on the identification envelope with the signature appearing on a form issued by an official that contains specified information. Provides that a county elections official would also be permitted to compare the signature on the form issued by the elections official.
STATUS:

09/09/2013	Signed by GOVERNOR.
09/09/2013	Chaptered by Secretary of State. Chapter No. 271

Priority: High

CA AB 1149

AUTHOR: Campos (D)
TITLE: Identity Theft: Local Agencies
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 09/27/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 395
SUMMARY: Relates to disclosure of any breach of an agency security to any resident whose unencrypted personal information was acquired by an unauthorized person. Expands disclosure requirements to apply to a breach of computerized data that is owned or licensed by a local agency.
STATUS:

09/27/2013	Signed by GOVERNOR.
09/27/2013	Chaptered by Secretary of State. Chapter No. 395

Priority: High

CA AB 1181

AUTHOR: Gray (D)
TITLE: Public Employee Organizations: Members: Paid Leave
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 09/09/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 305
SUMMARY: Requires the local public agency to give reasonable time off, without loss of compensation or other benefits, to employee representatives when they are testifying or appearing as the designated representative of the employee organization in proceedings before the Public Employment Relations Board concerning a charge filed by the organization against the public agency or by an agency against the organization, or when they are testifying or representing the organization in personnel or merit matters.
STATUS:

09/09/2013	Chaptered by Secretary of State. Chapter No. 305

Priority: High

CA AB 1218

AUTHOR: Gray (D)
TITLE: State Auditor: Duties
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 08/28/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 189
SUMMARY: Authorizes the State Auditor to conduct additional follow-up audit work that is related to findings and recommendation related to audits of state, local governmental agencies, or other publicly created entities. Makes technical, nonsubstantive changes.
STATUS:

08/28/2013	Signed by GOVERNOR.
08/28/2013	Chaptered by Secretary of State. Chapter No. 189

Priority: High

CA AB 1222

AUTHOR: Bloom (D)
TITLE: Public Retirement: Bargaining: Transit Workers
FISCAL COMMITTEE: no
URGENCY CLAUSE: yes
INTRODUCED: 02/22/2013
ENACTED: 10/04/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 527

SUMMARY: Excepts from the Public Employees' Pension Reform Act of 2013, public employees whose collective bargaining rights are subject to federal law until a specified federal court decision on certification on the U.S. Secretary of Labor, or a specified date, whichever is sooner. Provides that if the court upholds the Secretary's determination, the application of the Act to those employees precludes certification, and those employees are exempt from the Act. Appropriates funds to local mass transit providers.

STATUS:

10/04/2013	Signed by GOVERNOR.
10/04/2013	Chaptered by Secretary of State. Chapter No. 527

Priority: High

CA AB 1236

AUTHOR: Hagman (R)
TITLE: Contractors: Limited Liability Companies
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 08/16/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 114

SUMMARY: Amends the contractors' state license law. Amends existing law that states the policy or policies of insurance secured to satisfy the provisions of such law are required to be written by an insurer or insurers duly licensed by the state. Permits those policies to be written by an eligible surplus line insurer.

STATUS:

08/16/2013	Signed by GOVERNOR.
08/16/2013	Chaptered by Secretary of State. Chapter No. 114

Priority: High

CA AB 1248

AUTHOR: Cooley (D)
TITLE: Controller: Internal Guidelines for Local Agencies
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 08/28/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 190

SUMMARY: Requires the Controller to develop internal control guidelines applicable to a local agency to prevent and detect financial errors and fraud. Requires the Controller to post the completed guidelines on the Controller's Internet Web site and update them, as he or she deems necessary.

STATUS:

08/28/2013	Signed by GOVERNOR.
08/28/2013	Chaptered by Secretary of State. Chapter No. 190

Priority: High

CA AB 1253

AUTHOR: Blumenfield (D)
TITLE: Vehicles: Mobile Advertising Displays
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 10/08/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 652
SUMMARY: Authorizes local authorities to adopt civil penalties for a violation of an ordinance or resolution regulating mobile billboard advertising displays.
STATUS:

10/08/2013	Signed by GOVERNOR.
10/08/2013	Chaptered by Secretary of State. Chapter No. 652

Priority: High

CA AB 1317

AUTHOR: Frazier (D)
TITLE: State Government Operations
FISCAL COMMITTEE: no
URGENCY CLAUSE: yes
INTRODUCED: 02/22/2013
ENACTED: 09/26/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 352
SUMMARY: Reallocates certain duties of abolished state entities and officers to establish state entities and officers, including reallocating specified duties of the abolished Business, Transportation and Housing Agency and its Secretary to the created Transportation Agency and its Secretary and the duties of the abolished Commissioner of Corporations to the Commissioner of Business Oversight.
STATUS:

09/26/2013	Signed by GOVERNOR.
09/26/2013	Chaptered by Secretary of State. Chapter No. 352

Priority: High

CA AB 1336

AUTHOR: Frazier (D)
TITLE: Prevailing Wages: Payroll Records
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 10/13/2013
DISPOSITION: Enacted
LOCATION: Chaptered

CHAPTER: 792

SUMMARY: Relates to the deadline for filing a civil penalty assessment against a contractor or subcontractor for a violation under the public works provisions. Extends the deadline for filing an action regarding prevailing wages under a public works contract. Requires that any copy of a payroll record made available for inspection to be marked or obliterated only to prevent disclosure of an individual's social security number. Authorizes civil penalties only against the employer not paying the prevailing wage.

STATUS:

10/13/2013 Chaptered by Secretary of State. Chapter No. 792

Priority: High

CA AB 1359

AUTHOR: Hernandez R (D)
TITLE: Quimby Act: Use of Fees
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 09/28/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 412

SUMMARY: Amends the Quimby Act. Authorizes fees paid pursuant to the Act to be used for the purpose of developing new or rehabilitating park or recreational facilities in a neighborhood other than that in which the subdivision for which the fees were paid as a condition to the approval of a tentative map or parcel map is located. Requires holding a public hearing before using the fees in this manner. Authorizes the use of joint or shared use agreements of such facilities for residents in specified areas.

STATUS:

09/28/2013 Chaptered by Secretary of State. Chapter No. 412

Priority: High

CA AB 1365

AUTHOR: Perez J (D)
TITLE: State and Local Agency Reports: Legislative Counsel
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 08/28/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 192

SUMMARY: Requires the Legislative Council to make a list of agency reports available to the public by posting it on an Internet Web site. Authorizes state and local agencies to file certain reports with the Counsel electronically, with a hyperlink for report access. Removes the requirement to remove obsolete reports from the list of reports and that the list be provided to each member of the Legislature. Requires providing a hyperlink to each member whereby the list or report could be accessed.

STATUS:

08/28/2013 Signed by GOVERNOR.

08/28/2013 Chaptered by Secretary of State. Chapter No. 192

Priority: High

CA AB 1371

AUTHOR: Bradford (D)
TITLE: Vehicles: Bicycles: Passing Distance
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 09/23/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 331

SUMMARY: Enacts the Three Feet for Safety Act. Revises provisions regarding the driving requirements when overtaking and passing a bicycle that is proceeding in the same direction. Makes a violation an infraction punishable by a fine. Requires a separate fine on a driver if a collision occurs between a motor vehicle and a bicycle causing bodily harm to the bicyclist, and the driver is found to be in violation of these provisions.

STATUS:

09/23/2013	Signed by GOVERNOR.
09/23/2013	Chaptered by Secretary of State. Chapter No. 331

Priority: High

CA AB 1380

AUTHOR: Assembly Public Employees, Retirement and Social Security Committee
TITLE: County Employees' Retirement
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/26/2013
ENACTED: 09/06/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 247

SUMMARY: Amends the County Employees' Retirement Law (CERL) to coordinate and subordinate that law with Public Employees' Pension Reform Act of 2013 (PEPRA). Specifies certain provisions of CERL do not apply to members who are currently subject to PEPRA by virtue of employment date. Provides that provisions allowing a new retirement benefits calculation formula to be applied to service already performed are inoperative on a specified date. Prohibits nonqualified service credit purchasing. Regards contribution rates.

STATUS:

09/06/2013	Signed by GOVERNOR.
09/06/2013	Chaptered by Secretary of State. Chapter No. 247

Priority: High

CA AB 1422

AUTHOR: Assembly Jobs, Economic Development, and The Economy Committee
TITLE: Alternative Energy and Transportation Finance Authority
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no

INTRODUCED: 03/21/2013
ENACTED: 10/04/2013
DISPOSITION: Enacted
LOCATION: Signed by Governor
CHAPTER: 540

SUMMARY: Redefines the term project. Clarifies that for purposes of the sales and use tax exclusion, an entity located outside of the state, including an entity located overseas, is considered to be a participating party and is eligible to apply for financial assistance if the participating party commits to, and demonstrates that the participating party will be opening a manufacturing facility. Repeals peer review for greenhouse gas, air, or water pollution reduction, and energy efficiency projects.

STATUS:

10/04/2013	Signed by GOVERNOR.
10/04/2013	Chaptered by Secretary of State. Chapter No. 540

Priority: High

CA ACR 52

AUTHOR: Allen T (R)
TITLE: State Beaches: Fire Rings
INTRODUCED: 04/23/2013
ENACTED: 06/20/2013
DISPOSITION: Adopted
LOCATION: Chaptered
CHAPTER: 52

SUMMARY: Recognizes the tradition and cultural significance of fire rings on state beaches as part of California's recreational and community activity, and beach lifestyle. Supports the protection of California's beaches, access to those beaches, and important traditions that are integral to the state's culture and beach lifestyle, such as fire rings.

STATUS:

06/20/2013	Chaptered by Secretary of State.
06/20/2013	Resolution Chapter No. 52

Priority: High

CA ACR 68

AUTHOR: Donnelly (R)
TITLE: Detective Jeremiah MacKay Memorial Highway
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 06/25/2013
ENACTED: 09/27/2013
DISPOSITION: Adopted
LOCATION: Chaptered
CHAPTER: 142

SUMMARY: Designates a portion of State Highway Route 38 in San Bernardino County as the Detective Jeremiah MacKay Memorial Highway.

STATUS:

09/27/2013	Chaptered by Secretary of State.
09/27/2013	Resolution Chapter No. 142

Priority: High

CA SB 7

AUTHOR:	Steinberg (D)
TITLE:	Public Works: Charter Cities
FISCAL COMMITTEE:	yes
URGENCY CLAUSE:	no
INTRODUCED:	12/03/2012
ENACTED:	10/13/2013
DISPOSITION:	Enacted
LOCATION:	Chaptered
CHAPTER:	794
SUMMARY:	Prohibits a charter city from receiving or using state funding or financial assistance for a construction project if the city has a charter provision or ordinance that authorizes a contractor to not comply with prevailing wage provisions on any public works contract. Prohibits state funding assistance for such projects for a specified period. Authorizes such assistance for a city with an ordinance requiring prevailing wages. Provides a minimum contract threshold for such requirement.
STATUS:	
	10/13/2013 Chaptered by Secretary of State. Chapter No. 794
Priority:	High

CA SB 14

AUTHOR:	Gaines T (R)
TITLE:	Bear Lake Reservoir: Recreational Use
FISCAL COMMITTEE:	yes
URGENCY CLAUSE:	yes
INTRODUCED:	12/03/2012
ENACTED:	08/27/2013
DISPOSITION:	Enacted
LOCATION:	Chaptered
CHAPTER:	172
SUMMARY:	Relates to existing law which prohibits recreational use in which there is bodily contact with water in a reservoir in which water is stored for domestic use. Exempts from this prohibition any participant in the Bear Lake Reservoir, and establishes standards in this regard, including water treatment, monitoring, and reporting requirements. Subjects the Lake Alpine Water Company to suspension or revocation of any permit issued. Deems a violation would be subject to fines, penalties, or enforcement actions.
STATUS:	
	08/27/2013 Signed by GOVERNOR.
	08/27/2013 Chaptered by Secretary of State. Chapter No. 172
Priority:	High

CA SB 39

AUTHOR:	De Leon (D)
TITLE:	Local Agencies: Public Officers: Claims and Liability
FISCAL COMMITTEE:	no
URGENCY CLAUSE:	yes
INTRODUCED:	12/05/2012
ENACTED:	10/12/2013

DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 775

SUMMARY: Requires the forfeiture of a contractual, common law, constitutional, or statutory claim against a local public agency employer to retirement or pension rights or benefits by a local public officer who exercised discretionary authority and who was convicted of a felony for conduct arising out of, or in the performance of, his or her official duties.

STATUS:

10/12/2013 Chaptered by Secretary of State. Chapter No. 775

Priority: High

CA SB 43

AUTHOR: Wolk (D)
TITLE: Green Tariff Shared Renewables Program
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 12/11/2012
ENACTED: 09/28/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 413

SUMMARY: Enacts the Green Tariff Shared Renewables Program. Requires an eligible participating utility to file with the Public Utilities Commission an application requesting approval of a green tariff shared renewable program to implement a program enabling customers to participate directly in offsite electrical generation facilities that use eligible energy resources. Provides procedures and determinations. Relates to procurement requirements.

STATUS:

09/28/2013 Chaptered by Secretary of State. Chapter No. 413

Priority: High

CA SB 71

AUTHOR: Senate Budget & Fiscal Review Committee
TITLE: State Government
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 01/10/2013
ENACTED: 06/27/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 28

SUMMARY: Relates to private postsecondary institutions, public education facilities bonding, public body meetings, state mandates funding, capitol area funding and public works, trauma center grants, agency services and materials, an agency marketplace procurement program, agency personnel audits and reimbursement, state civil service revisions, board or commission member compensation, occupational safety, law enforcement domestic violence response, public works, state contracting, and emergency management.

STATUS:

06/27/2013 Signed by GOVERNOR.
06/27/2013 Chaptered by Secretary of State. Chapter No. 28

Priority: High

CA SB 73

AUTHOR:	Senate Budget & Fiscal Review Committee
TITLE:	Energy: Proposition 39 Implementation
FISCAL COMMITTEE:	yes
URGENCY CLAUSE:	no
INTRODUCED:	01/10/2013
ENACTED:	06/27/2013
DISPOSITION:	Enacted
LOCATION:	Chaptered
CHAPTER:	29
SUMMARY:	Appropriates funds from the Job Creation Fund to the Workforce Investment Board for grants to eligible organizations preparing disadvantaged youth and veterans for specified employment. Transfers moneys from the fund to the Education Subaccount to the Energy Commission for loans for eligible projects and technical assistance and to local education entities and community colleges. Requires entities receiving moneys from the fund to submit reports on projects, training, and jobs.
STATUS:	
	06/27/2013 Signed by GOVERNOR.
	06/27/2013 Chaptered by Secretary of State. Chapter No. 29
Priority:	High

CA SB 85

AUTHOR:	Senate Budget & Fiscal Review Committee
TITLE:	Transportation
FISCAL COMMITTEE:	yes
URGENCY CLAUSE:	no
INTRODUCED:	01/10/2013
ENACTED:	06/27/2013
DISPOSITION:	Enacted
LOCATION:	Chaptered
CHAPTER:	35
SUMMARY:	Creates a class of transportation bonds known as designated bonds. Provides the procedures governing the use of related weight fees for transportation-related bond's debt service. Provides the procedures that state agencies shall use upon collecting moneys from specified funds. Relates to permits for the relocation of utilities within the high-speed railway's right-of-way property.
STATUS:	
	06/27/2013 Chaptered by Secretary of State. Chapter No. 35
Priority:	High

CA SB 90

AUTHOR:	Galgiani (D)
TITLE:	Economic Development: Taxation: Credits:Exemption
FISCAL COMMITTEE:	yes
URGENCY CLAUSE:	yes
INTRODUCED:	01/10/2013
ENACTED:	07/11/2013

DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 70

SUMMARY: Extends the application of the sales and use tax exemption for property used in manufacturing, processing, refining, fabricating, or recycling of property, used in research and development and eliminates the property must be used within a designated census tract or former enterprise zone. Provides definitions under State income tax laws for employment-related tax credits and relates to the first year allocation of credit amounts and the taxable years for which the credits may be claimed.

STATUS:

07/11/2013	Signed by GOVERNOR.
07/11/2013	Chaptered by Secretary of State. Chapter No. 70

Priority: High

CA SB 99

AUTHOR: Senate Budget & Fiscal Review Committee
TITLE: Active Transportation Program
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 01/10/2013
ENACTED: 09/26/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 359

SUMMARY: Creates the Active Transportation Program to be funded from transportation funds. Provides for metropolitan planning organizations. Adds new authorized activities. Requires the Commission to develop guidelines and procedures, include project selection criteria. Transfers bicycle transportation funds to the State Highway Account. Relates to funding the Environmental Enhancement and Mitigation Program Fund. Provides for city or county agreements for prompt payment.

STATUS:

09/26/2013	Signed by GOVERNOR.
09/26/2013	Chaptered by Secretary of State. Chapter No. 359

Priority: High

CA SB 122

AUTHOR: Lieu (D)
TITLE: Vessels: Abandonment: Abatement
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 01/18/2013
ENACTED: 09/06/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 204

SUMMARY: Relates to provisions governing vessels, abandonment and abatement. Repeals the date of certain provisions of existing law and deletes alternative provisions that were to become operative as specified which would have reduced the minimum fine and eliminated the exception for a surrendered vessel. Deletes reporting requirements relating to the duty to track and report to legislative committees on surrendered vessels accepted by a public

agency.

STATUS:

09/06/2013	Signed by GOVERNOR.
09/06/2013	Chaptered by Secretary of State. Chapter No. 204

Priority: High

CA SB 142

AUTHOR: DeSaulnier (D)
TITLE: Public Transit
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 01/30/2013
ENACTED: 10/08/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 655

SUMMARY: Relates to creation of special benefit districts within a municipal transit or rapid transit district regarding issuance of bonds to be repaid through special assessments levied on property within the district. Amends district areas. Enacts provisions authorizing a transit district, municipal operator, other public agency operating or contracting for the operation of transit, commuter rail, or intercity rail service to create one or more special districts. Includes ferry terminals. Provides a repeal.

STATUS:

10/08/2013	Signed by GOVERNOR.
10/08/2013	Chaptered by Secretary of State. Chapter No. 655

Priority: High

CA SB 194

AUTHOR: Galgiani (D)
TITLE: Vehicles: Wireless Communications Device: Prohibition
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/07/2013
ENACTED: 10/11/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 754

SUMMARY: Prohibits a person who is under 18 years of age from using an electronic wireless communications device while driving even if it is equipped with a hands-free device.

STATUS:

10/11/2013	Signed by GOVERNOR.
10/11/2013	Chaptered by Secretary of State. Chapter No. 754

Priority: High

CA SB 203

AUTHOR: Pavley (D)
TITLE: Local Transportation Funds: Ventura County
FISCAL COMMITTEE: no

URGENCY CLAUSE: no
INTRODUCED: 02/07/2013
ENACTED: 10/01/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 464

SUMMARY: Relates to existing law requiring the expenditure of local transportation funds by specified local governments to be apportioned to urbanized areas of those counties for allocation for public transit purposes and not for street and road purposes. Repeals the provisions specifically relating to Ventura County and the expenditure of local transportation funds there. Requires the county transportation commission to post on its Internet Web site an annual report on transit service in the county.

STATUS:

10/01/2013	Signed by GOVERNOR.
10/01/2013	Chaptered by Secretary of State. Chapter No. 464

Priority: High

CA SB 234

AUTHOR: Walters (R)
TITLE: Recreational Off-Highway Vehicles
FISCAL COMMITTEE: yes
URGENCY CLAUSE: yes
INTRODUCED: 02/12/2013
ENACTED: 08/27/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 179

SUMMARY: Amends existing law that prohibits a person who is operating a recreational off-highway vehicle from allowing a passenger to occupy a separate seat location not designed and provided by the manufacturer for a passenger. Provides these provisions are for vehicles with a specified model year. Provides the requirements for earlier model year vehicles. Requires that passenger handholds be designed to allow the vehicle passenger to exit the vehicle without interference from the handholds.

STATUS:

08/27/2013	Signed by GOVERNOR.
08/27/2013	Chaptered by Secretary of State. Chapter No. 179

Priority: High

CA SB 238

AUTHOR: Liu (D)
TITLE: Santa Monica Mountains Conservancy Members: Voting
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/12/2013
ENACTED: 09/06/2013
DISPOSITION: Enacted
LOCATION: Chaptered

CHAPTER: 211

SUMMARY: Relates to the Santa Monica Mountains Conservancy and the Santa Monica Mountains Zone. Authorizes the Supervisor of the Angeles National Forest to vote on a manner related to a project located within, adjacent to, or substantially affecting, the Angeles National Forest.

STATUS:

09/06/2013	Signed by GOVERNOR.
09/06/2013	Chaptered by Secretary of State. Chapter No. 211

Priority: High

CA SB 286

AUTHOR: Yee (D)
TITLE: Vehicles: High-Occupancy Vehicle Lanes
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/14/2013
ENACTED: 09/28/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 414

SUMMARY: Extends the operation of existing law that authorizes the Department of Transportation to designate certain lanes for the exclusive use of high-occupancy vehicles, which lanes may also be used by certain low-emission or alternative fuel vehicles not carrying the requisite number of passengers otherwise required for the use of an HOV lane. Permits the department to issue a valid identifier to a vehicle that meets the state's transitional zero-emission standard. Repeals and deletes related provisions.

STATUS:

09/28/2013	Chaptered by Secretary of State. Chapter No. 414

Priority: High

CA SB 311

AUTHOR: Padilla (D)
TITLE: Local Elections: Charters and Charter Proposals
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/15/2013
ENACTED: 08/28/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 184

SUMMARY: Eliminates the option of submitting a city or city and county charter or a proposal to amend or repeal a charter to the voters at a statewide primary or regularly scheduled municipal election. Provides an exception. Provides that a charter or amendment, or charter proposal not excepted to be submitted to the voters at a statewide general election under certain conditions. Provides the election requirements for a proposal that complies with a court mandate or federal and state voting rights laws.

STATUS:

08/28/2013	Signed by GOVERNOR.
08/28/2013	Chaptered by Secretary of State. Chapter No. 184

Priority: High

CA SB 328

AUTHOR: Knight (R)
TITLE: Counties: Public Works Contracts
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/19/2013
ENACTED: 10/03/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 517
SUMMARY: Authorizes a county to utilize construction manager at-risk construction contracts for the erection, construction, alteration, repair, or improvement of any building owned or leased by the county. Provides that a construction manager at-risk contract may be awarded using the lowest responsible bidder or the best value method, to an at-risk entity which has sufficient bonding. Relates to awarding work to certain subcontractors. Requires posting the contract on county's Website and appropriate committees.
STATUS:

10/03/2013	Signed by GOVERNOR.
10/03/2013	Chaptered by Secretary of State. Chapter No. 517

Priority: High

CA SB 341

AUTHOR: DeSaulnier (D)
TITLE: Redevelopment
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/20/2013
ENACTED: 10/13/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 796
SUMMARY: Changes provisions relating to the functions to be performed by the entity assuming the housing functions of the former redevelopment agency to instead refer to the housing successor. Regards the use of funds in the Low and Moderate Income Housing Asset Fund shall be used in accordance with the Community Redevelopment Law. Authorizes the uses of income received by a housing successor. Requires the transfer of all non-used funds to the Multifamily Housing or Joe Serna Jr. Farmworker Housing Grant programs.
STATUS:

10/13/2013	Chaptered by Secretary of State. Chapter No. 796

Priority: High

CA SB 377

AUTHOR: Lieu (D)
TITLE: Public Works: Project Determinations: Wage Assessments
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/20/2013

ENACTED: 10/12/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 780

SUMMARY: Relates to the Director of Industrial Relations. Provides for public works project status determinations and appeals. Relates to the statute of limitations for commencing an action against an employer who fails to pay prevailing wages.

STATUS:

10/12/2013	Chaptered by Secretary of State. Chapter No. 780

Priority: High

CA SB 401

AUTHOR: Hueso (D)
TITLE: Administrative Practices
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/20/2013
ENACTED: 09/06/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 212

SUMMARY: Requires an initial statement of reasons for any regulation that is a building standard, regardless of whether the building standard impacts housing, to include the estimated cost of compliance and the potential benefits of the regulation and the related assumptions used in determining that estimate.

STATUS:

09/06/2013	Signed by GOVERNOR.
09/06/2013	Chaptered by Secretary of State. Chapter No. 212

Priority: High

CA SB 407

AUTHOR: Hill (D)
TITLE: Local Government: Officers and Employees: Contracts
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/20/2013
ENACTED: 09/06/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 213

SUMMARY: Relates to prohibitions against automatic renewal of contracts that provide compensation increases for local agency executives. Includes within the definition of local agency executive any person who is a deputy or assistant chief executive officer, and any person whose position is held by an employment contract between that person and the local agency.

STATUS:

09/06/2013	Signed by GOVERNOR.
09/06/2013	Chaptered by Secretary of State. Chapter No. 213

Priority: High

CA SB 425

AUTHOR: DeSaulnier (D)
TITLE: Public Works: the Public Works Peer Review Act of 2013
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/21/2013
ENACTED: 09/06/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 252
SUMMARY: Allows a public agency, principally tasked with administering, planning, developing, and operating a public works project, to establish a specified peer review group. Requires the administering agency, if a peer group is established, to draft a charter, published on the agency's Internet Web site, related to the duties of the peer review group.
STATUS:

09/06/2013	Signed by GOVERNOR.
09/06/2013	Chaptered by Secretary of State. Chapter No. 252

Priority: High

CA SB 436

AUTHOR: Jackson (D)
TITLE: Port Hueneme Beach Shoreline Protection.
FISCAL COMMITTEE: no
URGENCY CLAUSE: yes
INTRODUCED: 02/21/2013
ENACTED: 09/28/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 416
SUMMARY: Relates to Port Hueneme Beach shoreline protection. Appropriates moneys from the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Fund to the State Coastal Conservancy for a grant to the City of Port Hueneme. requires funding be allocated for emergency measures along Hueneme Beach to prevent severe infrastructure damage to streets and property caused by beach erosion and flooding.
STATUS:

09/28/2013	Chaptered by Secretary of State. Chapter No. 416

Priority: High

CA SB 454

AUTHOR: Corbett (D)
TITLE: Public Resources: Electric Vehicle Charging Stations
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/21/2013
ENACTED: 09/28/2013
DISPOSITION: Enacted

LOCATION: Chaptered
CHAPTER: 418

SUMMARY: Creates the Electric Vehicle Charging Stations Open Access Act. Prohibits the charging of a subscription fee on persons desiring to use an electric vehicle charging station. Prohibits a requirement for persons to obtain membership in any club, association, or organization as a condition of using the station. Requires the total actual charges for the use of a station to be disclosed at the point of sale. Requires a provider of certain equipment or a station to disclose certain information.

STATUS:

09/28/2013 Chaptered by Secretary of State. Chapter No. 418

Priority: High

CA SB 470

AUTHOR: Wright (D)
TITLE: Community Development: Economic Opportunity
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/21/2013
ENACTED: 10/08/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 659

SUMMARY: Relates to community development and economic opportunity. Includes agreements and projects. Relates to land use. Provides that before returned city, county, or city and county property is sold or leased for development, the sale or lease shall first be approved by the legislative body. Provides for a program to fund loans funds to owners or tenants for rehabilitating commercial buildings or structures and to assist with the financing of facilities or capital equipment for industrial or manufacturing.

STATUS:

10/08/2013 Signed by GOVERNOR.
10/08/2013 Chaptered by Secretary of State. Chapter No. 659

Priority: High

CA SB 488

AUTHOR: Hueso (D)
TITLE: Substandard Housing: Regulations
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/21/2013
ENACTED: 08/12/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 89

SUMMARY: Authorizes a code enforcement officer, upon successful completion of a course of study in the appropriate subject matter as determined by the local jurisdiction, to determine whether an infestation exists or whether there is a lack of adequate garbage and rubbish removal facilities if an agreement does not exist with an agency that has a health officer. Specifies that a local housing department is authorized to enforce regulations related to lead hazards.

STATUS:

08/06/2013 *****To GOVERNOR.

	08/12/2013	Signed by GOVERNOR.
	08/12/2013	Chaptered by Secretary of State. Chapter No. 89

Priority: High

CA SB 510

AUTHOR: Jackson (D)
TITLE: Land Use: Subdivisions: Rental Mobile home Parks
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/21/2013
ENACTED: 09/26/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 373

SUMMARY: Amends the Subdivision Map Act. Relates to the conversion of a rental mobile home park to resident ownership. Specifies the results of a certain survey are to be considered by a local agency in making its decision to approve or disapprove a map. Authorizes the local agency to disapprove the map if it finds that the results of the survey have not demonstrated the support of a majority of a park's homeowners. Authorizes local legislative bodies to implement the survey requirements by ordinance or resolution.

STATUS:

09/26/2013	Signed by GOVERNOR.
09/26/2013	Chaptered by Secretary of State. Chapter No. 373

Priority: High

CA SB 527

AUTHOR: Block (D)
TITLE: Workers Compensation: Public Employees: Leave
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/21/2013
ENACTED: 07/11/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 66

SUMMARY: Relates to public employees who are entitled to a leave of absence without loss of salary while disabled by injury or illness arising out of and in the course of employment. Extends this leave of absence entitlement to lifeguards and employees of the city of San Diego.

STATUS:

07/11/2013	Signed by GOVERNOR.
07/11/2013	Chaptered by Secretary of State. Chapter No. 66

Priority: High

CA SB 557

AUTHOR: Hill (D)
TITLE: High-Speed Rail
FISCAL COMMITTEE: yes
URGENCY no

CLAUSE:
INTRODUCED: 02/22/2013
ENACTED: 09/06/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 216

SUMMARY: Relates to existing law that appropriates specified funds from the High Speed Passenger Train Bond Fund and from federal funds for high-speed rail and connecting rail projects. Adds detail to provisions governing the expenditure of certain of those appropriated funds. Specifies that of the moneys appropriated for early high-speed rail improvement projects in the Budget Act of 2012, a specified amount shall be allocated solely for purposes of specified memoranda of understanding.

STATUS:

09/06/2013	Signed by GOVERNOR.
09/06/2013	Chaptered by Secretary of State. Chapter No. 216

Priority: High

CA SB 656

AUTHOR: Wright (D)
TITLE: Electrical Restructuring: Natural Gas: Information
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 10/05/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 604

SUMMARY: Amends existing law requiring the Public Utilities Commission to direct the Office, now Division, of Ratepayer Advocates to collect and analyze information regarding registered electric service providers and gas corporations to assist consumers in making service choices. Extends the consumer protection provisions applicable to electrical restructuring to aspects of natural gas restructuring. Relates to residential and small commercial customers. Relate to bundled basic gas service. Allows customer choice.

STATUS:

10/05/2013	Chaptered by Secretary of State. Chapter No. 604

Priority: High

CA SB 684

AUTHOR: Hill (D)
TITLE: Advertising Displays: Redevelopment Agency Project Area
FISCAL COMMITTEE: no
URGENCY CLAUSE: yes
INTRODUCED: 02/22/2013
ENACTED: 10/04/2013
DISPOSITION: Enacted
LOCATION: Signed by Governor
CHAPTER: 544

SUMMARY: Authorizes the establishment of redevelopment agencies in communities to address the effects of blight. Provides that an advertising display advertising businesses and activities

within the boundary limits of an individual redevelopment agency project may continue to exist and be considered an on-premises display, if the display does not reduce federal highway aid. Authorizes the designating agency to request an extension not to exceed the expiration of the redevelopment project area.

STATUS:

10/04/2013	Signed by GOVERNOR.
10/04/2013	Chaptered by Secretary of State. Chapter No. 544

Priority: High

CA SB 692

AUTHOR: Hancock (D)
TITLE: Local Government: Community Facilities Districts
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 09/06/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 219

SUMMARY: Relates to local community facilities districts. Authorizes a local agency to execute and record a notice of the owner's agreement to disclose certain information and a notice of termination of that obligation. Subjects a subsequent transferee of the property to the disclosure obligation. Authorizes a tax prepayment provision to be included in the unanimous approval. Requires unanimous approval of parcel owners that will be affected by the change.

STATUS:

09/06/2013	Signed by GOVERNOR.
09/06/2013	Chaptered by Secretary of State. Chapter No. 219

Priority: High

CA SB 694

AUTHOR: Correa (D)
TITLE: Outdoor Advertising: Transit Stations
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 10/04/2013
DISPOSITION: Enacted
LOCATION: Signed by Governor
CHAPTER: 545

SUMMARY: Exempts from certain provisions of the Outdoor Advertising Act an advertising display on public property upon which is located a publicly owned multimodal transit facility that serves passenger rail and that is to serve as a station for the high-speed train system. Imposes various conditions on an advertising display erected under these circumstances, including a local ordinance regulating the display and approval of the High-Speed Rail Authority. Requires advertising revenues to support the facility.

STATUS:

10/04/2013	Signed by GOVERNOR.
10/04/2013	Chaptered by Secretary of State. Chapter No. 545

Priority: High

CA SB 726

AUTHOR: Lara (D)
TITLE: California Global Warming Solutions Act of 2006
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 09/28/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 420

SUMMARY: Relates to greenhouse gases. Relates to the California Global Warming Solutions Act of 2006 and the use of market-based compliance mechanisms. Requires the State Air Resource Board to include information on all proposed expenditures and allocations of moneys to the Western Climate Initiative, Incorporated, in the Governor's Budget. Requires the Board to report on specified procurements. Requires compliance with open meetings and public records policies.

STATUS:

09/28/2013 Chaptered by Secretary of State. Chapter No. 420

Priority: High

CA SB 743

AUTHOR: Steinberg (D)
TITLE: Environmental Quality: Judicial Review
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 09/27/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 386

SUMMARY: Requires the Judicial Council to adopt a rule to establish procedures applicable to actions seeking review of a public agency's action in certifying an environmental impact report and in granting certain project approval. Requires a public agency, in certifying an impact report and granting approvals for a specified entertainment and sports center project in Sacramento, including the concurrent preparation of a the record, to comply with specified procedures. Provides certain actions shall not be impacts.

STATUS:

09/27/2013 Signed by GOVERNOR.

09/27/2013 Chaptered by Secretary of State. Chapter No. 386

Priority: High

CA SB 749

AUTHOR: Wolk (D)
TITLE: Habitat Protection: Endangered Species
FISCAL COMMITTEE: yes

URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 09/27/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 387

SUMMARY: Authorizes the Department of Fish and Wildlife to lease department-managed lands for agricultural activities. Authorizes the moneys collected from those leases to support the management, maintenance, restoration and operations of such lands. Requires the Department to annually provide an opportunity for hunters to comment and make recommendations concerning hunting programs. Relates to endangered species petitions and public hearings and the transfer of water when agricultural lands are being idled.

STATUS:

09/27/2013	Signed by GOVERNOR.
09/27/2013	Chaptered by Secretary of State. Chapter No. 387

Priority: High

CA SB 751

AUTHOR: Yee (D)
TITLE: Meetings: Publication of Action Taken
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 09/06/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 257

SUMMARY: Amends the Ralph M. Brown Act that requires all meetings of the legislative body of a local agency to be open and public and prohibits that body from taking action by secret ballot, whether preliminary of final. Requires that the legislative body of a local agency to publicly report any action taken and the vote or abstention of that action of each member present for the action.

STATUS:

09/06/2013	Signed by GOVERNOR.
09/06/2013	Chaptered by Secretary of State. Chapter No. 257

Priority: High

CA SB 763

AUTHOR: Fuller (R)
TITLE: Water Resources Board: Underground Storage Tanks
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 10/08/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 640

SUMMARY: Extends a specified loan and grant program to assist small businesses in upgrading, replacing, or removing underground storage tanks meeting certain standards. Specifies the

annual percentage of funds that available for grants. Sets a loan related interest rate. Provides the other uses for the funds in a related account. Transfers a specified amount of funds for the purpose of making such grants and loans. Provides grants for vapor emissions performance standards.

STATUS:

10/08/2013	Signed by GOVERNOR.
10/08/2013	Chaptered by Secretary of State. Chapter No. 640

Priority: High

CA SB 776

AUTHOR: Corbett (D)
TITLE: Public Works: Prevailing Wage Rates: Credits
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 08/27/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 169

SUMMARY: Makes changes to provisions specifying that certain employer payments are a credit against an obligation to pay the general prevailing rate of per diem wages, including certain benefits payments and payments to the Apprenticeship Council. Provides the conditions under which the employer may take credit for the payments. Prohibits credit from being granted for payments made to enforce laws related to public works if those payments are not required by a collective bargaining agreement.

STATUS:

08/27/2013	Signed by GOVERNOR.
08/27/2013	Chaptered by Secretary of State. Chapter No. 169

Priority: High

CA SB 788

AUTHOR: Senate Transportation and Housing Committee
TITLE: Transportation
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 10/03/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 523

SUMMARY: Defines the term highway for exemption purposes under the CEQA. Relates to the prepayment of sales tax on aircraft jet fuel. Relates to the relinquishment of highways and the maintenance of such highways. Modifies bikeway provisions. Revises the definition of logging dolly, logging vehicle, station wagon, and school bus accidents. Relates to Olympic and veterans' associations license plates and revenue. Regards commercial driver's licensing. Relates to traffic school. Amends medical certification dates.

STATUS:

10/03/2013	Signed by GOVERNOR.
10/03/2013	Chaptered by Secretary of State. Chapter No. 523

Priority: High

CA SB 806

AUTHOR: Hueso (D)
TITLE: Department of Motor Vehicles: License Plate Alternative
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/22/2013
ENACTED: 10/04/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 569
SUMMARY: Authorizes the Department of Motor Vehicles to establish a pilot program to evaluate the use of alternatives to stickers, tabs, license plates, and registration cards, subject to certain requirements, and to report the results of the program to the Legislature.
STATUS:

10/04/2013	Signed by GOVERNOR.
10/04/2013	Chaptered by Secretary of State. Chapter No. 569

Priority: High

CA SB 825

AUTHOR: Senate Governance and Finance Committee
TITLE: Government Finance
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 03/20/2013
ENACTED: 10/05/2013
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 607
SUMMARY: Requires a public agency to accept a corporate check, cashier's check, money order, or other draft method for payment of designated obligations and to impose a charge for any type of returned check or other authorized payment method that is not honored. Requires a private property owner to notify the county assessor if certain events occur. Relates to the assessment of contiguous properties in multiple tax districts. Adds information regarding assessments to tax bills. Requires notification of seniors.
STATUS:

10/05/2013	Chaptered by Secretary of State. Chapter No. 607

Priority: High

CA SCA 3

AUTHOR: Leno (D)
TITLE: Public Information
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 12/03/2012
ENACTED: 09/20/2013
DISPOSITION: Adopted

LOCATION:	Chaptered
CHAPTER:	123
SUMMARY:	Proposes an amendment to the Constitution to require each local agency to comply with the State Public Records Act and the Brown Act and with any statutory enactment amended either act, enacting a successor act, or amending any successor act which contains findings demonstrating that the statutory enactment furthers the purposes of the people's right of access to information concerning the conduct of the people's business. Regards the subvention of funds.
STATUS:	
	09/20/2013 Chaptered by Secretary of State.
	09/20/2013 Resolution Chapter No. 123
Priority:	High

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: **11**

Date: December 4, 2013

Subject: Representation on the South Coast Air Quality Management District

Recommendation:* Receive and file.

Background: SANBAG in its role as the Council of Governments is becoming more involved with issues before the South Coast Air Quality Management District (SCAQMD). While SANBAG staff participates in certain committees and attends hearings and meetings on various air quality issues as necessary, there has not been a great deal of policy discussion about SCAQMD issues.

Policy decisions that the SCAQMD will consider have the potential for significant impacts to our region and San Bernardino County in particular. Currently SCAQMD is collecting data to help in identifying and measuring sources of air pollution related to high-cube warehouses and the trucks that service them. It is important for San Bernardino County, with some of the worst air quality in the nation, to be working with agencies on efforts to reduce air pollution. At the same time, the economy of the region is very dependent upon the logistics industry and the high-cube warehouses needed by that industry, making it important for policy makers to be aware of the range of policy choices that are being considered.

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG	X	CTC		CTA		SAFE		CMA	

Check all that apply.
BRD1312a-dab

Another reason for local policy makers to be engaged is that the SCAQMD has begun the process for the 2015 update of the Air Quality Management Plan (AQMP). The AQMP will deal with a wide variety of policy issues to address air quality improvements. The policy direction adopted in the AQMP will have the potential for significant impacts to our regional economy if regulations and enforcement measures are too restrictive. It will be important for local leaders to express their views on the appropriate balance used in approaching the 2015 AQMP.

San Bernardino County has two representatives on the SCAQMD Board of Directors to represent us in these policy discussions. One representative is selected by the County Board of Supervisors. Supervisor Josie Gonzales currently fills that seat. The other position represents the cities of the County within the SCAQMD boundaries. Chino Mayor Dennis Yates currently fills that seat.

All SCAQMD Board Members have four-year terms. The County's representative is selected by the County Board of Supervisors. Supervisor Gonzales' current term expires in January 2015. The city representative is selected by the City Selection Committee, which is comprised of all of the mayors in the County. Mayor Yates' current term expires in January 2016.

While he has been the city representative, Mayor Yates has provided monthly updates on actions taken at the monthly SCAQMD Governing Board meetings. These monthly updates are attached at the end of the SANBAG Board of Directors agendas.

This item is in addition to those monthly updates and will provide an opportunity for SANBAG Board Members to better understand the issues before the SCAQMD Governing Board and to provide some policy input to our SCAQMD representatives. It is also an opportunity for Mayor Yates to describe the role that he plays representing the cities of San Bernardino County.

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

Reviewed By: This item was received by the Board Metro Valley Study Session on November 14, 2013.

Responsible Staff: Duane Baker, Director of Management Services

BRD1312a-dab

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 12

Date: December 4, 2013

Subject: Reimbursement Agreement for the Palm Avenue Grade Separation Project

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

1. Approve Contract No. R14071 with Caltrans to receive $5,000,000 for project cost reimbursement from the California Public Utilities Commission (CPUC) Grade Separation Fund for Section 190 funds for the Palm Avenue Grade Separation Project.

2. Approve Amendment to the SANBAG Fiscal Year 2013/2014 Budget modifying revenue sources funding Task No. 0874 (Palm Avenue Grade Separation) adding $4 million of CPUC Section 190 Grade Separation funds and reducing $1 million of Valley Major Street Bond Funds as detailed in the Financial Impact Section below to increase the task budget to a new total of $12,129,369.

Background: **This is a new reimbursement contract.** Every year the State of California Public Utilities Commission develops a railroad grade separation project priority list that, depending on fund availability, is used by the CPUC and the California Transportation Commission (CTC) to contribute up to $5 million per project for high priority railroad grade separation projects. The 2012-2013 Priority List includes the Palm Avenue Grade Separation project thus making the project

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

BRD1312c-ds

Attachment: http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/R14071.pdf
http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/R14071%20Exhibit%20A.pdf

eligible to receive $5 million. The California Transportation Commission has authorized Caltrans to allocate funds from the Grade Separation Fund to projects on the CPUC Priority List. The attached agreement acknowledges that the Palm Avenue Grade Separation project will receive $5 million from this program.

Financial Impact: This item is not consistent with the adopted Fiscal Year 2013/2014 budget under Task No. 0874, as it was not known during budget development that CPUC Section 190 funds would be available for this project. A budget amendment is necessary to modify revenue sources funding Task No. 0874 (Palm Avenue Grade Separation) adding $4 million of the CPUC Section 190 funds for this current year budget. Due to the addition of these funds, the Valley Major Street Bond Fund budget can be reduced by $1 million under Task No. 0874.

Reviewed By: This item was reviewed and recommended for approval (16-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on November 14, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item.

Responsible Staff: Garry Cohoe, Director of Project Delivery

BRD1312c-ds

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CONTRACT SUMMARY SHEET

Contract No. R 14071 Amendment No. _____

By and Between

San Bernardino County Transportation Commission and California Department of Transportation

Contract Description Section 190 fund reimbursement for the Palm Ave/BNSF Grade Seperation

Board of Director's Meeting Date: 12/4/13

Overview of BOD Action: Approve reimbursement to SANBAG of $5 million from Section 190 funds for all phases of the Palm Avenue Grade Separation Project.

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

CONTRACT OVERVIEW

Original Contract Amount	$	5,000,000.00	**Original Contingency Amount**	$	0
Revised Contract Amount *Inclusive of prior amendments*	$		**Revised Contingency Amount** *Inclusive of prior amendments*	$	
Current Amendment Amount	$		**Contingency Amendment**	$	
TOTAL CONTRACT VALUE	$	5,000,000.00	**TOTAL CONTINGENCY VALUE**	$	0
TOTAL BUDGET AUTHORITY *(contract value + contingency)*				$	5,000,000.00

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
12/4/13	4/15/15	

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

FINANCIAL INFORMATION

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

☒ A Budget Amendment is required.

How are we funding current FY? CPUC Section 190 funds

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

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

CPUC Section 190 funds

☐ Payable ☒ Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

☐ Retention? If yes, indicate % _____.

☐ Disadvantaged Business Enterprise (DBE) Goal _____ %

Dennis Saylor		
Project Manager (Print Name)	Signature	Date 10/8/13
Task Manager (Print Name)	Signature	Date 10.8.13
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date 10/21/13
Contract Administrator (Print Name)	Signature	Date 10/22/13
Chief Financial Officer (Print Name)	Signature	Date 10/24/13

R14071 css

Chapter	Statutes	Item	Fiscal Year	Program Code	Category	Fund Source
21 & 29	2012	2660.102.042	2012-13	20.30.010.400	210000	SHA

EA	Funding Profile Number	Project ID Number
918326	R00225	0014000065

I hereby certify upon my own personal knowledge that budgeted funds are available for this encumbrance.

Resource Manager Signature	FY & Amount
	2012-13 - $5,000,000

AGREEMENT

THIS AGREEMENT made and entered into this **23rd** day of **September 2013**, by and between the STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "State", and the **San Bernardino Associated Governments** a political subdivision of the State of California, hereinafter referred to as "**County**".

WITNESSETH

WHEREAS, pursuant to the provisions of Section 2452 et seq of the Streets and Highways Code, the Public Utilities Commission of the State of California, by **Interim Opinion Establishing Priority List for 2012-13 Fiscal Year as part of Investigation 11-07-022,** established a Priority List of Grade Separation Projects for the Fiscal Year of **2012-13** and

WHEREAS, said Priority List includes a project proposed by County to construct an Overpass at the tracks of the Burlington Northern Santa Fe Railroad (BNSF) to carry the roadway over the tracks of the **BNSF** hereinafter referred to as "Project", as shown on Exhibit "A" attached hereto and application was made for an allocation of $5 million; and

WHEREAS, by decision **No. G.12-10-005 dated November 1, 2012** the Public Utilities Commission authorized County to construct a crossing at separated grade identified as PUC Crossing No. 002-74.00 and DOT No. 026105N in the City of San Bernardino, San Bernardino County, **the roadway** will pass **over** the tracks of the **BNSF railroad**, hereinafter referred to as "Railroad"; and

WHEREAS, on **October 15, 2012** County and Railroad entered into an agreement for the construction and maintenance of said Project, and wherein Railroad has agreed to contribute a portion of the cost of Project as required by law; and

WHEREAS, County has herein certified to State that sufficient County funds are available to finance its share of Project cost, and that all other matters prerequisite to awarding a construction contract within a period of two years after the allocation have been or will be taken care of within that time; and

WHEREAS, the California Transportation Commission (by Resolution No. M-136), has authorized the Department of Transportation to allocate funds from the Grade Separation Fund to local agencies in accordance with the applicable annual priority list as established by the Public Utilities Commission; and

WHEREAS, an agreement is to be entered into between County and State to provide reimbursement to County in a sum not to exceed **$5,000,000**, provided, however, County establishes to the satisfaction of State that all sums expended by County for Project are reasonable and a necessary part of Project;

NOW THEREFORE, in consideration of the premises and mutual undertakings of the parties hereto, as hereinafter set forth, State and County agree as follows:

1. County hereby certifies it has sufficient County funds available to finance its share of Project cost.

2. County, in cooperation with Railroad, will undertake Project, which consists of acquisition and clearing of necessary rights of way, preliminary and construction engineering, work by Railroad forces, and construction of Project.

3. The costs attributable to Project are limited to the following:
   (a) Right of Way: The cost of right of way shall include condemnation attorney fees, escrow fee, other necessary acquisition costs, the actual payment to property owners for right of way obtained, the right of way agent's time plus travel expenses and normal payroll additives, the cost of clearing the right of way including utility relocation to the extent required by law and all relocation assistance benefit payments for the participating parcel as required by law, less the value of excess land obtained in such transactions.
   (b) Engineering: The cost of engineering shall include the actual time of engineers and designers plus travel expense and normal payroll additives.
   (c) Construction: The cost of construction shall include the amounts actually paid to the contractor(s) and the amounts directly expended for field supervision and

inspection, including travel expense, normal payroll additives, laboratory tests, and work by Railroad forces.

(d) Direct incidental costs: Direct incidental costs shall be limited to the cost of advertising for bids.

All additives, overhead, or administrative costs other than those mentioned above are excluded from the determination of the cost of Project.

4. As promptly as possible, and in any event **not more than two years** after the allocation by the Director of Transportation, County shall award a contract for construction of Project pursuant to the laws governing County in the advertising and award of public construction contracts, and in conformance with plans and specifications prepared by or on behalf of County in accordance with the California Department of Transportation "Bridge Design Specifications for Overhead Structures". Each plan sheet shall be signed and stamped by the responsible design engineer who shall be registered in the State California. Construction shall be under the control of County.

5. Within 60 days after award of contract by County for construction of Project and upon being furnished with a copy of the executed contract and the plans and specifications, and an itemized statement from County showing expenditures actually and necessarily made by County prior to award of contract for engineering, right of way and utility relocation directly connected with Project, State will reimburse County for up to **$5,000,000**, or a portion of said expenditures by the ratio of State's estimated share of the total Project cost to such Project cost, whichever is less.

6. Thereafter, as the work progresses, once funds have been made available by the Legislature, and the California Transportation Commission, then been added to this Agreement by amendment, upon being furnished with copies of the contractor's progress estimates as certified by a Civil Engineer registered in the State of California on behalf of County that the costs are true and correct, or other proof satisfactory to State as to amounts actually paid the contractor and necessarily expended directly for field supervision and inspection as certified by a Civil Engineer registered in the State of California on behalf of County, State will reimburse County up to the total amount allocated for Project by the State for a portion of the amount of payments to the contractor, and the amounts expended by County directly for field supervision and

inspection, equal to the product obtained by multiplying said expenditures by the ratio of State's estimated share of the total Project cost to such total Project cost **or $5,000,000** whichever is less.

7. Within 60 days after completion of the work and acceptance thereof by County, a detailed statement of the direct cost of Project will be prepared by County and furnished to State, whereupon a final accounting will be made based on the direct cost of the work to County, using the definition of cost herein provided in Section 3. State's share of said cost will be equal to 80 percent of the direct cost of State's participating portion of Project, up to a **total not to exceed $5,000,000.** If upon final accounting it is determined that State paid more than its share of Project cost, computed in said manner, County will refund to State the difference between State's share of the participating portion of Project cost, and the amount paid by State.

8. All books, papers, records, and accounts of the parties hereto, and the contractors and subcontractors, insofar as they relate to the items of expenses for labor and material or are in any way connected with the work herein contemplated, shall at all reasonable times be open to inspection and audit by the agents and the authorized representatives of the parties hereto, and the records relating thereto shall be retained by the parties and the contractors for a minimum of three years from the date that the final payment is made.

9. The portion of the total project which is the participating project for determination of State's share of the cost of Project is shown on Exhibit "A", attached hereto and made part hereof.

10. Any obligation by State for payment of moneys contained herein is subject to and contingent upon the County establishing to the satisfaction of State that all sums expended by County for Project, for which County requests partial reimbursement from State, are reasonable and are a necessary part of Project.

11. Disbursements of State funds to County, which are encumbered to pay for State's share of the participating portion of Project, must be made **prior to April 15, 2015**, otherwise the undisbursed balance shall revert to and become part of the fund from which the appropriation was made. If the County does not bill in a timely fashion, funds from a particular budget year may no longer be available in which case the State will not replace reverted funds from other sources of any kind.

12. Any progress payments made by State pursuant to Sections 6 and 7 herein are not an admission by State that such expenditures were reasonable and a necessary part of the project, and if State finds in final accounting that such expenditures were not reasonable and a necessary part of the project, County will reimburse State for such advance funds.

13. An original and two (2) copies of each invoice shall be submitted to State.

14. All invoices and all written correspondence from County to State shall reference this Agreement Number (Agreement No.**75GS6119**) and the name of the street crossing at separated grade (**Palm Avenue**).

15. All County invoices for payments are to be submitted to the following address:

California Department of Transportation
Division of Rail - MS 74
Railroad Crossing Safety Branch
P.O. Box 942874-MS 74
Sacramento, CA 94274-001

Attn: Grade Separation Fund

16. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. Any changes to the terms of this Agreement must be set forth in a formal Agreement amendment.

17. All work/provisions/requirements under this Agreement are to be completed by the expiration date of this Agreement, unless an extension of time is approved by the State in writing.

This Agreement will expire on April 15, 2015.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate the day and year first above written.

APPROVAL RECOMMENDED

LAUREN CLAUSON, Chief
Railroad Crossing Safety Branch
Caltrans Division of Rail

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

BY

WILLIAM D. BRONTE - Division Chief
Division of Rail
Caltrans

SAN BERNARDINO COUNTY
TRANSPORTATION COMMISSION

BY

W.E. JAHN
President, Board of Directors

Date

APPROVED AS TO FORM

Eileen Monaghan Teichert,
General Counsel

CONCURRENCE

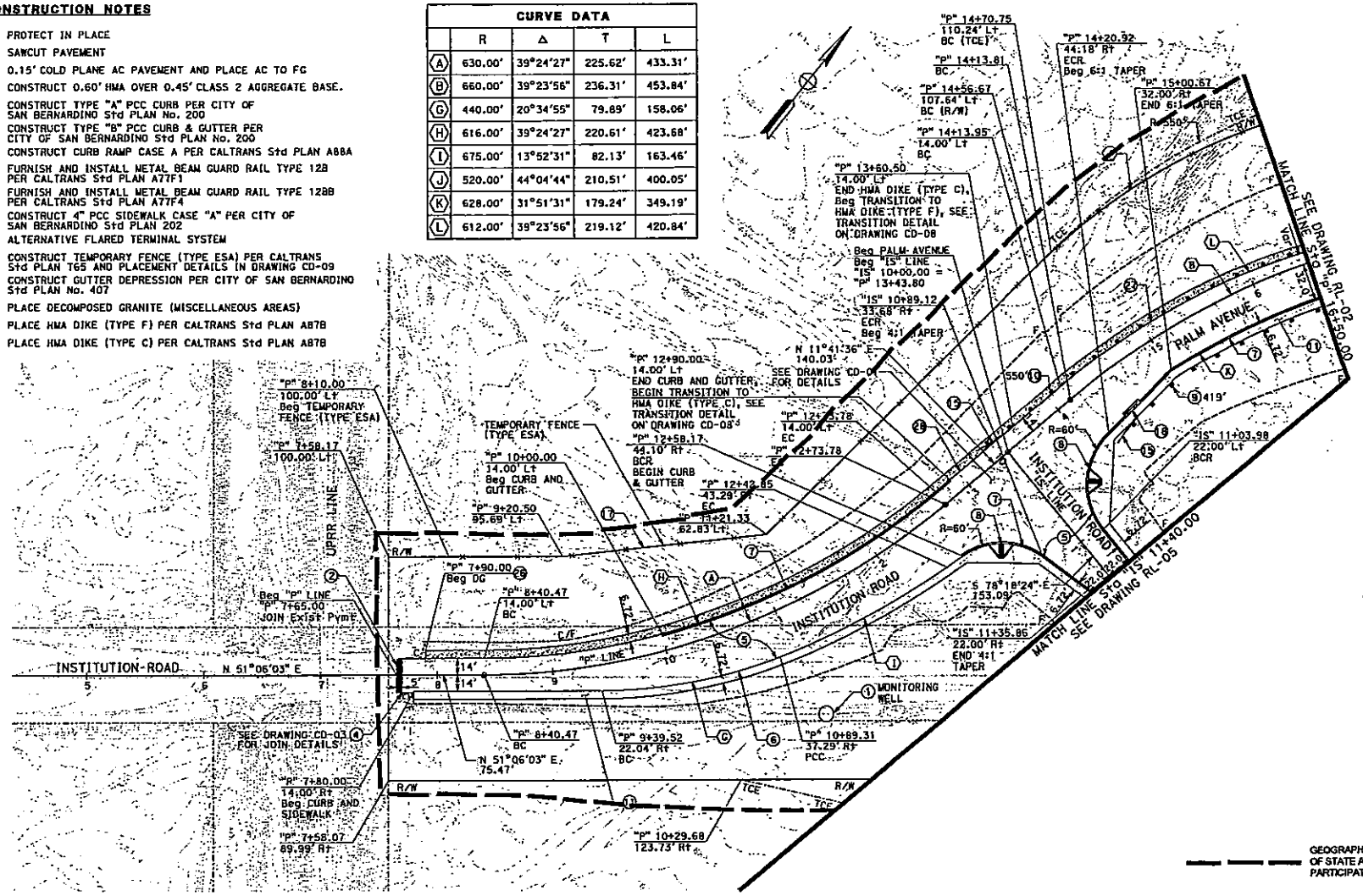
Jeffery Hill
Contract Administrator

SANBAG #R14071

CONSTRUCTION NOTES

1. PROTECT IN PLACE
2. SAWCUT PAVEMENT
4. 0.15' COLD PLANE AC PAVEMENT AND PLACE AC TO FG
5. CONSTRUCT 0.60' HMA OVER 0.45' CLASS 2 AGGREGATE BASE.
6. CONSTRUCT TYPE "A" PCC CURB PER CITY OF SAN BERNARDINO Std PLAN No. 200
7. CONSTRUCT TYPE "B" PCC CURB & GUTTER PER CITY OF SAN BERNARDINO Std PLAN No. 200
8. CONSTRUCT CURB RAMP CASE A PER CALTRANS Std PLAN A88A
9. FURNISH AND INSTALL METAL BEAM GUARD RAIL TYPE 12B PER CALTRANS Std PLAN A77F1
10. FURNISH AND INSTALL METAL BEAM GUARD RAIL TYPE 12BB PER CALTRANS Std PLAN A77F4
11. CONSTRUCT 4" PCC SIDEWALK CASE "A" PER CITY OF SAN BERNARDINO Std PLAN 202
15. ALTERNATIVE FLARED TERMINAL SYSTEM
17. CONSTRUCT TEMPORARY FENCE (TYPE ESA) PER CALTRANS Std PLAN T65 AND PLACEMENT DETAILS IN DRAWING CD-09
18. CONSTRUCT GUTTER DEPRESSION PER CITY OF SAN BERNARDINO Std PLAN No. 407
25. PLACE DECOMPOSED GRANITE (MISCELLANEOUS AREAS)
27. PLACE HMA DIKE (TYPE F) PER CALTRANS Std PLAN A87B
28. PLACE HMA DIKE (TYPE C) PER CALTRANS Std PLAN A87B

CURVE DATA				
	R	Δ	T	L
A	630.00'	39°24'27"	225.62'	433.31'
B	660.00'	39°23'56"	236.31'	453.84'
G	440.00'	20°34'55"	79.89'	158.06'
H	616.00'	39°24'27"	220.61'	423.68'
I	675.00'	13°52'31"	82.13'	163.46'
J	520.00'	44°04'44"	210.51'	400.05'
K	628.00'	31°51'31"	179.24'	349.19'
L	612.00'	39°23'56"	219.12'	420.84'



FINAL SUBMITTAL

JANUARY 31, 2013

Underground Service Alert
Dial 811 from any phone nationwide

APPROVED _____ 2013
MARK L. RAAB
PRINCIPAL CIVIL ENGINEER RCE NO. 29618 EXP 3-31-13

MARK L. RAAB — No. C29618 — Exp. 3/30/2013 — Civil — State of California

Governments SANBAG Working Together

CH2MHILL

JERRY R. ROMANA — No. C48536 — Exp. 6/30/2014 — Civil — State of California

MARK	REVISIONS	BY	APPR.	DATE

BENCH MARK:
ELEVATIONS ARE BASED ON CITY OF SAN BERNARDINO BENCH MARK "HI-I", A 3" STANDARD BRASS DISK STAMPED "T-1445-1989", SET VERTICALLY IN THE NORTHERLY FACE OF THE NORTHEAST COLUMN OF THE PALM AVENUE OVERPASS OF I-215, 4.9 FEET ABOVE THE GROUND.
ELEV = 1705.55 FEET (NAVD 88)

DESIGNED BY	JULIAN HERNANDEZ
SCALE	1"=40'
DRAWN BY	JULIAN HERNANDEZ
CHECKED BY	ALICIA CANNON
RECOMMENDED BY	JERRY ROMANA

EXHIBIT "A"
PALM AVENUE GRADE SEPARATION
AT BNSF RAILWAY COMPANY
CPUC CROSSING NO. 002-74.00 DOT NO. 026100
GEOGRAPHICAL LIMITS OF STATE AND RAILROAD PARTICIPATION

SANBAG CONTRACT NO. R140

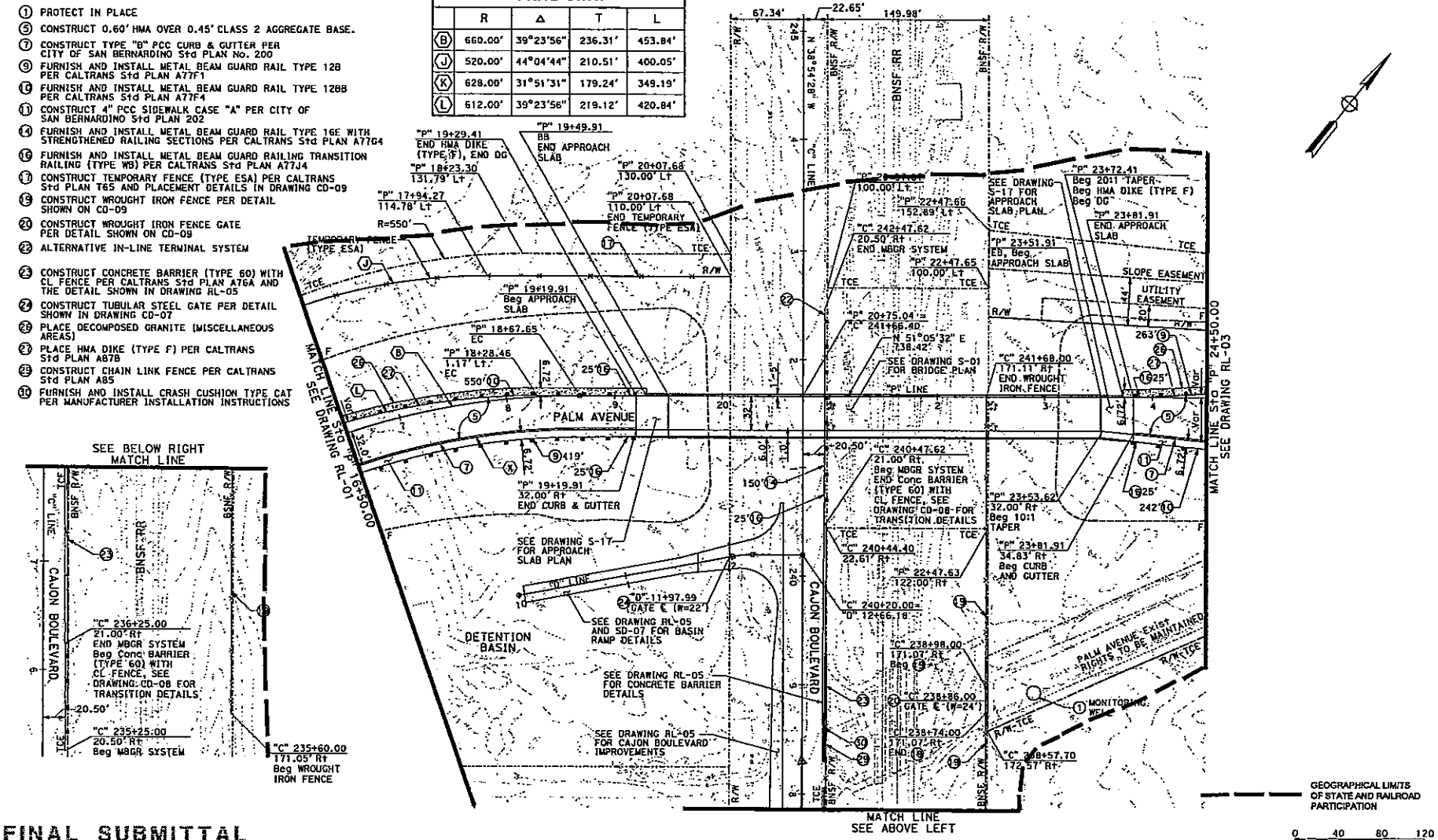
SHT 1 OF 10

FILE => RL-01.dgn

CONSTRUCTION NOTES

1. PROTECT IN PLACE
5. CONSTRUCT 0.60' HMA OVER 0.45' CLASS 2 AGGREGATE BASE.
7. CONSTRUCT TYPE "B" PCC CURB & GUTTER PER CITY OF SAN BERNARDINO Std PLAN No. 200
9. FURNISH AND INSTALL METAL BEAM GUARD RAIL TYPE 12B PER CALTRANS Std PLAN A77F1
10. FURNISH AND INSTALL METAL BEAM GUARD RAIL TYPE 12BB PER CALTRANS Std PLAN A77F4
11. CONSTRUCT 4" PCC SIDEWALK CASE "A" PER CITY OF SAN BERNARDINO Std PLAN 202
14. FURNISH AND INSTALL METAL BEAM GUARD RAIL TYPE 16E WITH STRENGTHENED RAILING SECTIONS PER CALTRANS Std PLAN A77G4
16. FURNISH AND INSTALL METAL BEAM GUARD RAILING TRANSITION RAILING (TYPE WB) PER CALTRANS Std PLAN A77J4
17. CONSTRUCT TEMPORARY FENCE (TYPE ESA) PER CALTRANS Std PLAN T65 AND PLACEMENT DETAILS IN DRAWING CD-09
19. CONSTRUCT WROUGHT IRON FENCE PER DETAIL SHOWN ON CD-09
20. CONSTRUCT WROUGHT IRON FENCE GATE PER DETAIL SHOWN ON CD-09
22. ALTERNATIVE IN-LINE TERMINAL SYSTEM
23. CONSTRUCT CONCRETE BARRIER (TYPE 60) WITH CL FENCE PER CALTRANS Std PLAN A76A AND THE DETAIL SHOWN IN DRAWING RL-05
24. CONSTRUCT TUBULAR STEEL GATE PER DETAIL SHOWN IN DRAWING CD-07
26. PLACE DECOMPOSED GRANITE (MISCELLANEOUS AREAS)
27. PLACE HMA DIKE (TYPE F) PER CALTRANS Std PLAN A87B
28. CONSTRUCT CHAIN LINK FENCE PER CALTRANS Std PLAN A85
30. FURNISH AND INSTALL CRASH CUSHION TYPE CAT PER MANUFACTURER INSTALLATION INSTRUCTIONS

CURVE DATA				
	R	Δ	T	L
(B)	660.00'	39°23'56"	236.31'	453.84'
(J)	520.00'	44°04'44"	210.51'	400.05'
(K)	628.00'	31°51'31"	179.24'	349.19'
(L)	612.00'	39°23'56"	219.12'	420.84'



FINAL SUBMITTAL
JANUARY 31, 2013

Underground Service Alert
Dial 811 from any phone nationwide

APPROVED _____ 2013
MARK L. RAAB
PRINCIPAL CIVIL ENGINEER RCE NO. 29616 EXP 3-31-13

REGISTERED PROFESSIONAL ENGINEER MARK L. RAAB No. C29616 Exp. 3/30/2013 CIVIL STATE OF CALIFORNIA

Governments SANBAG Working Together

CH2MHILL 1770 IOWA AVENUE, SUITE 200 RIVERSIDE, CA 92507

REGISTERED PROFESSIONAL ENGINEER JERRY R. ROMANA No. C48536 Exp. 6/30/2014 CIVIL STATE OF CALIFORNIA

MARK	REVISIONS	BY	APPR.	DATE

BENCH MARK: ELEVATIONS ARE BASED ON CITY OF SAN BERNARDINO BENCH MARK "M-1", A 3" STANDARD BRASS DISK STAMPED T-1445-1989, SET VERTICALLY IN THE NORTHERLY FACE OF THE NORTHEAST COLUMN OF THE PALM AVENUE OVERPASS OF I-215, 4.9 FEET ABOVE THE GROUND. ELEV = 1705.55 FEET (NAVD 88)

DESIGNED BY JULIAN HERNANDEZ
SCALE: 1"=40'
DRAWN BY: JULIAN HERNANDEZ
CHECKED BY: ALICIA CANNON
RECOMMENDED BY: JERRY ROMANA

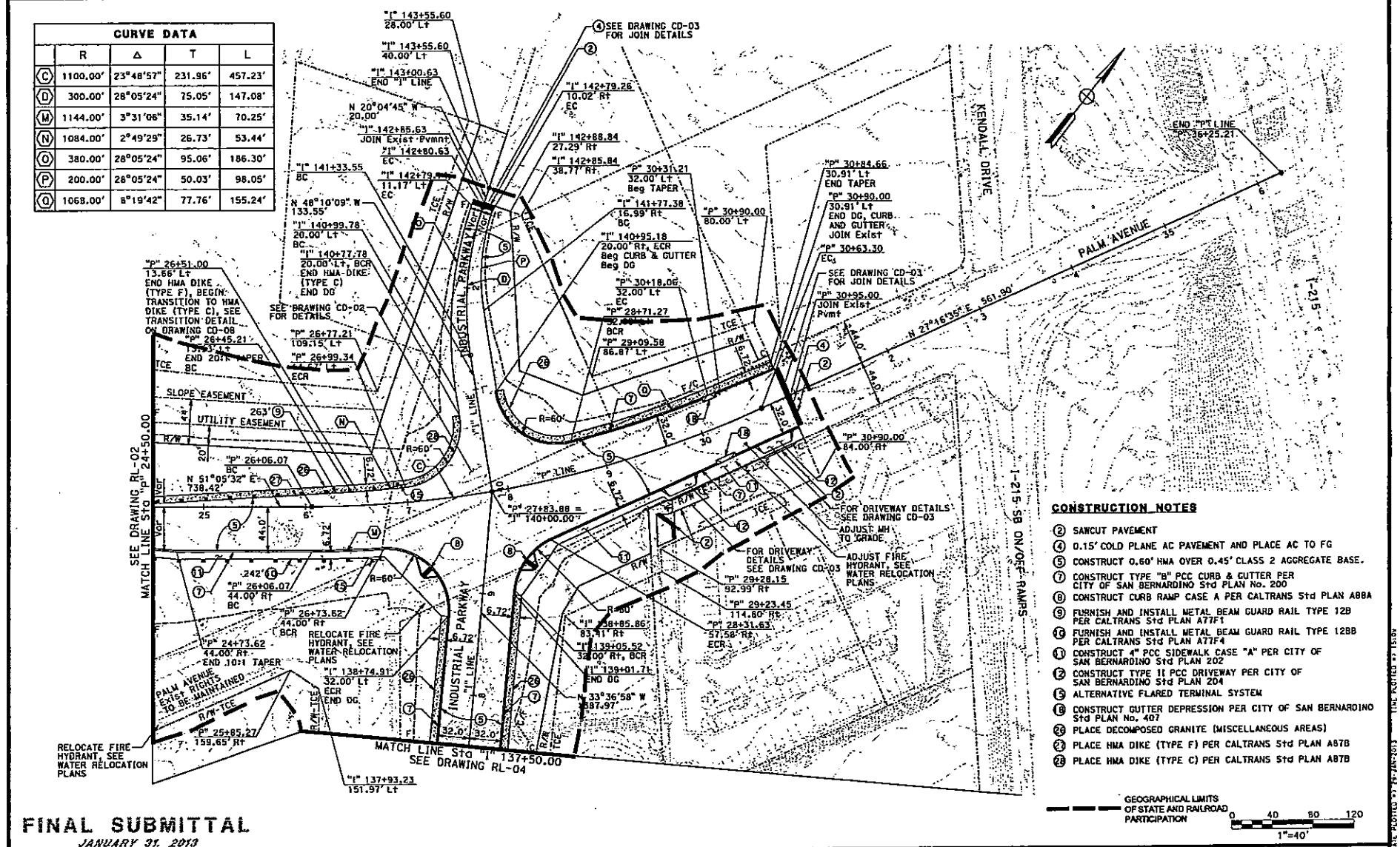
EXHIBIT "A"
PALM AVENUE GRADE SEPARATION
AT BNSF RAILWAY COMPANY
CPUC CROSSING NO. 002-74.00 DOT NO. 026103M
GEOGRAPHICAL LIMITS OF STATE AND RAILROAD PARTICIPATION

SANBAG CONTRACT NO. R140□

SHT 2 OF 10

FILE = R1-02.dgn
USERNAME = jpierson DATE PLOTTED = 01-FEB-2013 LINE ZOOTED = 1:1969

CURVE DATA				
	R	Δ	T	L
Ⓒ	1100.00'	23°48'57"	231.96'	457.23'
Ⓓ	300.00'	28°05'24"	75.05'	147.08'
Ⓜ	1144.00'	3°31'06"	35.14'	70.25'
Ⓝ	1084.00'	2°49'29"	26.73'	53.44'
Ⓞ	380.00'	28°05'24"	95.06'	186.30'
Ⓟ	200.00'	28°05'24"	50.03'	98.05'
Ⓠ	1068.00'	8°19'42"	77.76'	155.24'



FINAL SUBMITTAL

JANUARY 31, 2013

Underground Service Alert
Dial 811 from any phone nationwide

APPROVED _____ 2013
MARK L. RAAB
PRINCIPAL CIVIL ENGINEER RCE NO. 29616 EXP 3-31-13

MARK L. RAAB PROFESSIONAL ENGINEER No. C29616 Exp. 3/30/2013 Civil STATE OF CALIFORNIA

Governments SANBAG Western Together

CH2MHILL 1756 IOWA AVENUE, SUITE 200 RIVERSIDE, CA 92507

JERRY B. ROMANA PROFESSIONAL ENGINEER No. C48536 Exp. 6/30/2014 Civil STATE OF CALIFORNIA

MARK	REVISIONS	BY	APPR.	DATE

BENCH MARK: ELEVATIONS ARE BASED ON CITY OF SAN BERNARDINO BENCH MARK "HI-I" A 3" STANDARD BRASS DISK STAMPED "T-1445-1989", SET VERTICALLY IN THE NORTHERLY FACE OF THE NORTHEAST COLUMN OF THE PALM AVENUE OVERPASS OF I-215, 4.9 FEET ABOVE THE GROUND. ELEV = 1705.55 FEET (NAVD 88)

DESIGNED BY: JULIAN HERNANDEZ
SCALE: 1"=40'
DRAWN BY: JULIAN HERNANDEZ
CHECKED BY: ALICIA CANNON
RECOMMENDED BY: JERRY ROMANA

EXHIBIT "A"
PALM AVENUE GRADE SEPARATION
AT BNSF RAILWAY COMPANY
CPUC CROSSING NO. 002-74.00 DOT NO. 026105N
GEOGRAPHICAL LIMITS OF STATE AND RAILROAD PARTICIPATION

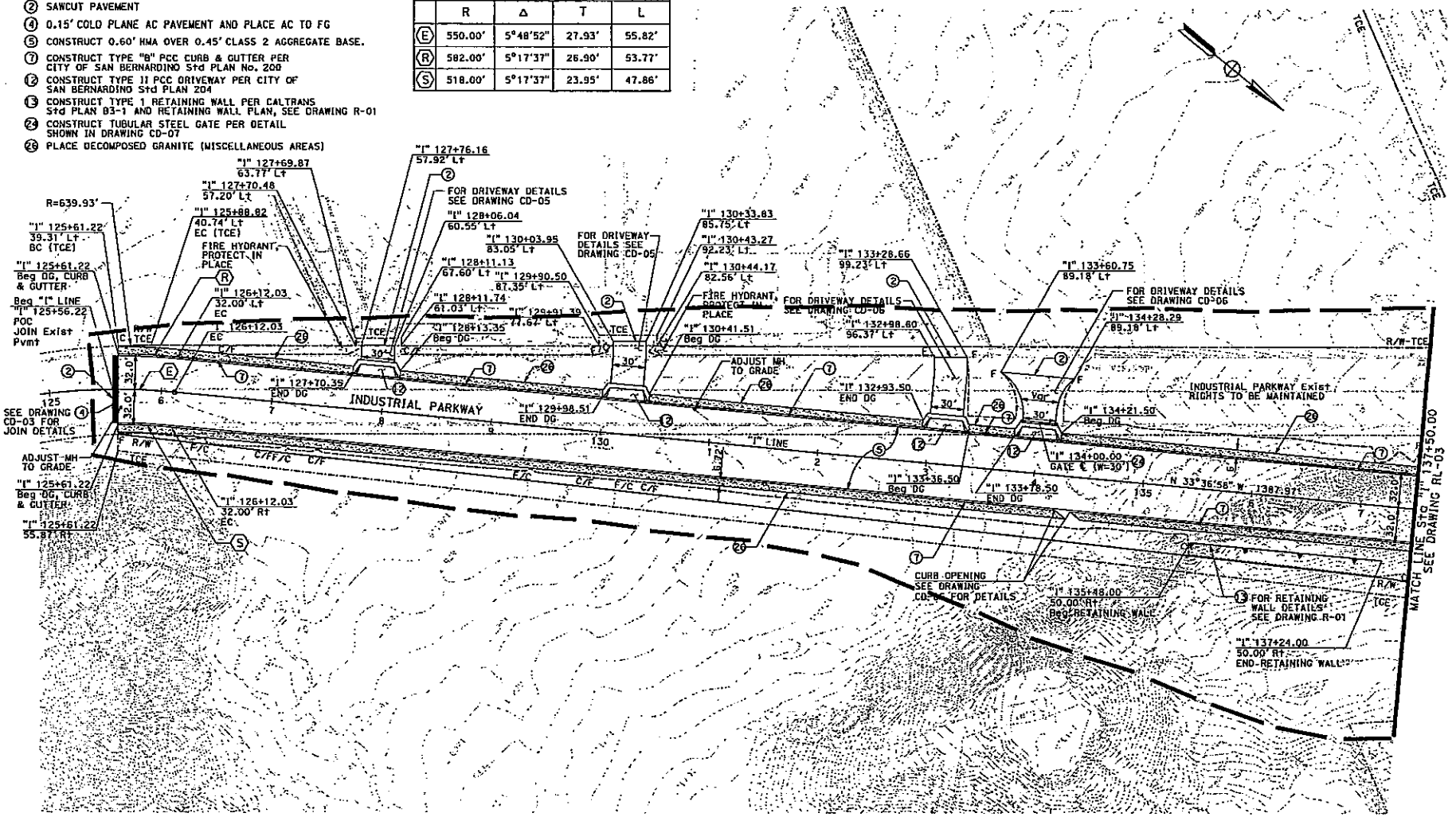
SANBAG CONTRACT NO. R140□ SHT □OF 10

FILE = 9 RL-03.dgn

CONSTRUCTION NOTES

(2) SAWCUT PAVEMENT
(4) 0.15' COLD PLANE AC PAVEMENT AND PLACE AC TO FG
(5) CONSTRUCT 0.60' HMA OVER 0.45' CLASS 2 AGGREGATE BASE.
(7) CONSTRUCT TYPE "B" PCC CURB & GUTTER PER CITY OF SAN BERNARDINO Std PLAN No. 200
(12) CONSTRUCT TYPE II PCC DRIVEWAY PER CITY OF SAN BERNARDINO Std PLAN 204
(13) CONSTRUCT TYPE 1 RETAINING WALL PER CALTRANS Std PLAN B3-1 AND RETAINING WALL PLAN, SEE DRAWING R-01
(24) CONSTRUCT TUBULAR STEEL GATE PER DETAIL SHOWN IN DRAWING CD-07
(26) PLACE DECOMPOSED GRANITE (MISCELLANEOUS AREAS)

CURVE DATA				
	R	Δ	T	L
(E)	550.00'	5°48'52"	27.93'	55.82'
(R)	582.00'	5°17'37"	26.90'	53.77'
(S)	518.00'	5°17'37"	23.95'	47.86'



FINAL SUBMITTAL

JANUARY 31, 2013

GEOGRAPHICAL LIMITS OF STATE AND RAILROAD PARTICIPATION

0 40 80 120
1"=40'

Underground Service Alert
Dial 811 from any phone nationwide
Two working days before you dig

APPROVED _____ 2013
MARK L. RAAB
PRINCIPAL CIVIL ENGINEER PCE NO. 29616 EXP 3-31-13

MARK L. RAAB
No. C29616
Exp. 3/30/2013
Civil
STATE OF CALIFORNIA

Governments
SANBAG
Working Together

CH2MHILL
1770 IOWA AVENUE, SUITE 200
RIVERSIDE, CA 92507

JERRY R. ROMANA
No. C48536
Exp. 6/30/2014
Civil
STATE OF CALIFORNIA

MARK	REVISIONS	BY	APPR.	DATE

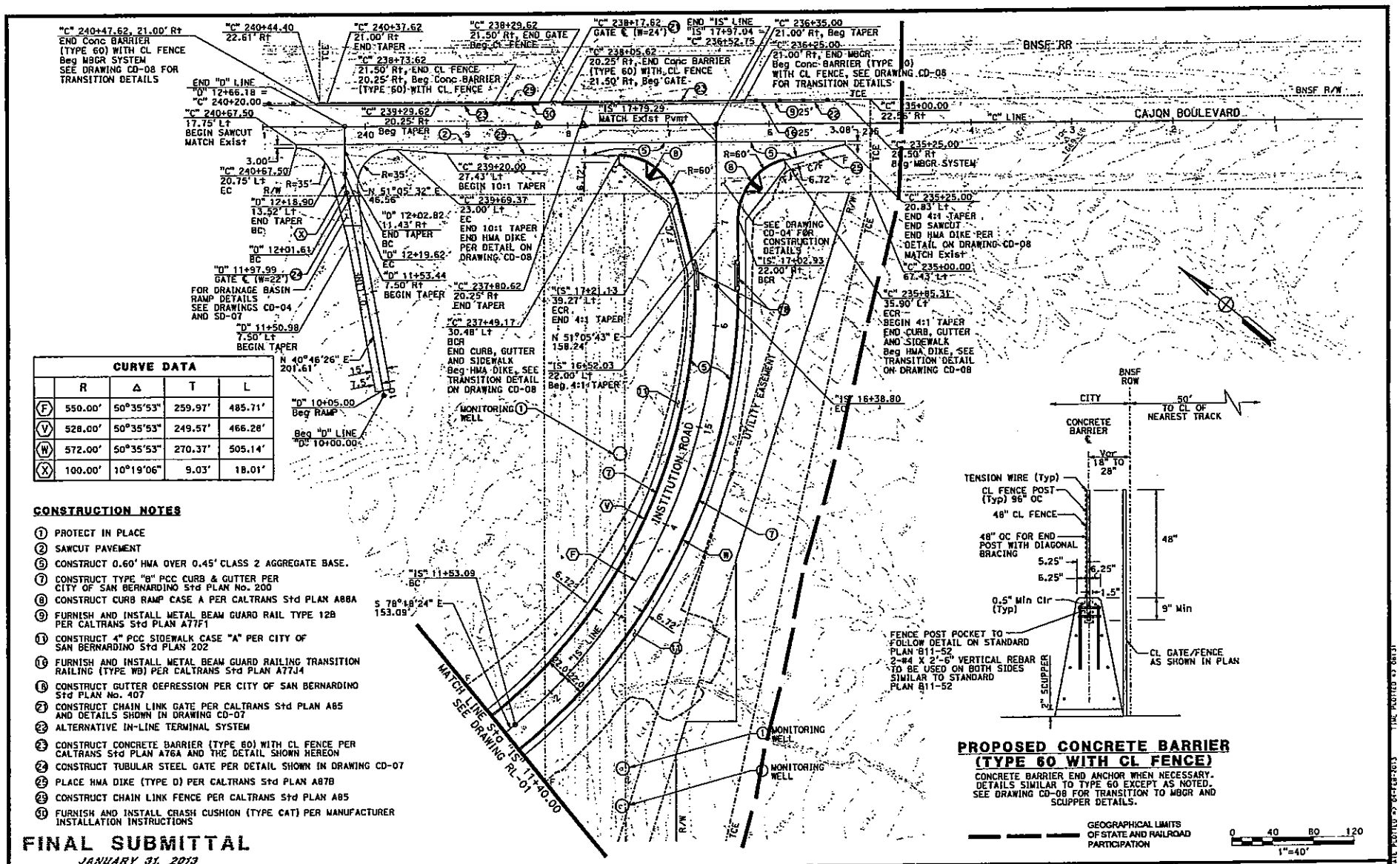
BENCH MARK:
ELEVATIONS ARE BASED ON CITY OF SAN BERNARDINO BENCH MARK "HI-I", A 3" STANDARD BRASS DISK STAMPED "I-1445-1989", SET VERTICALLY IN THE NORTHERLY FACE OF THE NORTHEAST COLUMN OF THE PALM AVENUE OVERPASS OF I-215, 4.9 FEET ABOVE THE GROUND.
ELEV = 1705.55 FEET (NAVD 88)

DESIGNED BY: JULIAN HERNANDEZ
SCALE: 1"=40'
DRAWN BY: JULIAN HERNANDEZ
CHECKED BY: ALICIA CANNON
RECOMMENDED BY: JERRY ROMANA

EXHIBIT "A"
PALM AVENUE GRADE SEPARATION
AT BNSF RAILWAY COMPANY
CPUC CROSSING NO. 002-74.00 DOT NO. 026110D
GEOGRAPHICAL LIMITS OF STATE AND RAILROAD PARTICIPATION

SANBAG CONTRACT NO. R140□

SHT 4 OF 10


"C" 240+47.62, 21.00' Rt
END Conc BARRIER (TYPE 60) WITH CL FENCE
Beg MBGR SYSTEM
SEE DRAWING CD-08 FOR TRANSITION DETAILS
END "D" LINE
"D" 12+66.18 =
"C" 240+20.00
"C" 240+67.50
17.75' Lt
BEGIN SAWCUT MATCH Exist
"C" 240+44.40
22.61' Rt
"C" 240+37.62
21.00' Rt
END TAPER
"C" 238+73.62
21.50' Rt, END CL FENCE
20.25' Rt, Beg Conc BARRIER (TYPE 60) WITH CL FENCE
"C" 238+29.62
21.50' Rt, END GATE
Beg CL FENCE
"C" 238+17.62
GATE ℄ (W=24')
"C" 238+05.62
20.25' Rt, END Conc BARRIER (TYPE 60) WITH CL FENCE
21.50' Rt, Beg GATE
END "IS" LINE
"IS" 17+97.04
"C" 236+52.75
"C" 236+35.00
21.00' Rt, Beg TAPER
"C" 236+25.00
21.00' Rt, END MBGR
Beg Conc BARRIER (TYPE 60) WITH CL FENCE, SEE DRAWING CD-08 FOR TRANSITION DETAILS
TCE
BNSF RR
BNSF R/W
"C" 239+29.62
20.25' Rt
240 Beg TAPER
"IS" 17+79.29
MATCH Exist Pvmt
"C" 35+00.00
22.5' Rt
"℄" LINE
CAJON BOULEVARD
"C" 235+25.00
20.50' Rt
Beg MBGR SYSTEM
"C" 235+25.00
20.83' Lt
END 4:1 TAPER
END SAWCUT
END HMA DIKE PER DETAIL ON DRAWING CD-08
MATCH Exist
"C" 235+00.00
67.43' Lt
"C" 235+85.31
35.90' Lt
ECR
BEGIN 4:1 TAPER
END CURB, GUTTER AND SIDEWALK
Beg HMA DIKE, SEE TRANSITION DETAIL ON DRAWING CD-08
SEE DRAWING CD-04 FOR CONSTRUCTION DETAILS
"IS" 17+02.93
22.00' Rt
BCR
"C" 240+67.50
20.75' Lt
EC
R=35'
N 51°05' 32" E
46.56
"D" 12+18.90
13.52' Lt
END TAPER
BC
"D" 12+01.61
BC
"D" 11+97.99
GATE ℄ (W=22')
FOR DRAINAGE BASIN RAMP DETAILS SEE DRAWINGS CD-04 AND SD-07
"D" 11+50.98
7.50' Lt
BEGIN TAPER
N 40°46'26" E
201.61'
"D" 12+02.82
11.43' Rt
END TAPER
BC
"D" 12+19.62
EC
"D" 11+53.44
7.50' Rt
BEGIN TAPER
"C" 239+20.00
27.43' Lt
BEGIN 10:1 TAPER
"C" 239+69.37
23.00' Lt
EC
END 10:1 TAPER
END HMA DIKE PER DETAIL ON DRAWING CD-08
"C" 237+80.62
20.25' Rt
END TAPER
"C" 237+49.17
30.48' Lt
BCR
END CURB, GUTTER AND SIDEWALK
Beg HMA DIKE, SEE TRANSITION DETAIL ON DRAWING CD-08
"IS" 17+21.13
39.27' Lt
ECR
END 4:1 TAPER
N 51°05'43" E
158.24'
"IS" 16+52.03
22.00' Lt
Beg 4:1 TAPER
"IS" 16+38.80
EC
"D" 10+05.00
Beg RAMP
Beg "D" LINE
"D" 10+00.00
MONITORING WELL
INSTITUTION ROAD
UTILITY EASEMENT
"IS" 11+53.09
BC
S 78°18'24" E
153.09'
MATCH LINE STA "IS" 11+40.00
SEE DRAWING RL-01
MONITORING WELL
MONITORING WELL
R=60'
R=35'
TCE
R/W
CURVE DATA
F 550.00' 50°35'53" 259.97' 485.71'
V 528.00' 50°35'53" 249.57' 466.28'
W 572.00' 50°35'53" 270.37' 505.14'
X 100.00' 10°19'06" 9.03' 18.01'
CONSTRUCTION NOTES
1 PROTECT IN PLACE
2 SAWCUT PAVEMENT
5 CONSTRUCT 0.60' HMA OVER 0.45' CLASS 2 AGGREGATE BASE.
7 CONSTRUCT TYPE "B" PCC CURB & GUTTER PER CITY OF SAN BERNARDINO Std PLAN No. 200
8 CONSTRUCT CURB RAMP CASE A PER CALTRANS Std PLAN A88A
9 FURNISH AND INSTALL METAL BEAM GUARD RAIL TYPE 12B PER CALTRANS Std PLAN A77F1
11 CONSTRUCT 4" PCC SIDEWALK CASE "A" PER CITY OF SAN BERNARDINO Std PLAN 202
16 FURNISH AND INSTALL METAL BEAM GUARD RAILING TRANSITION RAILING (TYPE WB) PER CALTRANS Std PLAN A77J4
18 CONSTRUCT GUTTER DEPRESSION PER CITY OF SAN BERNARDINO Std PLAN No. 407
21 CONSTRUCT CHAIN LINK GATE PER CALTRANS Std PLAN A85 AND DETAILS SHOWN IN DRAWING CD-07
22 ALTERNATIVE IN-LINE TERMINAL SYSTEM
23 CONSTRUCT CONCRETE BARRIER (TYPE 60) WITH CL FENCE PER CALTRANS Std PLAN A76A AND THE DETAIL SHOWN HEREON
24 CONSTRUCT TUBULAR STEEL GATE PER DETAIL SHOWN IN DRAWING CD-07
25 PLACE HMA DIKE (TYPE D) PER CALTRANS Std PLAN A87B
29 CONSTRUCT CHAIN LINK FENCE PER CALTRANS Std PLAN A85
30 FURNISH AND INSTALL CRASH CUSHION (TYPE CAT) PER MANUFACTURER INSTALLATION INSTRUCTIONS
FINAL SUBMITTAL
JANUARY 31, 2013
BNSF ROW
CITY
50' TO CL OF NEAREST TRACK
CONCRETE BARRIER ℄
Vor 18" TO 28"
TENSION WIRE (Typ)
CL FENCE POST (Typ) 96" OC
48" CL FENCE
48" OC FOR END POST WITH DIAGONAL BRACING
5.25"
5.25"
6.25"
1.5"
48"
9" Min
0.5" Min Clr (Typ)
FENCE POST POCKET TO FOLLOW DETAIL ON STANDARD PLAN 811-52
2-#4 X 2'-6" VERTICAL REBAR TO BE USED ON BOTH SIDES SIMILAR TO STANDARD PLAN 811-52
CL GATE/FENCE AS SHOWN IN PLAN
2" SCUPPER
PROPOSED CONCRETE BARRIER (TYPE 60 WITH CL FENCE)
CONCRETE BARRIER END ANCHOR WHEN NECESSARY. DETAILS SIMILAR TO TYPE 60 EXCEPT AS NOTED. SEE DRAWING CD-08 FOR TRANSITION TO MBGR AND SCUPPER DETAILS.
GEOGRAPHICAL LIMITS OF STATE AND RAILROAD PARTICIPATION
0 40 80 120
1"=40'
Underground Service Alert
Dial 811 from any phone nationwide
APPROVED 2013
MARK L. READ
PRINCIPAL CIVIL ENGINEER
REG NO. 29616
EXP 3-31-13
Government's SANBAG
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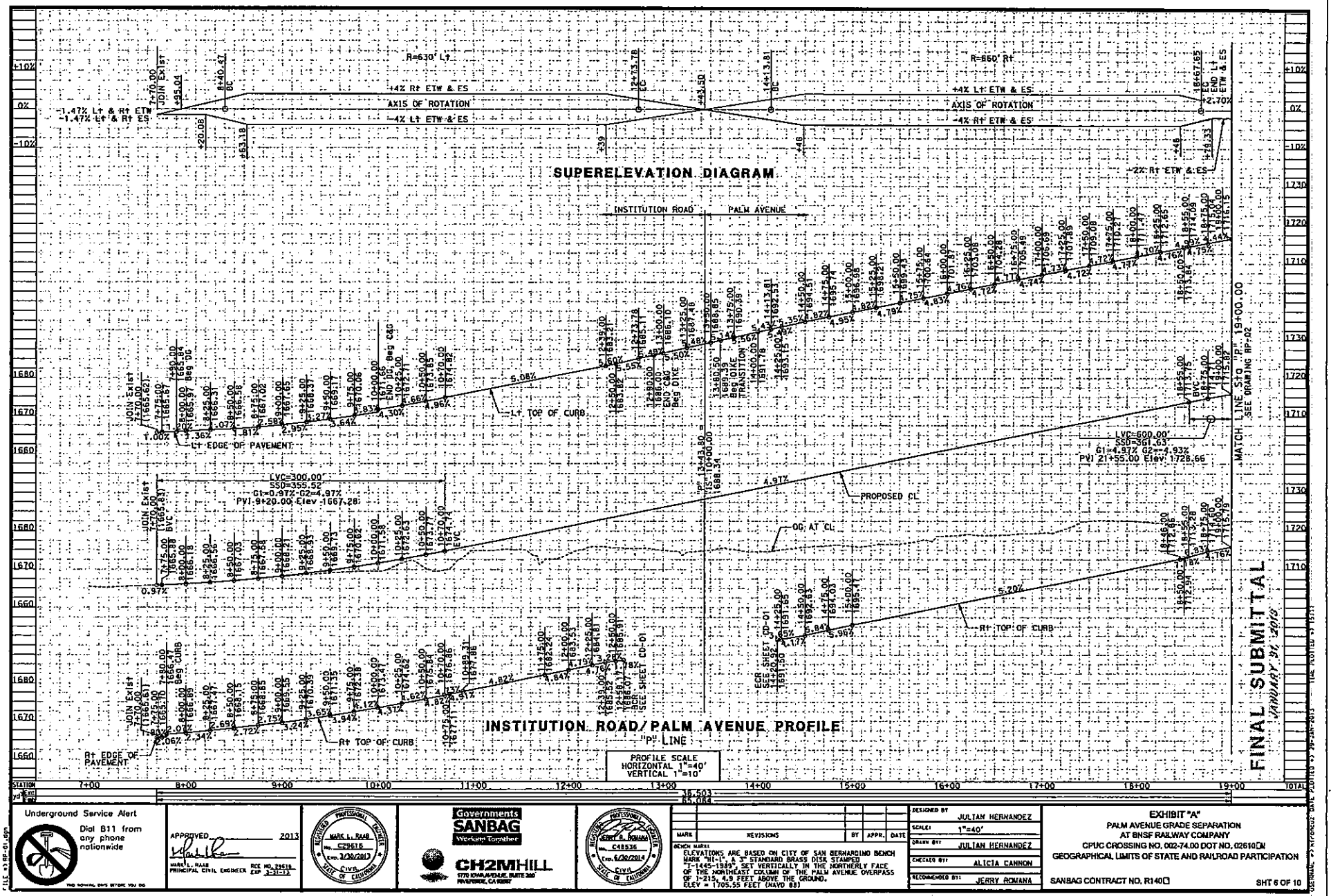
CH2MHILL
1776 IOWA AVENUE, SUITE 200
RIVERSIDE, CA 92507
MARK L. READ
No. C29616
Exp. 3/30/2013
CIVIL
STATE OF CALIFORNIA
HENRY A. ROMANA
No. C48536
Exp. 6/30/2014
CIVIL
STATE OF CALIFORNIA
MARK
REVISIONS
BY
APPR.
DATE
BENCH MARKS
ELEVATIONS ARE BASED ON CITY OF SAN BERNARDINO BENCH MARK "HI-I", A 3" STANDARD BRASS DISK STAMPED "I-1449-1989", SET VERTICALLY IN THE NORTHERLY FACE OF THE NORTHEAST COLUMN OF THE PALM AVENUE OVERPASS OF I-215, 4.9 FEET ABOVE THE GROUND.
ELEV = 1705.55 FEET (NAVD 88)
DESIGNED BY JULIAN HERNANDEZ
SCALE: 1"=40'
DRAWN BY: JULIAN HERNANDEZ
CHECKED BY: ALICIA CANNON
RECOMMENDED BY: JERRY ROMANA
EXHIBIT "A"
PALM AVENUE GRADE SEPARATION
AT BNSF RAILWAY COMPANY
CPUC CROSSING NO. 002-74.00 DOT NO. 026101N
GEOGRAPHICAL LIMITS OF STATE AND RAILROAD PARTICIPATION
SANBAG CONTRACT NO. R140□
SHT □OF 10 SHTS
FILE = PJ-01-09.dgn
DATE PLOTTED = 04-FEB-2013
TIME PLOTTED = 08:31



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TWO WORKING DAYS BEFORE YOU DIG

APPROVED _____ 2013
MARK L. RAAB
PRINCIPAL CIVIL ENGINEER
RCE NO. 29616 EXP. 3-31-13

REGISTERED PROFESSIONAL ENGINEER
MARK L. RAAB
No. C29616
Exp. 3/30/2013
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JERRY S. ROMANA
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STATE OF CALIFORNIA

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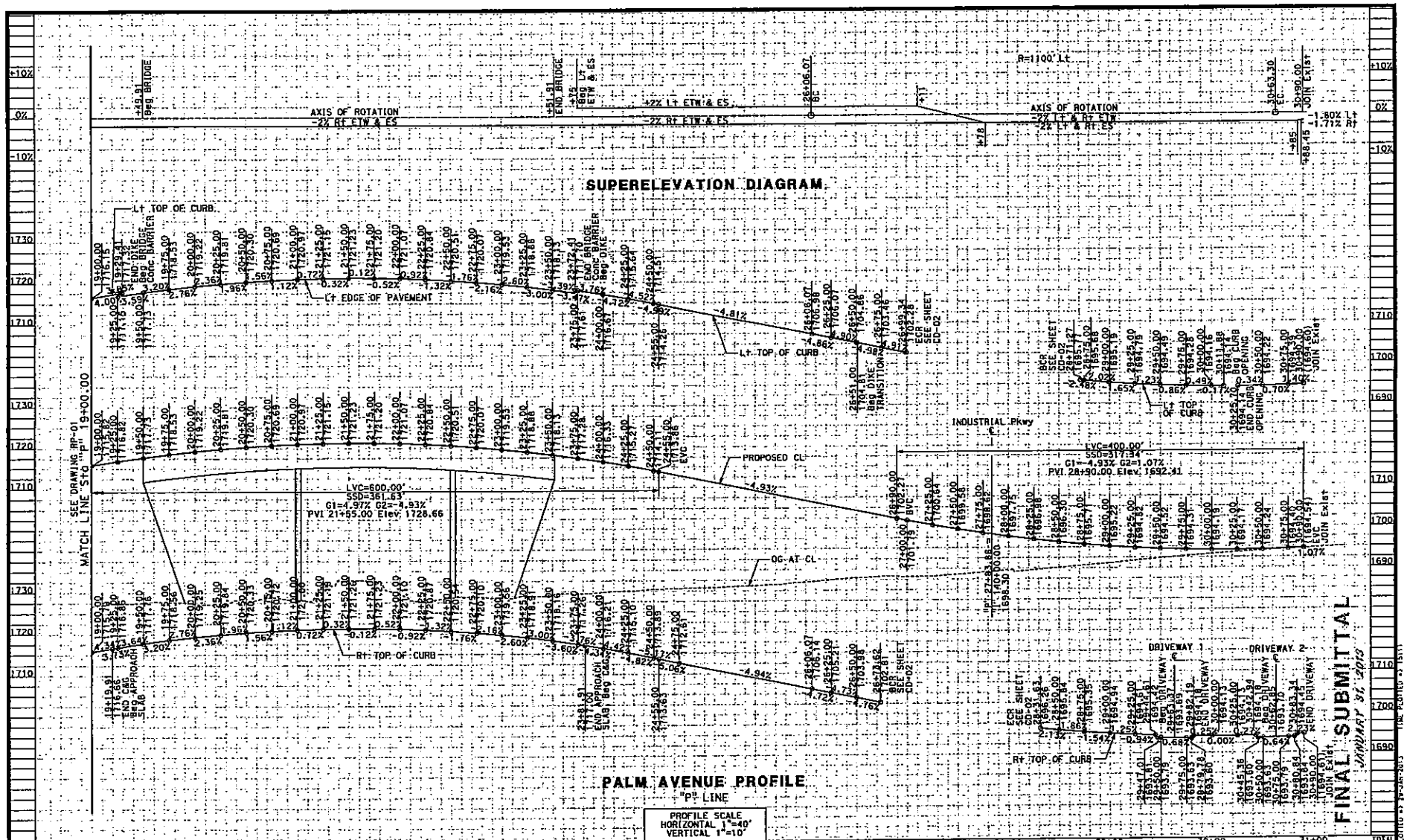
CPUC CROSSING NO. 002-74.00 DOT NO. 02610□M
GEOGRAPHICAL LIMITS OF STATE AND RAILROAD PARTICIPATION

SANBAG CONTRACT NO. R140□

SHT 6 OF 10



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MARK L. RAAB
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RCE NO. 29616
EXP 3-31-13

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CPUC CROSSING NO. 002-74.00 DOT NO. 02610
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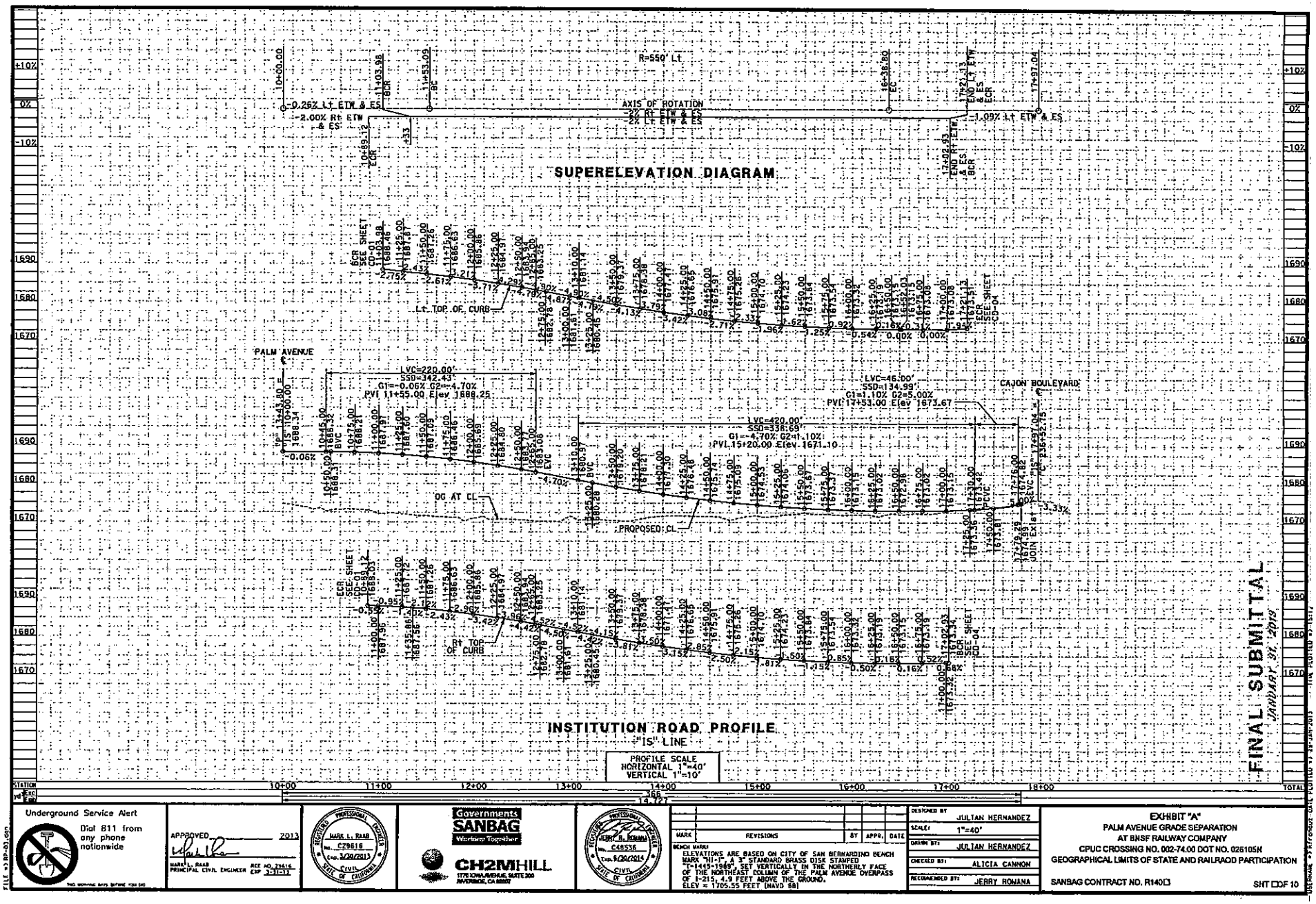
SANBAG CONTRACT NO. R140
SHT 7 OF 10


SUPERELEVATION DIAGRAM
INSTITUTION ROAD PROFILE
"IS" LINE
PROFILE SCALE
HORIZONTAL 1"=40'
VERTICAL 1"=10'
PALM AVENUE
CAJON BOULEVARD
OG AT CL
PROPOSED CL
Lt. TOP OF CURB
Rt. TOP OF CURB
R=550' Lt
AXIS OF ROTATION
-2% Rt ETW & ES
-2% Lt ETW & ES
-0.25% Lt ETW & ES
-2.00% Rt ETW & ES
-1.09% Lt ETW & ES
LVC=220.00'
SSD=342.43'
G1=-0.06% G2=-4.70%
PVI 11+55.00 Elev 1688.25
LVC=420.00'
SSD=338.69'
G1=-4.70% G2=+1.10%
PVI 15+20.00 Elev 1671.10
LVC=46.00'
SSD=134.99'
G1=1.10% G2=5.00%
PVI 17+53.00 Elev 1673.67
FINAL SUBMITTAL
January 31, 2013
Underground Service Alert
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MARK L. RAAB
PRINCIPAL CIVIL ENGINEER
REG NO. 29616
EXP 3-31-13
MARK L. RAAB
No. C29616
Exp. 3/31/2013
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1770 IOWA AVENUE, SUITE 200
RIVERSIDE, CA 92507
JERRY R. ROMANA
No. C48536
Exp. 6/30/2014
CIVIL
STATE OF CALIFORNIA
MARK
REVISIONS
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APPR.
DATE
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SCALE 1"=40'
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CPUC CROSSING NO. 002-74.00 DOT NO. 026105N
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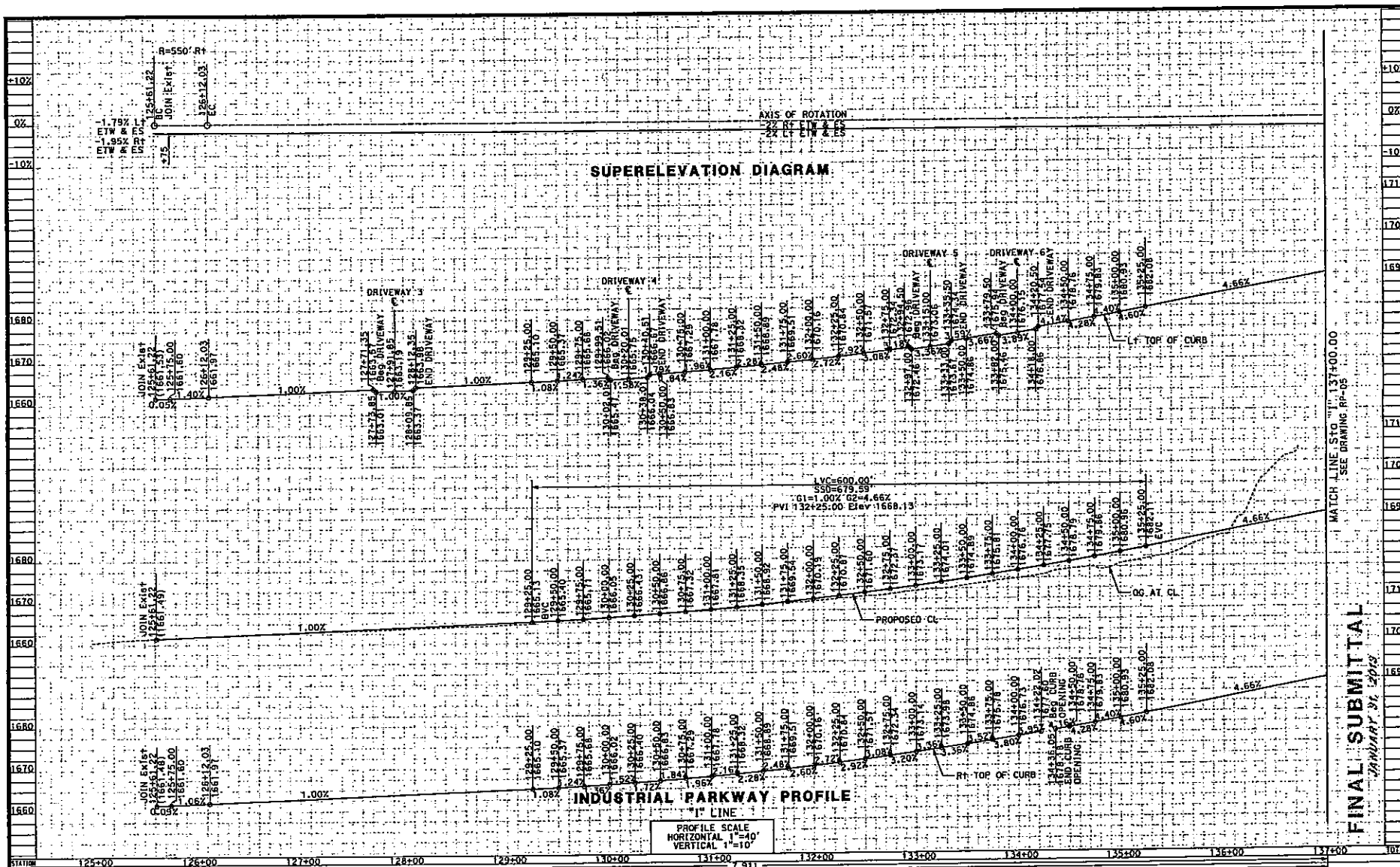
SANBAG CONTRACT NO. R140□
SHT □OF 10



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APPROVED _____ 2013
MARK L. RAAB
PRINCIPAL CIVIL ENGINEER
REG NO. 29616
EXP 3-31-13

REGISTERED PROFESSIONAL ENGINEER
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Exp. 3/30/2013
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STATE OF CALIFORNIA

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1770 IOWA AVENUE, SUITE 200
RIVERSIDE, CA 92507

REGISTERED PROFESSIONAL ENGINEER
JERRY R. ROMANA
No. C48536
Exp. 6/30/2014
CIVIL
STATE OF CALIFORNIA

MARK	REVISIONS	BY	APPR.	DATE

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GEOGRAPHICAL LIMITS OF STATE AND RAILROAD PARTICIPATION

SANBAG CONTRACT NO. R140☐
SHT ☐ OF 10

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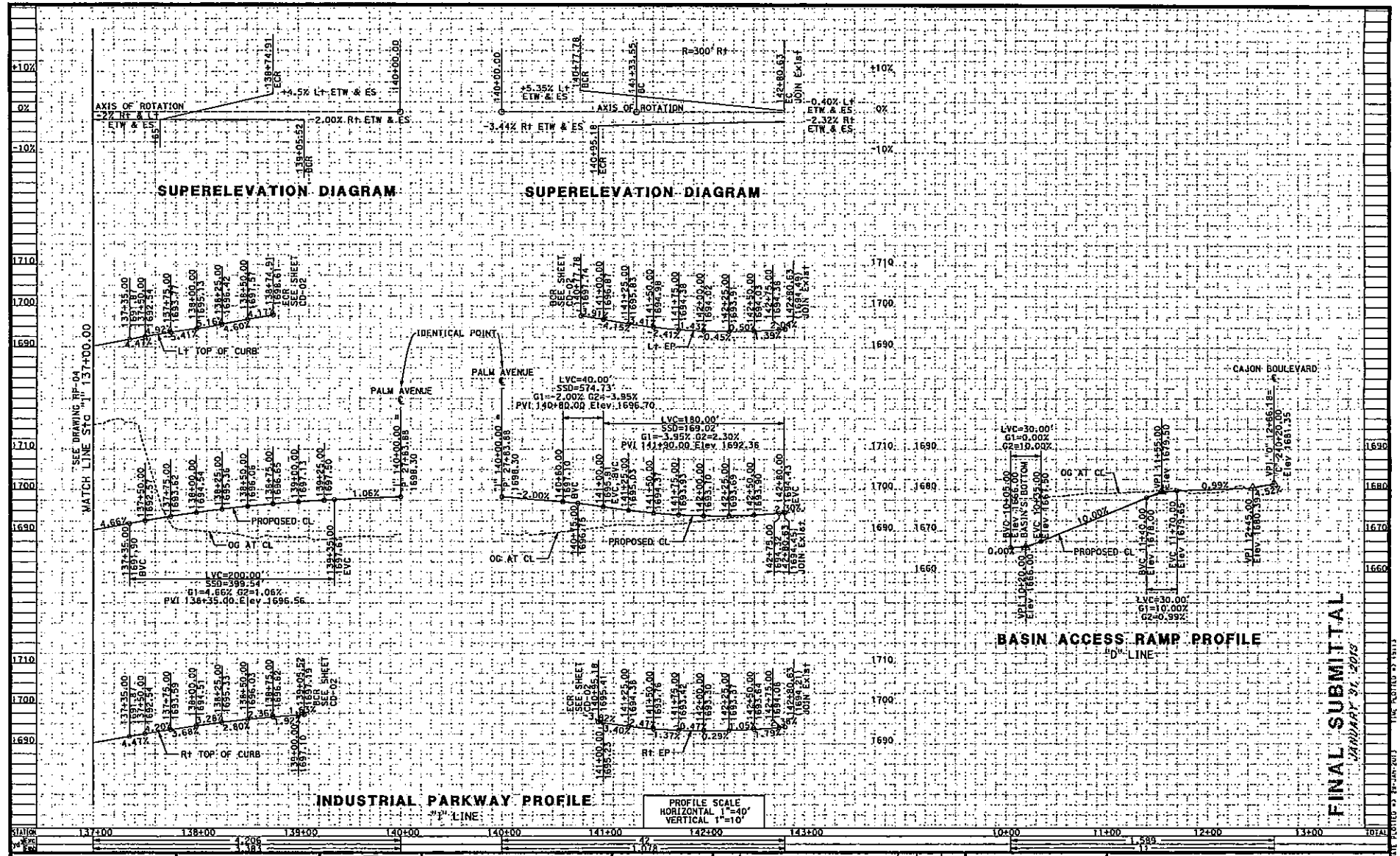

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RCE NO. 29616
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RIVERSIDE, CA 92507

KIRT A. ROMANA
No. C48536
Exp. 6/30/2014
CIVIL
STATE OF CALIFORNIA

MARK	REVISIONS	BY	APPR.	DATE

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CPUC CROSSING NO. 002-74.00 DOT NO. 026100
GEOGRAPHICAL LIMITS OF STATE AND RAILROAD PARTICIPATION

SANBAG CONTRACT NO. R140

SHT 10 OF 10

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San Bernardino Associated Governments

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

TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 13

Date: December 4, 2013

Subject: Cooperative Agreement with the Colton Unified School District for bus services during construction of the Laurel Street Grade Separation Project

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

1. Approve Cooperative Agreement No. C14087 with the Colton Unified School District in an estimated amount of $389,805.24 for bus services for Colton Middle School during construction of the Laurel Street Grade Separation Project.

2. Approve a contingency amount of $38,980.52 and authorize the Executive Director, or his designee, to release contingency as required for Cooperative Agreement No. C14087.

Background: The Laurel Street Grade Separation Project will improve safety and reduce traffic delays along Laurel Street by separating pedestrians and vehicles from train traffic on six tracks along the BNSF Railway Company (BNSF) rail corridor. The project would also reduce train related noise impacts by eliminating the need for trains to sound their horns while passing. The construction contract for the project was awarded at the September 2013 Board of Directors meeting. The

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

BRD1312a-pm

Attachment: http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C14087.doc

construction notice to proceed was issued to the contractor, and the first day of work was October 28, 2013.

In order to reduce the duration of construction and to facilitate the work, the City of Colton agreed to the full closure of Laurel Street at the BNSF railroad crossing during construction. With the full closure of Laurel Street, the existing railroad crossing signals, crossing arms, and warning devices such as bells and lights will be removed. The crossing was closed for vehicular traffic on November 4, 2013, and access for pedestrians across the tracks will be removed during the first week of December.

Presently, many students attending the Colton Middle School, which is located approximately ½ mile from the project area, cross the existing at-grade crossing at Laurel Street and the BNSF tracks on foot. With the full closure of Laurel Street at the railroad crossing, these children would be required to follow a pedestrian detour route through Olive Street to the south, adding about ¾ miles to their walk to school. Due to the added length of the pedestrian detour route, there is a possibility that Colton Middle School students may trespass on the BNSF railroad corridor and unsafely cross the tracks to reduce the distance of their route to school and back home.

With safety concerns for Colton Middle School students, SANBAG staff has been in discussions with representatives from the Colton Unified School District to explore funding of additional bus services during construction of the project. Colton School District Transportation representatives have provided a bus plan and schedule to service students that would otherwise have to utilize the pedestrian detour. The work plan calls for four buses along four routes for two hours in the morning and two hours in the afternoon. Project construction is estimated to last about two years, and provision of bus services for the remainder of the 2013/2014 school year, the 2014/2015 school year, and a portion of the 2015/2016 school year, a total of 319 school days, would sufficiently cover the duration of construction of the project.

Per Cooperative Agreement No. C14087, the cost per bus per day is $305.49 or a total of $1,221.96 per day for four buses. The total estimated cost for 319 school days would then be $389,805.24. Staff is also recommending a 10% contingency of $38,980.52 to account for unforeseen delays to the construction period.

Under the agreement, SANBAG will fund the full amount for bus services, and the Colton Unified School District will be responsible for providing the bus services and for all responsibilities and liabilities associated with the operation of additional school buses.

Financial Impact: This item is consistent with the Fiscal Year 2013/2014 budget. Cooperative Agreement No. C14087 will be funded with Measure I Major Streets Bond Funds and funding from the City of Colton, BNSF, and Union Pacific Railroad (UPRR) per funding agreement C12053.

Reviewed By: This item was reviewed and recommended for approval (16-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on November 14, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item.

Responsible Staff: Garry Cohoe, Director of Project Delivery

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. C 14087 Amendment No. _____

By and Between

SB County Transportation Commission and Colton Unified School District

Contract Description Cooperative Agreement for Bus Services

Board of Director's Meeting Date: 12/04/13

Overview of BOD Action: Approve co-op No. C14087 with the Colton Unified School District in for an estimated amount of $389,805.24 for bus services during construction of the Laurel Street Grade Separation Project. Approve 10% contingency in the amount of $38,980.52. Total of $428,785.76

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

CONTRACT OVERVIEW

Original Contract Amount	$	389,805.24	**Original Contingency Amount**	$	38,980.52
Revised Contract Amount *Inclusive of prior amendments*	$	0	**Revised Contingency Amount** *Inclusive of prior amendments*	$	0
Current Amendment Amount	$	0	**Contingency Amendment**	$	0
TOTAL CONTRACT VALUE	$	389,805.24	**TOTAL CONTINGENCY VALUE**	$	38,980.52
TOTAL BUDGET AUTHORITY *(contract value + contingency)*				$	428,785.76

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
12/04/13	12/31/15	

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

FINANCIAL INFORMATION

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

☐ A Budget Amendment is required.

How are we funding current FY? MSI, Colton, UPRR, and BNSF

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

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

MSI (6230) 72.34%, Colton 9.96%, UPRR 7.7%, and BNSF 10%

☒ Payable ☐ Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

☐ Retention? If yes, indicate % _____.

☐ Disadvantaged Business Enterprise (DBE) Goal _____ %

PAUL MELOCOTON Project Manager (Print Name)	Signature	11/4/13 Date
Garry Cohoe Task Manager (Print Name)	Signature	11.4.13 Date
Andrea Zureick Dir. of Fund Admin. & Programming (Print Name)	Signature	11/5/13 Date
Jeffery Hill Contract Administrator (Print Name)	Signature	11/8/13 Date
W STAWISKY Chief Financial Officer (Print Name)	Signature	11/4/13 Date

Contract Summary Sheet 11/6/12

COOPERATIVE AGREEMENT

BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION

AND THE COLTON JOINT UNIFIED SCHOOL DISTRICT

FOR THE

LAUREL STREET GRADE SEPARATION PROJECT

This Cooperative Agreement (Agreement) is made by and between the San Bernardino County Transportation Commission (herein referred to as COMMISSION) and the Colton Joint Unified School District (herein referred to as DISTRICT). This Agreement defines specific COMMISSION and DISTRICT tasks and responsibilities related to the detour (herein referred to as the DETOUR) necessitated by the closure of Laurel Street over the railroad tracks in Colton during construction of the Laurel Street Grade Separation Project (herein referred to as PROJECT). The DETOUR will require the DISTRICT to offer transportation to students who attend Colton Middle School and reside on the eastside of the railroad tracks.

RECITALS

1. The DETOUR will be in effect while Laurel Street is closed as part of the PROJECT for a period of approximately two (2) years.

2. COMMISSION and DISTRICT intend to work together in a cooperative manner in every respect toward completing the construction of a quality PROJECT.

3. The purpose of this Agreement is to define the roles and responsibilities for COMMISSION and DISTRICT.

4. The parties agree to the concept and purpose of the DETOUR.

AGREEMENT

1. DETOUR costs and responsibilities are to be divided between COMMISSION and DISTRICT as described below.

2. COMMISSION will supply funds to DISTRICT at the rates set out in this Agreement for the DISTRICT's use in providing additional school bus transportation for the duration of the DETOUR for Colton Middle School students impacted by the DETOUR.

3. COMMISSION will be responsible for disseminating public information related to the PROJECT. COMMISSION will update DISTRICT about the PROJECT as part of the dissemination of public information.

4. DISTRICT will be responsible for acquisition of additional buses, bus drivers, fuel, maintenance, busing the students, and any and all costs, responsibilities and liabilities associated with the operation of additional school buses needed to provided transportation to Colton Middle School students impacted by the DETOUR (cumulatively "additional school bus operations"). COMMISSION's only cost, responsibility and liability will be to fund the additional school bus operations at the rates set forth in this Agreement and keep the DISTRICT informed as described herein.

5. COMMISSION shall pay the DISTRICT for the additional school bus operations at the rate of $305.49 per school day for each of the four (4) school bus routes. It is estimated that four (4) school bus routes will be required to serve the students of Colton Middle School who are impacted by the DETOUR for an estimated 97 school days during the 2013-2014 school year, an estimated 180 school days for the 2014-15 school year, and an estimated 42 school days for the 2015-16 school year for a total estimated cost of $389,805.24. The initial payment to the DISTRICT shall be $1,221.96 per school day for sixty (60) school days for a total amount of $73,317.60, and shall be received by the DISTRICT within thirty (30) calendar days after the start of DETOUR. COMMISSION will be credited for the initial payment of $73,317.60 against amounts invoiced monthly by DISTRICT for the additional school bus operations beginning with the first month billing after the start of DETOUR. DISTRICT shall provide COMMISSION with detailed billing of school bus operations invoiced to COMMISSION including the operational days and the route numbers used to transport students.

6. The DISTRICT will monitor the utilization of the school buses to determine if the number of school bus routes to serve the Colton Middle School can be reduced or if additional school bus routes are required. Written consent is required from COMMISSION prior to adding additional school bus routes beyond the four (4) school bus routes contemplated under this agreement. Consent to additional bus routes may be provided by a letter from COMMISSION's Director of Project Delivery provided that any such additional bus service does not increase the total contract amount. Consent from COMMISSION shall not be unreasonably withheld. Additional school bus routes will be billed at $305.49 per school day.

7. Neither DISTRICT nor any of their officers, employees, or agents, is responsible for any damage or liability occurring by reasons of anything done or omitted to be done by COMMISSION under or in connection with any work performed by or authority of jurisdiction delegated to COMMISSION under this Agreement. It is understood and agreed that COMMISSION shall fully defend, indemnify and save harmless DISTRICT and its officers, employees, and agents from all claims,

suits or actions of every name, kind and description brought for or on account of injury occurring by reasons of anything done or omitted to be done by COMMISSION under or in connection with any work, authority, or jurisdiction delegated to COMMISSION under this Agreement.

8. Neither COMMISSION nor any of its officers, employees, or agents is responsible for any damage or liability occurring by reasons of anything done or omitted to be done by DISTRICT under or in connection with any work performed by or authority of jurisdiction delegated to DISTRICT under this Agreement. It is understood and agreed that DISTRICT shall fully defend, indemnify and save harmless COMMISSION and its officers, employees, and agents from all claims, suits or actions of every name, kind and description brought for or on account of injury occurring by reasons of anything done or omitted to be done by DISTRICT under or in connection with any work, authority or jurisdiction delegated to DISTRICT under this Agreement.

9. COMMISSION and DISTRICT agree to work cooperatively to solve any issues that develop during the DETOUR. All parties agree to respond to issues in a timely manner, so as not to interfere with the progress of the PROJECT. Each party shall bear their own costs in relation to carrying out the matters specified herein unless otherwise specified.

10. This Agreement will terminate upon the earlier of completion of DETOUR by COMMISSION or upon ninety (90) calendar days' written notification and acceptance between the parties.

11. This Agreement may not be modified or amended except by a written instrument duly authorized and executed by COMMISSION and DISTRICT.

12. Notices: Any notices, bills, invoices, or reports required by this Agreement shall be given by first class U.S. mail or by personal service. Notices shall be deemed received on (a) the day of delivery if delivered by hand or overnight courier service during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore set forth in the Agreement, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section. All notices shall be delivered to the parties at the following addresses:

If to COMMISSION: Garry Cohoe
Director of Project Delivery
San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor
San Bernardino, California 92410-1715
Phone: (909) 884-8276

If to DISTRICT: Rick Feinstein
Director of Risk Management & Transportation
Colton Joint Unified School District
1212 Valencia Drive
Colton, California 92324
Phone: (909) 580-5000 x 5388

13. This Agreement shall be effective on the date executed by COMMISSION.

14. The Recitals are incorporated into and made a part of this Agreement.

15. Entire Agreement. This Agreement constitutes the sole and entire agreement between the parties hereto, and this Agreement supersedes all prior negotiations, agreements, arrangements and undertakings among the Parties 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.

In witness whereof, the parties have executed this Agreement below.

SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION:

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

Date: _____

APPROVED AS TO LEGAL FORM:

By: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By: _____
Jeffery Hill
Contract Administrator

COLTON JOINT UNIFIED SCHOOL DISTRICT:

By: _____
Roger Kawalski
President, Board of Education

Date: _____

ATTEST:

By: _____
Patt Haro
Clerk of the Board

APPROVED AS TO LEGAL FORM:

By: _____

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: **14**

Date: December 4, 2013

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

Recommendation:*

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. Addendum No. 1 was issued on July 12, 2013, for clarification of pre-proposal

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

BRD1312b-maa

http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C14003.docx
http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C14086.docx

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 was reviewed and unanimously recommended for approval by the Commuter Rail and Transit Committee on November 14, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and the Contracts.

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

Governments SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. C 14003/C14086 ____ Amendment No. _____

By and Between

San Bernardino Associated Governments and Hatch Mott McDonald & C14003
Parsons Brinckerhoff, Inc. C14086

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	M. A. Alderman	10/28/13
Project Manager (Print Name)	Signature	Date
Mitch A. Alderman	M. A. Alderman	10/28/13
Task Manager (Print Name)	Signature	Date
Andrea Zureick	Andrea Zureick	10/1/13
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
Jeffery Hill	[signature]	11/5/13
Contract Administrator (Print Name)	Signature	Date
J. STAWARSKY	[signature]	11/5/13
Chief Financial Officer (Print Name)	Signature	Date

C14003/C14086 CSS

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 C14086

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: **15**

Date: December 4, 2013

Subject: County-Wide Transit Efficiency Study Scope of Work

Recommendation:* 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 each of the transit operators was formed. The purpose of the TAC is to aid in the

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.
BRD1312d-maa
Attachment: http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C14083%20CTO2%20SOW.docx

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 was reviewed and unanimously recommended for approval by the Commuter Rail and Transit Committee on November 14, 2013. The Transit Review Ad Hoc Committee and the Transit Review Technical Advisory Committee have reviewed and accepted this Scope of Work.

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

BRD1312d-maa
Attachment: http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared%20Documents/C14083%20CTO2%20SOW.docx

ATTACHMENT A

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 Study)

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: **16**

Date: December 4, 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:* 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.

Background: Between 1991 and 1993, San Bernardino Associated Governments (SANBAG) acquired the Baldwin Park branch line, the Pasadena Subdivision, and the

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

BRD1312a-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

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 was reviewed and unanimously recommended for approval by the Commuter Rail and Transit Committee on November 14, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and the License Agreements.

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

BRD1312a-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) Andrea Zureick	M. A. Morales	10/5/13
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
Jeffery Hill	for Andrea	11/21/13
Contract Administrator (Print Name)	Signature	Date
W STAWARSKI		11/21/13
Chief Financial Officer (Print Name)	Signature	Date
		11/22/13

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

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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.

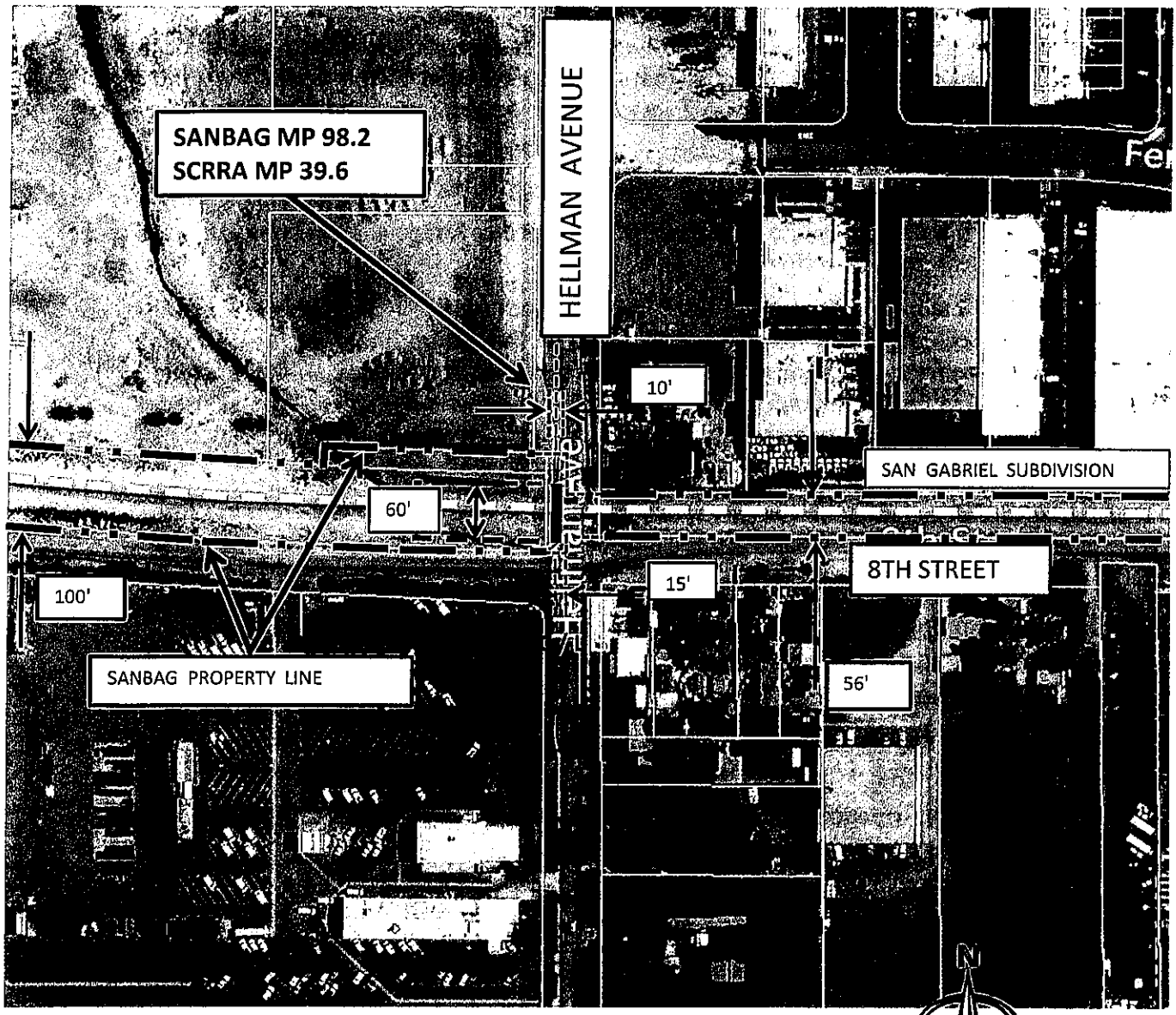
26.22. Additional Provisions. Those additional provisions set forth in Exhibit "D", if any, are hereby incorporated by this reference as if fully set forth herein. To the extent that any additional provisions in Exhibit "D" conflict with the provisions contained in this Part II, Standard License Provisions, 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 that may arise from, or in connection with, the use of SANBAG property hereunder by the Licensee, its agents, representatives, employees or subcontractors as follows:

Scope of Coverages and Minimum Limits of Insurance (Check all applicable boxes)

Licensee shall maintain and provide proof of insurance coverage at least as broad as and with limits no less than the following:

☒ General Liability: Coverage: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001). Minimum limits: *$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.

☒ Excess and/or Umbrella shall be in excess over the Commercial General Liability, Auto Liability & Workman's Compensation of:

☒ *$5,000,000* ☐ *$10,000,000*

☐ Automobile Liability: Insurance Services Office Form No. CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto). *$1,000,000* per accident for bodily injury and property damage.

☒ Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. *$1,000,000* per occurrence for bodily injury or disease.

☐ Course of Construction: Providing coverage for "all risks" of loss in the completed value of the project.

☐ Property Insurance against all risks of loss to any tenant improvements or betterments.: Full replacement cost with no coinsurance penalty provision.

☐ Contractors 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.

$1,000,000 per occurrence *$2,000,000* annual aggregate.

☐ Railroad Protective Liability Insurance: Coverage: Insurance Services Office Form Railroad Protective Liability, AAR-AASHTO (ISO/RIMA), in the name of SANBAG

with respect to the operations they or any of their subcontractors perform on the Property. Minimum Limits: **$2 million per occurrence**, combined single limit, for coverage and for losses arising out of injury to or death of all persons and for physical loss or damage to or destruction of Property, including the loss of use thereof. A **$6 million annual aggregate** shall apply. If providing coverage on the London claims-made form, the following provisions shall apply:

a. The limits of liability shall be not less than $3 million per occurrence, combined single limit. A $9 million aggregate may apply.

b. Declarations item 6, extended claims made date, shall allow an extended claims made period no shorter than the length of the original policy period plus one year.

c. If equivalent or better, wording is not contained in the policy form, the following endorsement must be included:

> It is agreed that "physical damage to Property" means direct and accidental loss of or damage to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbed, catenaries, signals, bridges or buildings.

In cases of low hazard activity and insignificant risk to rail facilities, and if the exposure to the track is physically separated by a building, floor or a continuous fence (no thoroughfares) and the employees of the Contractor are explicitly notified, trained, and supervised such that they are not permitted to have any contact with the track or its related improvements, the Railroad Protective Liability Insurance requirement may be waived by SANBAG, or its designated representative, in SANBAG's sole and absolute discretion, where SANBAG's agreements and obligations with rail operators allow it.

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.

Other Insurance Provisions

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

   a. 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.

   b. 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.

c. 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.

d. 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.

e. 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.

2. 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. No insurance coverage provided shall prohibit Licensee or Licensee's employees or agents from waiving the right of subrogation prior to a loss or claim. Licensee hereby waives all rights of subrogation against SANBAG and its Related Parties.

3. Additional Insured: All policies, except for Employer Liability/Worker's Compensation and Professional Liability policies, shall contain endorsements naming SANBAG and its Related Parties as additional insured parties with respect to liabilities arising out to the performance of Work hereunder. The additional insured endorsements shall not limit the scope of coverage for SANBAG or its Related Parties to vicarious liability but shall allow coverage for SANBAG and its Related Parties to the full extent provided by the policy.

4. Course of construction policies shall name SANBAG as loss payee.

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 certificates of insurance with endorsements as verifying 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 affecting 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.

Permitted Hazardous Material

Exhibit "C"

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 thereon, 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/flagging services 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 oil 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) Andrea Zureick	M. R. Alderman	11/5/13
	Signature	Date
Dir. of Fund Admin. & Programming (Print Name) Jeffery Hill	for Andrea	11/21/13
	Signature	Date
Contract Administrator (Print Name) WS STAWARSKI		11/21/13
	Signature	Date
Chief Financial Officer (Print Name)		11/22/13
	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

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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.

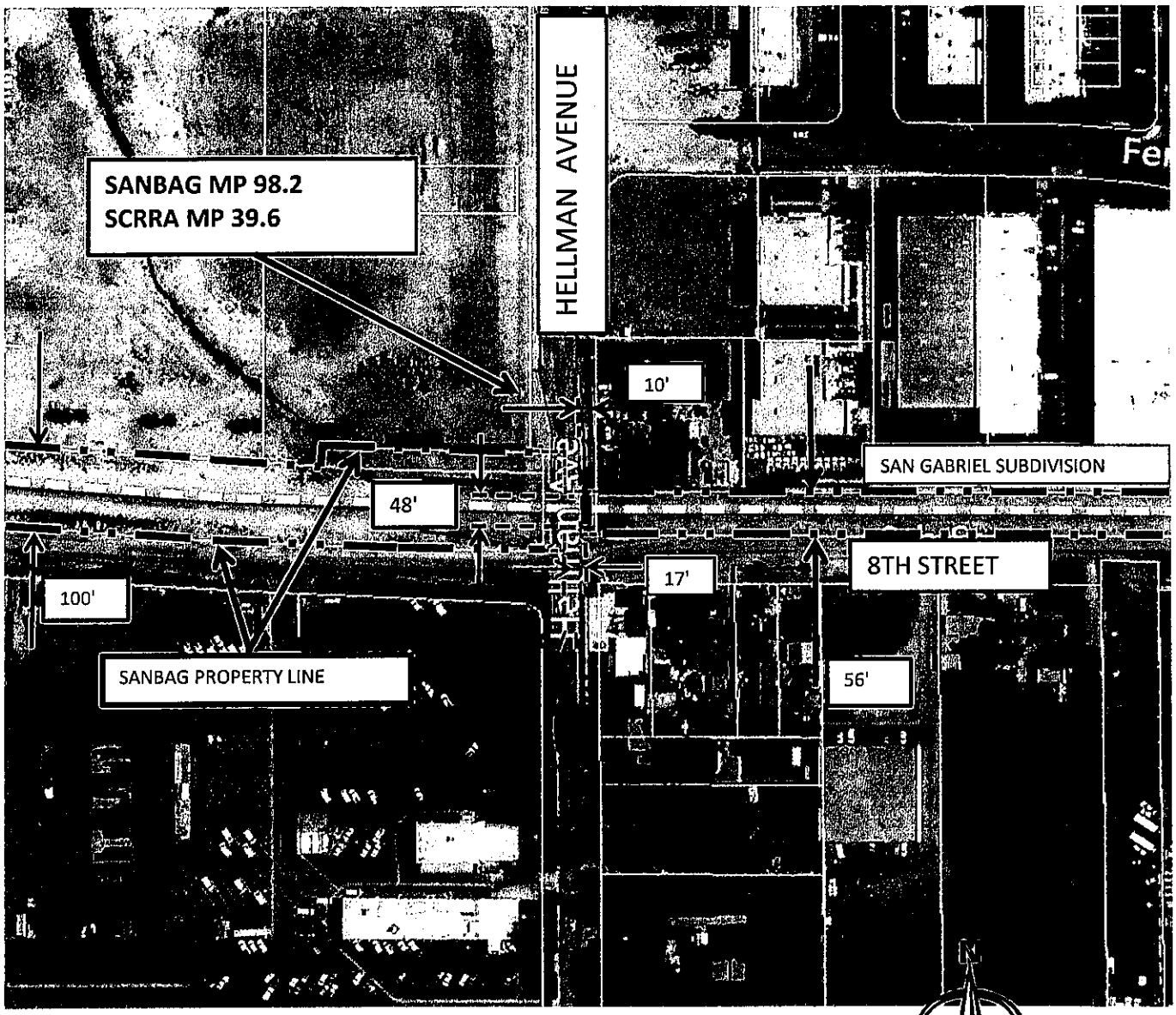
26.22. Additional Provisions. Those additional provisions set forth in Exhibit "D", if any, are hereby incorporated by this reference as if fully set forth herein. To the extent that any additional provisions in Exhibit "D" conflict with the provisions contained in this Part II, Standard License Provisions, 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 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 that may arise from, or in connection with, the use of SANBAG property hereunder by the Licensee, its agents, representatives, employees or subcontractors as follows:

Scope of Coverages and Minimum Limits of Insurance (Check all applicable boxes)

Licensee shall maintain and provide proof of insurance coverage at least as broad as and with limits no less than the following:

☒ General Liability: Coverage: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001). Minimum limits: *$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.

☒ Excess and/or Umbrella shall be in excess over the Commercial General Liability, Auto Liability & Workman's Compensation of:

☒ *$5,000,000* ☐ *$10,000,000*

☐ Automobile Liability: Insurance Services Office Form No. CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto). *$1,000,000* per accident for bodily injury and property damage.

☒ Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. *$1,000,000* per occurrence for bodily injury or disease.

☐ Course of Construction: Providing coverage for "all risks" of loss in the completed value of the project.

☐ Property Insurance against all risks of loss to any tenant improvements or betterments.: Full replacement cost with no coinsurance penalty provision.

☐ Contractors 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.

$1,000,000 per occurrence *$2,000,000* annual aggregate.

☐ Railroad Protective Liability Insurance: Coverage: Insurance Services Office Form Railroad Protective Liability, AAR-AASHTO (ISO/RIMA), in the name of SANBAG

with respect to the operations they or any of their subcontractors perform on the Property. Minimum Limits: **$2 million per occurrence**, combined single limit, for coverage and for losses arising out of injury to or death of all persons and for physical loss or damage to or destruction of Property, including the loss of use thereof. A **$6 million annual aggregate** shall apply. If providing coverage on the London claims-made form, the following provisions shall apply:

a. The limits of liability shall be not less than $3 million per occurrence, combined single limit. A $9 million aggregate may apply.

b. Declarations item 6, extended claims made date, shall allow an extended claims made period no shorter than the length of the original policy period plus one year.

c. If equivalent or better, wording is not contained in the policy form, the following endorsement must be included:

> It is agreed that "physical damage to Property" means direct and accidental loss of or damage to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbed, catenaries, signals, bridges or buildings.

In cases of low hazard activity and insignificant risk to rail facilities, and if the exposure to the track is physically separated by a building, floor or a continuous fence (no thoroughfares) and the employees of the Contractor are explicitly notified, trained, and supervised such that they are not permitted to have any contact with the track or its related improvements, the Railroad Protective Liability Insurance requirement may be waived by SANBAG, or its designated representative, in SANBAG's sole and absolute discretion, where SANBAG's agreements and obligations with rail operators allow it.

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.

Other Insurance Provisions

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

   a. 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.

   b. 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.

c. 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.

d. 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.

e. 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.

2. 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. No insurance coverage provided shall prohibit Licensee or Licensee's employees or agents from waiving the right of subrogation prior to a loss or claim. Licensee hereby waives all rights of subrogation against SANBAG and its Related Parties.

3. Additional Insured: All policies, except for Employer Liability/Worker's Compensation and Professional Liability policies, shall contain endorsements naming SANBAG and its Related Parties as additional insured parties with respect to liabilities arising out to the performance of Work hereunder. The additional insured endorsements shall not limit the scope of coverage for SANBAG or its Related Parties to vicarious liability but shall allow coverage for SANBAG and its Related Parties to the full extent provided by the policy.

4. Course of construction policies shall name SANBAG as loss payee.

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 certificates of insurance with endorsements as verifying 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 affecting 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 thereon, 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/flagging services 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 oil 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 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
	M. R. Alderman	11/5/13
Task Manager (Print Name) Andrea Zureick	Signature	Date
	for Andrea	11/21/13
Dir. of Fund Admin. & Programming (Print Name) Jeffery Hill	Signature	Date
		11/21/13
Contract Administrator (Print Name) [illegible]	Signature	Date
		11/22/13
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: _____

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

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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.

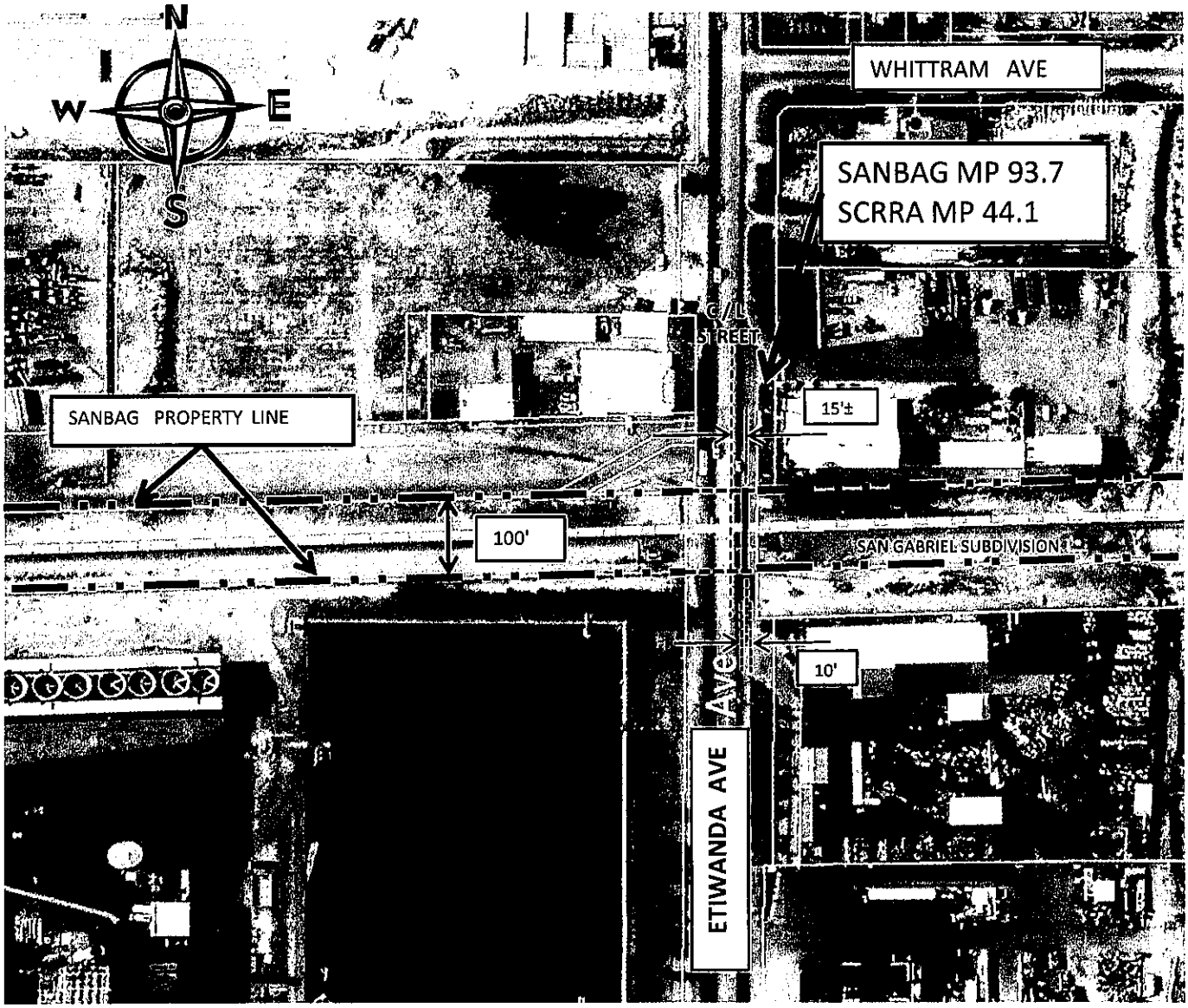
26.22. Additional Provisions. Those additional provisions set forth in Exhibit "D", if any, are hereby incorporated by this reference as if fully set forth herein. To the extent that any additional provisions in Exhibit "D" conflict with the provisions contained in this Part II, Standard License Provisions, 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	Mile Post **SCRRA 44.1**	Lessee/Licensee **CITY OF**	
SSB	**SANBAG 93.4**	**RANCHO CUCAMONGA**	
County	Nearest Cross Street	SANBAG File Number	
SAN BERNARDINO	**WHITTRAM**	**RSSB003768 R14084**	
Area	City **RANCHO**	Scale	
1,000 SQ. FT.	**CUCAMONGA**	**1"=200'**	
Map Reference	Use	Thomas Guide Grid	
SSB6	**STORM DRAIN**	**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 that may arise from, or in connection with, the use of SANBAG property hereunder by the Licensee, its agents, representatives, employees or subcontractors as follows:

Scope of Coverages and Minimum Limits of Insurance (Check all applicable boxes)

Licensee shall maintain and provide proof of insurance coverage at least as broad as and with limits no less than the following:

☒ General Liability: Coverage: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001). Minimum limits: *$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.

☒ Excess and/or Umbrella shall be in excess over the Commercial General Liability, Auto Liability & Workman's Compensation of:

☒ *$5,000,000* ☐ *$10,000,000*

☒ Automobile Liability: Insurance Services Office Form No. CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto). *$1,000,000* per accident for bodily injury and property damage.

☒ Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. *$1,000,000* per occurrence for bodily injury or disease.

☐ Course of Construction: Providing coverage for "all risks" of loss in the completed value of the project.

☐ Property Insurance against all risks of loss to any tenant improvements or betterments.: Full replacement cost with no coinsurance penalty provision.

☐ Contractors 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.

$1,000,000 per occurrence *$2,000,000* annual aggregate.

☐ Railroad Protective Liability Insurance: Coverage: Insurance Services Office Form Railroad Protective Liability, AAR-AASHTO (ISO/RIMA), in the name of SANBAG

with respect to the operations they or any of their subcontractors perform on the Property. Minimum Limits: **$2 million per occurrence**, combined single limit, for coverage and for losses arising out of injury to or death of all persons and for physical loss or damage to or destruction of Property, including the loss of use thereof. A **$6 million annual aggregate** shall apply. If providing coverage on the London claims-made form, the following provisions shall apply:

a. The limits of liability shall be not less than $3 million per occurrence, combined single limit. A $9 million aggregate may apply.

b. Declarations item 6, extended claims made date, shall allow an extended claims made period no shorter than the length of the original policy period plus one year.

c. If equivalent or better, wording is not contained in the policy form, the following endorsement must be included:

> It is agreed that "physical damage to Property" means direct and accidental loss of or damage to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbed, catenaries, signals, bridges or buildings.

In cases of low hazard activity and insignificant risk to rail facilities, and if the exposure to the track is physically separated by a building, floor or a continuous fence (no thoroughfares) and the employees of the Contractor are explicitly notified, trained, and supervised such that they are not permitted to have any contact with the track or its related improvements, the Railroad Protective Liability Insurance requirement may be waived by SANBAG, or its designated representative, in SANBAG's sole and absolute discretion, where SANBAG's agreements and obligations with rail operators allow it.

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.

Other Insurance Provisions

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

   a. 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.

   b. 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.

c. 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.

d. 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.

e. 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.

2. 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. No insurance coverage provided shall prohibit Licensee or Licensee's employees or agents from waiving the right of subrogation prior to a loss or claim. Licensee hereby waives all rights of subrogation against SANBAG and its Related Parties.

3. Additional Insured: All policies, except for Employer Liability/Worker's Compensation and Professional Liability policies, shall contain endorsements naming SANBAG and its Related Parties as additional insured parties with respect to liabilities arising out to the performance of Work hereunder. The additional insured endorsements shall not limit the scope of coverage for SANBAG or its Related Parties to vicarious liability but shall allow coverage for SANBAG and its Related Parties to the full extent provided by the policy.

4. Course of construction policies shall name SANBAG as loss payee.

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 certificates of insurance with endorsements as verifying 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 affecting 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 thereon, 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/flagging services 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 oil 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 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
	M. A. Alderman	11/5/13
Task Manager (Print Name)	Signature	Date
Andrea Zureick	for Andrea	11/21/13
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
Jeffery Hill		11/21/13
Contract Administrator (Print Name)	Signature	Date
W S Wilmarsh		11/22/13
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. $4,000.00 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

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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.

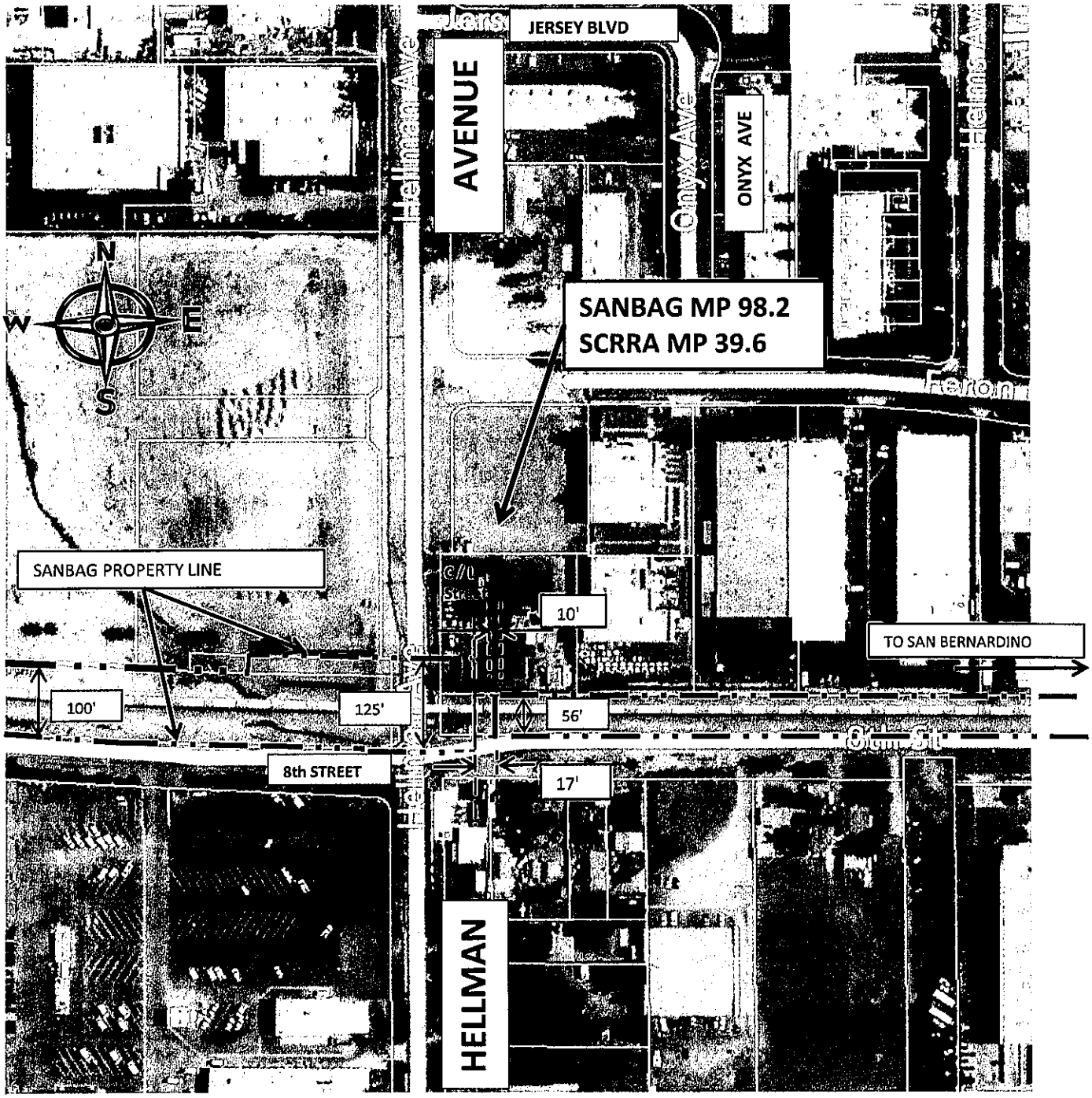
26.22. Additional Provisions. Those additional provisions set forth in Exhibit "D", if any, are hereby incorporated by this reference as if fully set forth herein. To the extent that any additional provisions in Exhibit "D" conflict with the provisions contained in this Part II, Standard License Provisions, 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 that may arise from, or in connection with, the use of SANBAG property hereunder by the Licensee, its agents, representatives, employees or subcontractors as follows:

Scope of Coverages and Minimum Limits of Insurance (Check all applicable boxes)

Licensee shall maintain and provide proof of insurance coverage at least as broad as and with limits no less than the following:

☒ General Liability: Coverage: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001). Minimum limits: *$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.

☒ Excess and/or Umbrella shall be in excess over the Commercial General Liability, Auto Liability & Workman's Compensation of:

☒ *$5,000,000* ☐ *$10,000,000*

☒ Automobile Liability: Insurance Services Office Form No. CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto). *$1,000,000* per accident for bodily injury and property damage.

☒ Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. *$1,000,000* per occurrence for bodily injury or disease.

☐ Course of Construction: Providing coverage for "all risks" of loss in the completed value of the project.

☐ Property Insurance against all risks of loss to any tenant improvements or betterments.: Full replacement cost with no coinsurance penalty provision.

☐ Contractors 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.

$1,000,000 per occurrence *$2,000,000* annual aggregate.

☐ Railroad Protective Liability Insurance: Coverage: Insurance Services Office Form Railroad Protective Liability, AAR-AASHTO (ISO/RIMA), in the name of SANBAG

with respect to the operations they or any of their subcontractors perform on the Property. Minimum Limits: **$2 million per occurrence**, combined single limit, for coverage and for losses arising out of injury to or death of all persons and for physical loss or damage to or destruction of Property, including the loss of use thereof. A **$6 million annual aggregate** shall apply. If providing coverage on the London claims-made form, the following provisions shall apply:

a. The limits of liability shall be not less than $3 million per occurrence, combined single limit. A $9 million aggregate may apply.

b. Declarations item 6, extended claims made date, shall allow an extended claims made period no shorter than the length of the original policy period plus one year.

c. If equivalent or better, wording is not contained in the policy form, the following endorsement must be included:

> It is agreed that "physical damage to Property" means direct and accidental loss of or damage to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbed, catenaries, signals, bridges or buildings.

In cases of low hazard activity and insignificant risk to rail facilities, and if the exposure to the track is physically separated by a building, floor or a continuous fence (no thoroughfares) and the employees of the Contractor are explicitly notified, trained, and supervised such that they are not permitted to have any contact with the track or its related improvements, the Railroad Protective Liability Insurance requirement may be waived by SANBAG, or its designated representative, in SANBAG's sole and absolute discretion, where SANBAG's agreements and obligations with rail operators allow it.

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.

Other Insurance Provisions

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

   a. 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.

   b. 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.

c. 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.

d. 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.

e. 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.

2. 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. No insurance coverage provided shall prohibit Licensee or Licensee's employees or agents from waiving the right of subrogation prior to a loss or claim. Licensee hereby waives all rights of subrogation against SANBAG and its Related Parties.

3. Additional Insured: All policies, except for Employer Liability/Worker's Compensation and Professional Liability policies, shall contain endorsements naming SANBAG and its Related Parties as additional insured parties with respect to liabilities arising out to the performance of Work hereunder. The additional insured endorsements shall not limit the scope of coverage for SANBAG or its Related Parties to vicarious liability but shall allow coverage for SANBAG and its Related Parties to the full extent provided by the policy.

4. Course of construction policies shall name SANBAG as loss payee.

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 certificates of insurance with endorsements as verifying 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 affecting 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 thereon, 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/flagging services 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 oil 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: 17

Date: December 4, 2013

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

Recommendation:* That 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 the 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
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

BRD1312c-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 was reviewed and unanimously recommended for approval by the Commuter Rail and Transit Committee on November 14, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and the Contract.

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

BRD1312c-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.A. Alderman	10/28/13
Task Manager (Print Name)	Signature	Date
Andrea Zureick	Andrea Zureick	10/30/13
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
Jeffery Hill		10/31/13
Contract Administrator (Print Name)	Signature	Date
W SHWARSKI		11/6/13
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: **18**

Date: December 4, 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 Board acting in its capacity 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
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA		SAFE		CMA	

Check all that apply.

BRD1312a-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 was reviewed and unanimously recommended for approval by the Commuter Rail and Transit Committee on November 14, 2013. SANBAG General Counsel has reviewed this item and the Contract.

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

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
Andrea Turcick	Andrea Turcick	10/31/13
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
Jeffery Hill		10/31/13
Contract Administrator (Print Name)	Signature	Date
W Stawarski		11/6/13
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	SANBAG
By: _____	By: _____
P. Scott Graham, Interim CEO/General Manager	W.E. Jahn, SANBAG Board President
Date: _____	Date: _____
APPROVED AS TO FORM:	APPROVED AS TO FORM:
By: _____	By: _____
Carol Greene, OMNITRANS OMNITRANS Legal Counsel	Eileen Monaghan Teichert, SANBAG General Counsel
Date: _____	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: **19**

Date: December 4, 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
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC		CTA	X	SAFE		CMA	

Check all that apply.

BRD1312a-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 was reviewed with a quorum of the Board present at the Board of Directors Metro Valley Study Session on November 14, 2013. This item was also reviewed by the Commuter Rail and Transit Committee on November 14, 2013 and the Mountain Desert Policy Committee on November 15, 2013.

Responsible Staff: Andrea Zureick, Director of Fund Administration and Programming

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: **20**

Date: December 4, 2013

Subject: State and Federal Fund Proportional Distribution Principles

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

Authorize SANBAG staff to develop a draft policy concerning the monitoring of State and Federal funds distribution between Subareas based on the following principles:

a. The Measure I 2010-2040 Expenditure Plan says that a proportional share of State and Federal funds shall be reserved for each subarea;
b. To monitor compliance with the Expenditure Plan, the Board must define a proportional distribution;
c. The policy should not impact the deliverability of the Expenditure Plan;
d. The policy should maximize flexibility in the funding and delivery of projects by allowing for monitoring of the overall distribution of State and Federal funds rather than the distribution of each individual fund source; and
e. The policy should not impact current Board-adopted policies on the distribution of individual State and Federal fund sources, nor should it restrict the authority of the Board to adopt fund-specific distributions of future fund sources.

Background: At the August 15, 2013, Metro Valley Study Session meeting, SANBAG staff began to introduce the necessity of the development of a policy concerning the

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Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA		SAFE		CMA	

Check all that apply.

BRD1312b-az

http://portal.sanbag.ca.gov/mgmt/committee/directors/brd2013/brd1312/AgendaItems/BRD1312b1-az.pdf
http://portal.sanbag.ca.gov/mgmt/committee/directors/brd2013/brd1312/AgendaItems/BRD1312b2-az.pdf

distribution of State and Federal funds between subareas. The discussion of the agenda item, included as Attachment 1, was deferred at the request of the Metro Valley Study Session so that staff could receive input and/or concurrence from both the Transportation Technical Advisory Committee (TTAC) and City/County Managers Technical Advisory Committee (CCMTAC) on principles to be used for the policy development. At the August and early September TTAC and CCMTAC meetings, SANBAG staff presented background information to educate both TACs on the current policies that will eventually lead to development of a proposed policy for approval by the SANBAG Board. The background information that was provided to both TACs is included as Attachment 2.

Staff has received concurrence from both TACs on the proposed principles recommended for use as the basis for policy development and as described below.

a) The Measure I 2010-2040 Expenditure Plan says that a proportional share of State and Federal funds shall be reserved for each subarea.

   Explanation: Specifically, the Expenditure Plan states: A proportional share of projected State and Federal transportation funds shall be reserved for use solely within the Valley and individual Mountain/Desert subareas.

b) To monitor compliance with the Expenditure Plan, the Board must define a proportional distribution.

   Explanation: The Expenditure Plan does not define what is intended by a "proportional share." For staff and the Board to monitor whether allocations of State and Federal funds are occurring in compliance with the Expenditure Plan, the Board must define "proportional."

c) The proportional distribution approved by the Board should not impact the deliverability of the Expenditure Plan.

   Explanation: There are many ways to define proportional. Borrowing from current fund distribution methods, it could be based on the State and Federal distribution formulas, population, revenue generation, road miles, or any combination of these. The distribution can vary widely depending on the measure chosen. SANBAG has historic allocation policies or practices that were used as planning assumptions in the development of the Expenditure Plan. These assumptions are primarily based on the historic split of funds between the Valley and Mountain/Desert areas that result from SANBAG applying the State or Federal distribution methodology at the local level. Because population is a dominant factor in the State and Federal distribution formulas, the assumptions in the Expenditure Plan more closely follow a

population distribution than a road miles distribution, with a road miles distribution causing an overall variance of as much as 30% from the assumptions in the Expenditure Plan. Losing access to 30% of the projected State and Federal revenue in the Valley subarea will impact SANBAG's ability to provide public share funds and could impact the deliverability of the Freeway Program as it's currently defined.

d) The proportional distribution should be managed in a way that will maximize flexibility in the funding and delivery of projects by allowing for monitoring the overall distribution of State and Federal funds rather than the distribution of each individual fund source.

Explanation: Each fund that comes to SANBAG for allocation has unique eligibility requirements and availability timelines. If the subareas are required to focus on developing projects that meet eligibility or schedule requirements, they may lose the ability to focus on delivering the highest priority projects. Monitoring the distribution of State and Federal funds at a "pooled" level rather than by each individual funds source gives the Board and individual jurisdictions the flexibility to focus on developing funding plans for priority projects rather than on developing projects to use certain sources of funds. Monitoring at a pooled level allows subareas to trade fund sources to meet individual needs while ensuring everyone gets their share in the end.

e) The policy should not impact current Board-adopted policies on the distribution of individual State and Federal fund sources, nor should it restrict the authority of the Board to adopt fund-specific distributions of future fund sources.

Explanation: As discussed in (c) above, the Expenditure Plan was based on the historical distribution of State and Federal funds within the county, which is largely based on SANBAG applying the State or Federal distribution methodology at the local level. In certain circumstances, the Board has approved an alternate distribution methodology. Staff recommends that the new policy that defines proportionality retain that flexibility for the Board to define fund-specific distribution methodologies. Choosing a population or revenue generation distribution measure takes away some of this flexibility.

In consideration of the principles above, staff is requesting authorization to develop a draft distribution policy for approval by the Board that monitors State and Federal funds distribution at a pooled level and that relies on current Board-adopted policies on the distribution of State and Federal funds, while also allowing the Board to develop fund-specific distributions for future fund sources that may arise.

Financial Impact: This agenda item is consistent with the adopted SANBAG Budget.

Reviewed By: The material in this agenda item was reviewed and concurred with by the Transportation Technical Advisory Committee on September 30, 2013 and the City/County Managers Technical Advisory Committee on October 5, 2013. This item was reviewed and recommended for approval (16-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on November 14, 2013. This item was reviewed and unanimously recommended for approval by the Mountain Desert Policy Committee on November 15, 2013.

Responsible Staff: Andrea Zureick, Director of Fund Administration and Programming

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 7

Date: August 15, 2013

Subject: State and Federal Fund Equity Distribution Principle

Recommendation:*

1. Receive overview of State and Federal funds available for projects in San Bernardino County and current SANBAG policies related to the distribution of those funds.

2. Provide input on policy development to measure proportionality and geographic equity in the distribution of State and Federal funds.

Background: In California, Regional Transportation Planning Agencies and County Transportation Commissions, such as SANBAG, are authorized by State law to allocate certain State and Federal funds for transportation projects within the county. The Measure I 2010-2040 Ordinance specifies that State and Federal transportation funds are to be distributed proportionally among the Valley and Mountain/Desert subareas, and the adopted SANBAG Measure I 2010-2040 Strategic Plan further identifies geographic equity over the life of the Measure as one of the key principles of the Strategic Plan. However, the Strategic Plan does not define how proportionality or geographic equity is to be measured, and while the Expenditure Plan assumed State and Federal funds are available to supplement Measure I funds and even contains policies concerning the use of these funds, there are no adopted policies or procedures in place to monitor whether State and Federal funds are distributed equitably among geographic areas within the region.

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Received and Filed

L. Dennis Michael suggested that this information be presented to the TTAC and City Managers for specific input on staff's recommendations. Members of the Board recommended follow up discussions occur between the Board Members and their City Managers. The information will be brought back before the Metro Valley Study Session at a later date.

Approved
Board Metro Valley Study Session

Date: August 15, 2013

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

MVSS1308B-PC
MVSS1308B1-PC
BRD1312b1-az

The purpose of this agenda item is to provide background on the various State and Federal fund sources apportioned to SANBAG and the current Board-approved allocation policies related to those funds and to solicit input on methods to monitor equitable distribution of these funds over the life of the Measure.

There are three major State and Federal funding sources that are apportioned to SANBAG for allocation decisions according to eligibility and adopted SANBAG allocation policies: Congestion Mitigation and Air Quality (CMAQ) and Surface Transportation Program (STP) funds, which are federal funds, and State Transportation Improvement Program (STIP) funds, which are typically Federal funds administered by the California Transportation Commission (CTC) through a State program. A summary of each fund source and typical funding levels are provided in Attachment A. The SANBAG Board-adopted allocation policies for these funds are described below.

CMAQ Funds Allocation Policy: SANBAG Policy 40001 defines a prioritization for the use of CMAQ funds in the Valley subarea: 1) Board-approved regional programs such as rideshare, freeway service patrol, regional signal synchronization; 2) Transit and rail capital and start-up operating costs; 3) High Occupancy Vehicle facility components of the Measure I Valley Freeway Program. The Mountain/Desert subareas do not have policies developed through the Strategic Plan related to the allocation of State and Federal funds, but in 2003 the SANBAG Board adopted a similar policy for the Mountain/Desert area that would allocate per priority 1 and 2 above with any balance of funds available allocated through a call for projects.

STP Funds Allocation Policy: SANBAG Policy 40001 states that all STP funds apportioned to the Valley subarea will be allocated to the Measure I Valley Freeway Program. Although there is no defined allocation policy in the Mountain/Desert subareas, the funds available for the Victor Valley subarea are considered public share funds and are being used to augment Measure I Major Local Highway Program allocations to projects identified in the Measure I 2010-2040 Ten-Year Delivery Plan. For the Rural Mountain/Desert Subareas, SANBAG has allocated funds through set-asides and priority project allocations, administered calls for projects, and has even exchanged Measure I Valley Major Projects Program funds; however, because of the limited eligibility of Valley Freeway Projects for these rural area funds, to do this again would require careful consideration.

STIP Funds Allocation Policy: Section IV.B.4.b. of the Strategic Plan concerning Financial Analysis of the Valley Freeway Program states that 100% of all State and Federal funds available to the Valley subarea for roadway programs

will be allocated to the Valley Freeway Program with the exception of certain interchanges and railroad grade separation projects. Again, while there is no defined allocation policy in the Mountain/Desert subareas, the funds available for the Victor Valley subarea are considered public share funds and are being used to augment Measure I Major Local Highway Program allocations to projects identified in the Measure I 2010-2040 Ten-Year Delivery Plan. There is nothing in the STIP Guidelines that dictates how funds are to be distributed between areas of a county, but there is a focus on performance measurement and cost effectiveness, both of which must be reported on in the STIP submittals. SANBAG has historically tried to maintain a 75/25 percent split of STIP funds between the Valley and Mountain/Desert subareas, respectively, a split that was reinforced in the Strategic Plan funding assumptions.

Special Funding Opportunities: In addition to the annual apportionments described above, over the past decade special funding opportunities have arisen, such as Proposition 1B and the American Recovery and Reinvestment Act (ARRA), and the SANBAG Board has acted to define distribution policies. While most funds have been distributed within the county based on program eligibility, project readiness, and full funding availability, the Board adopted allocation formulas for the Proposition 1B State Local Partnership Program (SLPP) based on 50% population/50% centerline miles and a local/federal exchange program for ARRA funds that were distributed on a per capita basis.

As far as State and Federal agencies are concerned, SANBAG has flexibility in the distribution of funds within the county. As detailed in Attachment A, the only fund source with distribution limitations is STP, which has distinct urban and rural apportionments. This provides flexibility to SANBAG to determine how to monitor the proportional and equitable distribution of these funds.

Policy Decision #1

The first policy decision that will be the subject of a future recommendation is how to define the proportional and equitable distribution that is referenced in both the Ordinance and the Strategic Plan. The discussions assume that the use of the words "proportional" and "equitable" were intended to be interchangeable in the Ordinance and Strategic Plan. The concept would be for proportionality/equity to be measured from 2010 through 2040, just as equity is being viewed for Measure I funds. Staff has identified the following measures that are typically used in the distribution of transportation funds while remaining consistent with current Board-approved policies:

1A. Legislative Distribution

This option measures distribution of funds between subareas according to how each individual fund source was distributed to each county by the state. As detailed in Attachment A, this is fund-specific and can be based on factors such as

population, severity of air quality problems, and road miles. For example, STP funds would be made available to each subarea based on generally a per capita distribution, CMAQ would be distributed based on a combination of population and air quality factors, and STIP would be distributed based on a combination of population and road miles.

1B. Population-Based Distribution
This option measures distribution of funds based on the population of each subarea. STP distribution would be based on population within the federally defined urban/rural area splits within the county. CMAQ and STIP would be distributed be based on population in each subarea.

1C. Centerline Miles Distribution
This option measures distribution of funds based on the amount of centerline road miles on the federal road network within each subarea. STP distribution would be based on road miles within the federally defined urban/rural area splits within the county. CMAQ and STIP would be distributed by road miles within each subarea. In this calculation, the centerline miles for the Interstate in the North Desert and Colorado River subareas were removed from the calculation because improvement to I-15 and I-40 in those subareas were not contemplated in the Measure and this would disproportionately weight the share of State and Federal funds to these subareas.

1D. Hybrid – 50/50 Population and Centerline Miles Distribution
This option measures distribution of funds using a hybrid approach with 50% of the funding based on population in each subarea as described in B above and 50% based on centerline miles in each subarea as described in C above.

1E. Measure-Based Distribution
This option measures distribution of funds based on the distribution of Measure funds to each subarea. STP distribution would be based on Measure distribution within the federally defined urban/rural area splits within the county. CMAQ and STIP would be distributed based on the Measure distribution to each subarea.

Policy Decision #2
The second policy decision that will be the subject of a future recommendation is whether or not to measure distribution on a fund-by-fund basis or on an accumulated basis. For both cases, the concept would be for proportionality/equity to be measured from 2010 through 2040, just as equity is being viewed for Measure I funds.

2A. Fund-by-Fund Distribution
This option would measure distribution of each individual fund source according to the distribution options above to ensure that each individual fund source is distributed equitably between subareas.

2B. Accumulated Distribution
This option would measure the cumulative distribution of funds after each fund source is distributed according to the options above.

Goal of this Exercise
Before discussing which options staff finds most favorable, it is important to clarify the goal of this exercise. The Strategic Plan was developed based on a set of twelve "overarching principles". The overarching principles are intended to be the foundation of policy decisions with regard to Measure programs. Geographic equity over the life of the Measure is the sixth overarching principle identified in the Strategic Plan. The first five principles are as follows:

1. Deliver all Expenditure Plan projects at the earliest possible date.
2. Seek additional and supplemental funds as needed for completion of all Expenditure Plan projects.
3. Maximize leveraging of State, federal, local, and private dollars.
4. Ensure use of federal funds on otherwise federalized projects.
5. Sequence projects to maximize benefit, minimize impact to the traveling public, and support efficient delivery.

Restrictive policies concerning the allocation of State and Federal funds will definitely ensure geographic equity over the life of the Measure but can run counter to the first five principles that focus on delivering projects efficiently and maximizing funding sources that can augment Measure. It is not reasonable to expect that each subarea would have priority projects ready for delivery at any given time meeting the various eligibility requirements for multiple fund sources. It may not even be reasonable to expect that this could be accomplished on five or ten year intervals. Forcing expenditure of funds on set time constraints can result in lower priority projects moving forward simply because they can be delivered. Therefore, staff does not expect that the information resulting from this exercise would be used at any set interval of time to ensure equity or to dictate allocation decisions. Rather staff expects that this information will be used to inform allocation decisions, to provide each subarea assurance that their share of funds is being monitored, and to provide a means to measure how funds are being distributed over time, with the goal being an equitable distribution of funds by 2040.

Favored Options

Staff currently favors the use of Option 1A and Option 2B in measuring the equity of State and Federal fund distribution, but will be obtaining further input from technical and policy committees.

Option 1A measures distribution of funds between subareas according to how each individual fund source was distributed to each county by the state. Staff favors 1A because this most closely follows the current allocation policies approved by the SANBAG Board. Choosing to move to a maintained miles-based or hybrid-based distribution can alter distributions by 10-20% and could have a significant impact on the deliverability of the Measure programs as contemplated in the Strategic Plan.

Additionally, since each individual fund source has its own eligibility limitations and time constraints, staff favors Option 2B that allows for monitoring fund distribution shares by overall total of all funding sources rather than by each individual fund source. This will provide the Board flexibility to make meaningful allocation decisions that can take funding applicability, performance measures, funding gaps, project and fund management complexity, and project schedules into consideration. For example, nothing would prevent the Board from allocating a certain fund based on strict allocation formulas so that every subarea gets a share, as was done for the SLPP funds, but this would also give the Board flexibility to choose to focus the more cumbersome Federal funds on larger projects and State funds on smaller projects in the rural areas. The development of this policy does not attempt to amend the existing fund allocation policies, but the Board could choose to approve exceptions to the allocation policies if it benefits the delivery of certain projects.

Attachment B includes examples of how each distribution method compares to the actual allocations that have occurred since the beginning of Measure I 2010-2040 assuming that funds are monitored by overall total of all funding sources (Option 2B). The funding sources included in the total of actual allocations are CMAQ, STP, STIP, SLPP, Trade Corridors Improvement Fund, and Corridor Mobility Improvement Account.

Next Steps

After discussion of these considerations with the Transportation Technical Advisory Committee, the City/County Managers Technical Advisory Committee, and SANBAG Policy Committees, staff will return to the General Policy Committee with recommended policy language for the measurement of equitable distribution of State and Federal funds between subareas. Additionally, in accordance with the approved initiatives for Fiscal Year 2013/2014, staff will develop a "dashboard" based on the approved policy that will monitor the distribution of funds to subareas. This can be used for information when the

Board is making allocation decisions and will provide a tool to ultimately ensure an equitable distribution of State and Federal funds over the life of Measure I 2010-2040.

Financial Impact: This item has no impact on the adopted SANBAG Fiscal Year 2013/2014 budget.

Reviewed By: This item was reviewed by the Board Metro Valley Study Session on August 15, 2013. This item was also reviewed by the City/County Managers Technical Advisory Committee on August 1, 2013, the Transportation Technical Advisory Committee (TTAC) on August 5, 2013, and the Mountain/Desert Policy Committee on August 16, 2013.

Responsible Staff: Andrea Zureick, Director of Fund Administration and Programming

ATTACHMENT A
State and Federal Fund Overview

CMAQ Funds

General Overview: CMAQ funds are authorized to fund transportation projects or programs located in nonattainment or maintenance areas that contribute to attainment of ambient air quality standards. CMAQ eligibility is conditional upon analyses showing that the project will reduce emissions of criteria pollutants. Activities typically eligible for funding by CMAQ include high occupancy vehicle (HOV) lanes, transit improvements, travel demand management strategies, traffic flow improvements such as signal synchronization, and public fleet conversions to cleaner fuels.

Typical Annual Funding Level: Funds are apportioned to SANBAG based upon a formula that considers population and the severity of ozone and carbon monoxide air quality problems within the nonattainment or maintenance area. SANBAG has historically received about $29 million per year with $22M available for the South Coast Air Basin (Valley and Mountains subareas) and $7 million available for the Mojave Desert Air Basin (remaining Mountain/Desert subareas). However, the funds can be used interchangeably if desired.

Current SANBAG Board-Approved Allocation Policy: SANBAG Policy 40001 defines a prioritization for the use of CMAQ funds in the Valley subarea: 1) Board-approved regional programs such as rideshare, freeway service patrol, regional signal synchronization; 2) Transit and rail capital and start-up operating costs; 3) High Occupancy Vehicle facility components of the Measure I Valley Freeway Program. The Mountain/Desert subareas do not have policies developed through the Strategic Plan related to the allocation of State and Federal funds, but in 2003 the SANBAG Board adopted a similar policy for the Mountain/Desert area that would allocate per priority 1 and 2 above with any balance of funds available allocated through a call for projects.

STP Funds

General Overview: STP provides flexible funding that may be used for projects on any federal-aid highway, bridge projects on any public road, transit capital projects, and public bus terminals and facilities.

Typical Annual Funding Level: Funds are apportioned to SANBAG based upon a formula that considers population for a portion of the apportioned funds and a mixture of population and road miles for the balance. SANBAG has historically received about $22 million per year with $1.09 million taken off the top and allocated to the County of San Bernardino as State funds for use on rural roads. About $20 million is divided among urbanized areas in the County with approximately $17 million available for the Valley subarea and $3M available for the Victor Valley subarea. The balance is for areas outside of the urban areas. These distributions represent what SANBAG received under prior transportation acts and will change slightly under MAP-21, but the impact is not yet known. Urban area funds can be used interchangeably between urban areas, but urban area funds cannot be used outside of the urban area and vice versa.

Current SANBAG Board-Approved Allocation Policy: SANBAG Policy 40001 states that all STP funds apportioned to the Valley subarea will be allocated to the Measure I Valley Freeway Program. Although there is no defined allocation policy in the Mountain/Desert subareas, the funds available for the Victor Valley subarea are considered public share funds and are being used to augment Measure I Major Local Highway Program allocations to projects identified in the Measure I 2010-2040 Ten-Year Delivery Plan. For the Rural Mountain/Desert Subareas, SANBAG has allocated funds through set-asides and priority project allocations, administered calls for projects, and has even exchanged Measure I Valley Major Projects Program funds; however, because of the limited eligibility of Valley Freeway Projects for these rural area funds, to do this again would require careful consideration.

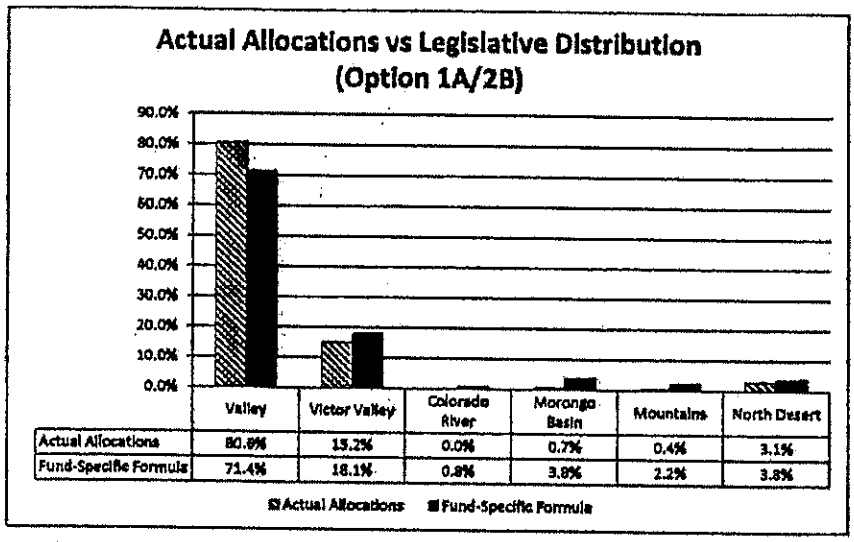
STIP Funds

General Overview: The STIP is a five-year program of transportation projects that is updated every two years that is funded through the State Highway and Federal Trust Fund Accounts. STIP funds provide flexible funding for transportation infrastructure projects on freeways, local roads, and transit systems. The STIP consists of two broad programs: 75% of the funds are apportioned to regional agencies through the Regional Transportation Improvement Program (RTIP or RIP) and 25% is apportioned to Caltrans through the Interregional Transportation Improvement Program (ITIP or IIP). SANBAG is responsible for developing the list of projects for funding through the RIP. These projects nominations are approved for programming by the California Transportation Commission (CTC). The IIP projects are nominated for programming by Caltrans.

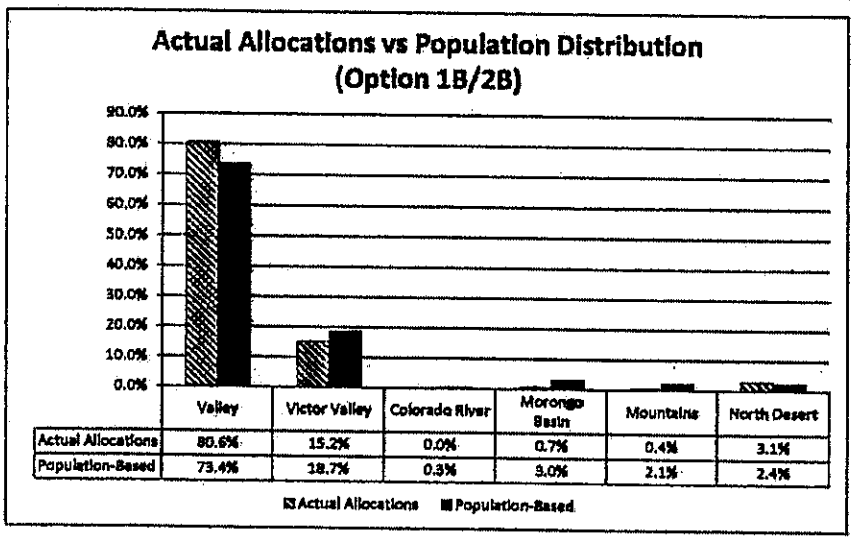
Typical Annual Funding Level: Funds are apportioned to SANBAG based upon a formula of 75% population and 25% road miles. As stated earlier, funding levels have been very volatile. In the upcoming 2014 STIP, SANBAG's share of the estimated $893 million available for new programming through Fiscal Year 2018/2019 is estimated to be $44 million. However, as has been the case for the past several STIP cycles, the new programming capacity exists only in the two new years of the STIP period, and the projects currently programmed may be required to be delayed to match funding availability in the first three years.

Current SANBAG Board-Approved Allocation Policy: Section IV.B.4.b. of the Strategic Plan concerning Financial Analysis of the Valley Freeway Program states that 100% of all State and Federal funds available to the Valley subarea for roadway programs will be allocated to the Valley Freeway Program with the exception of certain interchanges and railroad grade separation projects. Again, while there is no defined allocation policy in the Mountain/Desert subareas, the funds available for the Victor Valley subarea are considered public share funds and are being used to augment Measure I Major Local Highway Program allocations to projects identified in the Measure I 2010-2040 Ten-Year Delivery Plan. There is nothing in the STIP Guidelines that dictates how funds are to be distributed between areas of a county, but there is a focus on performance measurement and cost effectiveness, both of which must be reported on in the STIP submittals. SANBAG has historically tried to maintain a 75/25 percent split of STIP funds between the Valley and Mountain/Desert subareas, respectively, a split that was reinforced in the Strategic Plan.

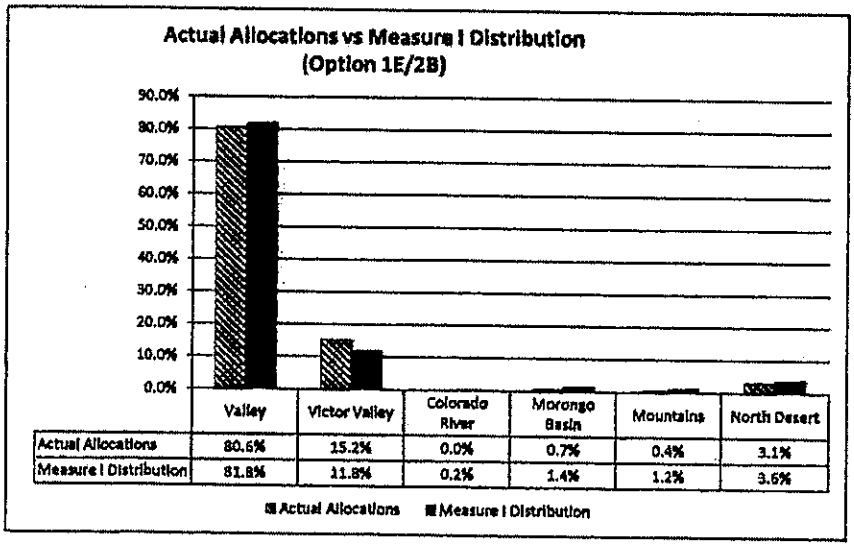
Attachment B - Actual Allocations vs Distribution Methodologies (Fiscal Years 2010/2011 - 2012/2013)



	Valley	Victor Valley	Colorado River	Morongo Basin	Mountains	North Desert
Actual Allocations	80.6%	15.2%	0.0%	0.7%	0.4%	3.1%
Fund-Specific Formula	71.4%	18.1%	0.8%	3.8%	2.2%	3.8%



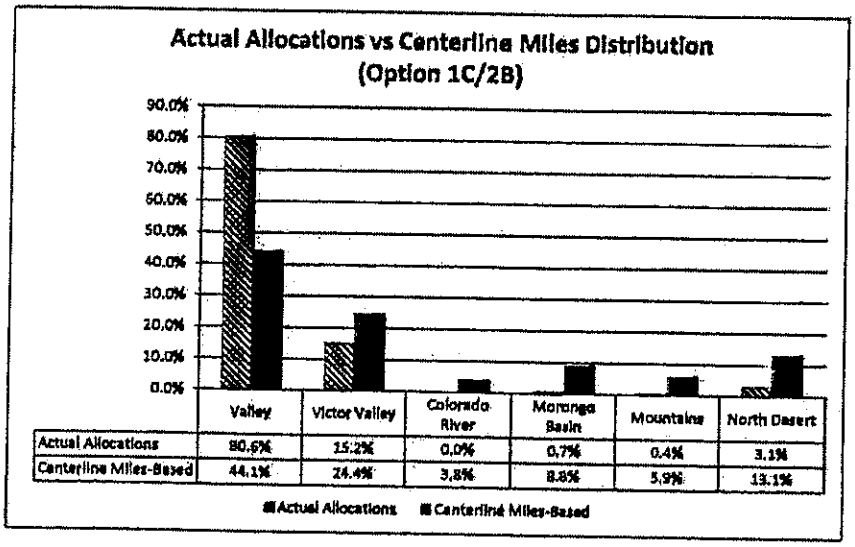
	Valley	Victor Valley	Colorado River	Morongo Basin	Mountains	North Desert
Actual Allocations	80.6%	15.2%	0.0%	0.7%	0.4%	3.1%
Population-Based	73.4%	18.7%	0.3%	3.0%	2.1%	2.4%



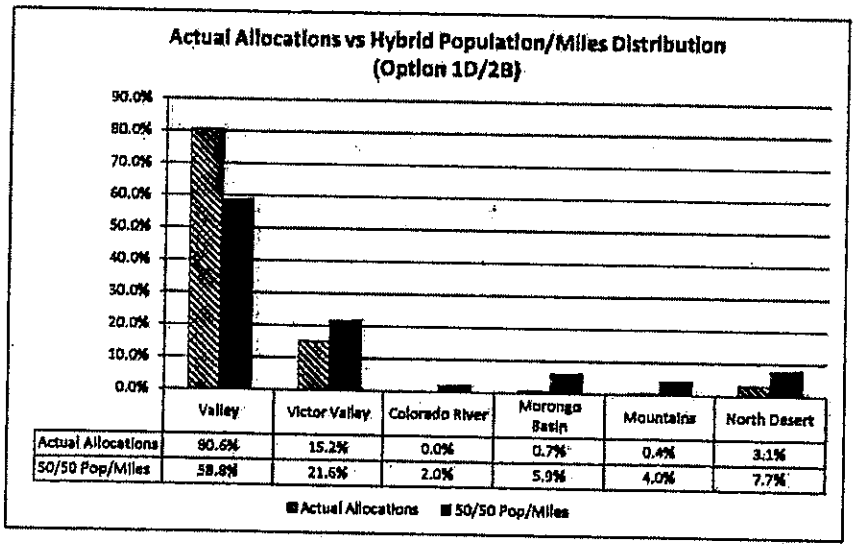
	Valley	Victor Valley	Colorado River	Morongo Basin	Mountains	North Desert
Actual Allocations	80.6%	15.2%	0.0%	0.7%	0.4%	3.1%
Measure I Distribution	81.8%	11.8%	0.2%	1.4%	1.2%	3.6%

MVSS1308b1-pc

Attachment B - Actual Allocations vs Distribution Methodologies (Fiscal Years 2010/2011 - 2012/2013)



	Valley	Victor Valley	Colorado River	Morongo Basin	Mountains	North Desert
Actual Allocations	80.6%	15.2%	0.0%	0.7%	0.4%	3.1%
Centerline Miles-Based	44.1%	24.4%	3.8%	8.8%	5.9%	13.1%



	Valley	Victor Valley	Colorado River	Morongo Basin	Mountains	North Desert
Actual Allocations	80.6%	15.2%	0.0%	0.7%	0.4%	3.1%
50/50 Pop/Miles	58.8%	21.6%	2.0%	5.9%	4.0%	7.7%

MVSS1308b1-pc

State and Federal Fund Equity Distribution

CCMTAC SEPTEMBER 5, 2013

TTAC SEPTEMBER 9, 2013

Governments SANBAG Working Together

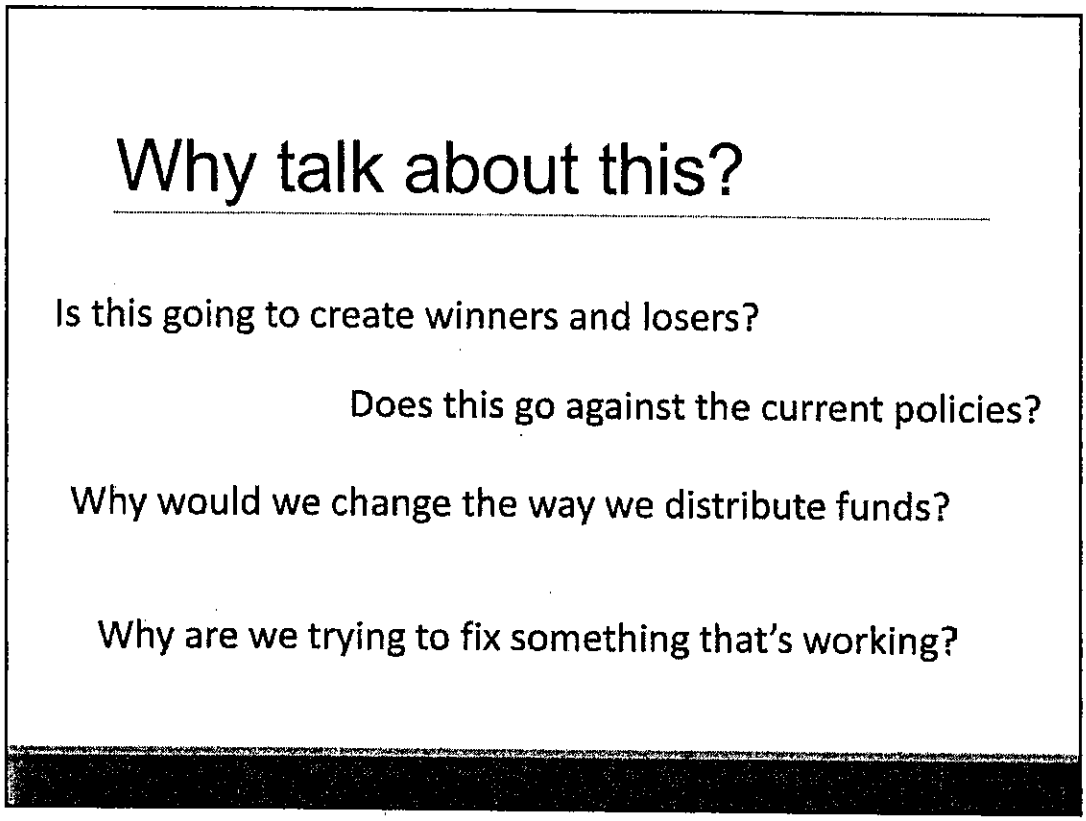
TRANSPORTATION MEASURE B

BRD1312b2-az

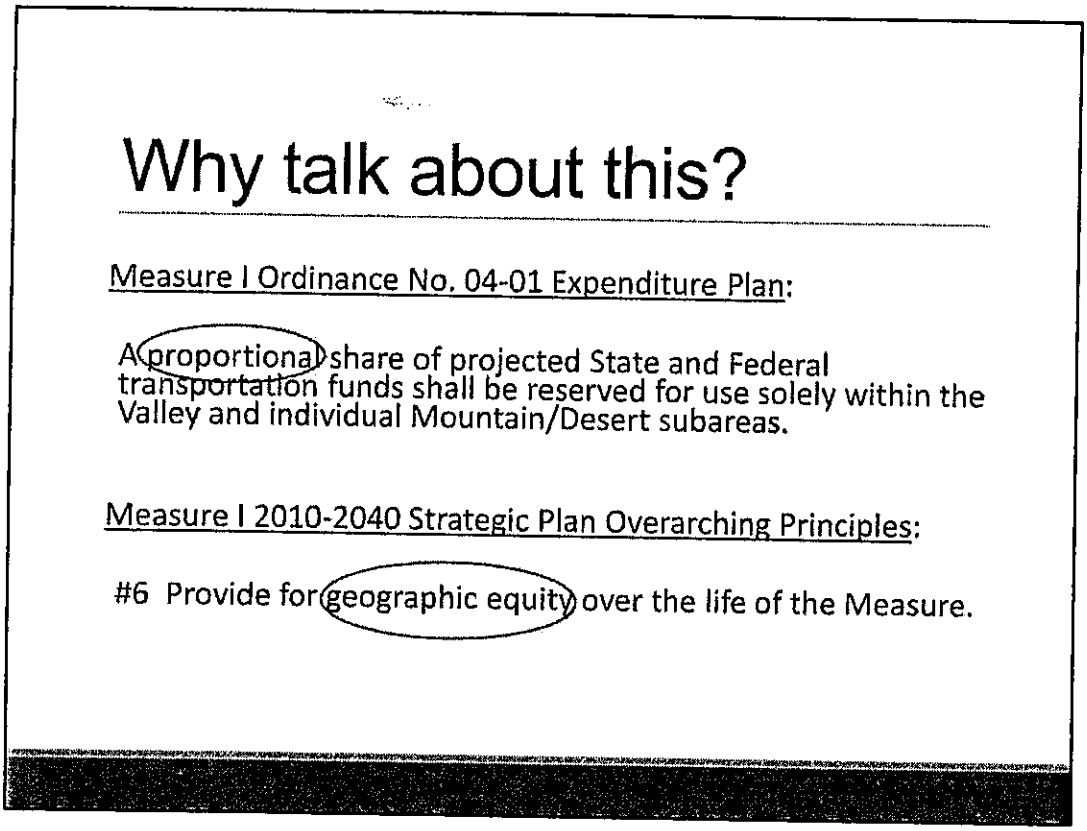
Objective

The Measure Expenditure Plan says that we will reserve a proportional amount of State and Federal funds for each subarea over the life of the Measure. We can easily calculate the amount of State and Federal funds that have been obligated in each subarea at any given time, but right now we can't say whether it is proportional because we don't have a Board-approved policy that defines "proportional". Is proportional based on population, allocation policies, Measure revenue generation, road miles, etc.?

The purpose of this discussion is to develop a policy that defines what proportional means in the context of State and Federal funds that SANBAG has allocation authority over. Once "proportional" has been defined, staff can monitor allocations to ensure that each subarea is receiving its share of funds over the life of the Measure.

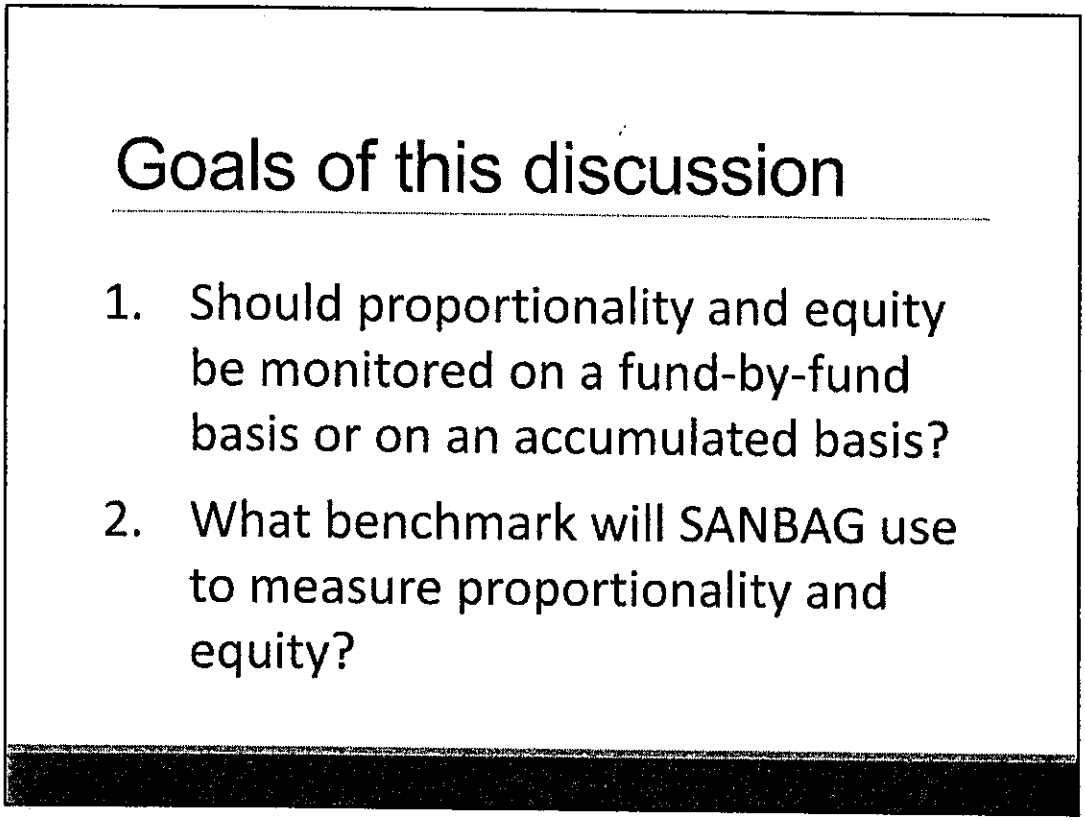


The most common question asked about this subject is why are we even talking about this? Things seem to be going really well. Yes, things are going well. Over the past four years we have obligated over $650 million in State and Federal funds and almost every subarea has been able to participate in that activity and see projects move forward that have been in development for years. So why are we talking about this now?

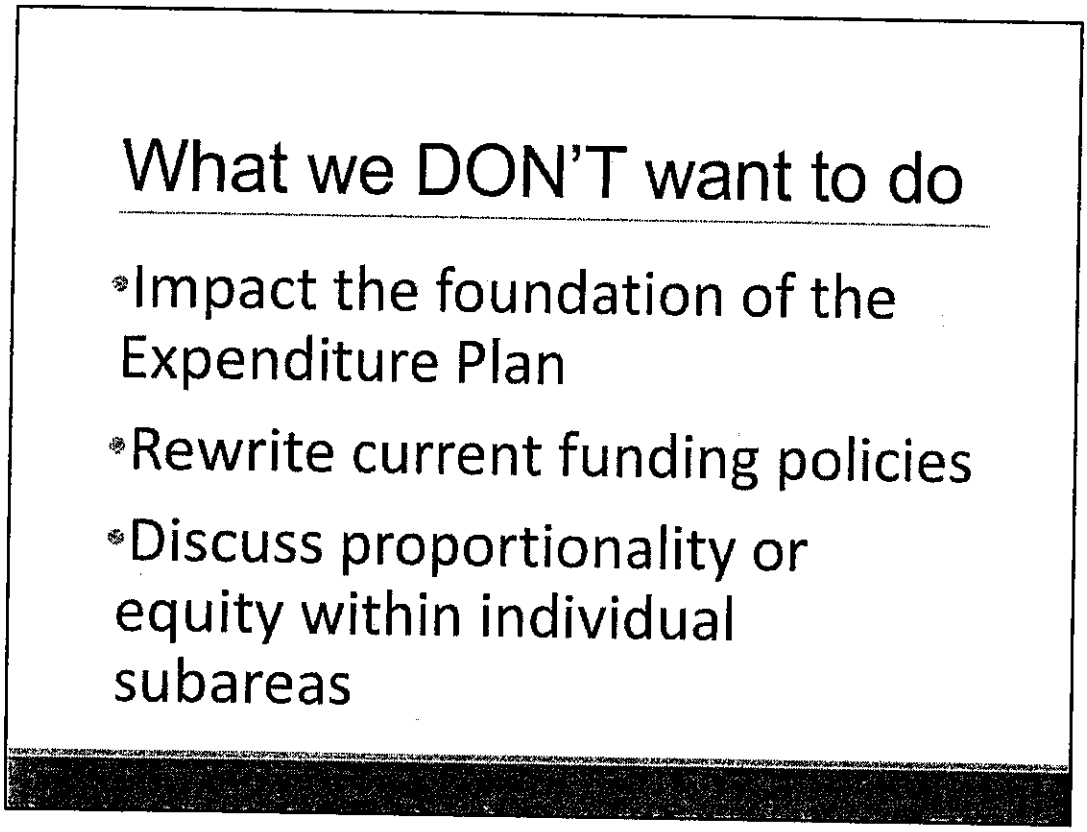


Mainly because the Measure I Expenditure Plan and Strategic Plan say we have to. The Expenditure Plan says that a proportional share of State and Federal funds will be reserved for use within each subarea. And during the development of the Strategic Plan, geographic equity was a common theme throughout those discussions and the final policies. It is actually the sixth overarching principle in the strategic plan, with the overarching principles being the overall guidance and direction for policy development for the new Measure.

While these principles and mandates seem like common sense, no one has defined how we determine proportional share or how we measure geographic equity. If we don't know how we as an agency define these terms, we can't monitor our compliance with the Measure.



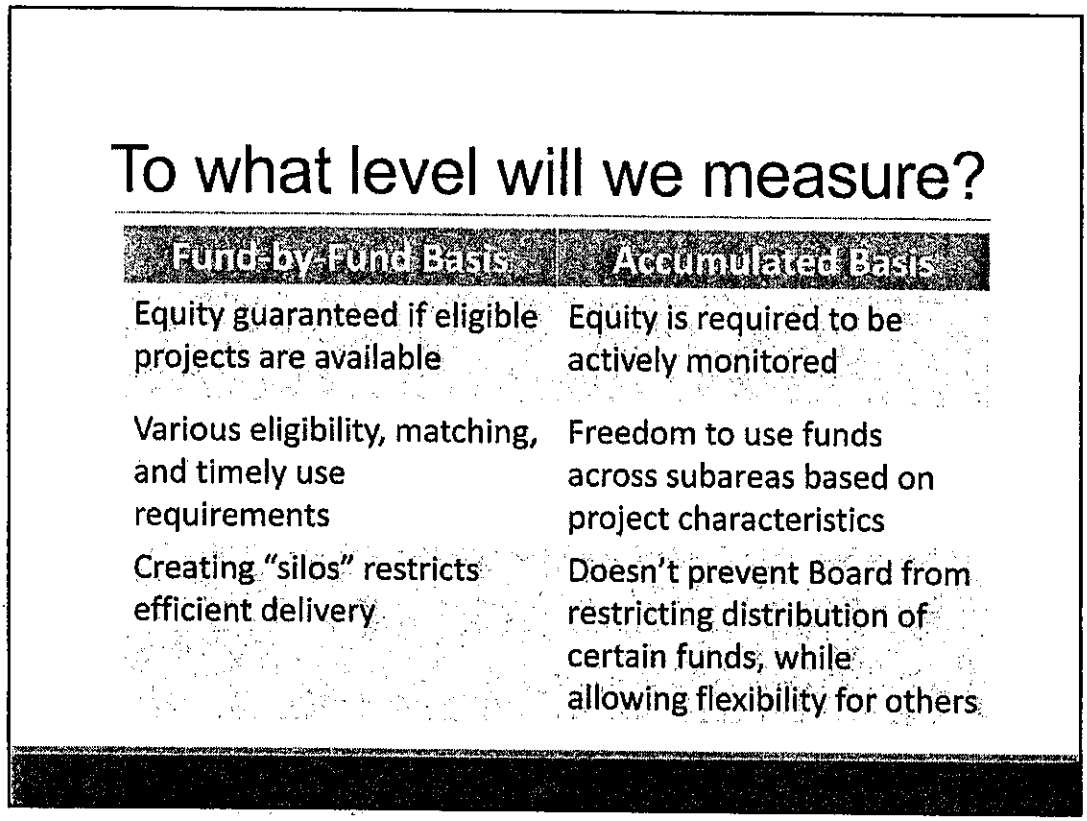
To be able to get to a point where we can monitor compliance with the Measure, there are two policy issues for the SANBAG Board to consider. First we would like the Board to consider whether they expect that equity be measured at the individual fund level or if we can take a higher level view of a pooled amount of State and Federal funds. And next we would like the Board to define proportional and equitable shares between subareas.



Almost more important is what we don't want to do. First we don't want to disrupt the foundation of the Expenditure Plan. The Expenditure Plan was based on assumptions about the availability of State and Federal funds and those assumptions helped to determine the scope of the programs and the scale of the projects that could be accomplished. The Expenditure Plan in no way assumed that each subarea would receive an equal amount of State and Federal funds, so we want to be sure that we don't isolate the term "equity" and confuse it with the word "equal" in this discussion – the focus is the word "proportional" that is used in the Expenditure Plan.

Also this discussion does not have to impact the allocation policies that the Board has already adopted. We are not intending to determine how the Board will make individual funding decisions from this point forward. The purpose of this exercise is to establish a benchmark or a point of reference for the Board so that when they are making allocation decisions, they know the impact that decision will have on the ability of SANBAG to provide proportional funding to each subarea over time.

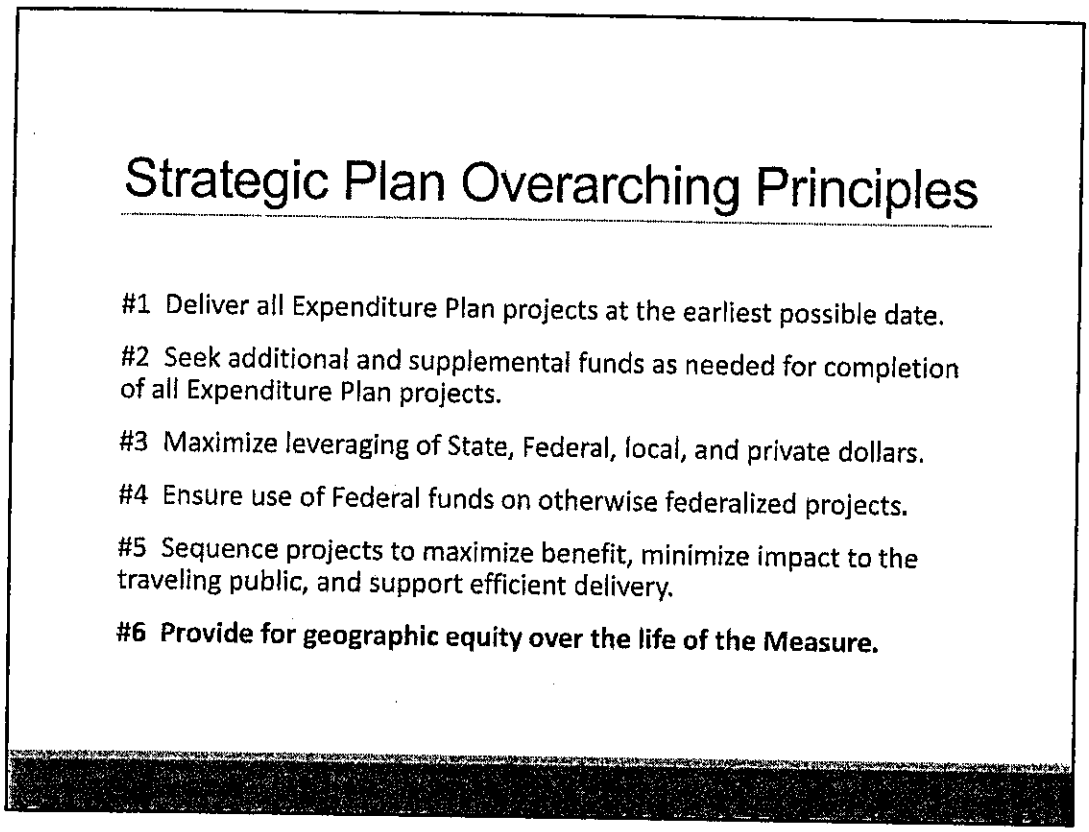
And finally, we are only talking about proportionality between subareas, not within subareas. Proportionality within subareas is a very different discussion that becomes complicated by the concept of public shares in the Valley and Victor Valley subareas, subarea priorities, and availability of Measure funds. We also wouldn't intend for the outcome of this discussion to set any precedence on that topic because that is just a very different discussion.



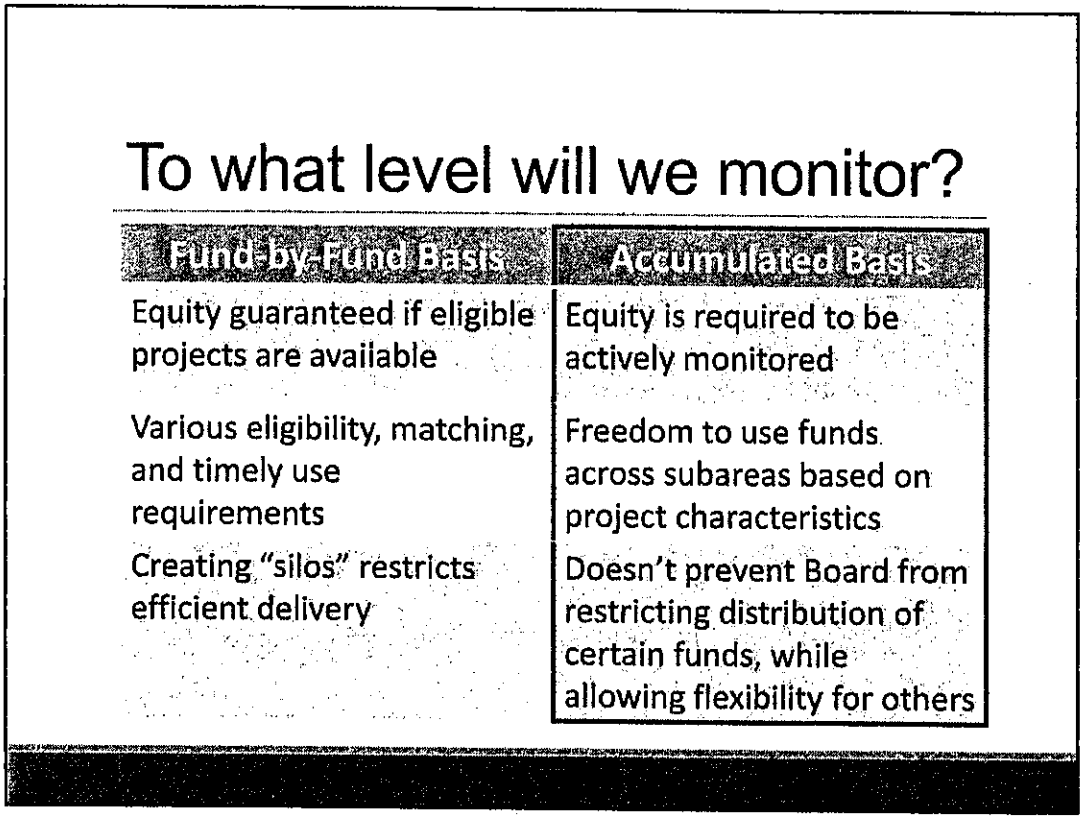
First issue: should we be tracking proportionality by each individual fund source, meaning every fund source that comes through SANBAG will be allocated proportionally to each subarea, or will the Board allow for management of proportionality and equity at a higher level as an accumulation or pool of all State and Federal funds?

If the Board chooses to monitor equity on a fund-by-fund basis, equity over the life of the Measure is guaranteed, but each subarea will be in the situation to have to find projects to meet criteria if they want full access to their share of funds. When considering if SANBAG should measure equity on a fund-by-fund basis it is important to keep in mind that each fund source has different eligibility and matching requirements and different use-it or lose-it deadlines. It may be more efficient to use one fund source to fill a gap in a larger project than to try to find five smaller projects that meet the individual criteria for each source of funds.

If the Board monitors equity on an accumulated basis, it gives subareas and the Board freedom to focus on putting together funding plans that make sense with regard to funding applicability, project and fund management complexity, and project schedules to get a priority project built. However, it also requires active monitoring by staff of where the State and Federal funds are being spent and whether every subarea is getting their share over time.

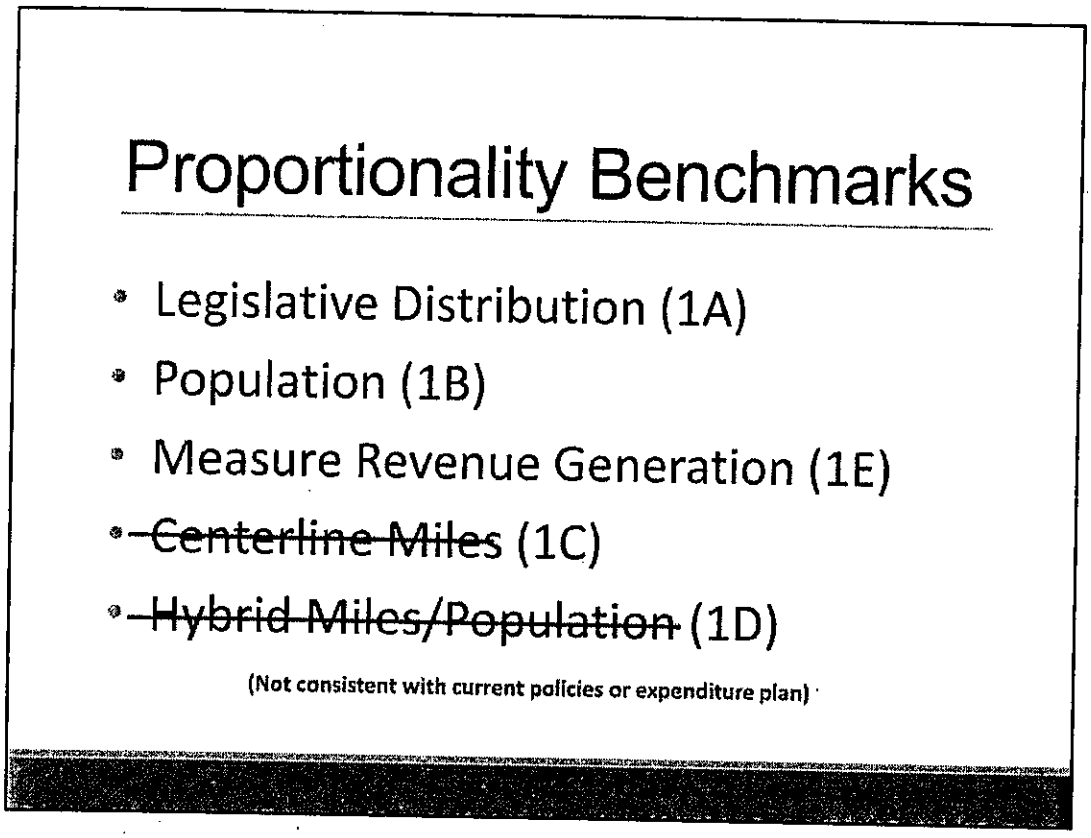


Going back to the Overarching Principles, Principles 1-5 listed here all focus on efficient delivery of the Expenditure Plan projects. And actually most of numbers 7-12 have the same focus. Efficient delivery. Restrictive policies concerning the allocation of State and Federal funds will definitely ensure geographic equity over the life of the Measure. However this can run counter to the basis of the Strategic Plan where the focus is on delivering projects efficiently and maximizing funding sources that can augment Measure.



To be able to most effectively address these principles, staff's preferred option is to monitor proportionality between subareas on an accumulated basis, meaning looking at the total pool of State and Federal funds available over time and making sure that over time each subarea receives a proportional share of that pool of funds.

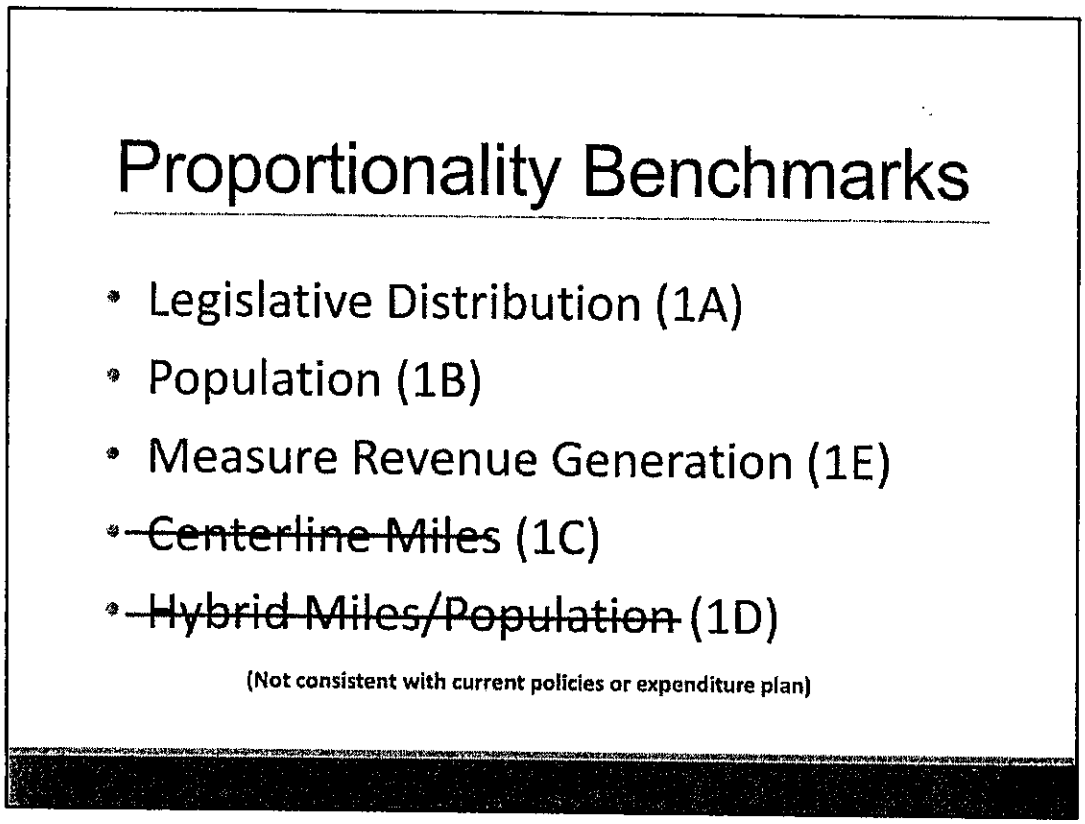
We are already doing this on a limited or unofficial basis because we naturally realize this is what makes sense for efficient delivery of projects. For example, recently the Board established a fund-specific formula distribution between subareas for the Proposition 1B State Local Partnership Program funds; however, at the end of the availability of those funds, not all mountain/desert subareas were able to make full use of their allocation. They decided amongst themselves that somebody would get a larger share of something at the next funding opportunity. The problem is that we currently do not have any system in place to make sure that those "donor" subareas are in fact getting their share paid back. If we are monitoring a pool of State and Federal funds, this kind of agreement would naturally be accounted for because their use of the pool of funds would be less than their overall share. If we were to monitor fund-by-fund, there would need to be some sort of documentation maintained when subareas had agreed to exchange shares of funds from various sources to be able to ensure that payback occurred. (Even talking about it is complicated.)



Now the more cumbersome discussion of Issue #2 and how the Board wishes to define proportionality or equitable shares of State and Federal funds. We will refer to this discussion as a discussion of proportionality "benchmarks" because again the focus is on setting benchmarks to measure the allocation history against – not to establish fund allocation formulas.

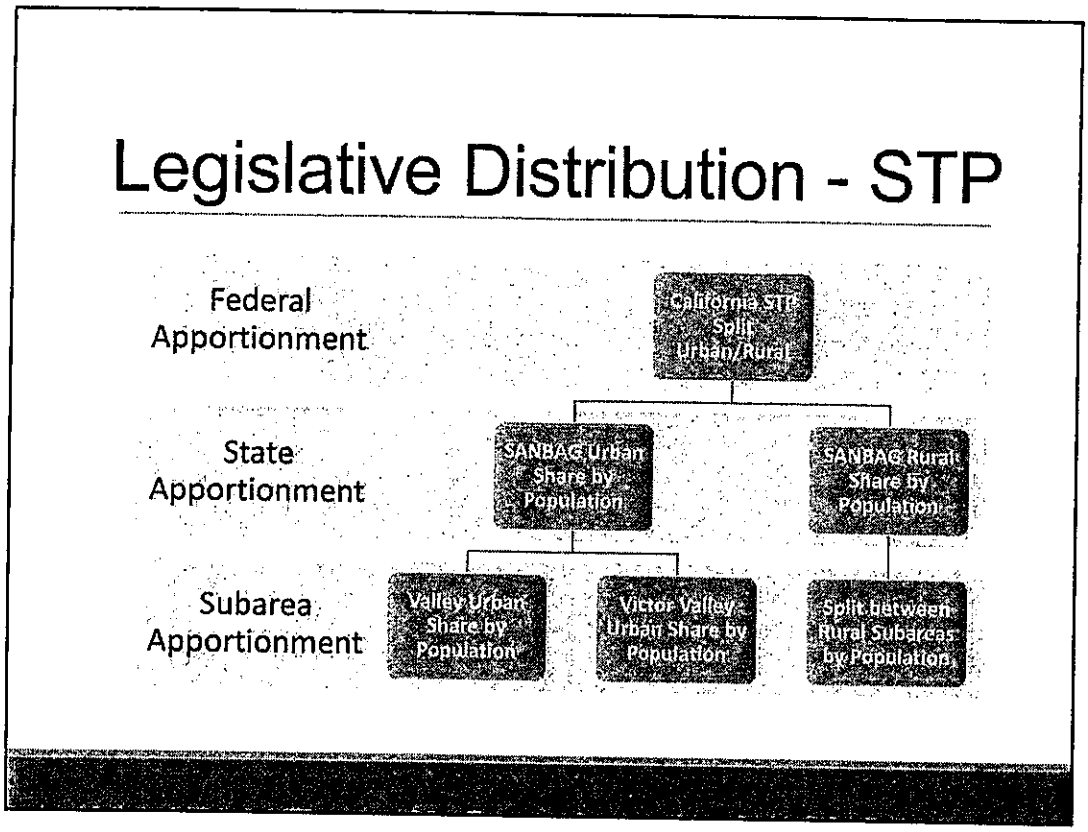
Of course when we talk about distributing funds proportionally, we are usually referring to a formula distribution. These are five methods of distribution that are often considered or used in the formula distribution of State and Federal funds (with the addition of 1E). (The references are to the agenda item that was prepared on this subject.) First there is what we have referred to as the legislative distribution – this refers to the formula that is used to apportion the funds to SANBAG being extended down to the subarea level. So every fund source would have it's own distribution formula. At times the SANBAG Board may define different formulas, as was done for the Proposition 1B SLPP. This is generally the current method of allocating State and Federal funds.

The next method that is commonly used for formula distribution is population. This was the method used when SANBAG created the Local Stimulus Program that was a result of the special funding opportunity in the federal American Recovery and Reinvestment Act. We don't currently use population alone as a method of splitting any other State and Federal funds that we have allocation authority over. And while population is a major factor in the distribution STP, it is first split at the state level into urban and rural pots so the resulting split of funds is different from a pure population distribution.

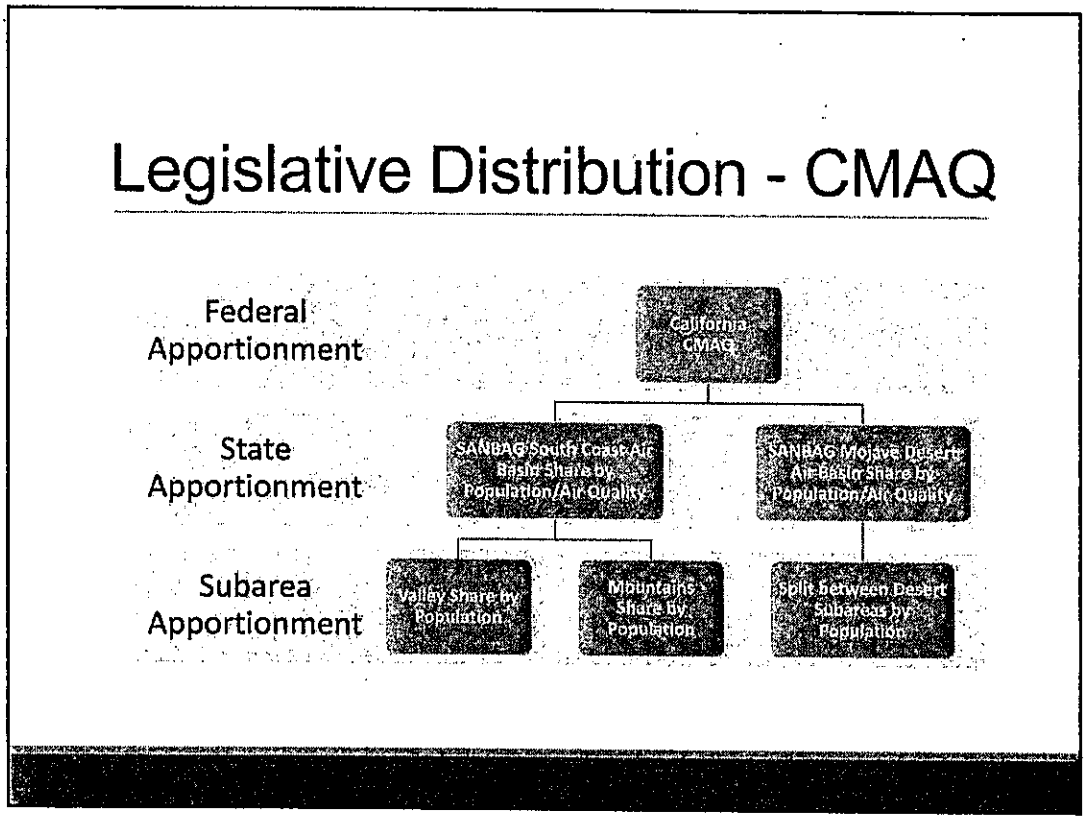


Another method that has been considered for distribution of funds by formula would be Measure Revenue Generation. This is not a method that the Board has ever used when apportioning or allocating funds, but it has been presented to the Board as an option for distributing funds in the past. It was discussed as a method for distributing the SLPP funds since the SLPP program was established as a means to reward counties with self-imposed transportation sales taxes. However, ultimately the Board did not select this distribution method even for those funds that had a direct nexus to Measure revenue generation.

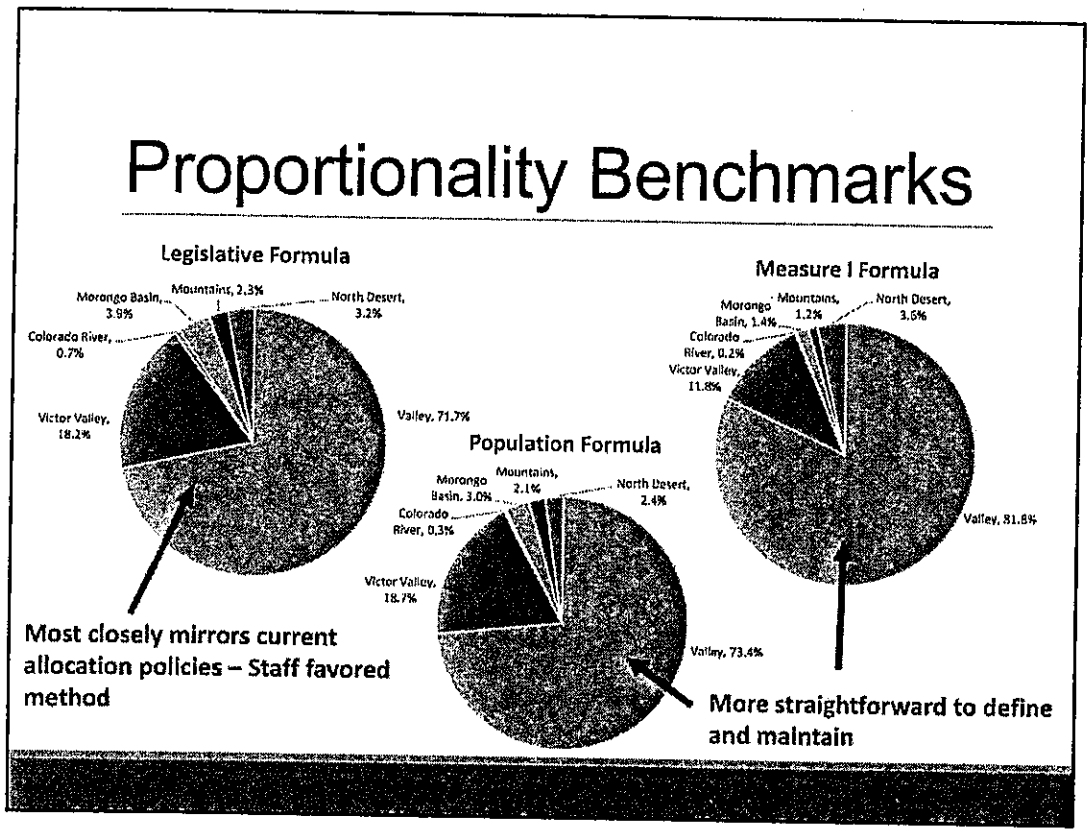
And finally, there are centerline miles and hybrid centerline miles/population formulas. Regarding these two formula methods, these actually stray quite a bit from the current Board approved policies and result in formulas that can be 10-20% different from the assumptions that are the basis for the Expenditure Plan and Strategic Plan. So where we would see the typical fund formulas resulting in about 75/25 or 80/20 valley/mtn/desert split, these could result in a split of 45/55 or 60/40 between the valley and mtn/desert subareas. This goes counter to the assumptions of funding availability in the Expenditure Plan and isn't consistent with the current allocation policies that are mostly based on a legislative distribution. These are two things on the list of actions we were hoping to avoid in this process. So staff would ask that the Board allow these to be removed from consideration in the overall measurement of equity. That does not mean the Board cannot use these methods for allocating an individual fund source, for example the hybrid method was used to distribute the SLPP funds, which incidentally the Board clearly stated that would not set precedent for future allocations, but these formulas would not be used to define equity or to establish benchmarks by which to measure proportionality over the life of the measure.



This is an example of how STP shares would be determined under the Legislative Distribution method. STP is apportioned to SANBAG in two apportionments based on relative urban and rural populations. If we were to extend that formula down to the subarea level, the urban STP funds would be split between the Valley and Victor Valley subareas based on population and the rural STP funds would be split between each of the rural mountain/desert subareas based on population. This is very similar to the way we currently manage the STP funds, except that the current policy doesn't define splits of funds between the rural subareas.



CMAQ shares would be determined in a similar way except rather than urban/rural splits it would be split based on apportionments to the South Coast/Mojave Desert Air Basins at the State Apportionment level, which is based on population and severity of air quality problems. Subarea apportionments would only factor in population since the air quality problems within air basins would not affect that split.



So to translate these words into what it would actually mean in practice, these are resulting Proportionality Benchmarks by Subarea from the first three methods on the previous slide. They don't differ much – in fact the legislative and population formulas track very closely, largely due to the fact that population plays a major role in formula distribution of funds to SANBAG. The Measure I formula, which is based on point-of-generation revenue, will favor the Valley because of the large population and the more mature retail sector; however, the Strategic Plan assumes that over the life of the Measure this may move closer to a 78/22 split as the Mountain/Desert areas grow. So it's important to point out that whatever method of proportionality benchmarking the Board selects, staff expects that these benchmarks will not be stagnant – they will continue to change over time as the county changes over time because, again, the purpose of this is to ensure proportionality and equity over the life of the Measure. It would make sense for the benchmarks to be adjusted annually as our normal funds are apportioned to us and our Measure revenue estimates and population estimates are adopted. The staff-favored option is shown as the Legislative Distribution because this most closely follows the current allocation policies adopted by the Board.

Calculating a Benchmark

Apportionments to SANBAG Over the Past 4 Years ($1,000s)

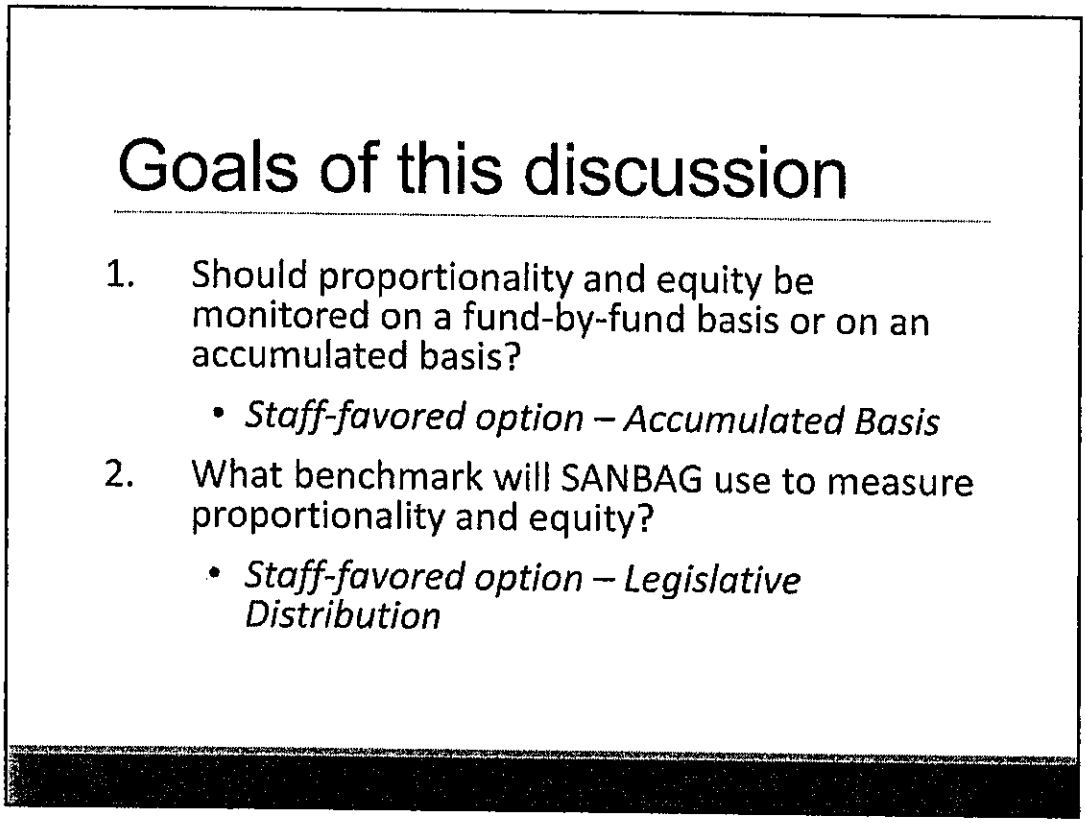
Subarea	STP		CMAQ		STIP		SLPP		Total	Benchmark
Valley	$78,624	82.41%	$85,367	73.86%	$72,872	64.63%	$35,460	63.00%	$272,322	71.70%
Victor Valley	$15,413	16.16%	$20,216	17.49%	$22,014	19.52%	$11,687	20.76%	$69,331	18.20%
Colorado River	$49	0.05%	$351	0.30%	$1,501	1.33%	$698	1.24%	$2,598	0.70%
Morongo Basin	$523	0.55%	$3,753	3.25%	$5,787	5.13%	$4,738	8.42%	$14,802	3.90%
Mountains	$377	0.40%	$2,910	2.52%	$4,011	3.56%	$1,437	2.55%	$8,735	2.30%
North Desert	$415	0.44%	$2,977	2.58%	$6,568	5.82%	$2,266	4.03%	$12,225	3.20%

This table shows how the benchmarks would be calculated if the Board did decide to monitor proportionality as a pool of State and Federal funds where shares of each fund are determined based on the legislative distribution. Each fund source has a different distribution formula, but the benchmark that would be referenced would be the resulting share of the total funds available.

Application of the data - SLPP

			Results of Allocation Options			
Subarea	(a) Actual Since 2010	(b) Benchmark	(c) SLPP by Population	(d) SLPP by Centerline Miles	(e) SLPP by 50/50 Pop/Miles	(f) SLPP by Measure I
Valley	82.3%	71.7%	81.4%	78.8%	80.1%	80.9%
Victor Valley	14.2%	18.2%	14.6%	14.9%	14.8%	15.0%
Colorado River	0.0%	0.7%	0.0%	0.4%	0.2%	0.0%
Morongo Basin	0.4%	3.9%	0.7%	1.3%	1.0%	0.6%
Mountains	0.0%	2.3%	0.2%	0.6%	0.4%	0.2%
North Desert	3.0%	3.2%	3.0%	4.0%	3.5%	3.3%

Using the SLPP allocation process as a case study, this shows how this information could be used in the future. Column (a) shows the total distribution of State and Federal funds since Measure I 2010-2040 began without SLPP factored in. Column (b) shows the Benchmarks (Proportional Shares) calculated before, and columns (c) - (f) show how the total State and Federal fund distribution would look (actuals + SLPP) if SLPP were distributed on the listed formula. Staff worked with Technical Advisory Committees and Board Committees on the distribution formula for SLPP for over four months with the final distribution method decided as the hybrid approach. Much of these discussions were centered around what was an equitable distribution for this particular fund source. However, all of these discussions were occurring without any consideration of where we were across all State and Federal funds in terms of proportional shares. Had this information been available or considered, staff would not expect that the Board would have decided to allocate SLPP based on centerline miles because it results in a total allocation closer to the benchmark. However, because we are expected to allocate funds proportionally over the life of the measure, it is important that this information be available to the Board so that they are aware of the overall impact of their decisions. Ultimately this is a transparency tool that allows the Board to make informed decisions about funding and that can guide staff in developing recommendations that are consistent with Board intentions.



The Board has asked that the TTAC and CCMTAC provide feedback on this issue. Staff would like to get concurrence from the CCMTAC on the favored options at the September CCMTAC meeting so that this can continue on for Board approval. Board action on this policy will be an important factor in the 2014 Update to the 10-Year Delivery Plan. As indicated, the staff favored methods would be to track a pooled proportionality by the legislative distribution of funds, and legislative can refer to either State or Federal methods of distribution, such as was demonstrated with the STP and CMAQ programs in the earlier slides, or it can refer to Board-approved distributions, as was discussed with regard to the SLPP funds.

Next Steps

- Develop consensus
- Discuss policy language with the Transportation Technical Advisory Committee and City/County Managers Technical Advisory Committee
- Present recommended policy language to General Policy Committee and Board for approval
- Develop a "dashboard" monitoring tool that will monitor compliance with the approved policy

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

TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 21

Date: December 4, 2013

Subject: La Mesa/Nisqualli Interchange Construction Cooperative Agreement

Recommendation:* That the Board, acting as the San Bernardino Transportation Authority:

Approve Amendment No. 2 to Construction Cooperative Agreement No. C11200 with the City of Victorville for the La Mesa/Nisqualli Interchange Project.

Background: On May 4, 2011, the San Bernardino Associated Governments (SANBAG) Board, acting as the San Bernardino County Transportation Authority, entered into Cooperative Agreement C11200 for construction of the I-15 La Mesa/Nisqualli interchange project following the City of Victorville's (City) request that SANBAG take the lead as the project manager for the project. The agreement defines the roles and responsibilities of SANBAG and the City, including funding shares for the cost of the project and the establishment of an escrow account to manage the City's contributions to the project. This agreement was amended on January 9, 2013, to revise the funding plan to reflect construction contract award savings.

Based on the SANBAG Nexus Study, SANBAG and the City have 50/50 shares of the total project cost, which is currently estimated at $43 million and the City is responsible for 100% of the SANBAG Management and Oversight costs up to $600,000. Therefore, the City is responsible for a total project share of $21,894,325. The City has deposited $10 million of this into the escrow account

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC		CTA	X	SAFE		CMA	

Check all that apply.

BRD1312d-az

http://portal.sanbag.ca.gov/mgmt/APOR-Mgmnt/Shared Documents/C11200-2.docx

required by C11200, and according to the terms of the agreement, was to maintain a minimum $3 million balance in the account. In the event the City is not able to maintain this minimum balance, the agreement authorizes SANBAG to withhold Measure I Local Streets funds to meet the construction obligations plus interest until fully repaid by the City. Additionally, the agreement specifies that the City will comply with the provisions of the Measure I ordinance by ensuring that as development occurs, development impact fees fully reimburse any other City funds that may have been used for the project.

On May 21, 2013, the City notified SANBAG that it is unable to deposit additional funds into the escrow account in accordance with the agreement. On June 20, 2013, SANBAG notified the City that allocations of Measure I Local Streets funds would be withheld effective June 2013, and be applied to the City's share of the project cost plus interest (Attachment 1). SANBAG will continue to account for the City's share of project costs in the Local Projects Funds. The Victor Valley Measure I Major Local Highway (MLH) Bond Fund will provide an advance to the Local Projects Fund for the City's share of the project cost, which is estimated at $11,894,325. The advance will be repaid from the Victorville Measure I Local Streets Fund. Staff estimates the Bond funds should be repaid by Fiscal Year 2016/2017. Because MLH allocations have been made with the conservative assumption that this might occur, this is not expected to impact any existing MLH allocations. However, this does limit the ability to make additional allocations of MLH funds until the Bond funds are fully reimbursed.

After reviewing the agreement for terms associated with the repayment of Measure I Local Streets funds by the City, staff determined that more explicit detail was required to ensure the agreement is compliant with the Measure I ordinance, specifically with regard to the requirement that Measure I not supplant the development share of project costs. Specifically, staff recommends clarification of the following language in Amendment 2:

1. Currently the agreement states that funds being deposited into escrow should be from Developer Impact Fees (DIF) and that if the City deposits City funds other than DIF funds, the City shall take a formal City action that those other City funds will be repaid with future-collected DIF funds. Staff recommends adding language to state that this also applies to funds being paid to SANBAG to repay the Measure I Local Streets loan. This is particularly important since SANBAG is using Measure I to pay the developer share.

2. The agreement does not address how the City will repay SANBAG so that the Measure I Local Streets funds can be released to the City. Staff recommends adding language that is consistent with the terms being established for the

Interchange Loan Program in the Valley subarea that states City will transfer all uncommitted DIF funds collected in the prior fiscal year until the City's share of the project cost plus interest is paid. SANBAG will release an equivalent amount of Local Streets funds to the City within 30 days of receiving the DIF payment. Additionally, if the City does not collect sufficient DIF funds by the expiration of Measure I to fully repay the loan of Local Streets funds, the City will no longer be obligated to make any further DIF payments for this project, and the Local Streets funds will remain as paid toward the City's share of the project cost. This will not be in violation of the Measure I ordinance since development would not have occurred at a pace necessary to contribute a full share to the project cost.

Financial Impact: This amendment is consistent with the adopted SANBAG Fiscal Year 2013/2014 Budget. However, this amendment does limit the ability to make future allocations from the Measure I MLH Bond Fund until the Bond Fund is reimbursed for the advance.

Reviewed By: This item was reviewed and unanimously recommended for approval by the Mountain/Desert Policy Committee on November 15, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item and the amendment.

Responsible Staff: Andrea Zureick, Director of Fund Administration and Programming

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CONTRACT SUMMARY SHEET

Contract No. C 11200 Amendment No. 02

By and Between

San Bernardino Associated Governments and City of Victorville

Contract Description Construction Cooperative Agreement

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

Overview of BOD Action: Approve amendment to Construction Cooperative Agreement amount to clarify terms of repayment of DIF to SANBAG.

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

CONTRACT OVERVIEW

Original Contract Amount	$	29,532,250.00	**Original Contingency Amount**	$	0
Revised Contract Amount *Inclusive of prior amendments*	$	21,894,324.00	**Revised Contingency Amount** *Inclusive of prior amendments*	$	0
Current Amendment Amount	$		**Contingency Amendment**	$	0
TOTAL CONTRACT VALUE	$	21,894,324.00	**TOTAL CONTINGENCY VALUE**	$	0
TOTAL BUDGET AUTHORITY *(contract value + contingency)*				$	21,894,324.00

Contract Start Date	**Current Contract Expiration Date**	**Revised Contract Expiration Date**
5/04/2011	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. 0888.
☐ A Budget Amendment is required.

How are we funding current FY? City of Victorville and SANBAG Bond Fund and Corridor Mobility Improvement Account.

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

Provide Brief Overview of the Overall Funding for the duration of the Contract:
City of Victorville shares 50.0% and SANBAG shares 50.0%.

☐ Payable ☒ Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

☐ Retention? If yes, indicate % _____.

☐ Disadvantaged Business Enterprise (DBE) Goal _____ %

Mike Barnum Project Manager (Mike Barnum)	MB Signature	10/21/13 Date
Garry Cohoe Task Manager (Garry Cohoe)	Signature	10.21.13 Date
Andrea Zureick Dir. of Fund Admin. & Programming (Print Name)	Signature	10/21/13 Date
Jeffery Hill Contract Administrator (Print Name)	Signature	10/22/13 Date
Ty Schuiling Chief Financial Officer (Print Name)	Signature	10/20/13 Date

C11200

AMENDMENT NO. 2 TO

COOPERATIVE AGREEMENT NO. C11200

BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF VICTORVILLE

FOR

INTERCHANGE CONSTRUCTION AT LA MESA/NISQUALLI ROAD IN THE CITY OF VICTORVILLE

THIS AMENDMENT NO. 2 TO THE COOPERATIVE AGREEMENT NO. C11200 (AMENDMENT NO. 2) is between the San Bernardino County Transportation Authority ("AUTHORITY" or "SANBAG") and the City of Victorville ("CITY"). AUTHORITY and CITY are each a "Party" and collectively "PARTIES".

RECITALS

A. WHEREAS, the Parties entered into COOPERATIVE AGREEMENT NO. C11200 (AGREEMENT) on the 4th day of May, 2011, to construct a new interchange on Interstate 15 at LaMesa/Nisqualli Road, in the City of Victorville ("PROJECT"); and

B. WHEREAS, the Parties entered into AMENDMENT NO. 1 to the AGREEMENT (AMENDMENT NO. 1) to revise the Funding Plan for PROJECT; and

C. WHEREAS, in AMENDMENT NO. 1 the PROJECT CONSTRUCTION WORK costs were estimated at $43,152,349; and

D. WHEREAS, in accordance with the Strategic Plan, the CITY is to be responsible for 100% of the SANBAG Management and Oversight costs in an amount not to exceed $600,000 and a 50% share of the total eligible PROJECT CONSTRUCTION WORK expenses incurred in an amount not to exceed

$21,894,325.00, as shown as Construction Management and Construction Capital in Attachment A of the AGREEMENT; and

E. WHEREAS, an Escrow Account as required by the AGREEMENT was opened with an initial deposit by CITY of $10,000,000; and

F. WHEREAS, CITY has notified AUTHORITY on May 21, 2013, that it is unable to deposit additional funds into the Escrow Account in accordance with AGREEMENT; and

G. WHEREAS, according to the terms of Paragraph 7 of Section III of the AGREEMENT, in the event of CITY's inability or failure to deposit additional funds into the Escrow Account, AUTHORITY is authorized to withhold from CITY the disbursement of any current or future allocation(s) of Measure I Local Streets funds and to apply such current or future allocation(s) to the CITY's 50% share of the cost of the PROJECT CONSTRUCTION WORK plus interest until such time as (a) CITY can contribute additional funds to the Escrow Account or (b) all of CITY's share of the costs of PROJECT CONSTRUCTION WORK plus interest have been paid to AUTHORITY; and

H. NOW, THEREFORE, the Parties agree to amend the AGREEMENT to specify the terms of repayment to AUTHORITY and subsequent release of withheld Measure I Local Streets funds to CITY.

AGREEMENT

In consideration of the mutual promises herein and the above Recitals that are incorporated into this AMENDMENT NO. 2, the Parties agree as follows:

1. The AGREEMENT is amended in the following particulars:

a. Paragraph 1 of Section II (CITY RESPONSIBILITIES) is deleted and replaced with the following:

"In accordance with the Strategic Plan, to be responsible for 100% of the SANBAG Management and Oversight costs in an amount not to exceed $600,000 and a 50% share of the total eligible PROJECT CONSTRUCTION WORK expenses incurred in an amount not to exceed $21,894,325.00 as shown as Construction Management and Construction Capital in Attachment A. **Also in accordance with the Strategic Plan, to fund its share of eligible PROJECT CONSTRUCTION WORK expenses from CITY's Road Service Development Impact Fees (DIF) account, except as provided herein."**

b. Paragraph 3 of Section II (CITY RESPONSIBILITIES) is deleted and replaced with the following:

"To continue to collect DIF funds for the purposes of meeting CITY's share of the PROJECT in the remaining amount of $11,894,325. In the event that CITY determines, in its discretion, that it must use other CITY funds ("Other CITY Funds") to meet its obligations hereunder, then CITY shall (i) notify AUTHORITY that funds being deposited into the joint escrow account **in accordance with Paragraph 2 Section II or being paid to AUTHORITY in accordance with Paragraph 7 Section III** are not DIF funds and (ii) ensure that DIF funds are collected and used to repay those Other CITY Funds so applied to the PROJECT. In order to comply with the intention of Measure I, CITY's obligation to repay Other CITY Funds with future-collected DIF funds shall be documented in the form of a formal CITY action and evidence of that action shall be provided to AUTHORITY upon the deposit of Other CITY Funds into the Joint Escrow Account **or upon payment to AUTHORITY**."

c. Paragraph 7 of Section III (IT IS MUTUALLY AGREED) is deleted and replaced with the following:

"In the event of CITY's inability or failure to deposit additional funds into the Escrow Account, AUTHORITY is hereby authorized to withhold from CITY the disbursement of any current or future allocation(s) of Measure I Local Streets funds and to apply such current or future allocation(s) to the CITY's 50% share of the cost of the PROJECT CONSTRUCTION WORK plus interest until such time as (a) CITY can contributue additional funds to the Escrow Account or (b) all of CITY's share of the costs of PROJECT CONSTRUCTION WORK plus interest have been paid to AUTHORITY. The amount of Measure I Local Streets funds withheld from disbursement to CITY and applied to pay CITY's 50% share of the cost of the PROJECT CONSTRUCTION WORK plus interest shall be a "Local Streets Loan". Interest will be calculated annually on any unpaid balance at the same rate as yielded by investments in the State of California Local Agency Investment Fund."

"Not later than July 31 of each year in which a Local Streets Loan remains unpaid, CITY shall transfer to AUTHORITY all uncommitted DIF collected by CITY in the prior Fiscal Year up to the amount of the unpaid Local Streets Loan. Within thirty (30) calendar days after AUTHORITY's receipt of a DIF payment from CITY, AUTHORITY shall release to CITY Measure I Local Streets funds in an amount equal to CITY's payment, less accumulated interest. If the Local Streets Loan is not paid in full as of the expiration date of Measure I due to insufficient uncommitted DIF collected by CITY, CITY's obligations to make any further DIF payments to AUTHORITY shall cease and this AGREEMENT shall terminate."

c. Paragraph 12 of Section III (IT IS MUTUALLY AGREED) is deleted and replaced with the following:

"This Agreement shall continue in full force and effect through December 31, 2018. In the event that the conditions in Section III, paragraph 7 are not fulfilled as of December 31, 2018, then AUTHORITY shall continue to withhold from CITY the disbursement of any current or future allocation(s) of Measure I Local Street funds and to apply such current or future allocation(s) as provided in Section III, paragraph 7, the force and effect of which shall survive the termination date of December 31, 2018, or any other termination of this Agreement, until CITY's obligation to AUTHORITY is satisfied."

2. All other terms and conditions of COOPERATIVE AGREEMENT NO. C11200, as previously amended, shall remain in full force and effect.

3. The COOPERATIVE AGREEMENT NO. C11200 and the AMENDMENT NO. 1 are incorporated into and made a part of this AMENDMENT NO. 2.

4. This AMENDMENT NO. 2 is effective on the date executed by AUTHORITY.

----------SIGNATURES ON FOLLOWING PAGE----------

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 2 below.

PARTIES declare that:

1. Each Party is an authorized legal entity under California state law.
2. Each Party has the authority to enter into this Amendment No. 2.
3. The people signing this Amendment No. 2 have the authority to do so on behalf of their public agencies.

San Bernardino County Transportation Authority

By: _____
W. E. Jahn, Chair
SANBAG Board of Directors

Date: _____

APPROVED AS TO FORM:

By: _____
Eileen Monaghan Teichert
AUTHORITY General Counsel

Date: _____

CONCURRENCE:

By: _____
Jeffery Hill
Contract Administrator

City of Victorville

By: _____
James L. Cox, Mayor
City of Victorville

Date: _____

APPROVED AS TO FORM:

By: _____
Andre de Bortnowksy
City Attorney

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: 22

Date: December 4, 2013

Subject: Measure I Valley Freeway Interchange Program Term Loan Agreement with the City of Colton for the Interstate 10 (I-10) Pepper Interchange Improvement Project

Recommendation:* That the Board, acting in its capacity as the San Bernardino County Transportation Authority, at a regularly scheduled Board meeting:

1. Approve Contract No. C14060, a term loan agreement in an amount not to exceed $164,267, with the City of Colton for the I-10 Pepper Interchange Project.

2. Waive the five-year contract term limitation set forth in Policy 11000.

3. Approve use of Term Loan Agreement Form Dated December 4, 2013, for Measure I Local Streets Funds loans made pursuant to Measure I Strategic Plan Policy 40005/VFI-23.1.

Background: On February 6, 2013, the City of Colton, County of San Bernardino and SANBAG entered into Contract No. C13040 defining the roles and responsibilities of the parties for all phases of the I-10 Pepper Interchange Project. In summary, under Agreement C13040, SANBAG agreed to be the lead agency for the PA&ED, Right-of-Way (ROW), PS&E, and Construction phases of the Project, and to contribute towards the overall Project cost an amount not to exceed $369,600 using Measure I funds. The City of Colton agrees to contribute towards the overall Project cost an amount not to exceed

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC		CTA	X	SAFE		CMA	

Check all that apply.

BRD1312a-cs
http://portal.sanbag.ca.gov/mgmt/committee/directors/brd2013/brd1312/AgendaItems/BRD1312a1-cs.docx
http://portal.sanbag.ca.gov/mgmt/committee/directors/brd2013/brd1312/AgendaItems/BRD1312a2-cs.dotx

$246,400. The County of San Bernardino consents to the use of the SAFETEA-LU DEMO funds that have already been authorized for the Project. Additionally, the City of Colton staff indicated that the City was anticipating requesting a loan for two-thirds of their share from their Measure I Local Streets Program revenue in accordance with the revised Measure I Strategic Plan Policy 40005/VFI-23.1, Section H - Development Mitigation Fair Share Loans and Loan Repayment. Although the loan was subject to future Board approval, the City indicated that it was willing to proceed with approval of Contract No. C13040.

Staff is now requesting approval of Contract No. C14060, a term loan agreement made in accordance with Policy 40005/VFI-23.1 in an amount not to exceed $164,267, which is two-thirds of the City's estimated financial responsibility for the I-10 Pepper Interchange Project. Details on how the loan will be handled are included in the financial impact section below. Repayment of the loan will be from Developer Impact Fees (DIF) after the City has fulfilled its obligation to other projects to which it has committed DIF, as identified in Exhibit "B" of Contract No. C14060 which include: La Cadena Drive Bridge Replacement, Mount Vernon Avenue over Union Pacific Railroad Bridge Widening, Washington Street Extension and Reche Canyon Road Widening Bi-County Project.

A considerable amount of time and effort has been expended in developing this Term Loan Agreement to assure it is fair and reasonable to both parties, and consistent with Policy 40005/VFI-23.1, Measure I and Measure I Strategic Plan Policies. Staff recommends the Board approve the use of the Term Loan Agreement Template for future Local Streets Funds loans made under Policy 40005/VFI-23.1. This will assure that all of SANBAG's member jurisdictions seeking such loans are treated fairly and equally and will eliminate the need to negotiate the general terms of the Term Loan Agreement with each loan applicant.

Financial Impact: As project costs are incurred, SANBAG will send an invoice to the City identifying two-thirds of the City's cost incurred to date and concurrently deduct an amount equal to the invoiced amount from the City's Local Street Program Pass-Through Funds which will then be applied to the project cost under Task 0896. On an annual basis, the City shall transfer to SANBAG all Uncommitted Development Impact Fees collected in the prior Fiscal Year until the Loan Amount is paid in full.

Reviewed By: This item was reviewed and recommended for approval (16-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on November 14, 2013. SANBAG General Counsel and Contract Administrator have reviewed this item, the Term Loan Agreement and the Template.

Responsible Staff: Andrea Zureick, Director of Fund Adminstration and Programming

BRD1312a-cs

MEASURE I VALLEY FREEWAY INTERCHANGE PROGRAM

TERM LOAN AGREEMENT

(Policy 40005 VFI 23-1)

(CITY OF COLTON I-10 PEPPER INTERCHANGE PROJECT)

This Term Loan Agreement, nominally dated _____, 2013, is entered into on the Effective Date by and between the City of Colton, a California municipal corporation (Borrower) and the San Bernardino County Transportation Authority (Lender). Borrower and Lender may, from time to time in this Agreement, be referred to individually as a "Party" and collectively as the "Parties.

RECITALS

A. On December 5, 2012, Lender's Board of Directors established a Development Mitigation Fair Share Loans and Loan Repayment program under Valley Freeway Interchange Program Measure I Strategic Plan Policy 40005, sub-policy VFI-23.

B. On February 6, 2013, Borrower and Lender entered into Contract No. C13040 setting forth the funding and other obligations of Borrower, Lender and the County of San Bernardino for all phases of the Interstate 10 (I-10) Pepper Interchange Improvement Project in the City of Colton.

C. Under Contract No. C 13040, Borrower is obligated to fund its Local Share of estimated Project Costs (defined below) in an amount not to exceed $246,400.

D. Borrower has requested that Lender loan Borrower two-thirds of its estimated Local Share of Project Costs (under the terms of sub-policy VFI-23-1) in an amount not to exceed $164,266.67.

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt of which is acknowledged by the Parties to this Agreement, it is agreed as follows:

ARTICLE ONE--DEFINITIONS

The following terms used in this Agreement shall have the meanings set out below and these definitions shall be applicable to both the singular and plural forms of the defined terms:

Agreement means this Term Loan Agreement, nominally dated _____, 2013, entered into between Borrower and Lender, as it may be amended from time to time.

Agreement Termination Date means the last day of the tenth (10th) year subsequent to the issuance of the Notice of Completion for the Project.

Borrower means the City of Colton, a California city and municipal corporation.

Collateral means Borrower's Uncommitted Development Impact Fees and Borrower's Local Street Program Pass-Through Funds up to the Loan Amount, as more fully described in Exhibit "A". Borrower's Local Street Program Pass-Through Funds in excess of the Loan Amount are not Collateral.

Contract No. C13040 means the Contract between the City of Colton, the County of San Bernardino and the San Bernardino County Transportation Authority for the Preliminary Engineering and Environmental Document, Plans Specifications and Estimate, Right-of-Way, and Construction of the I-10 Pepper Interchange.

Cost Buy-Down for Project means Federal, State or other funds, besides Local Share and Public Share funds, which buy down the Project Costs pursuant to Valley Freeway Interchange Policy 40001 IV. I. 1, after which the Local Share and Public Share are applied.

Development Impact Fees or **DIF** means the revenues generated by Borrower's locally-adopted development financing mechanism to mitigate development's impacts on transportation by making fair share contributions for transportation facilities needed as result of development, as required by Measure I, including without limitation proceeds from a Community Facilities District or other development-based sources.

Development Mitigation Annual Report means the annual report prepared by local jurisdictions in the urbanized areas of San Bernardino County as part of the SANBAG Development Mitigation Program that provides information on what development has occurred, the amount of development mitigation revenue collected and the amount of development mitigation revenue expended on projects contained in the Nexus Study.

Draw means an advance made by Lender from Borrower's Measure I Local Street Program Pass-Through Funds in order to pay for Borrower's Local Share of Project Costs as part of the Loan Amount.

Effective Date means the date this Agreement is executed by Lender.

Lender means the San Bernardino County Transportation Authority.

Lien means any voluntary or involuntary security interest, mortgage, pledge, claim, charge, encumbrance, intra-fund borrowing commitment, covering all or any part of the Collateral.

Loan Amount means the total amount of all Draws outstanding and unpaid by Borrower, up to an amount not to exceed One Hundred Sixty-Four Thousand, Two Hundred Sixty-Six Dollars and Sixty-Seven Cents ($164,266.67).

Loan Fee means Two-Thousand Seven Hundred Fifty Dollars ($2,750) payable by Borrower to Lender for Lender's additional costs of administering the Term Loan.

Local Share means the sum of: (1) Project Costs minus Cost Buy-Down for Project, times the development contribution percentage set forth in the SANBAG Nexus Study (thirty-four percent (34%)); plus (2) one-hundred percent (100%) of SANBAG management and oversight costs for the Project. The Local Share is estimated to be $246,400.

Local Share Project Cost Deposit means one-third of the Local Share for the Project, which is Eighty-Two Thousand One Hundred Thirty-Three Dollars and Thirty-Three Cents ($82,133.33). The funding source for the Local Share Project Cost Deposit is Development Impact Fees.

Local Street Program Pass-Through Funds means the Measure I program in all subareas that provides funds through a pass-through mechanism directly to local jurisdictions for expenditure on street and road construction, repair, maintenance and other eligible local transportation priorities including local streets, major highways, state highway improvements, freeway interchanges, transit, and other improvements/programs to maximize use of transportation facilities.

Measure I means the one-half of one percent (½%) retail transactions and use tax statutorily dedicated to transportation planning, design, construction, operation and maintenance only, in San Bernardino County as authorized by the San Bernardino County voters' passage of Ordinance 89-01 in 1989 and reauthorized by the San Bernardino County voters' passage of Ordinance 04-01 in 2004.

Nexus Study means that study dated November 2, 2011, and updated every two years, which sets forth the Local Share percentages for transportation improvements based on the estimates of Project Costs and the growth data provided by local jurisdictions.

Person means a natural person or a corporation, government entity or subdivision, agency, trust, estate, partnership, cooperative or association.

Project means the Interstate 10 (I-10) Pepper Interchange Improvement Project in the City of Colton, as more fully described in Contract No. C13040.

Project Costs means the total cost of the Project, which are estimated to be $7,655,000.

Project Phase means the Preliminary Engineering and Environmental Document and Plans, Specifications and Estimate work for the Project.

Public Share means the share of Project Costs assigned as SANBAG's contribution calculated as the Project Costs minus the Cost Buy-Down Funds and minus the Local Share for the Project.

SANBAG means the San Bernardino Associated Governments, acting in its capacity as the San Bernardino County Transportation Authority.

Term Loan means Lender's lending of money to Borrower under the terms of this Agreement from the defined source of funds and for the defined purposes as more specifically described in Article Two.

Uncommitted Development Impact Fees means those Development Impact Fees received by or to be received by Borrower during the term of this Agreement that, as of the Effective Date, Borrower has not previously committed to expend on the transportation projects listed in Exhibit "B".

Valley Freeway Interchange Policy means the Valley Freeway Interchange (VFI) Program Measure I 2010-2040 Strategic Plan set forth in Policy 40005 adopted by the SANBAG Board April 1, 2009, as revised December 5, 2012.

ARTICLE TWO—TERM LOAN

2.1 Term Loan. On the terms and conditions set forth herein, Lender hereby agrees to lend the Loan Amount to Borrower for the purpose of assisting Borrower in satisfying its obligation to pay its Local Share of Project Costs. On or before the Agreement Termination Date (unless extended in accordance with Subarticle 3.7), Borrower promises to pay Lender the principal sum of the Loan Amount. .

2.2 Term Loan Draws. As the Project moves forward, SANBAG shall send an invoice to Borrower, not more frequently than monthly, invoicing Borrower for two-thirds of Borrower's Local Share of Project Costs incurred to date. Concurrently Lender shall make a Draw in an amount equal to the invoiced amount. Each Draw shall become principal on the Loan Amount, and the next monthly Local Street Program Pass-Through Funds payable to Borrower shall be reduced by the amount of the Draw. The total of all Draws shall not exceed the Loan Amount.

2.3 Source of Loan Draws. The sole source of any Draws shall be Borrower's monthly Local Street Program Pass-Through Funds. Lender has no obligation to and shall not make Draws from any other source of funds.

2.4 Use of Proceeds. Measure I strictly limits the recipients of, the projects eligible for, and the uses of Measure I proceeds, including Local Street Program Pass-Through Funds. Borrower understands and agrees that Draws shall be credited toward Borrower's account with SANBAG for payment of Borrower's Local Share, and Draws shall not be paid directly to Borrower, Borrower's creditors, assigns, or any Person, and shall not be used for any purpose unauthorized by Measure I.

ARTICLE THREE—GENERAL CREDIT PROVISIONS

3.1 Conditions Precedent. As conditions precedent to Lender making the Term Loan to Borrower, Borrower shall:

3.1.1 Pay Lender the Loan Fee upon Borrower's execution of this Agreement; and

3.1.2 Not later than thirty (30) calendar days after SANBAG invoices Borrower for the Local Share Project Cost Deposit, Borrower shall pay SANBAG the Local Share Project Cost Deposit of $82,133.33, from Uncommitted Development Impact Fees or other lawful, non-Measure I sources of funds.

3.1.3 Deliver to Lender a certified copy of a Resolution of Borrower's legislative body: authorizing execution of this Agreement by Borrower's duly authorized representative; and approving this Agreement.

3.2 Records of Draws. Draws shall be evidenced by entries in Project accounting records maintained by Lender.

3.3 Collateral. Borrower shall grant Lender a first priority Lien in the Collateral, as more fully described in Exhibit "A". Borrower shall execute all such documents as Lender deems useful or necessary from time to time to perfect and maintain its Lien in the Collateral.

3.4 Repayment of Loan Amount.

3.4.1 Borrower shall repay the Loan Amount to Lender by the following means: Not later than July 31 of each year after the first Draw has been made by Lender, Borrower shall transfer to Lender all Uncommitted Development Impact Fees collected by Borrower in the prior Fiscal Year until the Loan Amount is paid in full.

3.4.2 Borrower shall commence repayment of the Loan Amount on the earlier of the date Borrower receives Uncommitted Development Impact Fees or the date SANBAG issues a Notice of Completion of the Project.

3.4.3 All payments of the Loan Amount received by Lender shall be entered in SANBAG's records as a reduction of the Loan Amount.

3.5 Release of Local Streets Pass-through. Within thirty (30) calendar days after Lender's receipt of a Term Loan payment from Borrower, Lender shall release to Borrower Local Street Program Pass-Through Funds that have been withheld as a Draw under Subarticle 2.2, in an amount equal to Borrower's Term Loan payment.

3.6 Loan Due Date. The remaining balance of the Loan Amount shall be due and payable upon the Agreement Termination Date.

3.7 Loan Extension. If the Loan Amount is unpaid ninety (90) calendar days prior to the Agreement Termination Date and Borrower is not in breach of this Agreement, Borrower and Lender shall negotiate in good faith an extension of the term of this Agreement necessary to enable Borrower to repay the Loan Amount from Uncommitted Development Impact Fees.

3.8 Expiration of Measure I. If the Loan Amount is not paid in full as of the expiration date of Measure I due to insufficient Uncommitted Development Impact Fees collected by Borrower, Borrower's obligations to make any further Term Loan payments shall cease, this Agreement shall terminate, and Lender shall release its security interest in the Collateral.

ARTICLE FOUR—REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants that as of the Effective Date and the dates of each of the Draws:

4.1 Authorization, Validity and Enforceability. The execution, delivery and performance of this Agreement are within Borrower's powers, have been duly authorized, and are not in conflict with Borrower's charter (if applicable), and this Agreement constitutes a valid and binding obligation of Borrower, enforceable in accordance with its terms.

4.2 Compliance with Applicable Laws. Borrower has complied with its charter (if applicable), all laws, ordinances, and other governmental regulations now or later in force and effect in entering into this Agreement.

4.3 No Conflict. The execution, delivery, and performance by Borrower of the terms of this Agreement are not in conflict with any law, rule, regulation, order or directive, or any indenture, agreement, or undertaking to which Borrower is a party or by which Borrower may be bound or affected.

4.4 No Litigation, Claims or Proceedings. There is no litigation, claim, proceeding or dispute pending, or to the knowledge of Borrower, threatened against or affecting the Collateral or Borrower's ability to enter into this Agreement, except as disclosed in writing to Lender prior to the Effective Date.

4.5 Correctness of Financial Statements. Borrower's Comprehensive Annual Financial Report for Fiscal Year 2011/2012 which has been delivered to Lender fairly and accurately reflects Borrower's financial condition as of June 30, 2012, and since that date, there has been no material adverse change in Borrower's financial condition.

4.6 DIF Committed Projects list. Borrower represents and warrants to Lender that the DIF Committed Projects, attached to this Agreement as Exhibit "B", is a true, correct and complete listing of the projects for which Borrower has previously committed to expend Development Impact Fees, and of the DIF amounts committed to those projects as of the Effective Date of this Agreement.

4.7 Reaffirmation of Representations. Each Draw accepted by Borrower shall be deemed a confirmation by Borrower that all representations and warranties contained herein or otherwise made by Borrower to Lender are then accurate in all material respects as though made on the date of such Draw.

4.8 Continuing disclosure. The Borrower shall notify the Lender of potential bankruptcies, changes in general fund balances or revenues greater than 20% from the prior year, operational changes that impact the Borrower's budget by greater than 20% and any new debt issuances.

4.9 Title to Collateral. Except as disclosed to Lender pursuant to this Agreement, Borrower has good and clear title to the Collateral, and the Collateral is not subject to any Liens.

ARTICLE FIVE—AFFIRMATIVE COVENANTS

During the term of this Agreement and until its performance of all obligations to Lender, Borrower promises and will:

5.1 Notice to Lender. Promptly give notice to Lender of:

5.1.1 Any litigation or threatened litigation or administrative or regulatory proceeding arising out of or related to this Agreement;

5.1.2 Any Event of Default; and

5.1.3 Receipt of Uncommitted Development Impact Fees, including the sources and amounts of the Uncommitted Development Impact Fees received.

5.2 Borrower grants Lender a first position security interest in the Collateral. Borrower shall execute all such documents as Lender deems useful or necessary from time to time to perfect and maintain its first position security interest in the Collateral.

5.3 Records. Maintain adequate books, papers, records, accounting records, files, reports, and all other material relating to the Project and the Development Impact Fees. Borrower shall, upon request, make all such materials available to Lender or its designee at any reasonable time during the term of the Contract and for three (3) years from the Agreement Termination Date for auditing, inspection, and copying.

5.4 Five Year Measure I CIP Disclosure. Include in its Five-Year Measure I Capital Improvement Plan the amount of this Loan, the use of the Loan funds, and Borrower's plan for repayment of the Loan.

5.4 General Credit Provisions. Comply with and perform all of Borrower's payment and other obligations under Article Two -Term Loan, and Article Three - General Credit Provisions.

5.5 Compliance with Laws. Comply with all laws, rules, regulations, orders or directives of any governmental or regulatory authority and with all material agreements to which Borrower is a party, that relate to or impact Borrower's performance under this Agreement.

ARTICLE SIX—NEGATIVE COVENANTS

During the term of this Agreement and until the performance of all obligations to Lender, Borrower will not, without prior written consent of Lender:

6.1 Liens. Create, incur, assume or permit to exist any Lien, or grant any other Person or entity a pledge, in any of the Collateral, except Liens in favor of Lender pursuant to Subarticle 3.3.

6.2 Transfer of Collateral. Borrower covenants not to directly or indirectly assign, transfer, pledge, convey, hypothecate or encumber the Collateral 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 Agreement.

6.3 Non-Assignment of Agreement. Borrower shall not assign this Agreement 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 Agreement. Subject to the foregoing, the provisions of this Agreement shall extend to the benefit of and be binding upon the successors and assigns of the Parties.

ARTICLE SEVEN—EVENTS OF DEFAULT

7.1 Event of Default.

An event of default is any breach or default of any covenant, representation or warranty of this Agreement which can be cured by the payment of money and which either Party does not cure within a fifteen (15) calendar day period commencing on the date when such amount was due and payable ("Monetary Event of Default"); or any other breach or default ("Non-Monetary Event of Default") by either Party of any covenant, representation or warranty of this Agreement which is not a Monetary Event of Default or which is not defined in this section and which the defaulting Party does not cure within a thirty (30) calendar day period commencing on the date of the occurrence of the breach or default (the "Applicable Cure Period"), or in the event such Event of Default cannot reasonably be cured within such time, which the defaulting Party does not commence to cure within the Applicable Cure Period and thereafter diligently and continuously proceed with such cure to

completion and complete the same within a period determined to be reasonable by the non-defaulting Party.

7.2 Remedies. Upon the occurrence of any uncured Event of Default, the following shall apply:

7.2.1 At Lender's sole discretion, Lender may take any or all of the following actions:

7.2.1.1 cease making further Draws;

7.2.1.2 withhold Local Street Program Pass-Through Funds equivalent to the Loan Amount outstanding at the time of Default;

7.2.1.3 terminate this Agreement, without further notice to Borrower;

7.2.1.4 pursue proceedings at law or equity to recover the Collateral or to otherwise enforce the terms of this Agreement against Borrower;

7.2.1.5 disqualify Borrower from further participation in SANBAG's Development Mitigation Fair Share Loans and Loan Repayment program under Valley Freeway Interchange Program Measure I Strategic Plan Policy 40005, sub-policy VFI-23.1;

7.2.1.6 exercise any and all rights and remedies available at law or equity.

7.2.2 At Borrower's sole discretion, Borrower may take any or all of the following actions:

7.2.2.1 terminate this Agreement, without further notice to Lender;

7.2.2.2 pursue proceedings at law or equity to enforce the terms of this Agreement against Lender.

7.2.3 In the event of any litigation, whether in a court of law, administrative hearing, arbitration, or otherwise, arising from or related to this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party all reasonable costs incurred, including staff time, court costs, attorneys' fees and all other related expenses in such litigation.

ARTICLE EIGHT—GENERAL PROVISIONS

8.1 Notices. Any notice given by any Party to this Agreement shall be in writing and personally deliver, deposited in the United States mail, postage prepaid, or sent by facsimile transmission, and addressed as follows:

To: Borrower
City of Colton
Attention: City Manager
650 N. La Cadena Drive
Colton, CA 92324
Fax No. (909) 370-5183

To: Lender
SANBAG
Attention: Executive Director
1170 W. Third Street
San Bernardino, CA 92410
Fax No. (909) 885-4407

Each Party may change the address to which notices, requests and other communications are to be sent by giving written notice of such change to each other Party.

8.2. No Waiver. Any waiver, permit, consent or approval by a Party of any Event of Default or breach of any provision, representation, warranty or covenant of this Agreement must be in writing and shall be effective only to the extent set forth in writing. No waiver of any breach or default shall be deemed a waiver of any later breach or default of the same or any other provision of this Agreement. Any failure or delay on the part of a Party in exercising any power, right or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude any further exercise thereof.

8.4 Rights Cumulative. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any other rights or remedies available under this Agreement or applicable law.

8.5 Unenforceable Provisions. Any provision of this Agreement which is prohibited or unenforceable, shall be so only as to the extent of such prohibition or unenforceability, but all the remaining provisions of the Agreement shall remain valid and enforceable.

8.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

8.7 Indemnification. Neither Lender nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by Borrower under or in connection with this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, Borrower shall fully defend, indemnify and save harmless Lender, its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by Borrower under or in connection with any work, authority or jurisdiction delegated to Borrower under this Agreement.

8.8 Reimbursement. Borrower shall reimburse Lender for all costs and expenses expended or incurred by Lender in any arbitration, judicial reference, legal action, or otherwise in connection with: (a) collecting any sum which becomes due Lender under this Agreement,

or (b) the protection, preservation or enforcement of any rights of Lender under this Agreement.

8.8 Execution in Counterparts. This Agreement may be executed in any number of counterparts which, when taken together, shall constitute but one agreement.

8.9 Further Assurances. At any time and from time to time upon the request of Lender, Borrower will execute and deliver such further documents and do such other acts as Lender may reasonably request in order to effect fully the purposes of the Agreement and provide for the payment of the Loan and preservation of Lender's security interest in the Collateral.

8.11 Headings. The headings and captions of Articles and subarticles of this Agreement are for the convenience of reference only and shall not constitute a part of the text nor alter or otherwise affect the meaning thereof.

8.12 Construction of Agreement. 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.

8.13 Exhibits. Exhibit "A"--Collateral and Exhibit "B"—DIF Committed Projects, are attached to and incorporated into this Agreement by this reference.

8.14 Entire Agreement. This Agreement is intended by the Parties as the final expression of their agreement and therefore contains the entire agreement between the Parties and supersedes all prior understandings or agreements, written or oral, concerning the subject matter hereof. All previous proposals, offers, and other communications, written or oral, relative to this Agreement, are superseded except to the extent that they have been incorporated into this Agreement.

8.15 Amendments. This Agreement may be amended only in a writing duly authorized and executed by both Borrower and Lender.

----------SIGNATURES ON FOLLOWING PAGE----------

IN WITNESS WHEREOF, Borrower and Lender have executed this Agreement below.

CITY OF COLTON

By: _____
Name: _____
Date: _____

ATTEST

_____
City Clerk

APPROVED AS TO FORM

_____
City Attorney

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

By: _____
W.E. Jahn, Chair
Date: _____

APPROVED AS TO FORM

_____
Eileen Monaghan Teichert,
General Counsel

CONCURRED

_____
Jeffery Hill, Contract Administrator

EXHIBIT "A"—COLLATERAL

COLLATERAL FOR TERM LOAN AGREEMENT NO. C14060

1. Any and all of the City of Colton's Uncommitted Development Impact Fees received by or to be received by the City of Colton, including the proceeds from and interest on such fees and accounts into which such fees are deposited. Uncommitted Development Impact Fees are the revenues generated by City of Colton's locally-adopted development financing mechanism to mitigate development's impacts on transportation by making fair share contributions for transportation facilities needed as result of development, as required by Measure I, including without limitation proceeds from a Community Facilities District or other development-based sources, but do not include such revenues generated to pay the development share for: Laurel Grade Separation Project and Reche Canyon Road Widening Bi-County Project.

2. Any and all of City of Colton's Measure I Local Streets Program Pass-Through Funds up to the amount of One Hundred Sixty-Four Thousand, Two Hundred Twenty-Six Dollars and Sixty-Seven Cents ($164,226.67). Local Streets Program Pass-Through Funds means the San Bernardino County Transportation Authority-administered Measure I program that provides funds through a pass-through mechanism directly to the City of Colton for expenditure on street and road construction, repair, maintenance and other eligible local transportation priorities including local streets, major highways, state highway improvements, freeway interchanges, transit, and other improvements/programs to maximize use of transportation facilities.

EXHIBIT "B"—DIF COMMITTED PROJECTS & DIF AMOUNTS COMMITTED

FY 2013-2014

- $129,760 - La Cadena Drive over Santa Ana River Bridge Replacement Project.
- $182,660 - Mt. Vernon Ave. over UPRR Bridge Widening Project

FY 2014-2015

- $9,030 - Widen La Cadena Dr. from Rancho Ave. to Iowa Ave. (Bridge Project).
- $44,540 - Mt. Vernon Ave. over UPRR Bridge Widening Project
- $40,770 – Washington Street Extension Project

FY 2015-2016

- $118,590 - Widen Canyon Road Widening Bi-County Project

FY 2016-2017

- $116,000 - Widen Canyon Road Widening Bi-County Project

MEASURE I VALLEY FREEWAY INTERCHANGE PROGRAM

TERM LOAN AGREEMENT

(Policy 40005 VFI 23-1)

(CITY OF Click here to enter text. PROJECT)

This Term Loan Agreement, nominally dated _____, 2013, is entered into on the Effective Date by and between the City of Click here to enter text., a California municipal corporation (Borrower) and the San Bernardino County Transportation Authority (Lender). Borrower and Lender may, from time to time in this Agreement, be referred to individually as a "Party" and collectively as the "Parties.

RECITALS

A. On December 5, 2012, Lender's Board of Directors established a Development Mitigation Fair Share Loans and Loan Repayment program under Valley Freeway Interchange Program Measure I Strategic Plan Policy 40005, sub-policy VFI-23.

B. On Click here to enter text., Borrower and Lender entered into Contract No.Click here to enter text. setting forth the funding and other obligations of Borrower, Lender and the County of San Bernardino for all phases of the Click here to enter text. Project in the City of Click here to enter text..

C. Under Contract No.,Click here to enter text. Borrower is obligated to fund its Local Share of estimated Project Costs (defined below) in an amount not to exceed $Click here to enter text..

D. Borrower has requested that Lender loan Borrower two-thirds of its estimated Local Share of Project Costs (under the terms of sub-policy VFI-23-1) in an amount not to exceed $Click here to enter text..

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt of which is acknowledged by the Parties to this Agreement, it is agreed as follows:

ARTICLE ONE--DEFINITIONS

The following terms used in this Agreement shall have the meanings set out below and these definitions shall be applicable to both the singular and plural forms of the defined terms:

Agreement means this Term Loan Agreement, nominally dated _____, 2013, entered into between Borrower and Lender, as it may be amended from time to time.

Agreement Termination Date means the last day of the tenth (10th) year subsequent to the issuance of the Notice of Completion for the Project.

Borrower means the City of Click here to enter text., a California city and municipal corporation.

Collateral means Borrower's Uncommitted Development Impact Fees and Borrower's Local Street Program Pass-Through Funds up to the Loan Amount, as more fully described in Exhibit "A". Borrower's Local Street Program Pass-Through Funds in excess of the Loan Amount are not Collateral.

Contract No. C13040 means the Contract between the City of Click here to enter text. and the San Bernardino County Transportation Authority for the Preliminary Engineering and Environmental Document, Plans Specifications and Estimate, Right-of-Way, and Construction of Click here to enter text. Project.

Cost Buy-Down for Project means Federal, State or other funds, besides Local Share and Public Share funds, which buy down the Project Costs pursuant to Valley Freeway Interchange Policy 40001 IV. I. 1, after which the Local Share and Public Share are applied.

Development Impact Fees or **DIF** means the revenues generated by Borrower's locally-adopted development financing mechanism to mitigate development's impacts on transportation by making fair share contributions for transportation facilities needed as result of development, as required by Measure I, including without limitation proceeds from a Community Facilities District or other development-based sources.

Development Mitigation Annual Report means the annual report prepared by local jurisdictions in the urbanized areas of San Bernardino County as part of the SANBAG Development Mitigation Program that provides information on what development has occurred, the amount of development mitigation revenue collected and the amount of development mitigation revenue expended on projects contained in the Nexus Study.

Draw means an advance made by Lender from Borrower's Measure I Local Street Program Pass-Through Funds in order to pay for Borrower's Local Share of Project Costs as part of the Loan Amount.

Effective Date means the date this Agreement is executed by Lender.

Lender means the San Bernardino County Transportation Authority.

Lien means any voluntary or involuntary security interest, mortgage, pledge, claim, charge, encumbrance, intra-fund borrowing commitment, covering all or any part of the Collateral.

Loan Amount means the total amount of all Draws outstanding and unpaid by Borrower, up to an amount not to exceed Click here to enter text. ($Click here to enter text.).

Loan Fee means Two-Thousand Seven Hundred Fifty Dollars ($2,750) payable by Borrower to Lender for Lender's additional costs of administering the Term Loan.

Local Share means the sum of: (1) Project Costs minus Cost Buy-Down for Project, times the development contribution percentage set forth in the SANBAG Nexus Study (Click here to enter text. (Click here to enter text.%)); plus (2) one-hundred percent (100%) of SANBAG management and oversight costs for the Project. The Local Share is estimated to be $Click here to enter text..

Local Share Project Cost Deposit means one-third of the Local Share for the Project, which is Click here to enter text. ($Click here to enter text.). The funding source for the Local Share Project Cost Deposit is Development Impact Fees.

Local Street Program Pass-Through Funds means the Measure I program in all subareas that provides funds through a pass-through mechanism directly to local jurisdictions for expenditure on street and road construction, repair, maintenance and other eligible local transportation priorities including local streets, major highways, state highway improvements, freeway interchanges, transit, and other improvements/programs to maximize use of transportation facilities.

Measure I means the one-half of one percent (½%) retail transactions and use tax statutorily dedicated to transportation planning, design, construction, operation and maintenance only, in San Bernardino County as authorized by the San Bernardino County voters' passage of Ordinance 89-01 in 1989 and reauthorized by the San Bernardino County voters' passage of Ordinance 04-01 in 2004.

Nexus Study means that study dated November 2, 2011, and updated every two years, which sets forth the Local Share percentages for transportation improvements based on the estimates of Project Costs and the growth data provided by local jurisdictions.

Person means a natural person or a corporation, government entity or subdivision, agency, trust, estate, partnership, cooperative or association.

Project means the Click here to enter text. Project in the City of Click here to enter text., as more fully described in Contract No.Click here to enter text..

Project Costs means the total cost of the Project, which are estimated to be $Click here to enter text..

Project Phase means the Preliminary Engineering and Environmental Document and Plans, Specifications and Estimate work for the Project.

Public Share means the share of Project Costs assigned as SANBAG's contribution calculated as the Project Costs minus the Cost Buy-Down Funds and minus the Local Share for the Project.

SANBAG means the San Bernardino Associated Governments, acting in its capacity as the San Bernardino County Transportation Authority.

Term Loan means Lender's lending of money to Borrower under the terms of this Agreement from the defined source of funds and for the defined purposes as more specifically described in Article Two.

Uncommitted Development Impact Fees means those Development Impact Fees received by or to be received by Borrower during the term of this Agreement that, as of the Effective Date, Borrower has not previously committed to expend on the transportation projects listed in Exhibit "B".

Valley Freeway Interchange Policy means the Valley Freeway Interchange (VFI) Program Measure I 2010-2040 Strategic Plan set forth in Policy 40005 adopted by the SANBAG Board April 1, 2009, as revised December 5, 2012.

ARTICLE TWO—TERM LOAN

2.1 Term Loan. On the terms and conditions set forth herein, Lender hereby agrees to lend the Loan Amount to Borrower for the purpose of assisting Borrower in satisfying its obligation to pay its Local Share of Project Costs. On or before the Agreement Termination Date (unless extended in accordance with Subarticle 3.7), Borrower promises to pay Lender the principal sum of the Loan Amount. .

2.2 Term Loan Draws. As the Project moves forward, SANBAG shall send an invoice to Borrower, not more frequently than monthly, invoicing Borrower for two-thirds of Borrower's Local Share of Project Costs incurred to date. Concurrently Lender shall make a Draw in an amount equal to the invoiced amount. Each Draw shall become principal on the Loan Amount, and the next monthly Local Street Program Pass-Through Funds payable to Borrower shall be reduced by the amount of the Draw. The total of all Draws shall not exceed the Loan Amount.

2.3 Source of Loan Draws. The sole source of any Draws shall be Borrower's monthly Local Street Program Pass-Through Funds. Lender has no obligation to and shall not make Draws from any other source of funds.

2.4 Use of Proceeds. Measure I strictly limits the recipients of, the projects eligible for, and the uses of Measure I proceeds, including Local Street Program Pass-Through Funds. Borrower understands and agrees that Draws shall be credited toward Borrower's account with SANBAG for payment of Borrower's Local Share, and Draws shall not be paid directly

to Borrower, Borrower's creditors, assigns, or any Person, and shall not be used for any purpose unauthorized by Measure I.

ARTICLE THREE—GENERAL CREDIT PROVISIONS

3.1 Conditions Precedent. As conditions precedent to Lender making the Term Loan to Borrower, Borrower shall:

3.1.1 Pay Lender the Loan Fee upon Borrower's execution of this Agreement; and

3.1.2 Not later than thirty (30) calendar days after SANBAG invoices Borrower for the Local Share Project Cost Deposit, Borrower shall pay SANBAG the Local Share Project Cost Deposit of $Click here to enter text., from Uncommitted Development Impact Fees or other lawful, non-Measure I sources of funds.

3.1.3 Deliver to Lender a certified copy of a Resolution of Borrower's legislative body: authorizing execution of this Agreement by Borrower's duly authorized representative; and approving this Agreement.

3.2 Records of Draws. Draws shall be evidenced by entries in Project accounting records maintained by Lender.

3.3 Collateral. Borrower shall grant Lender a first priority Lien in the Collateral, as more fully described in Exhibit "A". Borrower shall execute all such documents as Lender deems useful or necessary from time to time to perfect and maintain its Lien in the Collateral.

3.4 Repayment of Loan Amount.

3.4.1 Borrower shall repay the Loan Amount to Lender by the following means: Not later than July 31 of each year after the first Draw has been made by Lender, Borrower shall transfer to Lender all Uncommitted Development Impact Fees collected by Borrower in the prior Fiscal Year until the Loan Amount is paid in full.

3.4.2 Borrower shall commence repayment of the Loan Amount on the earlier of the date Borrower receives Uncommitted Development Impact Fees or the date SANBAG issues a Notice of Completion of the Project.

3.4.3 All payments of the Loan Amount received by Lender shall be entered in SANBAG's records as a reduction of the Loan Amount.

3.5 Release of Local Streets Pass-through. Within thirty (30) calendar days after Lender's receipt of a Term Loan payment from Borrower, Lender shall release to Borrower Local Street Program Pass-Through Funds that have been withheld as a Draw under Subarticle 2.2, in an amount equal to Borrower's Term Loan payment.

3.6 Loan Due Date. The remaining balance of the Loan Amount shall be due and payable upon the Agreement Termination Date.

3.7 Loan Extension. If the Loan Amount is unpaid ninety (90) calendar days prior to the Agreement Termination Date and Borrower is not in breach of this Agreement, Borrower and Lender shall negotiate in good faith an extension of the term of this Agreement necessary to enable Borrower to repay the Loan Amount from Uncommitted Development Impact Fees.

3.8 Expiration of Measure I. If the Loan Amount is not paid in full as of the expiration date of Measure I due to insufficient Uncommitted Development Impact Fees collected by Borrower, Borrower's obligations to make any further Term Loan payments shall cease, this Agreement shall terminate, and Lender shall release its security interest in the Collateral.

ARTICLE FOUR—REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants that as of the Effective Date and the dates of each of the Draws:

4.1 Authorization, Validity and Enforceability. The execution, delivery and performance of this Agreement are within Borrower's powers, have been duly authorized, and are not in conflict with Borrower's charter (if applicable), and this Agreement constitutes a valid and binding obligation of Borrower, enforceable in accordance with its terms.

4.2 Compliance with Applicable Laws. Borrower has complied with its charter (if applicable), all laws, ordinances, and other governmental regulations now or later in force and effect in entering into this Agreement.

4.3 No Conflict. The execution, delivery, and performance by Borrower of the terms of this Agreement are not in conflict with any law, rule, regulation, order or directive, or any indenture, agreement, or undertaking to which Borrower is a party or by which Borrower may be bound or affected.

4.4 No Litigation, Claims or Proceedings. There is no litigation, claim, proceeding or dispute pending, or to the knowledge of Borrower, threatened against or affecting the Collateral or Borrower's ability to enter into this Agreement, except as disclosed in writing to Lender prior to the Effective Date.

4.5 Correctness of Financial Statements. Borrower's Comprehensive Annual Financial Report for Fiscal Year Click here to enter text. which has been delivered to Lender fairly and accurately reflects Borrower's financial condition as of June 30, Click here to enter text. and since that date, there has been no material adverse change in Borrower's financial condition.

4.6 DIF Committed Projects list. Borrower represents and warrants to Lender that the DIF Committed Projects, attached to this Agreement as Exhibit "B", is a true, correct and complete listing of the projects for which Borrower has previously committed to expend Development Impact Fees, and of the DIF amounts committed to those projects as of the Effective Date of this Agreement.

4.7 Reaffirmation of Representations. Each Draw accepted by Borrower shall be deemed a confirmation by Borrower that all representations and warranties contained herein or otherwise made by Borrower to Lender are then accurate in all material respects as though made on the date of such Draw.

4.8 Continuing disclosure. The Borrower shall notify the Lender of potential bankruptcies, changes in general fund balances or revenues greater than 20% from the prior year, operational changes that impact the Borrower's budget by greater than 20% and any new debt issuances.

4.9 Title to Collateral. Except as disclosed to Lender pursuant to this Agreement, Borrower has good and clear title to the Collateral, and the Collateral is not subject to any Liens.

ARTICLE FIVE—AFFIRMATIVE COVENANTS

During the term of this Agreement and until its performance of all obligations to Lender, Borrower promises and will:

5.1 Notice to Lender. Promptly give notice to Lender of:

5.1.1 Any litigation or threatened litigation or administrative or regulatory proceeding arising out of or related to this Agreement;

5.1.2 Any Event of Default; and

5.1.3 Receipt of Uncommitted Development Impact Fees, including the sources and amounts of the Uncommitted Development Impact Fees received.

5.2 Borrower grants Lender a first position security interest in the Collateral. Borrower shall execute all such documents as Lender deems useful or necessary from time to time to perfect and maintain its first position security interest in the Collateral.

5.3 Records. Maintain adequate books, papers, records, accounting records, files, reports, and all other material relating to the Project and the Development Impact Fees. Borrower shall, upon request, make all such materials available to Lender or its designee at any reasonable time during the term of the Contract and for three (3) years from the Agreement Termination Date for auditing, inspection, and copying.

5.4 Five Year Measure I CIP Disclosure. Include in its Five-Year Measure I Capital Improvement Plan the amount of this Loan, the use of the Loan funds, and Borrower's plan for repayment of the Loan.

5.4 General Credit Provisions. Comply with and perform all of Borrower's payment and other obligations under Article Two -Term Loan, and Article Three - General Credit Provisions.

5.5 Compliance with Laws. Comply with all laws, rules, regulations, orders or directives of any governmental or regulatory authority and with all material agreements to which Borrower is a party, that relate to or impact Borrower's performance under this Agreement.

ARTICLE SIX—NEGATIVE COVENANTS

During the term of this Agreement and until the performance of all obligations to Lender, Borrower will not, without prior written consent of Lender:

6.1 Liens. Create, incur, assume or permit to exist any Lien, or grant any other Person or entity a pledge, in any of the Collateral, except Liens in favor of Lender pursuant to Subarticle 3.3.

6.2 Transfer of Collateral. Borrower covenants not to directly or indirectly assign, transfer, pledge, convey, hypothecate or encumber the Collateral 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 Agreement.

6.3 Non-Assignment of Agreement. Borrower shall not assign this Agreement 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 Agreement. Subject to the foregoing, the provisions of this Agreement shall extend to the benefit of and be binding upon the successors and assigns of the Parties.

ARTICLE SEVEN—EVENTS OF DEFAULT

7.1 Event of Default.

An event of default is any breach or default of any covenant, representation or warranty of this Agreement which can be cured by the payment of money and which either Party does not cure within a fifteen (15) calendar day period commencing on the date when such amount was due and payable ("Monetary Event of Default"); or any other breach or default ("Non-Monetary Event of Default") by either Party of any covenant, representation or

warranty of this Agreement which is not a Monetary Event of Default or which is not defined in this section and which the defaulting Party does not cure within a thirty (30) calendar day period commencing on the date of the occurrence of the breach or default (the "Applicable Cure Period"), or in the event such Event of Default cannot reasonably be cured within such time, which the defaulting Party does not commence to cure within the Applicable Cure Period and thereafter diligently and continuously proceed with such cure to completion and complete the same within a period determined to be reasonable by the non-defaulting Party.

7.2 Remedies. Upon the occurrence of any uncured Event of Default, the following shall apply:

7.2.1 At Lender's sole discretion, Lender may take any or all of the following actions:

7.2.1.1 cease making further Draws;

7.2.1.2 withhold Local Street Program Pass-Through Funds equivalent to the Loan Amount outstanding at the time of Default;

7.2.1.3 terminate this Agreement, without further notice to Borrower;

7.2.1.4 pursue proceedings at law or equity to recover the Collateral or to otherwise enforce the terms of this Agreement against Borrower;

7.2.1.5 disqualify Borrower from further participation in SANBAG's Development Mitigation Fair Share Loans and Loan Repayment program under Valley Freeway Interchange Program Measure I Strategic Plan Policy 40005, sub-policy VFI-23.1;

7.2.1.6 exercise any and all rights and remedies available at law or equity.

7.2.2 At Borrower's sole discretion, Borrower may take any or all of the following actions:

7.2.2.1 terminate this Agreement, without further notice to Lender;

7.2.2.2 pursue proceedings at law or equity to enforce the terms of this Agreement against Lender.

7.2.3 In the event of any litigation, whether in a court of law, administrative hearing, arbitration, or otherwise, arising from or related to this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party all reasonable costs incurred, including staff time, court costs, attorneys' fees and all other related expenses in such litigation.

ARTICLE EIGHT—GENERAL PROVISIONS

8.1 Notices. Any notice given by any Party to this Agreement shall be in writing and personally deliver, deposited in the United States mail, postage prepaid, or sent by facsimile transmission, and addressed as follows:

To: Borrower	To: Lender
Click here to enter text.	SANBAG
Attention: City Manager	Attention: Executive Director
Click here to enter text.	1170 W. Third Street
Click here to enter text.	San Bernardino, CA 92410
Fax No.:Click here to enter text.	Fax No. (909) 885-4407

Each Party may change the address to which notices, requests and other communications are to be sent by giving written notice of such change to each other Party.

8.2. No Waiver. Any waiver, permit, consent or approval by a Party of any Event of Default or breach of any provision, representation, warranty or covenant of this Agreement must be in writing and shall be effective only to the extent set forth in writing. No waiver of any breach or default shall be deemed a waiver of any later breach or default of the same or any other provision of this Agreement. Any failure or delay on the part of a Party in exercising any power, right or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude any further exercise thereof.

8.4 Rights Cumulative. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any other rights or remedies available under this Agreement or applicable law.

8.5 Unenforceable Provisions. Any provision of this Agreement which is prohibited or unenforceable, shall be so only as to the extent of such prohibition or unenforceability, but all the remaining provisions of the Agreement shall remain valid and enforceable.

8.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

8.7 Indemnification. Neither Lender nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by Borrower under or in connection with this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, Borrower shall fully defend, indemnify and save harmless Lender, its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be

done by Borrower under or in connection with any work, authority or jurisdiction delegated to Borrower under this Agreement.

8.8 Reimbursement. Borrower shall reimburse Lender for all costs and expenses expended or incurred by Lender in any arbitration, judicial reference, legal action, or otherwise in connection with: (a) collecting any sum which becomes due Lender under this Agreement, or (b) the protection, preservation or enforcement of any rights of Lender under this Agreement.

8.8 Execution in Counterparts. This Agreement may be executed in any number of counterparts which, when taken together, shall constitute but one agreement.

8.9 Further Assurances. At any time and from time to time upon the request of Lender, Borrower will execute and deliver such further documents and do such other acts as Lender may reasonably request in order to effect fully the purposes of the Agreement and provide for the payment of the Loan and preservation of Lender's security interest in the Collateral.

8.11 Headings. The headings and captions of Articles and subarticles of this Agreement are for the convenience of reference only and shall not constitute a part of the text nor alter or otherwise affect the meaning thereof.

8.12 Construction of Agreement. 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.

8.13 Exhibits. Exhibit "A"--Collateral and Exhibit "B"—DIF Committed Projects, are attached to and incorporated into this Agreement by this reference.

8.14 Entire Agreement. This Agreement is intended by the Parties as the final expression of their agreement and therefore contains the entire agreement between the Parties and supersedes all prior understandings or agreements, written or oral, concerning the subject matter hereof. All previous proposals, offers, and other communications, written or oral, relative to this Agreement, are superseded except to the extent that they have been incorporated into this Agreement.

8.15 Amendments. This Agreement may be amended only in a writing duly authorized and executed by both Borrower and Lender.

----------SIGNATURES ON FOLLOWING PAGE----------

IN WITNESS WHEREOF, Borrower and Lender have executed this Agreement below.

CITY OF Click here to enter text.

By: _____
Name: _____
Date: _____

ATTEST

_____
City Clerk

APPROVED AS TO FORM

_____
City Attorney

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

By: _____
W.E. Jahn, Chair
Date: _____

APPROVED AS TO FORM

_____
Eileen Monaghan Teichert,
General Counsel

CONCURRED

_____
Jeffery Hill, Contract Administrator

EXHIBIT "A"—COLLATERAL

COLLATERAL FOR TERM LOAN AGREEMENT NO. C14060

1. Any and all of the City of Colton's Uncommitted Development Impact Fees received by or to be received by the City of Colton, including the proceeds from and interest on such fees and accounts into which such fees are deposited. Uncommitted Development Impact Fees are the revenues generated by City of Click here to enter text. locally-adopted development financing mechanism to mitigate development's impacts on transportation by making fair share contributions for transportation facilities needed as result of development, as required by Measure I, including without limitation proceeds from a Community Facilities District or other development-based sources, but do not include such revenues generated to pay the development share for:Click here to enter text..

2. Any and all of City of Colton's Measure I Local Streets Program Pass-Through Funds up to the amount of Click here to enter text. ($Click here to enter text.). Local Streets Program Pass-Through Funds means the San Bernardino County Transportation Authority-administered Measure I program that provides funds through a pass-through mechanism directly to the City of Click here to enter text. for expenditure on street and road construction, repair, maintenance and other eligible local transportation priorities including local streets, major highways, state highway improvements, freeway interchanges, transit, and other improvements/programs to maximize use of transportation facilities.

EXHIBIT "B"—DIF COMMITTED PROJECTS & DIF AMOUNTS COMMITTED

- Click here to enter text.
- Click here to enter text.

DISCUSSION ITEMS

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 24

Date: December 4, 2013

Subject: Red Tape to Red Carpet

Recommendation:* Receive a presentation from Paul Granillo, the President and CEO of the Inland Empire Economic Partnership, on a collaborative effort to support job creation and eliminate barriers to economic growth in the Inland Empire.

Background: In an era of declining public resources, public agencies across the region are looking to "do more with less" and develop innovative ways to improve service and create a more positive business climate in the Inland Empire. The Inland Empire Economic Partnership (IEEP) is currently planning to create a "Turning Red Tape into Red Carpet" program to recognize those agencies that are proactively working to create a better environment for private sector job growth.

IEEP plans to give awards to public agencies in the following categories: Business Retention and Expansion; Responding to Globalization; Sustainable and Green Development; and Real Estate Redevelopment and Reuse. They also plan to recognize innovative public-private partnerships and great leadership in public service. An update on this event will be given at the meeting.

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

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

Responsible Staff: Duane Baker, Director of Management Services

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG	X	CTC		CTA		SAFE		CMA	

Check all that apply.

BRD1312c-wvs

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TRANSPORTATION MEASURE I

■ San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
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Minute Action

AGENDA ITEM: 25

Date: December 4, 2013

Subject: Overview of San Bernardino Associated Governments "Doing Business With SANBAG" Vendor Event

Recommendation:* Receive and File

Background: On October 8, 2013, San Bernardino Associated Governments ("SANBAG") held its first vendor outreach event entitled, "Doing Business With SANBAG". The primary goal of this event was to promote SANBAG as a contracting agency and to provide a forum for small and disadvantaged businesses in the Inland Empire to market their businesses to SANBAG and other attendees. The event was held at the Santa Fe Depot and there were 78 people in attendance. The attendance was limited due to space constraints at the Santa Fe Depot. As a result, an additional 45 firms, who were unable to attend, were placed on a priority list in the event SANBAG hosts a future event.

The three-hour program was opened by SANBAG's Executive Director Ray Wolfe and Board President Bill Jahn, and consisted of an overview SANBAG's procurement process. A lively panel discussion followed that featured business executives from SANBAG consulting firms who shared their stories of growth and success. Additionally, there was a presentation on the Disadvantaged Business Enterprise program followed by a networking session which afforded the opportunity for attendees to network with other attendees as well as SANBAG staff.

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG	x	CTC	x	CTA	x	SAFE	x	CMA	x

Check all that apply.
BRD1312a-kmp

The feedback that we have received was extremely positive and an overwhelming number of individuals have inquired about SANBAG's ability to hold future events similar in nature.

Financial Impact: This item has no fiscal impact on the SANBAG Fiscal Year 2013/2014 Budget.

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

Responsible Staff: Kathleen Murphy-Perez, Contracts Manager

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: **26**

Date: December 4, 2013

Subject: Announcement of Appointments and Vacancies to External Boards

Recommendation:* 1) Note the appointment of Council Member Frank Navarro, City of Colton, as a member of the Southern California Association of Governments (SCAG) Transportation Committee.

2) Note the following vacancies and request Board Members to express their interest in serving for the following:

- Metro Gold Line Foothill Extension Construction Authority – Alternate Member
- Metro Gold Line Phase II JPA – Alternate Member
- SCAG Energy and Environment Committee

Background: 1) **Appointment to SCAG Transportation Committee** - SANBAG Policy provides for the Board President to make certain appointments to outside committees and Boards and that those appointments be announced at the next SANBAG Board Meeting.

SANBAG President Bill Jahn has appointed Colton City Council Member Frank Navarro to the SCAG Transportation Committee.

2) **Outside Agency Vacancies** - SANBAG has a number of vacancies available with outside agencies for interested Board Members. Board Members should make their interest known to the SANBAG Board President. The vacancies are with the following:

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG	X	CTC	X	CTA		SAFE		CMA	

Check all that apply.
BRD1312c-dab

a. **Metro Gold Line Foothill Extension Construction Authority (Alternate Member)** - The passage of AB 1600 authorized the SANBAG Board President to appoint a primary and alternate member to the Metro Gold Line Foothill Extension Construction Authority. This Authority is responsible for the development of a light rail project from the City of Los Angeles into San Bernardino County.

b. **Metro Gold Line Phase II JPA (Alternate Member)** – This Authority was formed by the 13 cities along the Gold Line route, LA Metro and SANBAG. The Board of Directors makes this appointment. It is the forum for the review, development and recommendation of policies and plans for the extension of the Gold Line from Pasadena to Montclair.

c. **SCAG Energy and Environment Committee** – This committee provides policy recommendations to the SCAG Regional Council on subjects such as natural resources conservation, air quality, water quality, energy conservation, and reviews the Environmental Impact Report of the Regional Comprehensive Plan.

Financial Impact: This item is consistent with the adopted SANBAG budget.

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

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

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 27

Date: December 4, 2013

Subject: Award Construction Contract No. C13149 for Lenwood Road Grade Separation Project

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

1. Award Construction Contract No. C13149 to the lowest responsive and responsible bidder for the Lenwood Road Grade Separation Project for an amount to be determined after bids are opened on November 13, 2013.

2. Approve Allowances/Contingency for Contract No. C13149 on the Lenwood Road Grade Separation Project in the amount to be determined after bids are opened on November 13, 2013.

Background: **This item provides for award of a new construction contract. A revised agenda item will be submitted after bids are opened and Good Faith Efforts are received on November 19, 2013.** In April 2013, the Board of Directors authorized release of Invitation for Bids (IFB) No. C13149 and authorized staff to proceed directly to the Board with a recommendation for award of a construction contract for the Lenwood Road Grade Separation Project ("Project") based on the competitive low bid process. This was to allow the execution of the contract and start of construction to occur at the earliest possible date and ensure timely use of Federal and State funding and also to coordinate with the BNSF 4th quarter restrictions on construction.

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC		CTA	X	SAFE		CMA	

Check all that apply.

BRD1312a-mb

A 13.4% Disadvantaged Business Enterprise (DBE) goal has been established for this project. As such per the federal requirements, the three apparent lowest bidders are to provide within four business days after bid opening documentation to support their DBE outreach efforts and bid day commitment.

On September 27, 2013, we received federal authorization to proceed with construction phase of the project. On October 7, 2013, the IFB was issued. The engineer's construction cost estimate was $19 million. With supplemental items, agency furnished items, and contingency, the total project construction cost was estimated at $21.3 million.

Bids are due November 13, 2013. Good Faith Efforts (GFE) documentation is due November 19, 2013. Staff will review the bidder's bid and our on-call DBE compliance consultant will review the GFE information. If issues arise concerning GFE documentation, recommendations will be brought forward for the Board's consideration. Per our 3-party Construction Cooperative Agreement C11199-1 with the City of Barstow and the County of San Bernardino, if the lowest bid is above the construction phase cost of $22,300,000 (this includes Construction Management costs), the City will bear the first $499,000, then the City and County will share equally the additional costs up to a total increase of $1,719,930. In addition, staff will be preparing an Amendment 2 to the Construction Cooperative Agreement to bring to Mountain/Desert Committee and the Board for consideration. This amendment will address the increase in construction costs, the replacement of State and Local Partnership Program (SLPP) funds with Trade Corridor Improvement Fund (TCIF) funds, and a shift of right-of-way funds to construction.

It is anticipated Staff will make a recommendation for award of Contract No. C13149 and recommend approval of Allowances/Contingency for Contract No. C13149 for the Project, consisting of supplemental items, agency furnished items and contingency.

Financial Impact: Funding for the contract is provided under Task No. 0881 Lenwood Road Grade Separation Project.

Reviewed By: At the April 2013, Board meeting, approval was given to take award of Contract No. C13149 directly to the Board without prior Committee review. SANBAG General Counsel and Contract Administrator have reviewed this item.

Responsible Staff: Garry Cohoe, Director of Project Delivery

BRD1312a-mb

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: **28**

Date: December 4, 2013

Subject: Award Construction Contract No. C14002 for the San Bernardino Transit Center

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

1. Award Construction Contract No. C14002 to the lowest responsive and responsible bidder for the San Bernardino Transit Center for an amount to be determined after bids are opened on December 2, 2013.

2. Approve Allowances/Contingency for Contract No. C14002 on the San Bernardino Transit Center in the amount to be determined after bids are opened on December 2, 2013.

Background: **This item provides for award of a new construction contract based on the competitive low bid process. A revised agenda item will be submitted after bids are opened on December 2.** In partnership with Omnitrans, the San Bernardino Associated Governments (SANBAG), acting as the San Bernardino County Transportation Commission (Commission), is proposing to construct the San Bernardino Transit Center (SBTC) near the intersection of Rialto Avenue and E Street in the City of San Bernardino. The project includes development of a bus facility with twenty-two (22) bus bays, public facilities, and a public plaza. The engineer's construction estimate for the SBTC is $14,900,000.

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

BRD1312c-maa

In July 2013, the Board of Directors authorized release of Invitation for Bid No. 14002. On July 11, 2013 a contractor's workshop was held to introduce the project to the contracting community. The purpose of the workshop was to provide a high level overview of the project, introduce key members of the team and provide for networking opportunities between prime contractors and sub-contractors. Invitation for Bid (IFB) 14002 was released on October 25, 2013 and the pre-bid conference was held on November 1, 2013. At its November 2013 meeting, the SANBAG Board authorized staff to proceed directly to the Board without prior policy committee review to ensure certain funding sources were not jeopardized. A total of two addenda were released for the project and bids for the project were due on December 2, 2013.

Staff is also recommending approval of Allowances/Contingency for Contract No. C14001 for the Project, consisting of a contingency to be determined after bids are opened. Contingency and total construction cost information will be included in the revised agenda item.

At its November 2013 meeting, the Board of Directors authorized staff to proceed directly to the Board without prior policy committee review to ensure meeting deadlines for federal grant funding for the SBTC.

Financial Impact: This item is consistent with the SANBAG Fiscal Year 2013/2014 budget. The funding for the construction contract is provided under Task No. 0311 – Transit Capital - Proposition 1B Transit Security Grant, FTA 5307 - Urbanized Area Formula Grants, FTA 5309 – Bus and Bus Facilities, Proposition 1B – PTMISEA, State Transit Assistance Funds, Measure I, Transportation Enhancement Funds and Local Transportation Funds.

Reviewed By: This item has not received prior policy committee or technical advisory committee review. SANBAG General Counsel and Contract Administrator have reviewed this item.

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

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: **29**

Date: December 4, 2013

Subject: Award Contract No. C14072 for the Demolition, Abatement and Removal of Commercial and Residential Structures

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

1. Award Contract No. C14072 to the lowest responsive and responsible bidder for an amount to be determined after bids are opened on November 20, 2013, for the demolition, abatement and removal of commercial and residential structures located in the City of San Bernardino.

2. Approve Allowances/Contingency for Contract No. C14072 for a not-to-exceed amount to be determined after bids are opened and authorize the Executive Director, or his designee to release contingency as necessary for completion of the project.

Background: **This item provides award of a new construction contract based on the competitive low bid process. A revised agenda item will be submitted after bids are opened on November 20, 2013.** On October 24, 2013, Invitation for Bid (IFB) No. 14072 was released seeking bids on the demolition, abatement and removal of commercial and residential structures located in the City of San Bernardino, in preparation for the construction of the Downtown San Bernardino Passenger Rail Project (DSBPRP). The properties to be demolished include four

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

BRD1312e-maa

residential structures at 203, 221, 229 and 261 N. K Street; a commercial structure located at 111 S. I Street; two commercial structures located at 170 and 174 S. E Street; a storage shed located at 958 Rialto Ave. and duplex located at 961 W. 2nd Street. On October 31, 2013, a Pre-Bid conference was held for potential bidders. Bidder and Bid information will be submitted with the revised agenda item.

Staff is also recommending approval of Allowances/Contingency for Contract No. C14001 for the Project, consisting of a contingency to be determined after bids are opened. Contingency and total construction cost information will be included in the revised agenda item.

At its November 2013 meeting, the Board of Directors authorized staff to proceed directly to the Board without prior policy committee review to ensure the buildings were demolished prior to the commencement of the Downtown San Bernardino Passenger Rail Project construction activities.

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 has not received prior committee or technical advisory committee review. SANBAG General Counsel and Contract Administrator will review and approve the contract prior to contract execution.

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

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: **30**

Date: December 4, 2013

Subject: Award Contract No. C14001 for the Construction of the Downtown San Bernardino Passenger Rail Project

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

1. Award Construction Contract No. C14001 to the lowest responsive and responsible bidder for the Downtown San Bernardino Passenger Rail Project for an amount to be determined after bids are opened on November 26, 2013.

2. Approve Allowances/Contingency for Contract No. C14001 on the Downtown San Bernardino Passenger Rail Project in the amount to be determined after bids are opened on November 26, 2013.

Background: **This item provides for award of a new construction contract based on the competitive low bid process. A revised agenda item will be submitted after bids are opened on November 26.** The San Bernardino Associated Governments (SANBAG), acting as the San Bernardino County Transportation Commission, is proposing to extend Metrolink commuter passenger rail service. The extension is approximately one mile east from its current terminus at the existing Santa Fe Depot to new Metrolink commuter rail platforms at the proposed San Bernardino Transit Center (SBTC), near the intersection of Rialto

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

BRD1312f-maa

Avenue and E Street in the City of San Bernardino. Included within the Downtown San Bernardino Passenger Rail Project (DSBPRP) are new rail platforms at the SBTC and Depot, a pedestrian overpass, construction of a second track parallel to the existing track, grade crossing improvements, roadway closures, and drainage improvements. The engineer's estimate for the project is $57,800,000.

In July 2013, the Board of Directors authorized release of Invitation for Bid No. 14001. On July 11, 2013 a contractor's workshop was held to introduce the project to the contracting community. The purpose of the workshop was to provide a high level overview of the project, introduce key members of the team and provide for networking opportunities between prime contractors and sub-contractors. Invitation for Bid (IFB) 14001 was released on September 20, 2013 and the pre-bid conference was held on October 1, 2013. A total of seven addenda were issued for the contract answering over 200 questions related to various aspects of the project. Bids for the project were due on November 26, 2013 and a total of ___ bids were received.

Staff is also recommending approval of Allowances/Contingency for Contract No. C14001 for the Project, consisting of a contingency to be determined after bids are opened. Contingency and total construction cost information will be included in the revised agenda item.

At its November 2013 meeting, the SANBAG Board authorized staff to proceed directly to the Board with a recommendation to award the DSBPRP contract, without prior policy committee review to ensure certain funding sources were not jeopardized due to requirements that the contract be awarded in December.

Financial Impact: This item is consistent with the SANBAG Fiscal Year 2013/2014 budget. The funding for the construction contract is provided under Task No. 0379 – Commuter Rail Capital. Funding sources include: Local Transportation Fund (LTF), State Transit Assistance Fund, Measure I, Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA), Proposition 1B California Transit Security Grant Program, Congestion Mitigation and Air Quality Improvement (CMAQ), Federal Transit Administration Section 5307 and Proposition 1B State-Local Partnership Program (SLPP).

Reviewed By: This item has not received prior policy committee or technical advisory committee review. SANBAG General Counsel and Contract Administrator have reviewed this item.

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

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TRANSPORTATION MEASURE I

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

Minute Action

AGENDA ITEM: 31

Date: December 4, 2013

Subject: San Bernardino Transit Center Federal Funding Subgrantee Agreement

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

1. Approve Contract No. R14070, "San Bernardino Transit Center Federal Funding Subgrantee Agreement" between Omnitrans and the San Bernardino Associated Governments, acting in the capacity of the San Bernardino County Transportation Commission, providing for Omnitrans' contribution to reimburse SANBAG for costs of the project, in an amount not to exceed $19,769,690 (which includes $6,943,261 previously committed by Omnitrans in Contract C12117) and, providing for SANBAG to contribute an amount not exceeding $3,747,593 to the project.

2. Approve a budget amendment for Task No. 0311 Transit Capital in Transit Center Project fund in the amount of $2,590,336 for a new fund total of $13,150,482; and
3. Approve an administrative budget amendment to the Transit Center Project fund should it be required for tracking purposes. The administrative amendment will not increase the overall budget total of $13,150,482, but will solely reclassify the names of the funds within the budget.

*

Approved
Board of Directors

Date: _____

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	

Check all that apply.

BRD1312b-cd
Attachment: http://portal.sanbag.ca.gov/mgmt/workgroups/transit/majortransit/sbtransit/Shared%20Documents/R14070%20Final.docx

Background:

In 2008, Omnitrans purchased approximately five (5) acres of vacant land at the southwest corner of Rialto Avenue and E Street in downtown San Bernardino for the construction of the San Bernardino Transit Center (SBTC). The SBTC will provide a multi-modal transit center that will consolidate all bus stops currently scattered throughout downtown San Bernardino as well as provide connections to Metrolink when the Downtown San Bernardino Passenger Rail Project (DSBPRP) is constructed. Adjacent to, but not part of this Project includes a station for the planned (and now in construction) sbX Bus Rapid Transit (BRT) project.

In October 2011, SANBAG approved Contract No. C12117 for the planning, design, construction, operating, and maintenance of the San Bernardino Transit Center. Parties to the agreement included SANBAG, Omnitrans, the City of San Bernardino, and the San Bernardino Economic Development Corporation (SBEDC). The agreement was intended to provide initial funding to complete the design, engineering, environmental and right-of-way acquisition phase of the project and a subsequent agreement was envisioned to provide additional funding from both Omnitrans and SANBAG to complete the construction phase of the project.

As part of Contract No. C12117, SANBAG took the lead for the design and construction of the SBTC, providing a more efficient and cost-effective delivery method for SBTC and DSBPRP. In the agreement, the SBEDC agreed to contribute $2,000,000 in redevelopment funding along with approximately five (5) acres of land immediately to the south of the railroad tracks, estimated at a value of $1,420,000 to be used as a parking lot for serving the transit center and eventual commercial purposes in the area. However, with the subsequent dissolution of redevelopment agencies statewide by the State of California, the $2,000,000 funding commitment from SBEDC is no longer available. Included in Contract No. C12117, Omnitrans agreed to pass through $6,943,261 of federal and local funding to SANBAG for the design of the facility. Since October 2011, Omnitrans and SANBAG have secured additional funding for the SBTC in the amount of $16,574,022 with a combination of local, state and federal sources.

In February 2012, SANBAG entered into Contract No. C12077 with HDR Engineering, Inc. (HDR) for architectural and engineering services, project management, right-of-way acquisition, and environmental, as well as traffic studies, geotechnical work, hydrology work, and landscaping for the SBTC. Since then, staff from both Omnitrans and SANBAG have worked with the HDR team to develop a site plan and design for the transit center that met the goals and objectives of the Project within the available funds.

The Invitation for Bid (IFB) was released on October 2nd and bids were due December 2nd. In order for the construction contract to be awarded, a new

funding agreement is required to memorialize funding, roles and responsibilities. The total cost of the design, engineering, right-of-way, construction management, construction and contingency is estimated at $23,517,283. SANBAG's not-to-exceed contribution amount in Contract No. R14070 is $3,747,593 and the respective funding sources are outlined in the table below. In addition to $6,943,261 originally obligated by Omnitrans in Contract No. C12117, it will contribute an additional $12,826,429 under Contract No. R14070 bringing their total project contribution to $19,769,690.

The following table identifies the various funding sources and the responsible respective agency.

SANBAG Contributions – Contract No. R14070	
State Transportation Assistance Funds - Population	$1,935,593
Federal Transportation Enhancement Funds	$992,000
Local Transportation Funds	$320,000
State Proposition 1B Security	$500,000
SANBAG Total Contribution	**$3,747,593**

Omnitrans Contributions – Contract No. R14070	
Federal Transit Administration 5309 (Fiscal Year 2011 and Fiscal Year 2012)	$8,300,000
Local Transportation Fund	$966,197
State Transit Assistance Funds - Population	$153,896
State Proposition 1B PTMISEA*	$3,406,336
New Contract No. R14070	**$12,826,429**

*Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA)

Existing Contract No. C12117	$6,943,261
New Contract R14070	**$12,826,429**
Total Omnitrans Contribution	**$19,769,690**
Total SANBAG Contribution	**$3,747,593**
Combined SANBAG/Omnitrans Contribution	**$ 23,517,283**

At the July 2013 SANBAG Board of Directors meeting, the SANBAG Board authorized staff to proceed directly to the Board for consideration of this item due to the requirements of the Transportation Enhancement Funds; the construction

contract must be awarded by the end of December 2013. The overall duration of construction is expected to last approximately 12-18 months.

Since Federal Transit Administration (FTA) funds are being used on this project and since SANBAG is not yet a direct FTA grant recipient, the agreement also includes certain FTA sub-recipient responsibilities to ensure the project meets all FTA requirements for reporting, accounting and procurement.

Financial Impact: This item is not consistent with the current Fiscal Year 2013/2014 budget. This item requires budget amendments outlined in recommendation 2 .

Reviewed By: This item has not received prior policy committee or technical advisory committee review. SANBAG General Counsel and Contract Administrator have reviewed this item.

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

SANBAG Working Together

CONTRACT SUMMARY SHEET

Contract No. R 14070 Amendment No. _____

By and Between

San Bernardino Associated Government acting in its capacity as the San Bernardino County Transportation Commission and Omnitrans

Contract Description San Bernardino Transit Center Federal Funding Subgrantee Agreement

Board of Director's Meeting Date: 12/4/13

Overview of BOD Action: That the Board acting in its capacity as the San Bernardino County Transportation Commission: 1. Approve Contract No. R14070, "San Bernardino Transit Center Federal Funding Subgrantee Agreement" between Omnitrans and the San Bernardino Associated Governments, acting in the capacity of the San Bernardino County Transportation Commission, providing for Omnitrans' contribution to reimburse SANBAG for costs of the project, in an amount not to exceed $19,769,690 (which includes $6,943,261 previously committed by Omnitrans in Contract C12117) and, providing for SANBAG to contribute an amount not exceed $3,747,593 to the project. 2. Approve a budget amendment for Task No. 0311 Transit Capital in Transit Center Project fund in the amount of $2,590,336 for a new fund total of $13,150,482; and 3. Approve an administrative budget amendment to the Transit Center Project fund should it be required for tracking purposes. The administrative amendment will not increase the overall budget total of $13,150,482, but will solely reclassify the names of the funds within the budget.

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

CONTRACT OVERVIEW

Original Contract Amount	$	13,818,429	**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	$	13,818,429	**TOTAL CONTINGENCY VALUE**	$	
TOTAL BUDGET AUTHORITY *(contract value + contingency)*				$	13,818,429

(Contract No. R14070 includes $6,943,261 previously committed by Omnitrans in Contract No. C12117. The total budget authority listed above only includes additional commitments made in R14070 plus $992,000 in TE funds passed through by Omnitrans)

Contract Start Date	Current Contract Expiration Date	Revised Contract Expiration Date
12/4/13	12/31/15	

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

FINANCIAL INFORMATION

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

☒ A Budget Amendment is required.How are we funding current FY? Various Funds

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

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

☐ Payable ☒ Receivable ***(Omnitrans R14070 Contribution: $12,826,429 [excluding C12117 in the amount of $6,943,261] and including $992,000 in TE Funds)***

CONTRACT MANAGEMENT INFORMATION

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

☐ Disadvantaged Business Enterprise (DBE) Goal _____ %

Casey Dailey		11.22.13
Project Manager (Print Name)	Signature	Date
Justin Fornerey		11/22/13
Task Manager (Print Name)	Signature	Date
Andrea Zureick	Andrea Zureick	11/22/13
Dir. of Fund Admin. & Programming (Print Name)	Signature	Date
W. Stawarski c/o J. Hill		11/22/13
Contract Administrator (Print Name)	Signature	Date
W Stawarski		11/27/13
Chief Financial Officer (Print Name)	Signature	Date

SANBAG Contract No. R 14070

SAN BERNARDINO TRANSIT CENTER (SBTC)
FEDERAL FUNDING SUBGRANTEE AGREEMENT

BY AND AMONG

SAN BERNARDINO ASSOCIATED GOVERNMENTS
Acting in its capacity as the San Bernardino County Transportation Commission
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

SAN BERNARDINO TRANSIT CENTER (SBTC)
FEDERAL FUNDING SUBGRANTEE AGREEMENT

This AGREEMENT, entered into as of _____ __, 2013, is by and between the San Bernardino Associated Governments ("SANBAG"), acting in its capacity as the San Bernardino County Transportation Commission, and Omnitrans, a Joint Powers Authority established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code ("Omnitrans"), collectively referred to herein as the "Parties," with reference to the following facts:

RECITALS

WHEREAS, the Parties are also among the parties to Contract C12117, "San Bernardino Transit Center (SBTC) Planning, Design, Construction, Operating and Maintenance Agreement" by and among the Parties, the City of San Bernardino ("City") and the San Bernardino Economic Development Corporation ("EDC") a true and correct copy of which is attached hereto as Exhibit A and hereby incorporated into this agreement by reference; and

WHEREAS, since Contract C12117 was executed, the City has filed for bankruptcy; the EDC has been ordered divested of many of its assets and funds by the California Department of Finance; and both have renounced and/or failed to perform their respective obligations under said Contract C12117, and the default of the City and EDC has put at risk the timing, cost and funding for the SBTC Project; and

WHEREAS, delaying design or construction of the SBTC Project while pursuing legal or equitable remedies for the City's and EDC's defaults under Contract C12117 would not be in the public interest, would jeopardize federal funding for this much needed public transportation project and would cause harm to the Parties' own interests and public missions; and

WHEREAS, in order to mitigate damages caused by the defaults of the City and the EDC, and to move forward with the SBTC to meet the transportation needs of the public, the Parties have mutually agreed to move forward with design, right of way and construction of the SBTC, despite the defaults of the City and the EDC; to reserve any rights either or both Parties may have with respect to the City and/or EDC under Contract C12117; and to cooperate and mutually participate in the planning, design, and construction, of the SBTC; and

WHEREAS, the SBTC, generally located at the southwest quadrant of Rialto Avenue and "E" Street in the City of San Bernardino as shown on Exhibit B1 and B2, will be a transit hub for SANBAG passenger rail service between Redlands and San Bernardino, which will be established in the future through the Redlands Passenger Rail Project; for Metrolink passenger rail service between San Bernardino and Los Angeles and Orange Counties, which will be extended from the Santa Fe Depot to Downtown San Bernardino by the Downtown San Bernardino Passenger Rail Project; and for Omnitrans bus service within the San Bernardino Valley; and will also involve the construction of a surface parking lot; and other certain off-site improvements; and

WHEREAS, the SBTC, when fully completed, will consist of an Omnitrans-owned and operated bus facility as contemplated in Section 2.5 of Contract C12117 (the "Omnitrans Facility"); a separate rail station which will contain platforms serving both the Downtown San Bernardino Passenger Rail Project and the Redlands Passenger Rail Project ("Rail Station") to be owned and operated by SANBAG and/or other agencies; and a joint use parking lot facility, together with certain other off-site improvements; and

WHEREAS, at the time of the execution of Contract C12117, funding sources had not been identified for full cost of the Omnitrans Facility, and since that time the SANBAG and Omnitrans have cooperatively worked to identify full funding for the project; and

WHEREAS, the Parties desire to specify herein the terms and conditions under which the Omnitrans Facility will be funded, undertaken, implemented, and constructed to its completion under the conditions created by the City's and the EDC's defaults, without modifying, excusing, releasing, waiving or otherwise affecting the obligations of the City and/or the EDC or the remedies available to the Parties under Contract C12117; and

WHEREAS, Omnitrans is the direct recipient, or grantee, of funds from the Federal Transit Administration; and SANBAG, as a subgrantee, or subrecipient, will use the funds for the planning, design, and construction of the Omnitrans Facility.

WHEREAS, this Agreement outlines the roles and responsibilities of SANBAG and Omnitrans related to the pass-through of federal and local funding from Omnitrans to SANBAG.

WHEREAS, the Parties recognize the potential need for an additional operations and management agreement ("O&M" agreement), in addition to this Agreement, to cover, but not be limited to, security, on-site maintenance, utilities, and other matters of joint concern regarding the joint use and/or co-location of the Omnitrans Facility, the Rail Station, and the parking lot. The O&M agreement is to be entered into by and between the Parties and/or others prior to beginning operation of the completed SBTC.

NOW, THEREFORE, SANBAG, and Omnitrans do hereby mutually agree as follows:

ARTICLE I
GENERAL INFORMATION

Section 1.1 The Parties agree that the above referenced Recitals are true and correct in all respects and shall constitute a substantive part of this Agreement and are incorporated herein by this reference.

Section 1.2 To the extent feasible, and except as specifically modified herein, the obligations of the Parties contained in Contract C12117 shall remain in full force and effect and shall be implemented in accordance with Contract C12117 and this agreement. Nothing in this Agreement shall be construed to waive, release, rescind, modify, excuse performance or otherwise affect the obligations of the City and/or the EDC under Contract C12117.

Section 1.3 To the extent feasible without causing further delay to the SBTC; for the benefit and convenience of the Omnitrans Facility project and the Parties hereto; and in the best interests of the public due to the jurisdiction of the City in the permitting process and the location and property title issues involving the EDC and without affecting any rights or remedies related to the City or EDC default under Contract C12117, the Parties shall continue to include representatives of the City on the Project Development Team (PDT) as originally contemplated in Contract C12117 and shall consult with the EDC as needed for the benefit of the project.

Section 1.4 The total cost for the Omnitrans Facility, including planning, design, right-of-way and construction, is estimated at $23,517,283.

ARTICLE II
SANBAG COVENANTS AND RESPONSIBILITIES

Section 2.1 SANBAG shall continue to perform its Covenants and Responsibilities set forth in Article II of Contract C12117 and all other obligations and covenants it has to Omnitrans under Contract C12117, the terms of which are incorporated herein by reference, in addition to the obligations and covenants outlined in this Agreement.

Section 2.2 To permit the Omnitrans Facility Project to move forward despite the loss of funds and increased costs due to the defaults of the City and EDC, SANBAG shall provide, to the extent such funds are and remain available to SANBAG and budgeted for the Omnitrans Facility by SANBAG's Board of Directors, an amount not to exceed $3,747,593 from the funding sources shown in the table below:

Fund Source	Grant Number	Amount
SANBAG FHWA Transportation Enhancement Funds	CA-90-Z121	$ 992,000
SANBAG Local Transportation Funds		$ 320,000
SANBAG State Proposition 1B Security		$ 500,000
SANBAG State Transit Assistance Funds-Population		$ 1,935,593
Total		**$ 3,747,593**

Section 2.3 SANBAG shall provide to Omnitrans all information that is reasonably needed for the §5307 grant application submission referenced in Section 3.3 for the FHWA TE funds. To the best of SANBAG's knowledge, the submittal of the FTA §5307 application by Omnitrans on behalf of SANBAG will not constitute any violation of applicable law.

Section 2.4 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.

Section 2.5 SANBAG shall be responsible for all duties relative to the construction phase of the Omnitrans Facility including, but not limited to, complying with all FTA requirements and other requirements for bidding and contract administration, with all due diligence and in a skillful and competent manner. SANBAG and/or its contractors shall obtain all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work required to complete the Omnitrans Facility. SANBAG and/or its contractors shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.

Section 2.6 SANBAG shall notify Omnitrans of any changes in the scope or description of the Omnitrans Facility, and shall obtain Omnitrans' prior approval of any material changes that impact the cost to construct or future operation of the Omnitrans Facility.

Section 2.7 SANBAG shall comply with all requirements of the FTA 2013 Master Agreement, found at http://ftateamweb.fta.dot.gov/static/Agreements/2012-19-MASTER.pdf ("FTA Master Agreement"). All FTA requirements and guidelines as summarized in the FTA Master Agreement are incorporated herein by reference. Such compliance shall include, but is not limited to, submitting to Omnitrans on a quarterly basis all reports that document the status of the Omnitrans Facility's implementation progress, including task completion status, budget status, and adherence to project schedule. SANBAG shall be responsible for complying with and flowing down all applicable FTA legal requirements and standard clauses in its contracts to be funded under this Agreement to the lowest tier required under the FTA requirements, including those requirements set forth in Exhibit "C" attached hereto and incorporated herein by reference. Exhibit "C" is not meant to be an exhaustive list of federal clauses that apply to this Agreement.

Section 2.8 SANBAG's contracts to be funded under this Agreement shall include a clause allowing SANBAG to terminate such contract for convenience, including for failure to receive sufficient federal funds to complete the work under such contract.

Section 2.9 SANBAG shall require its construction contractor to provide sufficient insurance for the work contemplated under the contract, and shall require that its contractor include Omnitrans as an additional insured and an indemnified party under such contract, with protection provided to Omnitrans to the same extent provided to SANBAG.

Section 2.10 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.

Section 2.11 SANBAG will provide Omnitrans a copy of its annual single audit for each fiscal year, in accordance with FTA audit requirements.

Section 2.12 SANBAG shall provide all information needed for quarterly reporting and milestone updates on a timely basis to Omnitrans to prepare and submit to the FTA all required

or requested 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.

Section 2.13 SANBAG shall maintain all books, papers, records, and accounting records including but not limited to all direct and indirect costs allocated to the Omnitrans Facility, cost proposals with backup data, and all other material relating to the Omnitrans Facility. 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 the 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.

Section 2.14 All actions contemplated of SANBAG by this Agreement shall be taken in compliance with the terms of the grants which are being sought and with all applicable law.

Section 2.15 In the event of any failure of SANBAG to comply with federal contracting and procurement requirements on the part of SANBAG, SANBAG shall be solely responsible for any penalties, reimbursement of funds, costs of investigation and remedy of such failure.

Section 2.16 If it is determined pursuant to an FTA audit that any funds provided by Omnitrans pursuant to this Agreement have been improperly expended by SANBAG, SANBAG shall, at the direction of Omnitrans, reimburse, within thirty (30) days, the full amount of such improperly expended funds to FTA or Omnitrans, as directed by Omnitrans.

ARTICLE III
OMNITRANS RESPONSIBILITIES AND COVENANTS

Section 3.1 Omnitrans shall continue to perform the OMNITRANS Responsibilities and Covenants set forth in Article V of Contract C12117, and all other obligations and covenants it has to SANBAG under Contract C12117, the terms of which are incorporated herein by reference, in addition to the obligations and covenants outlined in this Agreement.

Section 3.2 Omnitrans shall provide to SANBAG an amount not to exceed $19,769,690 from the funding sources shown in the table below, to the extent that such funds are and remain available to Omnitrans and are budgeted to the Omnitrans Facility by Omnitrans' Board of Directors:

Fund Source	Fiscal Year	Grant Number	Amount
Contract C12117			$ 6,943,261
Omnitrans Federal Transit Administration 5309	2011	CA-04-0229	$ 3,000,000
Omnitrans Federal Transit Administration 5309	2012	CA-04-0229	$ 5,300,000
Omnitrans Local Transportation Fund			$ 966,197

Omnitrans State Transit Assistance Funds-Population			$ 153,896
Omnitrans State Proposition 1B PTMISEA*			$ 3,406,336
Total			**$ 19,769,690**

* Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA)

Section 3.3 Omnitrans, as the FTA grantee, will submit a Fiscal Year 2014 §5307 grant application to the FTA for the $992,000 of FHWA Transportation Enhancement (TE) funding referenced in Section 2.2. Upon approval from the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), this funding will be "flexed" from FHWA to FTA. Omnitrans, as the FTA grantee, will pass the $992,000 of TE funds through to SANBAG along with Omnitrans' other funding sources listed in Section 3.2.

Section 3.4 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.

Section 3.5 Omnitrans shall participate in construction update meetings to be held on a weekly basis, or as needed, to coordinate construction activities and enhance mutual cooperation related to the Omnitrans Facility Project.

Section 3.6 Omnitrans will reimburse SANBAG for the Omnitrans Facility, provided the grant funds listed in Section 3.2 are available to Omnitrans, and in conformity with the following procedure:

a. SANBAG shall submit a Disbursement Request to Omnitrans, which shall consist of a written invoice specifying the amount requested to be disbursed, an explanation of 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, the amount from federal funds, and the amount from local 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. If the Disbursement Request is submitted before the 15th day of each month, Omnitrans, not later than the fifth business day of the following month, shall: (i) disburse (including through electronic transfer of funds, if so requested, and if SANBAG provides the necessary information prior to the date of payment) all or that portion of the requested funds which it reasonably believes it can disburse without violating the terms of either the grant or of Applicable Law; and (ii) if applicable, notify SANBAG why it reasonably believes that it is unable to disburse all of the requested funds without violating the terms of either the grant or of Applicable Law.

e. Omnitrans may withhold disbursement of funds in the event that Omnitrans has a good faith and reasonable belief that such disbursement of funds would constitute a violation of the terms of the grant or of Applicable Law until such time as it is reasonably determined that such disbursement would not violate the terms of the grant or Applicable Law. Omnitrans, upon receipt of a determination by the FTA or other applicable agency, or of a legal opinion from an attorney acceptable to both Parties upon which Omnitrans can reasonably rely advising that the disbursement will not violate the terms of the grant or Applicable Law, will release the requested funds within five (5) days.

f. 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.

g. 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 all Applicable Law.

h. Omnitrans shall comply with all requirements of the FTA Master Agreement, including submission to the FTA on a quarterly basis, of reports that document the status of the SBTC's implementation progress, including task completion status and budget status.

ARTICLE IV
MUTUAL OBLIGATIONS

Section 4.1 Both Parties agree to cooperate in negotiating in good faith an operations and maintenance agreement (O&M agreement) for the SBTC that properly reflects each Party's role, responsibility and beneficial interest in the SBTC as a whole and its ongoing operations, maintenance, safety and security needs.

Section 4.2 The Parties acknowledge that due to a number of reasons beyond the Parties' control, including but not limited to, the defaults of the City and EDC, delays in funding availability, and normal delays in processing, permitting, right-of-way acquisition and governmental decision making, the Omnitrans Facility Project will not be completed before November of 2013 as originally estimated and agree to cooperate to achieve completion as soon as is reasonably feasible. SANBAG shall not be held responsible or liable to Omnitrans for delays from the original estimated completion date. The Parties will work cooperatively to establish, monitor and from time to time revise an updated project schedule and shall expend their best efforts to complete the Omnitrans Facility Project at the earliest reasonable time.

Section 4.3 In the event that any funds are recovered by either Party from the City and/or EDC with respect to their defaults or obligations under Contract C12117, whether voluntarily paid, received by way of settlement, or paid in satisfaction of judgment; such funds shall be applied first to repay any costs of collection incurred by SANBAG, including but not limited to attorney's fees and/or costs of litigation and preparation for litigation whether or not a lawsuit is actually filed, secondly to repay SANBAG for its additional contribution of funds under Section 2.2 above caused by the defaults of the City and EDC, and lastly to reimburse OMNITRANS for its additional costs or expenses for the Omnitrans Facility Project caused by the defaults of the City and EDC.

Section 4.4 In the event that actual Omnitrans Facility Project costs are in excess of the current budget of $23,517,283, or that any of the funding sources listed in 2.2 or 3.2 above become unavailable, both parties shall work together to identify additional funding sources. If additional funding cannot be obtained, SANBAG reserves the right to redesign the Omnitrans Facility Project, with Omnitrans' concurrence, to fit within the existing budget as approved by both parties. If the Omnitrans Facility Project cannot be adequately redesigned to fit within the available funding to the satisfaction of both Parties, the Parties shall negotiate a mutually acceptable resolution. If no mutually acceptable resolution can be reached, SANBAG shall, to the extent feasible based on the remaining funding, complete portions of the Omnitrans Facility Project that have been commenced, and shall leave the work and facilities in a safe condition reasonably acceptable to Omnitrans. Following such actions by SANBAG, this Agreement shall terminate, and other than any payment already earned or payable in accordance with the terms of this Agreement and any terms surviving termination of this Agreement, including any requirements of the grant funding provided hereunder, both parties shall be excused from further performance.

ARTICLE V
SELF-INSURANCE AND MUTUAL INDEMNIFICATION

Section 5.1 Insurance requirements and Indemnification shall be subject to and provided in accordance with the provisions of Article VI, Self-Insurance and Mutual Indemnification, of Contract C12117, the terms of which are incorporated herein by reference, shall govern any liability between the Parties arising under this Agreement, and shall survive termination of this Agreement.

ARTICLE VI
DEFAULT AND REMEDIES

Section 6.1 Default and Remedies. Default and remedies under this agreement shall be subject to the terms and provisions of Article VII, Default and Remedies, of Contract C12117, the terms of which are incorporated herein by reference.

ARTICLE VII
MISCELLANEOUS

Section 7.1 The term of this Agreement shall be from the date of execution of this Agreement by the Parties until the Omnitrans Facility's final acceptance has been determined by SANBAG, including submission of all required reports, unless earlier terminated pursuant to the provisions herein.

Section 7.2 All costs referred to throughout this Agreement shall include all direct costs attributable to such work, applied in accordance with the State of California's standard accounting procedures and with Federal Transit Administration regulations.

Section 7.3 No alteration to or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto. No waiver of any term, condition or covenant of this Agreement shall be a continuing waiver thereof.

Section 7.4 No Third Party Rights. Nothing contained within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not a Party to this Agreement or to affect the legal liability of any Party to the Agreement by imposing any standard of care with respect to the maintenance of facilities different from the standards of care imposed by law.

Section 7.5 Notice. All notices and correspondence, including invoices, between or among the Parties to this Agreement shall be in writing and shall be deemed to have been given when actually delivered, if given by hand delivery or transmitted by overnight courier service, or if mailed, three (3) business days after being deposited in the United States mail, postage prepaid, to the addresses noted below:

OMNITRANS
Attn: Anna Rahtz
Acting Director of Planning & Development Services
1700 W. Fifth Street
San Bernardino, CA 92411-2499

SANBAG
Attn: Mitchell Alderman
Director of Transit and Rail Programs

1170 W. Third St, 2nd Floor
San Bernardino, CA 92410-1715

Any Party may change its address for receipt of written notice by notifying the other Parties in writing of a new address for delivering notice to each such other Parties.

Section 7.6 This Agreement shall be binding on the successors and assigns of the Parties, but may not be assigned by SANBAG without written approval from Omnitrans.

Section 7.7 Consent. Whenever review, consent, or approval of any Party must be given or where it can be withheld, that Party must not unreasonably review or unreasonably withhold such consent or approval.

Section 7.8 Entire Agreement. This Agreement and Contract C12117 constitute the entire understanding of the Parties with respect to the subject matter hereof, and there are no other representations, promises, warranties, covenants, or undertakings with respect thereto.

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

In witness thereof, the Parties have caused this Agreement to be executed by their respective officers as of the date indicated in the introductory paragraph of this Agreement.

OMNITRANS	SAN BERNARDINO ASSOCIATED GOVERNMENTS
By: _____	By_____
P. Scott Graham	W.E. Jahn
CEO/General Manager	President
Date: _____	Date: _____
APPROVED AS TO FORM:	APPROVED AS TO FORM:
By: _____	By: _____
Carol Greene	Eileen Monaghan Teichert
Omnitrans Counsel	SANBAG General Counsel

Exhibit "A"

Contract C12117

Exhibit B1

Overall San Bernardino Transit Center Site Plan

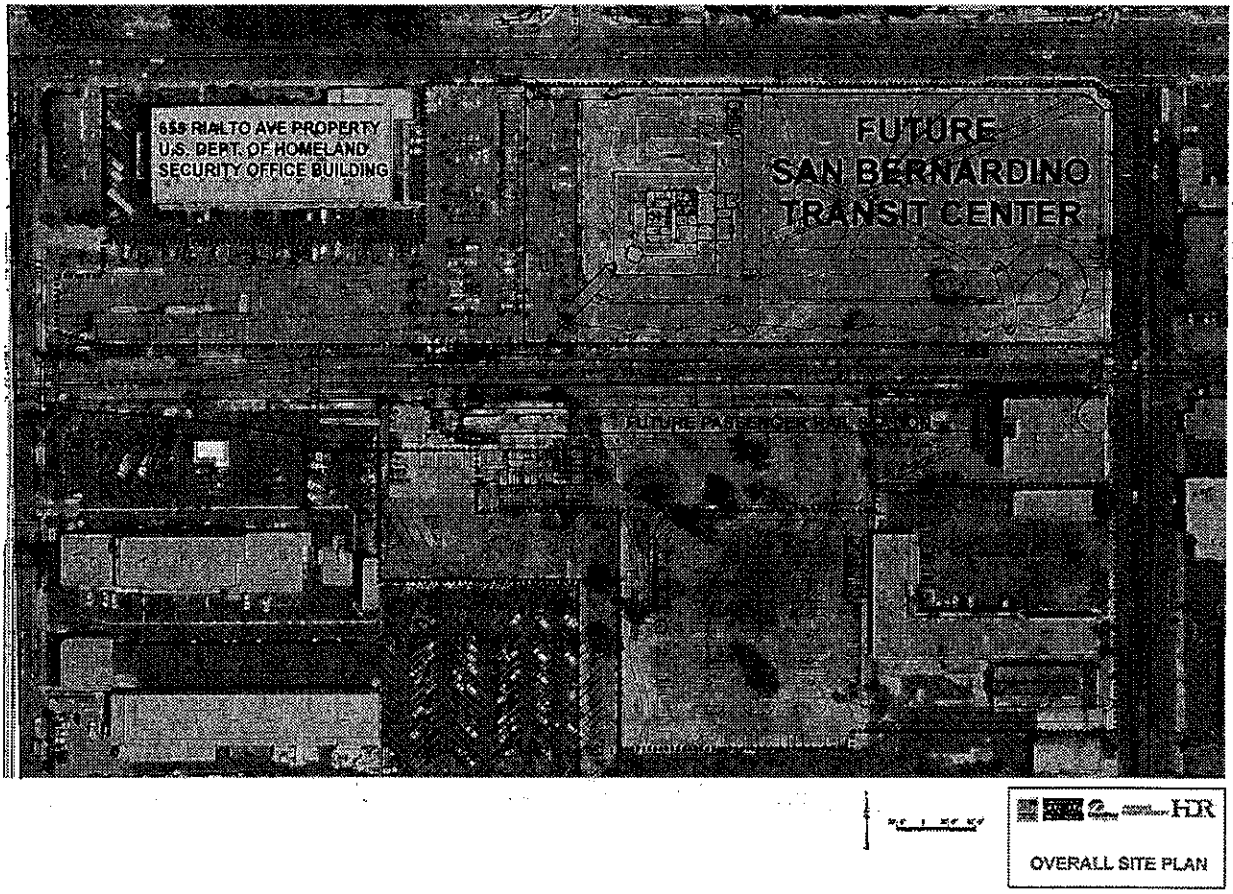

Exhibit 2

San Bernardino Transit Center
Site Plan

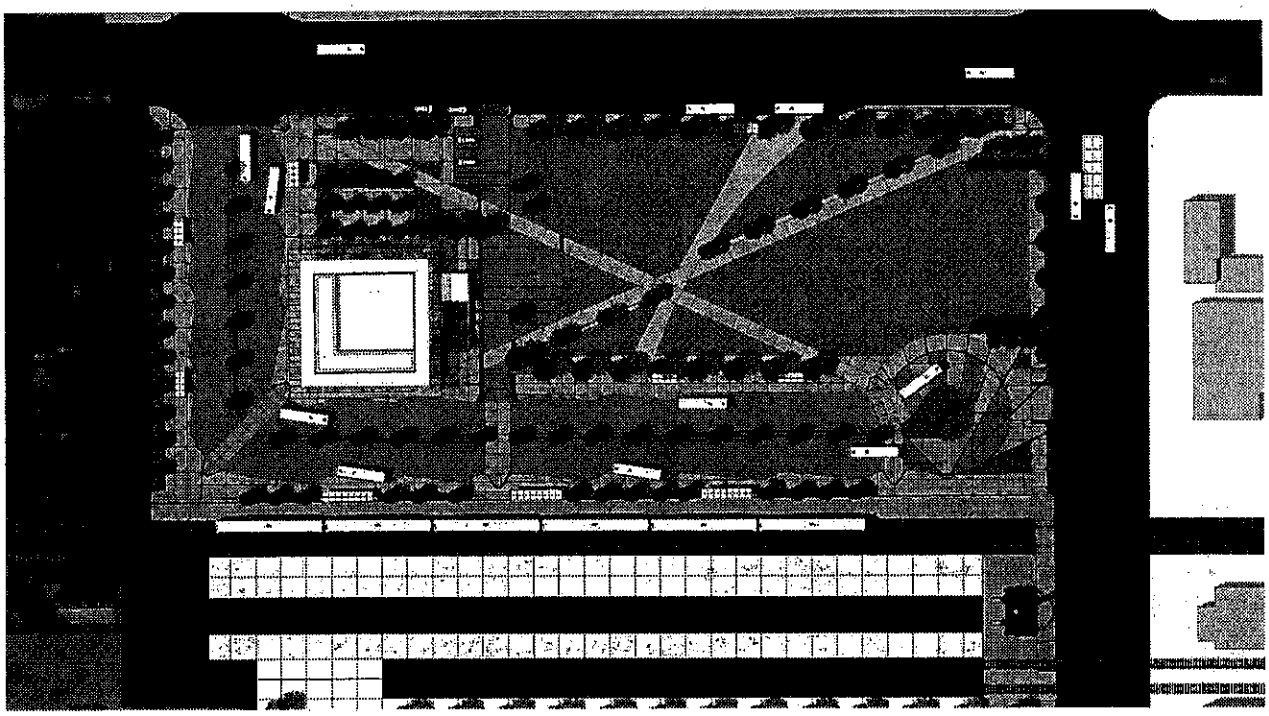

Exhibit "C"
Flowdown of Federal Requirements

As used herein, "Contractor" shall refer to any contractor of SANBAG to be reimbursed with federal funds provided under this Agreement.

All SANBAG procurement transactions to be funded under this Agreement shall be conducted in a manner that provides full and open competition, and shall be conducted in accordance with applicable state and federal requirements, including the FTA requirements set forth in FTA Circular 4220.1F. The provisions below, as applicable, shall be included in the procurement documents and resulting contracts.

1. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j) ; 49 CFR Part 661

a. Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than $100,000).

b. Buy America

SANBAG shall comply and shall require its Contractors to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.

General waivers are listed in 49 CFR 661.7. Note: General waivers for small purchases do not apply to Contractor equipment purchases when Contractor's contract value exceeds $100,000 in value.

A Bidder or offeror must submit the appropriate Buy America certification with all Bids on FTAfunded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

2. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. Appx 1241; 46 CFR Part 381

a. Applicability to Contracts

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

b. Flow Down

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

c. Cargo Preference - Use of United States-Flag Vessels

SANBAG agrees to comply and to ensure that its Contractors will comply with 46 U.S.C. § 1241 and 46 CFR Part 381, regarding use of United States-Flag Vessels for equipment, materials or commodities transported by ocean vessel.

3. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.; 49 CFR Part 18

a. Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

b. Flow Down

The Energy Conservation requirements extend to all Contractors and their contracts at every tier and sub recipients and their sub agreements at every tier.

c. Energy Conservation

SANBAG shall comply and shall require its Contractor 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 Act.

4. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251 et seq.

a. Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds $100,000.

b. Clean Water

1. SANBAG shall comply and shall require its Contractor 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. The Contractor agrees to report each violation and understands and agrees that Omnitrans, will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. The Contractor shall include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

5. LOBBYING

31 U.S.C. 1352; 49 CFR Part 19 49 CFR Part 20

a. Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

b. Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

c. Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995. P.L. 104-65 [to be codified at 2 U.S.C. 4 1601., et seq.]

SANBAG and its Contractors who apply or Bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to Omnitrans.

6. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325; 49 CFR 18.36 (i) 49 CFR 633.17

1. SANBAG and its Contractors shall provide Omnitrans, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where SANBAG or its Contractor or a sub grantee of Contractor in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive Bidding, said entity shall make available records related to the contract to Omnitrans, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

3. SANBAG shall permit and shall require its Contractor to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

4. SANBAG shall maintain and shall require its Contractor ato maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case SANBAG and its Contractor shall maintain same until Omnitrans, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

5. FTA does not require the inclusion of these requirements in subcontracts.

7. FEDERAL CHANGES

49 CFR Part 18

a. Applicability to Contracts

The Federal Changes requirement applies to all contracts.

b. Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

c. Federal Changes

SANBAG and its Contractor 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 Agreement (Form FTA MA (10) dated October, 2003) between Omnitrans and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

8. CLEAN AIR

42 U.S.C. 7401 et seq.; 40 CFR 15.61; 49 CFR Part 18

a. Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding $100,000, including indefinite quantities where the amount is expected to exceed $100,000 in any year.

b. Flow Down

The Clean Air requirements flow down to all subcontracts which exceed $100,000.

c. Clean Air

1. SANBAG and its Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to Omnitrans and understands and agrees that Omnitrans, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

9. RECYCLED PRODUCTS

42 U.S.C. 6962; 40 CFR Part 247

a. Applicability to Contracts

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the Contractor procures $10,000 or more of one of these items during the fiscal year, or has procured $10,000 or more of such items in the previous fiscal year, using Federal funds.

b. Flow Down

These requirements flow down to all to all contractor and subcontractor tiers.

c. Recovered Materials

SANBAG and its Contractor agree to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

10. DAVIS-BACON ACT

40 U.S.C. 3142 et seq. (2003); 29 CFR § 5 et seq. (2003)

SANBAG agrees to include applicable provisions of the Davis-Bacon Act, as amended, 49 U.S.C. § 5333(a), the Davis-Bacon Act, 40 U.S.C. §§ 276a - 276a(7), and Department of Labor Regulations, 29 CFR Part 5 in all construction contracts in excess of $2,000. As between Davis-Bacon and California prevailing wage rates, the higher of the two shall apply.

11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

40 U.S.C. §§ 3701 -3708 (2003); 29 C.F.R. § 5 (2003); 29 C.F.R. § 1926 (2003)

a. Applicability to Contracts

Section 102 of the Act, which deals with overtime requirements, applies to:

1. All construction contracts in excess of $2,000 and;

Section 107 of the Act, which deals with OSHA requirements applies to construction contracts in excess of $2,000 only. The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

b. Flow Down

Applies to third party contractors and subcontractors.

c. Pursuant to Section 102 (Overtime)

These clauses are specifically mandated under DOL regulation 29 C.F.R. § 5.5.

1. **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. **Withholding for unpaid wages and liquidated damages** - SANBAG shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally- assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

5. **Payrolls and basic records** - payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

d. Section 107 (OSHA)

1. Contract Work Hours and Safety Standards Act

SANBAG shall require that is Contractor comply with the following:

A. The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations," Safety and Health Regulations for Construction" 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

B. Subcontracts - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

12. COPELAND ANTI-KICKBACK ACT

40 U.S.C. § 3145 (2003); 29 C.F.R. § 3 (2003); 29 C.F.R. § 5 (2003)

a. Applicability to Contracts

All construction contracts in excess of $2,000.

b. Flow Down

Applicable to all third party contractors and subcontractors. The language can be found at § 5.5(a)(5) of the Davis-Bacon clause 16.

c. Compliance with Copeland Act requirements

SANBAG shall require that is Contractor comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

13. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

a. Applicability to Contracts

Applicable to all contracts.

b. Flow Down

This concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

c. No Obligation by the Federal Government

1. SANBAG and its Contractor acknowledge and agrees 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 Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. The Contractor 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.

14. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.; 49 CFR Part 31; 18 U.S.C. 1001; 49 U.S.C. 5307

a. Applicability to Contracts

These requirements are applicable to all contracts. SANBAG shall require that its Contractor comply with the following.

b. Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

c. Program Fraud and False or Fraudulent Statements or Related Acts

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et q. 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, the Contractor 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, the Contractor 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 Contractor to the extent the Federal Government deems appropriate.

2. The Contractor 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.

3. The Contractor 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.

15. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

49 CFR Part 29; Executive Order 12549

a. Applicability to Contracts

Executive Order 12549, as implemented by 49 CFR Part 29, prohibits organizations that have been suspended or debarred from receiving Federally-assisted contracts. SANBAG will not enter into contracts over $100,000 with suspended or debarred contractors and that will require their contractors (and their subcontractors) to make the same certification to them. SANBAG will include appropriate debarment and suspension certifications in its procurement documents.

b. Flow Down

Contractors are required to pass this requirement on to subcontractors seeking subcontracts over $100,000. Thus, the terms "lower tier covered participant" and "lower tier covered transaction" include both contractors and subcontractors and contracts and subcontracts over $100,000.

16. PRIVACY ACT

5 U.S.C. 552

a. Applicability to Contracts

When SANBAG maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

b. Flow Down

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

c. Contracts Involving Federal Privacy Act Requirements

The following requirements apply to SANBAG and its Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

17. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000 d; 42 U.S.C. § 6102, 42 U.S.C. § 12112; 42 U.S.C. § 12132, 49 U.S.C. § 5332; 29 CFR Part 1630 et seq., 41 CFR Parts 60-1 et seq.

a. Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

b. Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

c. Civil Rights

The following requirements apply to SANBAG and its Contractor (both "Contractor" below):

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, the Contractor 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, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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 m. ., (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. The Contractor 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, the Contractor 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, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. Access Requirements for Persons with Disabilities. Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The Recipient also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.,* which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.,* which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the Recipient agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

i. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

ii. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

iii. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

iv. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

v. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

vi. U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

vii. U.S. Equal Employment Opportunity Contractor, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

viii. U.S. Federal Communications Contractor regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;

ix. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609;

x. Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and

xi. Any implementing requirements FTA may issue.

18. STATE AND LOCAL LAW DISCLAIMER

a. Applicability to Contracts

This disclaimer applies to all contracts.

b. Flow Down

The Disclaimer has unlimited flow down.

19. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

a. Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

b. Flow Down

The incorporation of FTA terms has unlimited flow down.

c. Incorporation of Federal Transit Administration (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, dated November 1, 2008, 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 Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Omnitrans requests which would cause Omnitrans to be in violation of the FTA terms and conditions.

20. METRIC REQUIREMENTS

15 U.S.C. §§205a et seq.

As required by U.S. DOT or FTA, Contractor agrees to use the metric system of measurement in its Project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.;* Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, the Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.

21. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS

23 U.S.C. §502

Contractor agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and with FTA Notice, 'PTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other subsequent Federal directives that may be issued.

22. FEDERAL MINIMUM WAGE REQUIREMENTS

29 U.S.C. § 201 *et seq.*

The Fair Labor Standards Act of 1938, as amended 29 U.S.C. 201, *et seq.* ("FLSA"). The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments. Covered nonexempt workers are entitled to a minimum wage of not less than $7.25 per hour effective July 24, 2009. Overtime pay at a rate not less than one and one-half times the regular rate of pay is required after 40 hours of work in a workweek.

FLSA Minimum Wage: The federal minimum wage is $7.25 per hour effective July 24, 2009. Many states also have minimum wage laws. In cases where an employee is subject to both state and federal minimum wage laws, the employee is entitled to the higher minimum wage.

FLSA Overtime: Covered nonexempt employees must receive overtime pay for hours worked over 40 per workweek (any fixed and regularly recurring period of 168 hours — seven consecutive 24-hour periods) at a rate not less than one and one-half times the regular rate of pay. There is no limit on the number of hours employees 16 years or older may work in any workweek. The FLSA does not require overtime pay for work on weekends, holidays, or regular days of rest, unless overtime is worked on such days.

Hours Worked: Hours worked ordinarily include all the time during which an employee is required to be on the employer's premises, on duty, or at a prescribed workplace.

Recordkeeping: Employers must display an official poster outlining the requirements of the FLSA. Employers must also keep employee time and pay records.

Youth Employment: These provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being.

For additional requirements and guidelines, Contractor must visit the website for the U.S. Department of Labor at: http://www.dol.gov/esa/whd/Flsa/

Applicable Laws and Regulations

29 U.S.C. 201, et seq.
29 CFR Chapter V
See the Federal Web site, http://www.dot.ca.gov/davisbacon

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

a Discrimination: SANBAG shall not discriminate and shall ensure that its Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

c. SANBAG shall comply with its adopted FTA DBE program in implementing this Agreement.

AGENCY REPORTS

South Coast
Air Quality Management District
21865 Copley Drive, Diamond Bar, CA 91765-4178
(909) 396-2000 • www.aqmd.gov

Members of the Governing Board:

Chairman
Dr. William A. Burke
Speaker of the Assembly
Appointee

Vice Chairman
Dennis R. Yates
Mayor, Chino
Cities of San Bernardino County

Michael D. Antonovich
Supervisor, Fifth District
County of Los Angeles

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Cities of Riverside County

John J. Benoit
Supervisor, Fourth District
County of Riverside

Joe Buscaino
Councilmember, 15th District
City of Los Angeles

Michael A. Cacciotti
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Cities of Los Angeles County/
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Supervisor, Fifth District
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Joseph K. Lyou, Ph.D.
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Judith Mitchell
Mayor Pro Tem, Rolling Hills Estates
Cities of Los Angeles County/
Western Region

Shawn Nelson
Supervisor, Fourth District
County of Orange

Dr. Clark E. Parker, Sr.
Senate Rules Appointee

Miguel A. Pulido
Mayor, Santa Ana
Cities of Orange County

November 12, 2013

To: Mayors and Councilmembers

From: Dennis R. Yates
Mayor, City of Chino
Vice Chairman, South Coast AQMD Governing Board /
Representative, Cities of San Bernardino County

Attached is the agenda item and outcome of the November 1, 2013 SCAQMD Governing Board meeting, and a preview of the item(s) for discussion at the December 6, 2013 meeting.

PUBLIC HEARING ITEM AT NOVEMBER 1 BOARD MEETING:

Amend Rule 1146 – Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters and Rule 1146.1 – Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters

The proposed amendments to Rules 1146 and 1146.1 will address a SIP approvability issue related to rule enforceability raised by U.S. EPA. As requested by U.S. EPA, the proposed rules clarify that source test results showing emissions in excess of rule limits are considered a rule violation. However, the proposed amended rules allow diagnostic emission checks for boiler maintenance purposes. None of the proposed changes will affect rule emission limits or result in any adverse environmental, socioeconomic, or cost impacts. This action is to adopt the resolution: 1) Certifying the CEQA Notice of Exemption for Proposed Amended Rule 1146 and Proposed Amended Rule 1146.1; and 2) Amending Rule 1146 and Rule 1146.1.

Vote: 12 Yes; 0 No; 0 Abstain; 1 Absent

PUBLIC HEARINGS TENTATIVELY SET FOR DECEMBER BOARD MEETING:

Amend Rule 1420.1 - Emission Standards for Lead and Other Toxic Air Contaminants from Large Lead-Acid Battery Recycling Facilities

Proposed Amended Rule 1420.1 establishes requirements for owners or operators of large lead-acid battery recycling facilities to reduce arsenic emissions and other key toxic air contaminant emissions. PAR 1420.1 includes requirements for ambient air concentration limits for arsenic, as well as hourly emission limits of arsenic, benzene, and 1, 3-butadiene. PAR 1420.1 also contains additional administrative, monitoring and source testing requirements for stack emissions.

Clean Transportation
Funding from the MSRC
Mobile Source Air Pollution Reduction Review Committee

REPORT: Mobile Source Air Pollution Reduction Review Committee

FROM: Larry McCallon, SANBAG Representative to the MSRC

SYNOPSIS: Below is a summary of key issues addressed at the MSRC's meeting on October 17, 2013. The MSRC's next meeting is scheduled for Thursday, November 21, 2013, at 2:00 p.m. in Conference Room CC8.

Meeting Minutes Approved
The MSRC unanimously approved the minutes from its September 19, 2013 meeting.

Awards to Implement Event Center Transportation Programs
As part of their FYs 2012-14 Work Program, the MSRC allocated $4 million towards the implementation of programs to provide transportation service for venues not currently served by sufficient transportation service. Five awards totaling $2,550,518 have previously been approved under this program, which has an open application period from March 1, 2013 through September 30, 2014. At its October 17, 2013 meeting, the MSRC considered and unanimously approved two new awards under this program, both to the Orange County Transportation Authority (OCTA). The first award in the amount of $601,187 would be to implement an express bus service for the 2014 Orange County Fair. The service would provide transportation to and from eight strategic pickup sites (train stations, depots and/or park-n-rides) to the entrance gates of the fair and would include a reduced entrance fee for users. OCTA would provide match funding of $605,300 and would expand service on Fridays and Saturdays as compared to the previous year. The second award in the amount of $208,520 would be to implement a special Metrolink service for 48 home games for the 2014 Angels season. The service would provide two dedicated trains, one operating along Metrolink's Orange County Line corridor from Oceanside in the south and the other operating from Los Angeles Union Station in the north to the terminus at Anaheim station, to take riders to Angels Stadium. Regular Metrolink service trips from the south will not be reimbursed. Additionally,

limited service for 13 Friday games would also be provided on Metrolink's Inland Empire-Orange County line from downtown Riverside to Orange with a transfer to Anaheim. For this service OCTA would provide match funding of $215,000. The SCAQMD Board will consider both awards to OCTA at its November 1, 2013 meeting.

Approval of Two New/Replacement Local Government Match Contracts
Under prior Local Government Match Programs, FYs 2005-06 and 2008-09 respectively, the City of Santa Monica was awarded a $149,925 contract to purchase three heavy-duty CNG vehicles and install a time-fill CNG station and the County of Los Angeles Department of Public Works was awarded a $400,000 contract to modify their existing vehicle repair facility in Downey to accommodate the maintenance of gaseous-fueled vehicles. Unfortunately, both contracts expired before the work and invoicing could be completed. At its October 17, 2013 meeting, the MSRC considered and unanimously approved new/replacement contracts for each contractor. The new/replacement contract for the City of Santa Monica would be for the full amount originally awarded with a contract term extending until November 2016, which is five years from the in-service date of all vehicles and the station. The County contract would also be for the full amount originally awarded but for a term of 12 months. The SCAQMD Board will consider these two new/replacement contracts at its November 1, 2013 meeting.

Vendors Approved for Participation in Alternative Fuel School Bus Incentive Program
As part of its two-year FYs 2012-14 Work Program, the MSRC allocated $2 million for an Alternative Fuel School Bus Incentive Program. Qualified vendors would administer the incentive program, which provides $31,000 for each full-size Type D CNG school bus and $9,000 for each conventional body Type C propane school bus. The smaller Type C buses are frequently used for special needs students. In September, the MSRC released a Request for Qualifications (RFQ) to test the market and solicit applications from vendors. Two school bus vendors, A-Z Bus Sales and BusWest, submitted qualification applications. A-Z Bus Sales offers Thomas Built buses; and BusWest offers Bluebird buses. Both vendors have previously participated satisfactorily in the MSRC's program. At its October 17, 2013 meeting, the MSRC unanimously approved the qualification packages from the two bus vendors including the bus configurations for Type D CNG and Type C propane buses in their product offerings. No money will be awarded until the vendors receive a purchase order(s) from a school district or private pupil transportation provider, at which time the MSRC will consider requests for contract award. Any contract awards will be subject to SCAQMD Board approval. The RFQ is open until November 8, 2013, so additional vendor applications may be received.

Contract Modification Requests
The MSRC considered two contract modification requests and took the following unanimous actions:

1. For Regents of the University of California Contract #MS08068, which provides $400,000 for installation of a hydrogen fueling station, approval of a two-year term extension and alternative remedies should the contractor fail to operate the station after three years or fulfill throughput requirements; and
2. For City of La Puente Contract #ML12022, which provides $110,000 for two medium-duty and three heavy-duty CNG vehicles, approval to change the fuel type of the three heavy-duty vehicles from natural gas to LPG.

The SCAQMD Board will consider the contract modification for the City of La Puente at its November 1, 2013 meeting. The Regents of the University of California contract modification does not require SCAQMD Board approval.

Contracts Administrator's Report
The MSRC's AB 2766 Contracts Administrator provides a written status report on all open contracts from FY 2004-05 through the present.

ADDITIONAL INFORMATION

SANBAG Representatives on SCAG Committees

APPOINTING/ELECTING AUTHORITY	REGIONAL COUNCIL (12:00 noon)	POLICY COMMITTEES (Regional Council Members Serve on One Each) (Subregional Appointments) (County Commissions Appoint One to TC) (10:00 a.m.)		
		Community, Economic, and Human Development	Energy and Environment	Transportation
District 6 (Grand Terrace, Colton, Loma Linda, Redlands, Yucaipa)	J. Harrison	J. Harrison		
District 7 (San Bernardino, Highland)	L. McCallon	L. McCallon		
District 8 (Rialto, Fontana)	D. Robertson		D, Robertson	
District 9 (Rancho Cucamonga, Upland, Montclair)	P. Eaton			P. Eaton
District 10 (Chino, Chino Hills, Ontario)	E. Graham		E. Graham	
District 11 (Barstow, Big Bear, Needles, Twentynine Palms, Yucca Valley)	B. Jahn	B. Jahn		
District 65 (Adelanto, Apple Valley, Hesperia, Victorville)	R. McEachron			R. McEachron
San Bernardino County	G. Ovitt			G. Ovitt
†SANBAG Acting as County Transportation Commission	A. Wapner			A. Wapner
SANBAG Subregional Appointees* *One appointee to each policy committee for a total of three appointees per subregion, plus one additional appointee for every SCAG District over three in the subregion. SANBAG has a total of seven subregional appointees to the policy committees.		Julie McIntyre Ray Musser Ed Paget	Diane Williams Vacant (James Ramos)	F. Navarro B. Stanton

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Rules of Appointment

1. SANBAG policy stipulates that all SANBAG appointees be SANBAG Board Members.
2. SCAG President appoints Regional Council members to Standing and Policy Committees.

Terms of Appointment

Terms of appointment are two years, commencing on adjournment of the annual General Assembly in May of each year. Even-numbered District representatives' terms expire in even-numbered years; odd-numbered District representatives expire in odd-numbered years. †SANBAG's Regional Council Representative serves a two-year term from the date of appointment.

Stipend Summary

SCAG Regional Council members receive a $120 stipend for attendance and travel to SCAG sponsored meetings. Regional Council members may also receive reimbursement for public transit expenses or a mileage reimbursement. Parking is validated at SCAG's downtown Los Angeles office for RC members. RC members are eligible to receive up to six (6) per diem stipends per month. Both RC members and Subregional Appointees, if eligible, may receive reimbursement ($150 + taxes) for lodging (please review SCAG rules before making expenditure). Subregional Appointees shall receive a $120 stipend for up to four Policy or Task Force meetings per month.

Meeting Information

The regular meetings of SCAG Regional Council and Policy Committees are on the 1st Thursday of each month at the SCAG offices located at 818 West 7th Street, 12th Floor in Los Angeles. Generally, the Policy Committee meetings start at 10 AM and Regional Council meetings start at 12:15 PM.

Policy Committees

Community, Economic, and Human Development: Provides policy recommendations to the Regional Council on subjects of housing, land use, resource, economic, community development, infrastructure, employment, and regional disaster preparedness issues. Reviews and recommends to the Planning Committee revisions to the Housing, Economy, Growth Management, Human Resources, and Finance Chapters of the Regional Comprehensive Plan and Guide.

Energy and Environment: Acts as the policy advisory committee to the Regional Council on environmental issues, including air and water, hazardous, solid waste management, natural resources conservation, and energy conservation Reviews the Environmental Impact Report of the Regional Comprehensive Plan and Guide. Provides recommendations to the Planning Committee on state and federal legislative proposals and administrative guidelines affecting environmental quality, resource conservation.

Transportation and Communications: Acts as the policy advisory committee to the Regional Council on all regional matters pertaining to the movement of goods and people on land, water, and air. Reviews and recommends to the Regional Council all major utility development plans. Addresses the location, size, or capacity, timing, and impact of facilities.

SANBAG Policy Committee Membership

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

SANBAG Policy Committee Membership

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
Mountain/Desert Committee Membership consists of 11 SANBAG Board Members from each Mountain/Desert jurisdiction and County Supervisors representing the First, Second, and Third Districts.	Provides ongoing policy level oversight related to the full array of SANBAG responsibilities as they pertain specifically to the Mountain/Desert subregion. The Committee also meets as the Mountain/Desert Measure I Committee as it carries out responsibilities for Measure I Mountain/Desert Expenditure Plan.	Edward Paget, Needles (Chair) Ryan McEachron, Victorville, (Vice Chair) Curt Emick, Apple Valley Jim Harris, Twentynine Palms George Huntington, Yucca Valley Bill Jahn, Big Bear Lake Mike Leonard, Hesperia Robert Lovingood, Supervisor Julie McIntyre, Barstow James Ramos, Supervisor Janice Rutherford, Supervisor Cari Thomas, Adelanto	Indeterminate (6/30/2014) Indeterminate (6/30/2014) Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate Indeterminate

Policy Committee Meeting Times

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

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

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Board of Directors Study Sessions for Metro Valley Issues

STUDY SESSION	PURPOSE	MEMBERSHIP	TERMS
Board of Directors Study Sessions for Metro Valley Issues Refer to SANBAG Policy 10007.	To review, discuss, and make recommendations for actions to be taken at regular meetings of the Board on issues relating to Measure I Projects in the Valley.	Board of Directors Richard Riddell, Yucapa (Chair) Michael Tahan, Fontana (Vice Chair)	 6/30/2014 6/30/2014

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

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

COMMITTEE	PURPOSE	MEMBERSHIP	TERMS
Independent Taxpayer Oversight Committee (ITOC) Review of Measure I Expenditure Plan The ITOC shall provide citizen review to ensure that all Measure I funds are spent by the San Bernardino County Transportation Authority (hereby referred to as the Authority) in accordance with provison of the Expenditure Plan and Ordinance No. 04-01.	The ITOC shall review the annual audits of the Authority; report findings based on the audits to the Authority; and recommend any additional audits for consideration which the ITOC believes may improve the financial operation and integrity of program implementation. The Authority shall hold a publicly noticed meeting, which may or may not be included on the agenda of a regularly scheduled Board meeting, with the participation of the ITOC to consider the findings and recommendations of the audits.	Richard Haller Rod Johnson Norman Orfall Craig Scott Larry Sharp Ray Wolfe, Ex-Officio In addition to the appointed members, the SANBAG Executive Director will serve as an ex officio member.	12/31/16 12/31/16 12/31/14 12/31/14 12/31/14

SANBAG Ad Hoc Committees

COMMITTEE	PURPOSE	MEMBERSHIP
Audit Subcommittee of the General Policy Committee In November 2008, the Board approved the creation of an Audit Subcommittee of the General Policy Committee to strengthen the financial oversight function of the Board. Additional SANBAG Board Members may be appointed annually at the discretion of the Board President.	The responsibilities of the Audit Subcommittee shall be to: • Provide a direct contact between the independent auditor and the Board of Directors before, during and after the annual audit. • Work with the auditor and SANBAG staff on reviewing and implementing practices and controls identified in the annual audit.	Audit Subcommittee (for FY 2012-2013 Audit) - SANBAG President – Bill Jahn, Big Bear Lake - Vice President – L. Dennis Michael, Rancho Cucamonga - Immediate Past President – Janice Rutherford, Supervisor - Presidential Appointment – Walt Stanckiewitz, Grand Terrace
Ad Hoc Committee on Litigation with San Bernardino County Flood Control District In January 2007, the SANBAG President was authorized to appoint an ad hoc review committee of SANBAG Board Members who do not represent local jurisdictions party to the San Bernardino County Flood Control District vs. SANBAG litigation relative to the Colonies Development. In April 2008, the role of this committee was expanded to include the Cactus Basin litigation.	Review and provide guidance on litigation with San Bernardino County Flood Control District regarding the Colonies Development and the Cactus Basin in Rialto.	Pat Morris, San Bernardino, Chair Larry McCallon, Highland Richard Riddell, Yucaipa
Bylaws In July 2012, the SANBAG Board President appointed this ad hoc committee to review SANBAG's bylaws and recommend changes to modernize SANBAG's governance document.	Review SANBAG's bylaws and make recommendations to the Board on any necessary changes.	Rhodes "Dusty" Rigsby, Loma Linda - Chair Mike Leonard, Hesperia Larry McCallon, Highland Pat Morris, San Bernardino
Budget Process In July 2012, the SANBAG Board President appointed this ad hoc committee to review SANBAG's budget preparation process and final budget document and make recommendations to help improve communication and transparency of SANBAG's budget to elected officials and the general public.	Review SANBAG's budget adoption process and final budget document and make recommendations on changes to improve the process and the final budget document to make them more useful and informative to Board Members and the public.	Ray Musser, Upland – Chair Mike Podegracz, P.E. – City Manager, City of Hesperia Sam Racadio – Council Member, City of Highland Kevin Ryan - Principal Transportation Planner, City of Fontana
Contracting Process In July 2012, the SANBAG Board President appointed this ad hoc committee to strengthen SANBAG's procurement policies and procedures.	Review SANBAG's contracting policies and procedures and make recommendations to improve them.	Michael Tahan, Fontana - Chair Robert Lovingood, Supervisor Julie McIntyre, Barstow Walt Stanckiewicz, Grand Terrace Alan Wapner, Ontario Dennis Yates, Chino

SANBAG Ad Hoc Committees

COMMITTEE	PURPOSE	MEMBERSHIP
Legislative In March 2013, the SANBAG Board President appointed this ad hoc committee. This committee will consist of the SANBAG Board Officers.	Review proposed legislation at the state and federal level. Provide direction to staff on positions consistent with the Board-adopted legislative platform.	President – Bill Jahn, City of Big Bear Lake Vice President – L. Dennis Michael, Rancho Cucamonga Immediate Past President – Janice Rutherford, Supervisor
Right of Way In February 2013, the SANBAG Board President appointed this ad hoc committee.	Review Right of Way policies and make recommendations on changes and signature authority limits.	Curt Emick, Apple Valley James Ramos, Supervisor Deborah Robertson, Rialto Michael Tahan, Fontana
Transit Review Ad Hoc Committee In July 2013, the SANBAG Board President appointed this ad hoc committee.	Review transit agency efficiencies and maximize transit funding.	Janice Rutherford, Supervisor – Chair Jim Harris, Twentynine Palms Robert Lovingood, Supervisor Ryan McEachron, Victorville L. Dennis Michael, Rancho Cucamonga Dusty Rigsby, Loma Linda Alan Wapner, Ontario

SANBAG Technical Advisory Committees

COMMITTEE	PURPOSE	MEETING SCHEDULE
Transportation Technical Advisory Committee (TTAC) Committee membership consists of a primary staff representative of each SANBAG member agency designated by the City Manager or County Administrative Officer.	SANBAG's Transportation Technical Advisory Committee was formed by SANBAG management to provide input to SANBAG staff on technical transportation-related matters and formulation of transportation-related policy recommendations to the SANBAG Board of Directors. The TTAC is not a Brown Act committee.	Generally meets on the first Monday of each month at 1:30 PM, at SANBAG.
City/County Manager's Technical Advisory Committee (CCM TAC) The committee is made up of up to two representatives of the County Administrator's Office and the city manager or administrator from each city and town in the County.	SANBAG's City/County Manager's Technical Advisory Committee was established in the Joint Powers Authority that established SANBAG. The primary role of the committee is to provide a forum for the chief executives of SANBAG's member agencies to become informed about and discuss issues facing SANBAG. It also provides a forum for the discussion of items of mutual concern and a way to cooperate regionally in addressing those concerns. The CCM TAC is a Brown Act Committee.	Meets on the first Thursday of each month at 10:00 AM, at SANBAG.
Public and Specialized Transportation Advisory and Coordinating Council (PASTACC) Membership consists of 13 members appointed by the SANBAG Board of Directors 6 representing Public Transit Providers 1 representing County Dept. of Public Works 1 representing the Consolidated Transportation Services Agency 5 representing Social Service Providers	Subject to the Transportation Development Act (TDA) Section 99238 – establishes PASTACC's statutory responsibilities: (1) Review and make recommendations to SANBAG on annual Unmet Transit Needs, Federal Transit Administration and Measure I Program applications and reports. (2) Assist SANBAG in developing public outreach approach on updating the Coordinated Public Transit/Human Services Transportation Plan and disseminate information in reference to State law and recommendations as they relate to transit and specialized transit. (3) Monitor and make recommendations on Federal regulatory processes as they relate to transit and specialized transit. (4) Address any special issues of PASTACC voting and non-voting members. The PASTACC is a Brown Act committee.	Meets the second Tuesday every other even month at 10:00 AM, at SANBAG.
Planning and Development Technical Forum (PDTF) Committee membership consists of a primary staff representative of each SANBAG member agency designated by the City Manager or County Chief Executive Officer.	The SANBAG Planning and Development Technical Forum was formed by SANBAG management to provide an opportunity for interaction among planning and development representatives of member agencies on planning issues of multijurisdictional importance. The PDTF is not a Brown Act Committee.	Meets the 4th Wednesday of each month at 2:00 p.m. at the Depot (in the SCAG Office).

SANBAG Technical Advisory Committees

COMMITTEE	PURPOSE	MEETING SCHEDULE
Project Development Teams	Project Development Teams (PDTs) are assembled for all major project development activities by SANBAG staff. Teams are generally composed of technical representatives from SANBAG, member jurisdictions appropriate to the project, Caltrans, and other major stakeholder entities that have significant involvement in the project. PDTs make recommendations related to approaches to project development, evaluation of alternatives, and technical solutions. PDTs meet on a regular basis throughout the project phase to review progress and to provide technical input required for project development. The PDTs are not Brown Act Committees.	Varies with the PDT, at SANBAG.

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