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## Agenda

### MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 13, 2012

9:00 a.m.

James R. Mills Building  
Board Meeting Room, 10th Floor  
1255 Imperial Avenue, San Diego

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#### ACTION RECOMMENDED

1. Roll Call
2. Approval of Minutes - November 15, 2012
3. Public Comments - Limited to five speakers with three minutes per speaker. Others will be heard after Board Discussion items. If you have a report to present, please give your copies to the Clerk of the Board.

Approve

Please SILENCE electronics  
during the meeting

1255 Imperial Avenue, Suite 1000, San Diego, CA 92101-7490 • (619) 231-1466 • [www.sdmts.com](http://www.sdmts.com)

Metropolitan Transit System (MTS) is a California public agency comprised of San Diego Transit Corp., San Diego Trolley, Inc., San Diego and Arizona Eastern Railway Company (nonprofit public benefit corporations), and San Diego Vintage Trolley, Inc., a 501(c)(3) nonprofit corporation, in cooperation with Chula Vista Transit. MTS is the taxicab administrator for seven cities. MTS member agencies include the cities of Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, San Diego, Santee, and the County of San Diego.



## CONSENT ITEMS

- |    |   |         |
|----|---|---------|
| 6. | <u>Investment Report - October 2012</u><br>Action would receive a report for information.   | Receive |
| 7. | <u>Classroom Day Tripper Program Follow-up - Audit Report</u><br>Action would receive Internal Audit's report on the Classroom Day Tripper Program.   | Receive |
| 8. | <u>San Diego Transit Corporation (SDTC) Noncontract Pension Formula</u><br>Action would: (1) amend the Retirement Plan for Noncontract Employees of the San Diego Transit Corporation (SDTC) to comply with the California Public Employees' Pension Reform Act of 2013 (PEPRA); and (2) adopt Resolution No. 12-20 implementing the "pick-up" provisions of Section 414(h)(2) of the Internal Revenue Code with respect to the Retirement Plan for noncontract employees of San Diego Transit Corporation. | Approve |
| 9. | <u>Transmissions and In-Frame Engine Overhaul Services - Contract Award</u><br>Action would authorize the CEO to: (1) execute MTS Doc. No. B0595.0-13 with Dartco Transmission Sales and Service for the provision of transmission and in-frame engine overhaul services for Group III-Transmission Rebuilds for a three-year base period with 2 one-year options; and (2) exercise each option year at his discretion.   | Approve |

## CLOSED SESSION

- |     |   |                    |
|-----|---|--------------------|
| 24. | a. CLOSED SESSION - CONFERENCE WITH LABOR NEGOTIATORS Pursuant to California Government Code Section 54957.6; Agency-Designated Representative: Harry Mathis, Board Chair; Unrepresented Employee: Chief Executive Officer  | Possible<br>Action |
|     | b. CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL EXISTING LITIGATION Pursuant to California Government Code Section 54956.9(a) (IRS Tax Appeal, Ref. No. 569-X)  | Possible<br>Action |
|     | c. CLOSED SESSION - CONFERENCE WITH REAL PROPERTY NEGOTIATORS PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 54956.8<br><u>Property:</u> The San Diego and Arizona Eastern Railway Company (SD&AE) Desert Line from approximate Mile Post 60 to approximate Mile Post 130 (Division to Plaster City) in San Diego and Imperial Counties<br><u>Agency Negotiators:</u> Karen Landers, General Counsel; Tim Allison, Manager of Real Estate Assets; and Paul Jablonski, Chief Executive Officer<br><u>Negotiating Parties:</u> Pacific Imperial Railroad, Inc. (PIR)<br><u>Under Negotiation:</u> Price and Terms of Payment for Assignment of Operating Rights | Possible<br>Action |

Oral Report of Final Actions Taken in Closed Session

## NOTICED PUBLIC HEARINGS

25. None.

## DISCUSSION ITEMS

30. Operating Agreement and Lease for Desert Line with Pacific Imperial Railroad, Inc. (PIR) (Karen Landers)  
Action would authorize the CEO to execute a long-term Operating Agreement and Lease for the Desert Line with PIR. Approve
31. Extension of Chief Executive Officer's Executive Employment Agreement (Karen Landers)  
Action would authorize the CEO to execute a five-year extension of the CEO Executive Employment Agreement. Approve
32. Management Pension Formula (Jeff Stumbo)  
Action would adopt Resolution No. 12-19 establishing a new MTS employee pension formula of 2% at 60. Adopt
33. a. 40-Foot Low-Floor CNG Transit Bus Procurement - Contract Award (Ernesto DeGuzman)  
Action would authorize the CEO to: (1) execute MTS Doc. No. B0589.0-13 with Gillig, LLC for the purchase of fifty 40-foot, low-floor compressed natural gas (CNG) transit buses; and (2) make additional purchases of up to 300 buses for a period not to exceed five years from the date of the initial contract with Gillig, LLC. All purchases would be contingent upon the successful completion of the federally required Buy America audit and available funding. Approve
- b. 60-Foot Low-Floor Articulated CNG Transit Buses - Contract Award (Ernesto DeGuzman)  
Action would authorize the CEO to: (1) execute MTS Doc. No. B0570.0-12 with New Flyer Industries for the purchase of up to 165 60-foot, low-floor, articulated, compressed natural gas (CNG) transit buses plus associated contract spare parts, manuals, training, special tools, and use-tax payments; and (2) issue a Notice to Proceed for 47 buses for the I-15 Corridor Bus Rapid Transit (BRT) and Mid-City Rapid Projects. All purchases would be contingent upon the successful completion of the federally required Buy America audit and available funding. Approve

## REPORT ITEMS

45. Fiscal Year 2012 Comprehensive Annual Financial Report (Linda Musengo)  
Action would receive a report for information. Receive
46. FY 2012 Final Budget Comparison (Tom Lynch)  
Action would receive a report for information. Receive
47. Operations Budget Status Report - October 2012 (Mike Thompson)  
Action would receive a report for information. Receive

- |     |   |             |
|-----|---|-------------|
| 60. | <u>Chairman's Report</u>  | Information |
| 61. | <u>Audit Oversight Committee Chairman's Report</u>  | Information |
| 62. | <u>Chief Executive Officer's Report</u>   | Information |
| 63. | <u>Board Member Communications</u>  |             |
| 64. | <u>Additional Public Comments Not on the Agenda</u><br>If the limit of 5 speakers is exceeded under No. 3 (Public Comments) on this agenda, additional speakers will be taken at this time. If you have a report to present, please furnish a copy to the Clerk of the Board. Subjects of previous hearings or agenda items may not again be addressed under Public Comments. |             |
| 65. | <u>Next Meeting Date:</u> January 17, 2013  |             |
| 66. | <u>Adjournment</u>  |             |



JOINT MEETING OF THE BOARD OF DIRECTORS FOR THE  
METROPOLITAN TRANSIT SYSTEM (MTS),  
SAN DIEGO TRANSIT CORPORATION (SDTC), AND  
SAN DIEGO TROLLEY, INC. (SDTI)

**MINUTES**

November 15, 2012

MTS - 1255 Imperial Avenue, Suite 1000, San Diego

1. Roll Call

Chairman Mathis called the Board meeting to order at 9:05 a.m. A roll call sheet listing Board member attendance is attached.

2. Approval of Minutes

Mr. Cunningham moved to approve the minutes of the October 18 and November 1, 2012, MTS Board of Directors meetings. Mr. Ewin seconded the motion, and the vote was 10 to 0 in favor (with Ms. Denny abstaining and Ms. Emerald, Messrs. Alvarez, and McClellan absent).

4. Appointment of Ad Hoc Nominating Committee for Recommending Appointments to MTS Committees for 2013 (Taken out of Order)

Chairman Mathis nominated himself as Chair and Board Members Roberts (Vice Chair), Cunningham, and Ewin as the Ad Hoc Nominating Committee.

Action Taken

Mr. Castaneda moved to appoint Messrs. Mathis, Roberts, Cunningham, and Ewin as the Ad Hoc Nominating Committee (pursuant to MTS Board Policy No. 22 - Rules of Procedure for the Metropolitan Transit System) to make recommendations to the Board with respect to the appointment of members of the Board to serve on MTS and non-MTS committees for 2013. Mr. Cox seconded the motion, and the vote was 11 to 0 in favor (with Ms. Emerald and Messrs. Alvarez, and McClellan absent, and Mr. Young out of the room).

3. Public Comments

*Lorraine Leighton* – Ms. Leighton stated that whoever took her information got it wrong regarding expired tags on a Route 833 vehicle (handout attached). Ms. Leighton voiced complaints about a wheelchair ramp with no strip, not having enough time to request the next bus stop, not being asked where she is getting off, and the time it takes to load her wheelchair.

CONSENT ITEMS

6. San Diego and Arizona Eastern (SD&AE) Railway Company Quarterly Reports and Ratification of Actions Taken by the SD&AE Board of Directors at its Meeting on October 16, 2012  
Action would: (1) receive the San Diego and Imperial Valley Railroad (SD&IV), Pacific Southwest Railway Museum Association (Museum), and Pacific Imperial Railroad, Inc. (PIR) quarterly reports for information; and (2) ratify actions taken by the SD&AE Board at its quarterly meeting on October 16, 2012.
7. Investment Report - September 2012  
Action would receive a report for information.
8. Unallocated Transportation Development Act Funds for Transit-Related Projects  
Action would approve the use of \$125,128.59 in unallocated Transportation Development Act (TDA) funds currently held by the County of San Diego for transit-related expenses for the City of El Cajon.
9. Adoption of the 2013 MTS Executive Committee and Board of Directors Meeting Schedule  
Action would adopt the 2013 Executive Committee and Board of Directors meeting schedule.
10. Purchase and Installation of AT&T's CISCO Core and IDF Network Equipment  
Action would authorize the CEO to purchase AT&T equipment and professional installation services to replace MTS network infrastructure hardware.
11. Increased Authorization for Legal Services - Liebman, Quigley, Sheppard & Soulema, APLC  
Action would authorize the CEO to execute MTS Doc. No. G1425.1-25 with Liebman, Quigley, Sheppard & Soulema, APLC for legal services throughout the remainder of FY 2013.
12. Federal Transit Administration 5317 Grant Applications  
Action would approve Resolution No. 12-16 authorizing the CEO to submit applications for federal fiscal year 2012 New Freedom funding.
13. San Diego Regional Communications System Participating Agency Agreement - Contract Amendment  
Action would: (1) authorize additional funding of \$45,951 to cover MTS's share of the Regional Communications System (RCS) Participating Agency Agreement (MTS Doc. No. G0763.2-02) for radio-repeater services through March 31, 2013; and (2) authorize the CEO to execute MTS Doc. No. G0763.3-02 to the RCS Participating Agency Agreement extending the radio-repeater service term from April 1, 2013, to March 31, 2016.
14. AT&T CALNET II Telecommunications Contract  
Action would authorize the CEO to purchase telecommunications services, including leased-line telecommunications services, for MTS, San Diego Transit Corporation (SDTC), and San Diego Trolley, Inc. (SDTI) using the State of California's CALNET II Master Services Agreement (MSA) for modules MSA-1 (voice data and video services) and MSA-2 (long-distance services) with American Telephone and Telegraph (AT&T) for the entire term of the contract and any contract extensions currently calculated at 15 months.
15. Job Order Contact Approval for Wright Street Yard Security Enhancement - Contract Award  
Action would authorize the CEO to execute Work Order No. MTSJOC 1337-18 with Southland Electric Inc. (MTS Doc. No. PWL132.0-11) for the Wright Street Yard Security Enhancement Project.

CONSENT ITEMS – Continued

16. Simmons/Hegenscheidt U2000-50 Under-Floor Wheel-Truing Lathe - Sole-Source Procurement  
Action would authorize the CEO to execute MTS Doc. No. L1120.0-13 as a sole-source procurement with Simmons/Hegenscheidt Machine Tool Corporation for the procurement of a U2000-50 Under-Floor Wheel-Truing Lathe with associated spare-parts packages, installation, commissioning, and training.
17. Wheel-Truing Machine Pit - Funds Transfer  
Action would: (1) approve Addendum 17 Project Scope of Work, which is a Memorandum of Understanding (MOU) with the San Diego Association of Governments (SANDAG) to provide funding from MTS's Capital Improvement Project (CIP) 11309 and for SANDAG's use for bidding, constructing, and commissioning the new equipment; and (2) forward a request to SANDAG to prepare accounts for engineering, administration, and construction-management costs for charging against CIP 11309.
18. Mendoza, Argentina LRV Purchase – Contract Amendment  
Action would authorize the CEO to negotiate and execute a contract amendment with the Government of Mendoza, Argentina (Mendoza) including the exercise of Mendoza's option to purchase spare parts, the transfer of 5 nonoperable U-2 light rail vehicles to Mendoza, and the loaning of up to 2 light rail vehicle (LRV) Maintenance employees to Mendoza for training and support purposes for a 12-month period.
19. Security CCTV System Projects - Fund Transfers  
Action would: (1) approve Addendum 17 Project Scope of Work, which is a Memorandum of Understanding (MOU) with the San Diego Association of Governments (SANDAG), for transferring funds from MTS's Capital Improvement Project (CIP) 11324 (CCTV System Upgrade) to SANDAG CIP 1210070 (System Station Platforms). The funds would be used for providing and installing new CCTV cameras on the Orange Line and Downtown Stations using a SANDAG Job Order Contractor. The cameras would be added to the existing equipment as a result of the reconfiguration of the new platforms; (2) forward a request to SANDAG to prepare accounts for contractor billings to MTS CIP 11324 for the installation of the new cameras; (3) approve Addendum 17 Project Scope of Work, which is an MOU for transferring funds from MTS's CIP 11325 (SDSU Monitoring System) to SANDAG CIP 1210070 (System Station Platforms). The funds would be used for providing and installing new cameras in the San Diego State University (SDSU) Trolley Station tunnels using a SANDAG Job Order Contractor; and (4) forward a request to SANDAG to prepare accounts for contractor billings to MTS CIP 11325 for installation of the new cameras.
20. Item pulled for discussion (see page 4).
21. LiveScan Authorization  
Action would approve Resolution No. 12-18 authorizing staff to execute a request to the California Department of Justice for San Diego Trolley, Inc. to become a contributing agency for LiveScan fingerprinting.

Action on Consent Items 6-19 and 21

Mr. Ewin moved to approve Consent Agenda Item Nos. 6-19 and 21. Mr. Castaneda seconded the motion, and the vote was 11 to 0 in favor (with Ms. Emerald and Messrs. Alvarez and McClellan absent, and Mr. Young out of the room).

20. An Ordinance Amending Ordinance No. 5, An Ordinance Relating to the Enforcement Authorities of Code Compliance Inspectors, Assistant Code Compliance Supervisors, the Code Compliance Inspection Supervisor, and Taxicab Inspectors I & II and an Ordinance Amending Ordinance No. 11, an Ordinance Providing for the Licensing and the Regulating of Transportation Services within the City by the Adoption of a Uniform Paratransit Ordinance  
Action would: (1) read the title of Ordinance No. 5, An Ordinance Relating to the Enforcement Authorities of Code Compliance Inspectors, Assistant Code Compliance Supervisors, the Code Compliance Inspection Supervisor, and Taxicab Inspectors I & II and Ordinance No. 11, An Ordinance Providing for the Licensing and the Regulating of Transportation Services Within the City By the Adoption of a Uniform Paratransit Ordinance; (2) waive further readings of the ordinance; (3) adopt the proposed ordinance amendments; and (4) direct publication of an ordinance summary.

Public Comments (Agenda Item No. 20)

*Brian Giardina - United Taxi Workers of San Diego (UTWSD).* Mr. Giardina thanked the Board for its discussion at the last meeting regarding the minor changes to Ordinance Nos. 5 and 11 and thanked staff for working with UTWSD. In reference to prior discussions regarding retaliation, Mr. Giardina informed the Board that in the last few weeks, drivers trying to exercise basic rights were terminated, and he asked that the Board and staff take this into consideration.

*Sarah Saez – UTWSD.* Ms. Saez provided Board members with study called *Workplace Safety Issues of San Diego Taxi Drivers* (attached). Ms. Saez stated that UTWSD is dedicated to bringing the Board information because it is not getting it from MTS staff. She discussed taxi driver demographics and referenced <http://utwdsd.org>. Ms. Saez added that taxi drivers are not comfortable going to MTS staff because they feel intimidated, and she reiterated that drivers face retaliation leading to termination for speaking before the Board. Ms. Saez read from the handout and asked the Board to do its due diligence educating itself on these issues.

*Ben Seifu – Taxicab Driver.* Mr. Seifu referenced a handout he brought for the Board (attached). He cited complaints against John Scott, MTS Manager of Taxicab Administration, Sharon Cooney, MTS Director of Governmental Affairs, and others up the chain of command. Mr. Seifu added that the MTS Board also deserves the brunt of accountability for being out of touch. He stated that it is time for new management to bring integrity and transparency to a complex industry full of corruption and deceit.

*Mikail Hussein - UTWSD.* Mr. Hussein thanked the Board and the Taxicab Administration for their hard work. Mr. Hussein stated he was at the meeting to educate the Board regarding issues with retaliation and that the UTWSD's mission is to look at ways to improve the situation. Mr. Hussein cited instances of retaliation against the drivers and doesn't understand why it can't be dealt with at MTS. He would like to see Ordinance Nos. 5 and 11 revisited with changes to address the retaliation issues. Mr. Hussein stated that it troubles him that (MTS) taxicab inspectors can make arrests because he feels they are not doing a good job.

*Michelle Anderson – West Coast Cab & Radio Service and other Radio Service Companies.* Mr. Anderson stated that he was representing radio services to urge support for staff's recommendation. He felt the previous speakers raised new issues that have already been vetted. Mr. Anderson felt these issues should be brought to the Taxicab Committee before Chairperson Marti Emerald and requested the Board move forward unanimously with staff's recommendation.

Public Comments (Agenda Item No. 20) – Continued

*David Yemeni – Taxi Driver/Owner.* Mr. Yemeni stated that his parents have been taxicab drivers for 20 years, and he has been a driver and owner himself for many years. He feels the newer drivers have the same opportunities to work but blame their issues on the owners. Mr. Yemeni added that he feels that John Scott and MTS are understaffed and that the Transportation Charter-Party cars (TCPs) are the problem. He asked everyone who feels they have issues to sit down and talk to work it out.

*Margo Tanguay – Taxicab Driver.* Ms. Tanguay gave the Board a history of her college degrees and management training sessions. She commended John Scott stating that he has done more service for the taxicab industry than any other regulator in MTS history. She feels that Mr. Scott is under a lot of pressure due to the amount of service, limited funds in the industry, and trying to enforce the rules and regulations. Ms. Tanguay stated that she does not disagree with some of the taxicab industry's issues and would like to find solutions.

Mr. Mathis responded that he felt compelled to state that there are problems (within the taxicab industry); however, MTS is not a law enforcement agency. He added that law enforcement for the taxicab industry falls under the Sheriff's Department, and MTS is not a party to drivers' contracts and therefore has no standing in court. Mr. Mathis reiterated that MTS's main role is adequate training for drivers and to ensure that cabs are safe. He stated that the Board does not have a lack of sympathy for the drivers and it can hear grievances, but it cannot enforce the laws.

Action on Consent Item 20

Mr. Gloria moved to approve Consent Agenda Item No. 20. Ms. England seconded the motion, and the vote was 11 to 0 in favor (with Ms. Emerald and Messrs. Alvarez and McClellan absent, and Mr. Young out of the room).

CLOSED SESSION

24. Closed Session Items

The Board convened to Closed Session at 9:33 a.m. and reconvened to open session at 9:42 a.m.

Oral Report of Final Actions Taken in Closed Session

Karen Landers, General Counsel, reported the following:

- a. CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL EXISTING LITIGATION Pursuant to California Government Code Section 54956.9(a): Michael Daniels v. MTS (SDSC Case Nos. 0305425 and 0279536)

The Board received a report and gave directions to staff.

- b. CLOSED SESSION - CONFERENCE WITH LABOR NEGOTIATORS Pursuant to California Government Code Section 54957.6; Agency-Designated Representative – Jeff Stumbo; Employee Organization - International Brotherhood of Electrical Workers, Local 465

The Board voted to ratify the Tentative Agreement between the IBEW 465 and San Diego Trolley, Inc. by a unanimous vote of 12-0 (with Mr. Alvarez, Ms. Emerald, and Mr. McClellan absent).

## PUBLIC HEARING

25. There were no public hearings.

## DISCUSSION ITEMS

30. FY 2013 Capital Improvement Plan Amendment

Mike Thompson, MTS Budget Manager, gave a PowerPoint presentation on additional funding for the Capital Improvement Program (CIP) for fiscal year 13 and also adjustments due to estimates included in the FY 13 CIP. Mr. Thompson informed the Board that the revised FY 13 amount would be \$176,468 million. He explained the various funding sources and which projects would receive funding.

Mr. Gloria referenced Slide 4 for clarification about unanticipated State Transit Assistance (STA) one-time funding. Mr. Thompson responded that the funds are anticipated, but it is not known when they will be distributed. Mr. Thompson also clarified for Mr. Gloria that the \$22.2 million in STA money—of which \$5 million would be used for the operating budget—is not an ongoing resource. Mr. Jablonski added that MTS has a structural deficit for its operating budget and is borrowing capital dollars to fill the gap. He clarified that the \$5 million being used is the anticipated amount and would not exaggerate the structural deficit.

Mr. Minto asked for clarification on how funding is designated for grants. Mr. Thompson responded that most grants are very specific about how the money is designated. He explained that it is up to MTS as to how STA funds are spent.

Mr. Minto asked if grant money includes administrative costs. Mr. Jablonski referred to the East County Bus Maintenance Facility Project grant—MTS applied for \$30 million and was awarded \$10 million. With that \$10 million, MTS was able to fund bus replacements. He also explained that starting in May—through new federal legislation—Map 21 is requiring transit systems to get asset management systems in place. MTS got in ahead of the deadline through a pilot program and is getting funded when other agencies will have to pay. This savings offsets money that MTS would have had to allocate for this type of project, and allows MTS to buy 8 additional rail cars on the Orange Line. Mr. Jablonski explained that without that money, MTS would have had to cut back on projects.

### Action Taken

Ms. Bragg moved to approve the amended FY 2013 Capital Improvement Program. Mr. Cunningham seconded the motion, and the vote was 11 to 0 in favor (with Ms. Emerald and Messrs. Alvarez, McClellan, and Young absent).

31. Management Pension Formula

Jeff Stumbo, Director of Human Resources and Labor Relations, gave a PowerPoint presentation on amending the management pension formula. Mr. Stumbo explained that MTS currently offers a 2.7%-at-age-55 pension formula through CalPERS. During an MTS Budget Development Committee meeting in June, staff was directed to implement a second-tier 2%-at-age-60 pension formula for employees not yet hired. Mr. Stumbo explained that in August, the California Public Employees' Pension Reform Act of 2013 (PEPRA) was enacted with a January 1, 2013, effective date, which requires a 2%-at-62 formula for new hires, employee cost-sharing of up to 50% of "normal costs," and other cost-saving provisions.

Mr. Stumbo explained that there is a loophole in the legislation wherein new hires who were members of CalPERS or a reciprocal pension plan prior to December 31, 2012, would be eligible for the pension plan that MTS had in effect on December 31, 2012. He reported that to close the loophole, MTS must modify its pension formula prior to that date. Mr. Stumbo reviewed the next steps and staff's proposal before the Board to adopt Resolution No. 12-17 establishing a new MTS employee pension formula of 2% at 60 effective on or around December 24, 2012. Mr. Stumbo added that staff will continue to update the Board on this new legislation as it progresses.

In response to a question from Ms. England, Mr. Stumbo stated that MTS employees would be informed of today's action in writing and through communications from Mr. Jablonski.

Mr. Minto stated that currently there is a lawsuit in California over legislation like this because it prohibits unions from bargaining over significant pension changes. He stated that the new law was forced on us and asked if this law could be changed in the future to some other formula. Mr. Jablonski responded that we are trying to deal with the current law. He added that SANDAG went to a 2%-at-60 formula, and that MTS can't immediately go with the 2%-at-62 formula because it is not a CalPERS plan (until after the first of the year). Mr. Jablonski used the example that if we were to hire someone from Los Angeles Metro 15 years from now who was in a reciprocal plan, they would receive the current 2.7%-at-55 formula if we took no action. In addition, we would be required to fund the delta for the entire years of service and the liability would be significant.

Karen Landers, MTS General Counsel, clarified for the Board that the action today regarding the 2.7%-at-55 pension formula impact is only for MTS unrepresented employees and would not impact any bargaining units.

#### Action Taken

Mr. Cunningham moved to adopt Resolution No. 12-17 establishing a new MTS employee pension formula. Mr. Minto seconded the motion, and the vote was 11 to 0 in favor (with Ms. Emerald and Messrs. Alvarez, McClellan, and Young absent).

## REPORT ITEMS

### 49. East County Bus Maintenance Facility Project Update (Taken out of Order)

Elliot Hurwitz, MTS Manager of Capital Projects, gave a PowerPoint update on the East County Bus Maintenance Facility (ECBMF) Project for information. Mr. Jablonski added that the hope is to have this project completed in a little over a year or so.

#### Action Taken

Mr. Gloria moved to receive a report for information. Mr. Ewin seconded the motion, and the vote was 10 to 0 in favor (with Ms. Emerald and Messrs. Alvarez, Cunningham, McClellan, and Young absent).

REPORT ITEMS - Continued

45. Annual Service Performance-Monitoring Report

Devin Braun, MTS Senior Transportation Planner, gave a PowerPoint presentation on FY 2012 annual service performance monitoring for MTS bus, rail, and contract services. He explained the different route frequencies.

In response to Mr. Minto, Mr. Jablonski stated there is no industry on-time performance standard, but he thinks that 85% is considered respectable. He explained that a downward trend for the industry in on-time performance is due to increased ridership and less funding. Mr. Jablonski reported that MTS is working on improving on-time performance and has a special task force looking at the components that cause delays for operators. He gave examples of current issues stating that MTS is not accepting the status quo and has initiatives for bus and rail operators to improve their performance.

Mr. Ewin referred to slide 10 in the PowerPoint. He requested that the prior three years' performance data be included in these reports to the Board. Mr. Jablonski explained the difficulties compiling performance data from many different sources, and Mr. Braun added that FY 11 was the first year that the data could be collected on an "apples-to-apples" basis. These reports will include the prior 3 years of data going forward.

Action Taken

Mr. Castaneda moved to receive a report for information. Ms. Bragg seconded the motion, and the vote was 9 to 0 in favor (with Ms. Emerald and Messrs. Alvarez, Cunningham, McClellan, and Young absent, and Mr. Mathis out of the room).

46. Annual Rail Operations Report

Wayne Terry, Chief Operating Officer (Rail), gave a PowerPoint presentation on San Diego Trolley, Inc.'s (SDTI's) FY 12 year-end operating report. Mr. Terry gave updates regarding the Transportation, LRV Maintenance, and Revenue Departments and also discussed special projects.

Action Taken

Mr. Cox moved to receive a report for information. Mr. Ewin seconded the motion, and the vote was 10 to 0 in favor (with Ms. Emerald and Messrs. Alvarez, Cunningham, McClellan, and Young absent).

63. Board Member Communications (Taken out of Order)

Chairman Mathis welcomed Barbara Denny (Al Ovrom's alternate from the City of Coronado) and announced that this is the last Board meeting for Mary England (representative from the City of Lemon Grove) (handout attached). On behalf of the Board, Chairman Mathis thanked Ms. England for her service and also thanked Mr. Castaneda who is terming out from the City of Chula Vista.



REPORT ITEMS – Continued

47. Annual Bus Operations Report

Claire Spielberg, MTS Chief Operating Officer (Bus), and Jim Byrne, Director of Transportation, gave a PowerPoint presentation on the annual bus operations report. The presentation included information about FY 12 milestones, ridership, maintenance, and accomplishments. In response to a request by Mr. Minto, Ms. Spielberg stated that going forward, staff will incorporate labor calculations and bus comparisons by series and bus age.

Action Taken

Mr. Gloria moved to receive a report for information. Mr. Minto seconded the motion, and the vote was 9 to 0 in favor (with Ms. Emerald and Messrs. Alvarez, Castaneda, Cunningham, McClellan, and Young absent).

48. Semiannual Security Report (January through June 2012)

Bill Burke, MTS Chief of Police, gave a PowerPoint presentation regarding the semiannual security report from January through June 2012. Mr. Burke's presentation included information about crimes, arrests, enforcement details, ongoing programs, and outreach efforts.

Mr. Cox commended Mr. Burke and MTS staff for their use of the Graffiti Tracker Program and cited the benefits gained from the program. Mr. Cox added that the contract will be up in June, and that Gary Gallegos and SANDAG are working to make the program permanent. He added that the program only works if all of the entities work together.

Ms. Bragg requested that going forward, staff break out the "Number of MTS Images Submitted to Graffiti Tracker" (on Slide 18) by either city or train line (Orange, Green, or Blue).

Mr. Jablonski reported that MTS will be implementing a pilot security effort within the next few weeks to add an officer on every Blue and Orange Line train after 8:30 p.m. Mr. Jablonski explained that officers will move from one car to the next to make their presence known, and the impacts will be measured (in regard to security incidents). Mr. Burke added that the cars have wireless capabilities and, in the future, security personnel should be able to view live feed while onboard. Mr. Jablonski added that security will also be increased when school lets out and for fare evasion enforcement.

Action Taken

Mr. Cox moved to receive a report for information. Mr. Minto seconded the motion, and the vote was 8 to 0 in favor.

50. Operations Budget Status Report for September 2012

Mike Thompson, MTS Budget Manager, gave a PowerPoint update on the operations budget.

Action Taken

Mr. Minto moved to receive a report for information. Mr. Cox seconded the motion, and the vote was 7 to 0 in favor (with Ms. Emerald and Messrs. Alvarez, Cunningham, England, Ewin, McClellan, and Young absent, and Ms. Denny out of the room).

60. Chairman's Report

There was no Chairman's report.

61. Audit Oversight Committee (AOC) Chairman's Report

Mr. Mathis informed members that the full audit report will be on the docket for the next meeting.

62. Chief Executive Officer's Report

Mr. Jablonski reported that he drove to Palm Springs last week to attend the California Transit Association (CTA) annual meeting, and that he is the Chair of that organization.

63. Board Member Communications - Continued

Mr. Castaneda discussed the *Southwestern Community College District Associated Student Organization (ASO) Transportation Survey Fall 2012* that he previously sent to the Board. He stated that there is some good information in the survey that could be helpful in looking at replenishing transit services for students in South County. Mr. Jablonski responded that staff will use this information and that Southwestern Community College is a great transit-generator destination. Mr. Jablonski stated that there is currently a plan to increase Route 709 services to every 7.5 minutes in the mornings. Mr. Castaneda added that the survey sample included about 1,100 students. Although some questions weren't asked, Mr. Castaneda feels the survey is a good start, and he appreciates MTS's recognition of its value.

64. Additional Public Comments on Items Not on the Agenda

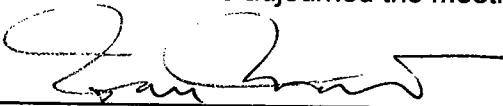
There were no additional public comments.

65. Next Meeting Date

The next regularly scheduled Board meeting is December 13, 2012.

66. Adjournment

Chairman Mathis adjourned the meeting at 11:44 a.m.



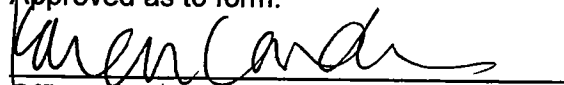
Chairperson  
San Diego Metropolitan Transit System

Filed by:



Office of the Clerk of the Board  
San Diego Metropolitan Transit System

Approved as to form:



Office of the General Counsel  
San Diego Metropolitan Transit System

Attachments: Roll Call Sheet  
Basic Details for PSG0024770 (Handout from Lorraine Leighton)  
Workplace Safety Issues of San Diego Taxi Drivers (Handout from Sarah Saez)  
Lease Driver Information (Handout from Ben Seifu)  
Letter of Retirement from the Lemon Grove City Council (Handout from Mary England)

**METROPOLITAN TRANSIT SYSTEM  
BOARD OF DIRECTORS  
ROLL CALL**

MEETING OF (DATE): November 15, 2012

CALL TO ORDER (TIME): 9:05 a.m.

RECESS: \_\_\_\_\_

RECONVENE: \_\_\_\_\_

CLOSED SESSION: 9:33 a.m.

RECONVENE: 9:42 a.m.

PUBLIC HEARING: \_\_\_\_\_

RECONVENE: \_\_\_\_\_

ORDINANCES ADOPTED: 5 and 11

ADJOURN: 11:44 a.m.

BOARD MEMBER	(Alternate)	PRESENT (TIME ARRIVED)	ABSENT (TIME LEFT)
ALVAREZ	<input type="checkbox"/> (Faulconer) <input type="checkbox"/>		
BRAGG	<input checked="" type="checkbox"/> (King) <input type="checkbox"/>		
CASTANEDA	<input checked="" type="checkbox"/> (Rindone) <input type="checkbox"/>		11:08 a.m.
CUNNINGHAM	<input checked="" type="checkbox"/> (Mullin) <input type="checkbox"/>		10:51 a.m.
EWIN	<input checked="" type="checkbox"/> (Arapostathis) <input type="checkbox"/>		11:10 a.m.
EMERALD	<input type="checkbox"/> (Faulconer) <input type="checkbox"/>		
ENGLAND	<input checked="" type="checkbox"/> (Gastil) <input type="checkbox"/>		11:05 a.m.
GLORIA	<input checked="" type="checkbox"/> (Faulconer) <input type="checkbox"/>		
MATHIS	<input checked="" type="checkbox"/>		
MCCLELLAN	<input type="checkbox"/> (Ambrose) <input type="checkbox"/>		
MINTO	<input checked="" type="checkbox"/> (McNelis) <input type="checkbox"/>	9:18 a.m.	
OVROM	<input type="checkbox"/> (Denny) <input checked="" type="checkbox"/>		
RIOS	<input checked="" type="checkbox"/> (Zarate) <input type="checkbox"/>		
ROBERTS	<input type="checkbox"/> (Cox) <input checked="" type="checkbox"/>		
YOUNG	<input checked="" type="checkbox"/> (Faulconer) <input type="checkbox"/>	9:16 a.m.	10:02 a.m.

SIGNED BY THE CLERK OF THE BOARD: *Jan Zardetto*

CONFIRMED BY THE GENERAL COUNSEL: *Calvin Taylor*

**California Public  
Utilities Commission**

&gt;&gt;Lookup Home &gt; &gt; Details

**BASIC DETAILS for PSG0024770**[Return](#)

Carrier ID: PSG0024770  
Carrier Status: Expired  
Carrier Name: FIRST TRANSIT INC  
Carrier DBA: FIRST TRANSIT INC

**List of Authorities for PSG0024770**

Authorities
Transportation Charter Class A Certificate - Expired - 09/04/2012

1 - 1

**List of Insurance Policies for PSG0024770**

Insurance Policy	Policy#	Address
PL and PD Policy	5273859	NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA 180 MAIDEN LANE NEW YORK, NY 10038-
Workers Compensation Coverage	1178529	NEW HAMPSHIRE INSURANCE COMPANY 180 MAIDEN LANE NEW YORK, NY 10038-

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**Workplace Safety Issues of San Diego Taxi Drivers:  
What About Their Health & Safety?**  
A Study of the San Diego Taxicab Industry



Occupational Health Internship Program (OHIP)  
Association of Occupational and Environmental Clinics (AOEC)  
Employee Rights Center (ERC) & the United Taxi Workers of San Diego (UTWSD)  
Summer 2012

**Mina Nguyen**  
Ethnic Studies (Institution & Activism) & Sociology, B.A. Graduate  
University of San Diego - School of Arts & Sciences

**Roxana Said**  
Health Promotion and Behavioral Sciences, M.P.H Candidate

## **Table of Contents**

<b>I. Introduction</b>	<b>2</b>
<b>II. Project Background</b>	<b>3</b>
<b>III. Literature Review</b>	<b>4</b>
<b>IV. Methods</b>	<b>5</b>
<b>V. Results</b>	<b>7</b>
<b>VI. Limitations</b>	<b>11</b>
<b>VII. Recommendations</b>	<b>12</b>
<b>VIII. Personal Narrative</b>	<b>18</b>
<b>IX. Conclusion</b>	<b>18</b>
<b>X. Acknowledgements</b>	<b>19</b>
<b>XI. References</b>	<b>20</b>
<b>XII. Appendix A – D</b>	<b>21</b>
A: Survey Questionnaire	22
B: OHIP Name Badges & Business Cards	34
C: Graphs, Charts, & Tables of Results	35
D: Give Back Products	37

## **I. Introduction**

The city of San Diego is the eighth largest city in United States and the second largest city in California (sandiego.gov). It is known for its great tourist attractions, making San Diego one of the top tourist destinations. Nonetheless, the city has vulnerable working populations mainly because it has a large influx of immigrants from countries like Africa, Asia, and Latin America. Unfortunately, many of them encounter various issues that they have to try and overcome, such as, language barriers, cultural differences, social and economic hardship, and lack of good, safe jobs in mainstream society. In particular, the taxicab industry is an occupation where workers are exposed to high risk factors, and driving taxicabs is considered one of the most dangerous jobs nationwide.

Essentially, the National Institute for Occupational Safety and Health (NIOSH) indicated that taxi drivers are 60 times more likely to be murdered while on the job than other workers. The Department of Labor reported that they are also 80 times more likely to be robbed than any other U.S. worker. Studies indicate, from 1980 – 2009 there has been approximately 1,126 job related homicides of U.S. taxicab drivers (Centers for Disease Control and Prevention [CDC], 2012). For that reason, there have been recent studies illustrating that taxi drivers face high risk factors, suffer from poor working conditions, and do not know that they have the right to report injuries and illnesses, or file for workers compensation if they were to get hurt on the job. In particular, the Occupational Health Internship Program (OHIP) has carried out projects on taxicab drivers in previous years in other major U.S. cities, such as New York City and Los Angeles. Thus, the Occupational Health Internship Program (OHIP) of San Diego has created an opportunity for a research project to be conducted, which includes a more extensive study and documentation of the health and safety issues of San Diego taxi drivers.

## II. Project Background

The eight week internship program involves us working closely with the United Taxi Workers of San Diego (UTWSD), and the Employee Rights Center (ERC). The ERC, a community partner, has provided UTWSD with organizational and legal support. UTWSD is a membership based organization that was formed in January of 2010, which followed the San Diego taxi drivers' strike in December of 2009. UTWSD is an organization that gives taxi drivers a space where they can come together and fight for their rights. Essentially, the organization empowers, supports, and advocates for taxi drivers, and their families by improving working conditions. As OHIP interns, we support UTWSD and this project will further the organization's mission of creating a better, equitable taxi industry in San Diego.

Moreover, San Diego's taxi industry is predominately composed of Somalian and Ethiopian taxi drivers. Majority of them are lease drivers and considered independent contractors under the local government. This serves as a significant problem because they are unable to collectively bargain, and they are not protected by federal or state labor laws. Since San Diego's taxi drivers are not protected by the California Occupational Safety and Health Administration (Cal-OSHA), this additionally creates another layer of problems because drivers have limited or no knowledge on their workplace health and safety. Furthermore, many of San Diego's lease drivers do not have health insurance. Some receive health care at their local community clinic, however many taxi drivers do not seek medical attention while injured on the job. The lack of health insurance puts them in an uneasy, difficult state because ultimately they are responsible for paying their own medical bills, which many of them cannot afford. Also, unlike other occupations, taxi drivers do not have retirement benefits, paid vacations, or sick leave.

Overall, drivers are working in an environment in which they are incredibly vulnerable in and often exposed to high-risk scenarios, such as being robbed, verbally threatened, physically attacked, injured, and sometimes victims of homicide. For example, two of San Diego's taxi drivers were murdered in fall of 2011- Mir Sadat Sahou, 68 years old and Jalaludin Hamrah, 39 years old ([www.utwsd.org](http://www.utwsd.org)). Their tragic deaths exemplify the extent of unsafe working conditions of taxi drivers.



In all, the drivers face many challenges that negatively impact their lives, especially in regards to their health, safety, and overall well being. Certainly, they are workers who are categorized as being part of a vulnerable population. For that reason, this summer's project is very important, not only because it serves San Diego taxi drivers, but it is significant that the collective San Diego community are aware of, acknowledge, and understand the issues that drivers face daily. Thus, this occupational health internship program will shed light on the San Diego taxi industry, and address workplace health and safety issues to improve taxi drivers' working conditions.

### III. Literature Review

"Taxi driving is considered to be one of the most hazardous occupations because of the risks involved" (Machin & Souza, 2004, p.258). Various approaches to improving the safety of taxi drivers have mainly focused on prevention by altering their environment through reduction of hazards. These approaches towards prevention include, in car alarms, protective screens, automatic door locks, and tracking drivers using the global positioning systems (2004). "The nature of work in the taxi industry is also quite different from conventional occupations. For example, the employer is ambiguous, work hours and income fluctuate on a daily basis, and the frequency and severity of hazards range from verbal abuse to homicide" (2004, p.258). It is evident that taxi drivers are part of a vulnerable working population and using various methodology to implement safer working environments is vital for their health and well-being.

In one taxi driver health and safety study, a particular model helped define the working environment of taxi drivers. The model is the *integrative model of safety climate* (2004). "This framework was used as a guide to develop the current exploratory model of taxi driver health and safety behaviour" (2004, p.258). Within this model and particular study, the findings indicated that the frequency and severity of hazards that taxi drivers face and their perceptions of their owner/management's commitment to health and safety issues, will each be a direct predictor of the physical health, emotional well-being, and unsafe behavior of taxi drivers (2004).

Overall, taxi drivers are associated within a social-ecological model that integrates the individual, interpersonal, organizational, community, and public policy levels (Glanz, Rimer, & Viswanath, 2008). When planning and implementing campaigns for policy change, this model is important because it can target multiple levels, and includes comprehensiveness, linkages across organizations, and coordination (2008). This model will have direct and indirect influences on taxi

drivers' health, lifestyle, and behavior choices (2008). The organizational, community, and public policy levels are essential because this is where changes within the system are made for policy implementation. Most importantly, if changes at the policy level are not immediate, taxi drivers' can overcome some personal obstacles through the individual, and interpersonal levels. Moreover, all of these levels can strongly affect the outcomes of the health and safety of taxi drivers.

#### **IV. Methods**

Through community based participatory research we wanted to distinguish the major causes of occupational health and safety issues among the San Diego taxi driver community. In order to develop an evidence-based study, we intergrated both qualitative and quanitative methods to fully embrace and define the issues among the taxi drivers. Also, we used the social-ecological model, which provided a greater scope and perspective of how we can approach these issues. Working closley with UTWSD was also imperative because of their knowlege and resources that pertain to the San Diego taxi drivers. All of these componenets guided us in our methodology.

We conducted a 64-question survey, which was composed of questions in regards to the health and safety issues among taxi drivers. The types of questions we used for the survey were open-ended, multiple choice, checkboxes, and a scale system (see Appendix A). The questions were formatted on a *Google* document survey template. We used the previous OHIP taxi driver studies from Los Angeles and New York City to guide us in the questionnaire design and overall theme of the survey. We wanted to target issues such as robbery, physical assault, diet, use/access to restrooms, smoking status, overall working conditions, and physical activity, beacuse these were most prevalant issues we sought from our research. We rehearsed the survey among each other and with a former taxi driver at UTWSD, to estimate how long it would take to do a face to face survey with a taxi driver in the field. The rehearsed survey took about 10-15 minutes.

The locations where we decided to survey were based off of prior knowledge of being San Diego natives, as well as suggestions from the UTWSD. The UTWSD was a major part in guiding us to locations where drivers were more accessible. The locations where we surveyed were: Fashion Valley Mall, Old Town Transit Center, Hyatt Hotel Mission Bay, San Diego Convention Center, Westfield Horton Plaza Mall, Westin Hotel, Marriott Marquis Hotel, San Diego Airport Holding Lot, Belmont Park, Bahia Resort Hotel, Staples parking lot in Pacific Beach, and at the Community Police Center for the UTWSD monthly meeting. The location that was most convenient and had an

abundance of taxi drivers was at the Staples parking lot in Pacific Beach. This is where many drivers would meet up to take a break and talk amongst each other. It was a prime location for us to interview because they had some free time and were not in a hurry. The parking lot was the most accessible and convenient for us to find large numbers of drivers. This allowed us to stay in one location for a longer period of time, rather than having to relocate to find more drivers. Furthermore, most of them were members of UTWSD so they were more aware of our objectives and willing to take part in our survey. The UTWSD had also informed drivers that we would be surveying in the lot prior to our arrival, thus some of the drivers were aware of our project beforehand. Also, drivers who were already surveyed encouraged other drivers in the lot to participate as well.

The way that we introduced ourselves and approached drivers was, "Hello, my name is.... I am from the ERC and the UTWSD, and we are doing a survey that targets the health and safety issues of taxi drivers in San Diego. Do you have about 10-15 minutes to answer some questions? It is completely confidential and anonymous." We also had badges and business cards made for us by UTWSD, which displayed our name and titles (see Appendix B).

We surveyed for a total of 5 days and an average of 6-7 hours per day. In any given area, we typically surveyed taxi drivers from the end of the taxi line and worked our way up. We were informed by UTWSD that taxi drivers line up in order of who arrived first, thus drivers at the front of the line are called up the quickest to pick up passengers. This was the best approach when interviewing drivers because those at the end of the line would have more time to complete the survey. To avoid incomplete surveys we would not start interviews with taxis that were first in line. Nonetheless, we did not have any set agenda on what type of drivers we wanted to survey, given that permit holders, lease permits holders, and lease drivers can have varying perceptions and opinions regarding their occupation as a taxi driver. Therefore, we did not discriminate and approached all drivers equally.

We entered our survey data using an Excel spreadsheet. Then we imported the results into a *Google* documents spreadsheet, and converted and interpreted it into a summary of graphs and tables (see Appendix C).

## V. Results

We collected 50 surveys total. We had 40 complete and 10 incomplete surveys. The incompletion of surveys was due to drivers not having enough time to complete the surveys. (All results found in Appendix C).

The most significant health related findings were that 68% of drivers have lower back pain due to their occupation, 38% of taxi drivers have gained weight since the start of their job, 50% of drivers feel very stressed, and an overall 42% say that their health has worsened in the past 5 years.

On a more positive note, we were surprised to find out that 34% of drivers had seen a doctor this year for a yearly check up. This finding is important, because we are able to evaluate and distinguish how taxi drivers perceive their health in affiliation to seeking medical care. Also, 66% of drivers do not smoke. However, one taxicab driver that works for Yellow Cab and has been driving for four years indicated something quite significant. He said, "I used to never drink coffee. Now I have to drink coffee because I have to be alert.... I can feel like there's something [physically] wrong with me even though I am not really sick....I also never used to smoke. Now I smoke...about six times a day, but only when I am driving taxis because I am so stressed."

One important issue that was brought to our attention through UTWSD that we decided to include in our survey, was how often taxi drivers used the restroom in a day. 44% of drivers said they only use the restroom 1-2 times a day, which consequently means that they do not drink enough water throughout the day, to avoid having to use the restroom. We found a few reasons for this. First, drivers reported that access to usable restrooms is scarce and that many hotels in San Diego, especially downtown, do not allow for drivers to use their restroom facilities. Thus, 68% of drivers said that there are not enough places to use the restroom if needed. Another reason is because using the restroom is difficult to do when having to obey the 12-foot rule, which indicates that taxi drivers are not to be more than 12 feet away from their taxis ([www.utwsd.org](http://www.utwsd.org)). Lastly, if taxi drivers have to use the restroom throughout the day they can lose potential business, for the time it takes to actually find a restroom and park their cab legally, they can lose potential customers. Although when we asked taxi drivers where they would go if they needed to use the restroom, common places that came up were: public restrooms at the park and beach, gas stations, Starbucks, and fast food restaurants.

Findings related to safety indicate that 70% of drivers report having been verbally assaulted while on the job, 81% of drivers would like cameras installed in their taxicabs, and 67% of drivers would like partitions installed in their cabs. Drivers explained during interviews, that cameras would

help prevent assaults and violent behaviors from passengers because they are being videotaped. On the other hand, the videotaping will only provide justice if the police department reviews the tapes and proceeds to arrest the perpetrators. Furthermore, some drivers pointed out that cameras would not *physically* protect them from violent passengers. For that reason, drivers explained that the partition would act as a safety barrier that will prevent physical assault and invasion of personal space. However, some taxi drivers expressed that a partition will not be a good addition because the drivers themselves would feel imprisoned. A few added that it would also make the passengers feel uncomfortable and thus be an unpleasant experience. Drivers who reported that they have been physically assaulted during their time as a taxi driver, 67% indicated that in their opinion, they were assaulted because the customer was highly intoxicated or under the influence of some type of substance. Essentially, 93% of these physical assaults took place late night (9:00 p.m. - 4:00 a.m.).

Issues that taxi drivers had the most in common, in regards to their occupation, were the high lease rates (62%), ticketing from police officers (43%), and the long work hours (19%). Since many taxi drivers at the Staples store parking lot and at the UTWSD meeting in July had more free time to be surveyed, they elaborated on the issues of lease rates and ticketing. In regards to their lease rates, some of the taxi drivers said that their lease was, "\$420 per week, but it will go up to \$450 by the end of July, if it hasn't already." Another individual we surveyed recently quit working as a taxi driver and he replied, "It is \$420 a week lease, which is \$60 a day. I can't pay my rent sometimes because everything goes to the lease." This driver has been a part of the taxi industry for nine years, and drove for both the Orange Cab and Yellow Cab Company. As a result, the taxi drivers explained that they are very stressed due to the high demand to meet the lease rates.

Additionally, the issue of being ticketed by police officers was another indicator of their stress levels. A few of the taxi drivers who typically work in downtown San Diego reported, "Passengers flag us down and we stop to pick them up, or drop them off, but then we get ticketed." In particular, drivers pointed out that 5<sup>th</sup> Avenue in downtown is the number one location where the majority of the ticketing occurs. The reason being is because this is a red zone area, which means no vehicles are allowed to stop at any given time. Staff from UTWSD indicated that other major cities such as New York City, Los Angeles, and San Francisco have exceptions for their taxi drivers, allowing them to pickup and drop off even in red zone areas. However, San Diego taxi drivers are not exempt from this rule, thus creating the issue of being "over ticketed" by the police.

Overall, the taxi drivers in this cohort worked for an average of 6.64 years, and 58% of drivers worked for Yellow Cab Company. In regards to the long work hours, many drivers we surveyed worked 7 days a week for 12 hours per shift, which are the typical work hours for lease drivers. Also, about half of the drivers worked the morning shift (typically 4 a.m. – 4 p.m.) and the other half worked the night shift (typically 4 p.m. – 4 a.m.). However, many indicated they drove night shifts because of the influx in customers, even though driving the night shift was more dangerous. Also, drivers reported that it does not matter if they are sick, injured, or if they are having mechanical problems with their taxis, they still have to work and pay the lease rate for that day/week. “There are no off days,” was one of the driver’s statements, which accurately reflects the majority of the drivers’ perspectives on their long work hours.

Some of the other issues drivers indicated, included heat from the gas pedal, vehicle maintenance, work related injuries, and difficult customers. The specific problem regarding heat from the gas pedal was primarily an issue for drivers whose taxicabs were a Ford Crown Victoria, which was the vehicle most common amongst the taxi drivers we surveyed. These drivers indicated their vehicles were old, had high mileage, lacked a good air conditioning system or did not have AC, and felt excessive heat from under the accelerator/gas pedal. As a result, some of them who felt like this was a major concern reported having dry skin, even blisters and burns on their legs and feet. Essentially, taxi drivers said their Crown Victoria taxicabs had many issues in terms of upkeep and maintenance.

We also discovered that taxi drivers typically do not put time aside for breaks. In our opinion, a break is defined as a physical and mental disengagement from one’s work environment. However, many taxi drivers divulged that their “breaks” are just waiting in their cab for customers, or waiting around their cab (not more than 12 feet away) until they get a customer call. 50% of drivers indicated that they do not take breaks, 8% of drivers took one break during their shift, 10% of drivers took two breaks, 8% of drivers took four breaks, and 6% of drivers took three breaks. Nonetheless, it is important to keep in mind that these are 12-hour shifts, and a standard 8-hour workday requires 2 fifteen-minute breaks and a 30-minute to one-hour lunch.

Essentially, the drivers who had time to elaborate and talk more in depth about their health and safety issues, provided us with a deeper insight and perspective to some specific scenarios or incidents that have occurred. For that reason, we felt it was significant to share some of the quotes from the taxi drivers that we interviewed:

- “Many people view us as lazy who does nothing. We face many problems...from the owner and passengers. It isn’t an easy job...we can get fired from the job easily....[The owner] threatens us if we complain or say we don’t like something.”
  - *Yellow Cab Driver, driving taxis for 4 years*
- “I don’t feel safe and don’t wear a seat belt....because there was a driver getting strangled with his seat belt....I don’t wear a seat belt when I’m feeling unsafe....[You] never knows who gets into your cab.”
  - *Orange Cab Driver, driving taxis for 9 years*
- “Many guys die, they die at young age....They have many health issues like diabetes, kidney failure, high blood pressure. It’s a horrible job.”
  - *Yellow Cab Driver, driving taxis for 8 years*
- “I am just driving to survive.”
  - *Yellow Cab Driver, driving taxis for 5 years*
- “They, [the owners], are holding us hostage. We have no choice but to work this job and people don’t recognize our struggles and issues.”
  - *Yellow Cab Driver, driving taxis for 4 years*
- “Even if it’s just one incident, it affects you for a while. I am traumatized. There is no safety for driver....[And] the cops...they don’t show up at all, especially on the weekends. They say they’re busy. I am not satisfied with how they handled it.”
 

(This quote was in regards to a driver who unfortunately have been a victim of physical assault).

  - *Yellow Cab Driver, who have driving taxis for 4 years*
- “We’re like slaves. We’re forced to drive in this condition”.
  - *Yellow Cab Driver, driving taxis for 6 years*

## VI. Limitations

A major issue that we faced as researchers in this given community was the accessibility and quantity of taxi drivers to survey. Given the physical layout of San Diego, such as larger suburban

areas and small urban areas, it was harder to find large numbers of taxis compared to other large cities like New York and Los Angeles.

Another limitation that altered the number of taxi drivers that we were able to survey, was at the San Diego Airport holding lot. This location was recommended to us by the UTWSD and would of been a great location to survey given the large quantity of taxi drivers. Unfortunately, we were told to leave the property after an altercation broke out between the lease drivers and permit holders, due to political disagreements. We both had only surveyed one taxi driver when we were approached by authorities, and were told that we needed permits from the airport to continue our surveys on the property. Ultimately, we were not able to obtain permits and could not survey the taxi drivers at the airport holding lot.

Moreover, currently there are no studies based in San Diego that pertain to taxi drivers. The articles that we reviewed were based in other major cities. This prevented us from conducting a more specific and condensed survey, because we did not have the background information necessary, like certain demographics and statistics. Thus, we had to develop a survey that included a broader spectrum of questions.

Due to funding, other limitations included lack of proper data collection and interpretation statistical software, such as SPSS or STATA. This was needed in order to elevate our study results with higher levels of statistical analysis. Complex correlations and regressions were impossible to attempt because we did not have adequate statistical software to perform these tasks.

Lastly, there was the issue of the time it took to complete the survey, which was in part due to the language barrier. Our objective from the beginning was to create a survey that encompassed a range of questions that targeted health and safety hazards in the taxi drivers' workplace. However, understanding the dynamic of their workplace and their busy work schedule, we had to make multiple revisions to our survey in order to allocate 10 to 15 minutes per interview. All the drivers spoke English; however the majority of the drivers' native language was either Somali or Ethiopian. That's why drivers who did not speak English fluently had difficulty with comprehension of our survey questions. As a result, communication between us and the drivers was difficult at times. Thus, the language barrier affected the survey's time length, making the surveying process even longer. However, we did try to alleviate this issue by repeating and or elaborating on the questions drivers



did not understand. In addition, we would also ask other drivers to help translate who spoke English more fluently.

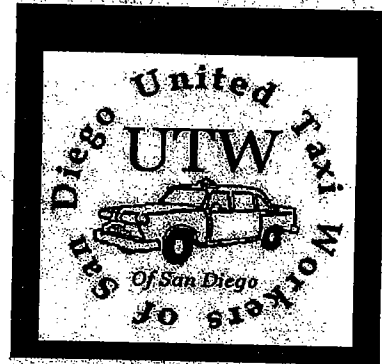
## VII. Recommendations

Based on the data collected from this project, our knowledge about the San Diego taxicab industry has increased. We are now more aware and have a better understanding of drivers' health and safety issues and concerns. As low wage, immigrant taxi drivers they face a great deal of challenges. From analyzing the data and finding common themes, we propose several recommendations for different organizations. In addition, we also provided recommendations for the stakeholders – taxicab drivers. Overall, the goal of these recommendations is to improve the workplace and working conditions for taxicab drivers, particularly those of San Diego.

### General Recommendations

- *The United Taxi Workers of San Diego (UTWSD) –*

Since UTWSD is the only organization in San Diego that specifically works with taxicab drivers, and provides a space for unity and collaboration, we recommend that UTWSD continue to outreach, empower, and educate. It is important to outreach and educate San Diego taxi drivers, but it is also essential to outreach and educate the larger San Diego community. The general public should be more aware and informed on issues that taxi drivers face, because drivers are a part of the transportation services for San Diego residents and visitors. As a result, both taxi drivers and their passengers will be safer and the efficiency of the San Diego taxi industry will increase.



Moreover, UTWSD should consider making the membership fee more affordable, which will allow for more taxi drivers to join. Since many taxi drivers indicated they face financial hardship due to having high lease rates, having a smaller membership fee will make joining the organization more accessible. This will help the organization grow and flourish.

We also recommend following up on our give back products (first aid kit & the informational flyer) to see if they are beneficial for drivers. Notate what the drivers' responses are to the give

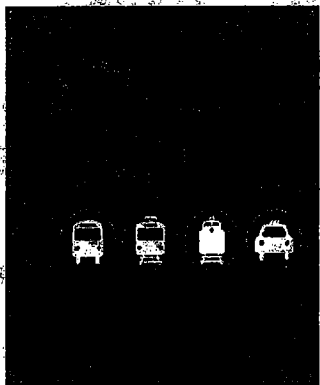
back products. Lastly, if possible, try to follow up on the survey questions by surveying more taxi drivers. UTWSD can use the original survey of 64 questions, create a more comprehensive one, or even split up the survey into sections to keep it in a shorter time frame.

• *Employee Rights Center (ERC)* –

Continue to work with the United Taxi Workers of San Diego (UTWSD) by empowering and advocating for their organization. As a community partner, it is significant that the ERC continues being active and involved in UTWSD's mission statement, goals, and agenda. Having strong, active community partners is one of the important keys to supporting one another.

• *San Diego Metropolitan Transit System (MTS)* –

We recommend that San Diego's MTS set up a professional transportation system where taxi drivers are not considered independent contractors, but listed under the same system as bus drivers, trolley workers, and security guards, etc. Furthermore, MTS should consult with Cal-OSHA to have taxi drivers covered and protected by Cal-OSHA.

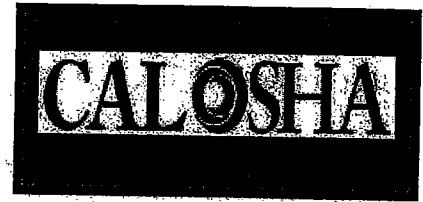


In addition, many drivers indicated a list of problems with their current taxicab vehicle. That is why we also recommend that MTS's inspections be extensive in order to regulate the vehicle's condition so it is safe for the drivers. As a result, this would improve their working conditions.

We also highly suggest that Ordinance 11 be revised. For instance, section 2.4 m in particular should be taken into consideration for revision, and or removed. Section 2.4 m is the rule that indicates that drivers who are more than 12 feet away from their vehicle will receive penalties. Essentially, drivers are ticketed as a penalty for breaking this rule, mainly because they leave their taxi to use the restroom. This illustrates that taxi drivers' dignity and rights are violated when a rule as such is implemented. Therefore, we recommend that certain sections of Ordinance 11 be looked over, revised, or even removed because some of the rules negatively affect drivers' health, safety, and sense of dignity.

• *California Occupational Safety and Health Administration (Cal-OSHA)* –

Cal-OSHA should consider including taxicab drivers under their state labor laws for employees. This research project and other significant studies conducted throughout major U.S. cities have clearly demonstrated that taxi drivers certainly belong to a vulnerable population of workers. Their occupation in the taxi industry is incredibly dangerous because they are exposed to high risk scenarios on a daily basis. Without a doubt, the majority of taxi drivers work long hours, seven days a week. They are not only vulnerable due to their poor, unsafe working conditions, but have a higher probability of enduring workplace illnesses, injuries, and even fatalities. That is why we believe that taxicab drivers need to be protected under Cal-OSHA so that they know their rights to report unsafe conditions without retaliation, have workers compensation insurance, and improve their overall working conditions.



• Permit Holder (also known as the taxicab owners) –

It is critical that permit holders, or taxicab owners, are held accountable for the lease drivers. In particular, owners should take full responsibility of their taxicabs regarding issues of upkeep and maintenance. From what drivers reported in regards to driving unsafe vehicles and owners neglecting the maintenance, we believe that the lease drivers should not be held solely accountable for maintaining and/or fixing their taxis, especially because it is work related. Owners who hold themselves accountable for the vehicles' maintenance will improve the drivers' working conditions.

We also recommend that taxicab owners help lease drivers by providing resources and offering certain benefits, such as health insurance, paid time off, and sick leave. Owners should also consider lowering their lease rates because that is one of the biggest challenges lease drivers face. Thus, instead of an unequal, unjust, and negative relationship between owners and drivers, the dynamic of the relationship will improve and become more positive and sustainable.

• Law Enforcement: San Diego Police Department (SDPD) –

It is significant that the police officers communicate with the ERC, UTWSD, and the taxi drivers. There needs to be a protocol where the police respond efficiently to any harm, robbery, and violence that occurs against taxi drivers. Essentially, taxi drivers should feel safe and

protected by police officers, and trust that perpetrators of crime will receive legal consequences that are fair and just.

Likewise, the issue of ticketing taxi drivers, particularly in downtown San Diego, must be addressed. That is why we recommend that the stakeholders and law enforcement have a safe space where they can discuss the issues at hand and solve the problem of “over ticketing”. We also suggest that SDPD provide training for taxi drivers because it is important to educate the drivers on laws and regulations of the road, so that they are fully informed and understand the rules. Nonetheless, the safe space for discussion and training would allow for taxi drivers and SDPD to create a positive relationship, where drivers can gain respect and trust for the law enforcement.

• City of San Diego –

Our project’s results show “high lease rates” as one of the top three challenges that taxi drivers face as being employed in this industry. Essentially, this issue has negatively impacted the health, safety, and well being of lease drivers. It is important to understand that drivers reported having a high amount of stress as a result of this issue. Since the lease rates are high, and continue to increase, drivers have to work more days and longer hours in order to meet the rate. This also means that they are not making enough income to support themselves or their families, which essentially does not allow for social mobility and they will continue to be identified as low-wage immigrant workers. High lease rates are controlled by the taxicab owners, which is the root problem and we must call attention to it. It is unjust that there is no cap on lease rates. Therefore, we strongly recommend there be a cap put on lease rates in order to improve the lives and working conditions of lease taxi drivers.

In addition, it is important to hold taxicab permit holders, or owners accountable for their vehicles, but also held accountable for their employees, the drivers. Since taxi drivers are not represented by a union, it is even more crucial that they are not exploited by the permit holders. Exploitation of lease drivers maintains the unequal power relationship between drivers and owners, and should be dismantled. Thus, the city of San Diego should be aware of this vulnerable working population, and protect the most vulnerable in order to better our society as a whole.

• Taxicab Design & Engineering –

The vehicle design plays a vital role to the taxi drivers' comfort, health, and safety. We noticed while doing the face to face surveys that a majority of the drivers had at least one, if not more, issues with their current taxicab design, especially the Ford Crown Victoria taxis. Drivers indicated there were many problems with this specific make and model. The reaction we got from the drivers, along with our findings, indicated that many taxi drivers had the following problems: uncomfortable seats, no air conditioning, heat from the accelerator or gas pedal, high mileage, and many other mechanical problems. Note that some of these recommendations also fall under the responsibility of MTS and the taxicab permit holder/owner.

Taxicabs should be designed in a way that are comfortable, yet safe for the drivers. We have specific design changes and recommendations for the seat, air conditioning system, and accelerator or gas pedal. Essentially, all taxicab vehicles should have an AC system and one that runs properly. A well functioning AC system is not only needed and beneficial to the drivers, but to the passengers as well. As a result, this increases the professional transportation services for everyone. Secondly, the accelerator or gas pedal should be designed in a way to ensure that heat does not generate from the engine, so drivers do not feel immense heat on the bottom of their feet and lower legs.

Lastly, the seat should be more comfortable to improve the ergonomics of the vehicle. Drivers should have the ability to recline their seat backward, forward, up and down. Also, the seat should have a built-in lumbar support to aid drivers, since they are sitting in their seats for long periods of time ([www.ehow.com](http://www.ehow.com)). The lumbar support in taxicabs will increase the driver's health and improve ergonomics by preventing body aches pains. These changes will surely improve taxicab drivers' health, safety, and overall well being.

### **Future Research Recommendations**

This research project was the first to be conducted in San Diego that focuses on the city's taxi industry, and the health and safety for this occupation. The project tried to capture a wide range of problems and challenges that drivers may face. Thus, we recommend for future research to use the results of the project and determine one to two key issues to focus on, and then follow up on those issues by asking more specific survey/interview questions. For example, one can follow up on these key issues: taxi drivers' health conditions, lower back pain, access to health insurance, high lease rates, excessive ticketing from police, and lack of access to restrooms, just to name a

few. Focusing on more specific issues will give future research a more in depth profile of taxi drivers' health and safety.

One specific area in San Diego that this project did not have a better representation of is the San Diego Airport holding lot, due to political issues. Therefore, surveys or interviews for research in the future should include this area to receive input from airport taxi drivers. Additionally, the holding lot is composed of both taxicab owners and lease drivers. Thus, it would be crucial to include both the drivers' and owners' perspectives.

Furthermore, future researchers should keep in mind the length of the survey/interview questions. Majority of taxi drivers do not have much leisure time to take a 10 to 15 minute survey. We recommend surveys be between 5 to 7 minutes to allow drivers enough time to answer and complete the survey to create stronger research statistics.

### Stakeholder Recommendations

#### • San Diego Taxicab Drivers –

As a taxicab driver, we recommend that drivers know their rights as a worker in the taxi industry. We highly recommend that drivers join UTWSD and become a member. The organization is very helpful, supportive, educational, and encouraging. The UTWSD has great resources and guidance to empower and advocate for all taxi drivers and their working conditions. On that note, we also suggest that drivers educate and empower each other. It is important that taxi drivers unite and work together to create long term changes. Lastly, please use our *Health and Safety Suggestions* flyer, along with the *Make Your Own First Aid Kit* pamphlet, and the first aid kits themselves. Take care of yourself in regards to your health and mental well being.

### VIII. Personal Narratives

Spending this summer as occupational health and safety interns opened our perspectives on vulnerable working populations. In particular, working with taxi drivers, allowed us to fully understand their occupation and the health and safety issues that they face daily. We did not have much knowledge about the taxicab industry and drivers' working conditions prior to this research project. However, we did know that taxi drivers are not protected under OSHA. Thus, it seems even more important to focus in on this particular cohort. The project has given us the opportunity to gain

alternative insights to certain challenges of low wage immigrant taxi workers, which goes unrecognized by the general public.

Moreover, we have enjoyed the relationships we have made this summer with UTWSD and the ERC, as well as the taxi drivers that we surveyed. We discovered through the surveying process that taxi drivers nationwide face similar workplace issues, but each driver has their own experiences and perspectives. As a result, the surveying process was special because each driver we surveyed provided us with a more in depth, personal point of view. For that reason, we are grateful to have had the chance to converse with so many drivers. Not to mention, that we appreciate the time and energy they put forth during the surveying process, since we quickly learned that time is money in their field of work. In the end, not only was it important to gather data and put together our final research project, but to build sustainable relationships within the community, and touch base in the future after the internship program has ended. We are very pleased and excited to have been given this opportunity to be a part of the OHIP program, and to conduct this particular research project on San Diego taxi drivers. It definitely opened many doors for us both educationally and professionally.

## **IX. Conclusion**

In conclusion, this research project identified many risk factors that taxi drivers are exposed to on a daily basis. The most significant health and safety factors that we found through our reasearch were, verbal assault, use/access to restrooms, stress levels, lower back pain, public policies, ergonomics, long work hours, and lack of health insurance. It is crucial that future studies on the health and safety of San Diego taxi drivers, continue to investigae further on these issues. This vulnerable working population endures a lot of unjust occurrences that can be prevented with a few alterations at the organizational, community, and public policy levels. Drivers need to be protected by a larger entity that can assure health and safety regulations are implemented and enforced. As well as, the San Diego community as a whole needs to become more aware of the health and safety concerns that taxi drivers face, and to aid the issue through education and philanthropy.

## **X. Acknowledgments**

First and foremost, we want to thank the United Taxi Workers of San Diego (UTWSD) for all their help, guidance, encouragement, and support. Essentially, they gave us an encompassing scope of their organization and how they support taxi drivers. They certainly played a significant role

in our research project because they assisted us by establishing and organizing interviews within the San Diego taxi driver community. UTWSD gave key suggestions as to where we should go to survey taxi drivers, along with the best hours to survey. Thereafter, they also provided us with feedback in regards to our survey. The organization played an important role in guiding us in our area of research and assisted us in better understanding the San Diego taxi industry.

Moreover, we also want to thank the Employee Rights Center (ERC) for their help and support as well. They linked us to UTWSD, provided us with connections within the community, and guided us with ideas and feedback on our surveys.

Last but not least, we want to acknowledge and thank all the taxi drivers that took the time to take our survey and talk to us. We were able to establish a relationship with them and create an educational dialogue. Doing so informed us about the demographics of the taxi drivers and being in this line of work. We understood that some may hesitate, or even refuse to take our survey due to fear of retaliation from the permit holders. Therefore, we want to recognize that without their willingness to take the survey and discuss their occupation with us, we would not have been able to conduct this project. As a result, we are able to educate others on taxi drivers' health and safety issues in the workplace. Certainly, we gained an appreciation for this vulnerable population of workers and will continue to support, empower, and advocate for taxi drivers in San Diego and nationwide.



## XI. References

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### Taxi Cab Lease Driver Information and Declaration

First Name [REDACTED] Last Name [REDACTED] D.O.B. [REDACTED]  
Address \_\_\_\_\_  
Home Phone \_\_\_\_\_ Cell Phone [REDACTED]  
Ca. Drivers License # \_\_\_\_\_ Social Security # [REDACTED]  
Business License # \_\_\_\_\_ Sheriff's File # [REDACTED]  
Vehicle # [REDACTED] Mileage 151,000  
Weekly Lease Amount: \$ 580.00 Deposit \$ 00  
Lease starting Date: NOV. 14, 2012 Lease Ending Date: \_\_\_\_\_  
AGREEMENT SHALL BE AUTOMATICALLY RENEWED FOR 7 DAYS FROM EFFECTIVE DATE

THE TERM OF LEASE AGREEMENT IS ONE CALENDAR WEEK ( SEVEN DAYS )  
ON AVAILABLE BASIS ONLY.

I AGREE TO PAY LESSOR THE WEEKLY RENTAL FEE IN ADVANCE AT THE  
BEGINNING OF EACH WEEKLY PERIOD AND PRIOR TO THE ACCEPTANCE AND  
REMOVAL OF THE TAXI CAB. FAILING TO PAY THE RENTAL FEE IN ADVANCE AT  
THE BEGINNING OF EACH WEEKLY PERIOD MAY RESULT IN IMMEDIATE  
CANCELATION OF THE LEASE AGREEMENT.

I HAVE BEEN ADVISED BY LESSOR THAT IT IS MY RESPONSIBILITY AS WELL AS  
MY BEING A SELF-EMPLOYED LESSEE / BUSINESS PERSON TO ACQUIRE A  
BUSINESS LICENSE FOR THE AREA(S) IN WHICH I INTEND TO OPERATE, I  
ALSO UNDERSTAND THAT IT IS MY RESPONSIBILITY TO FILE ALL NECESSARY  
TAX RETURNS, AND TO PAY ALL FEDERAL AND STATE INCOME TAX AND SELF-  
EMPLOYMENT TAXES. I HAVE BEEN ADVISED BY LESSOR THAT, AS A SELF-  
EMPLOYED BUSINESS PERSON, NO MEDICAL INSURANCE BENEFITS OR  
WORKERS COMPENSATION INSURANCE IS BEING PROVIDED TO ME.

I AM NOT AN EMPLOYEE OF THE TAXI CAB COMPANY.

I WANT TO REMAIN AND CONTINUE TO BE AN INDEPENDANT CONTRACTOR  
RATHER THAN AN EMPLOYEE, AND I DO NOT BELIEVE THAT TO BE AN  
EMPLOYEE IS IN MY BEST INTEREST.

Y  
SIGNATURE Lease Driver

Y  
DATE

Please acknowledge your status as a self-employed businessperson by writing the following statement in your own handwriting:

"While I am leasing a taxicab, I am self-employed for all purposes, including workers compensation and unemployment. I am not an employee of either the taxicab company or the taxicab owner."

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness: \_\_\_\_\_

I have been advised by LESSOR that it is my responsibility as a self-employed businessperson to acquire a business license for the area(s) in which I intend to operate, file all necessary tax returns, and pay all federal and state income taxes and self-employment taxes.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

I have been advised by LESSOR that, as a self-employed businessperson, no medical insurance, benefits, or worker's compensation insurance is being provided to me.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

EXECUTED in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in San Diego, San Diego County, State of California.

MARTIN CAB CO BY

By

LESSOR

YOU (Leasing Party)

Print Name

Initials \_\_\_\_\_

## TAXICAB LEASE AGREEMENT

THIS AGREEMENT is made and entered into at San Diego, California, this 14 day of NOV, 20 12, and between MARTIN CAB CO CAB with its principal place of business at 2753 REYNOLDS WAY, S.D., CA. hereinafter called "LESSOR" and [REDACTED] the Leasing Party, an adult individual hereinafter called "YOU" residing at \_\_\_\_\_ with respect to the following facts:

- a. LESSOR possesses the right to use the certain licenses and vehicles, which are identifiable as MARTIN CAB CAB and are equipped for the Business of Taxicabs for hire with the right to Lease said Taxicab vehicles to a self-employed Businessperson.
- b. YOU represent to the LESSOR that YOU possess a safe place to garage the leased taxicab when not in use, and that YOU are a careful and qualified driver, are a licensed driver by the State of California and are licensed as a taxicab driver by the municipality in which you intend to operate the leased taxicab. YOU, after inspecting the taxicab and considering the rental fee therefor, desire to lease the taxicab and other services from the LESSOR under the terms and conditions set forth therein.

Consideration of the mutual promises and covenants of the parties contained herein, the parties have agreed as follows:

The term of this agreement is one (1) calendar week (seven days) from the effective date hereof. During the one-week term of this agreement, LESSOR shall lease to YOU on an available basis, a taxicab vehicle. YOU agree to pay LESSOR the weekly rental fee of \$580.00 (\$ \_\_\_\_\_) in advance at the beginning of each weekly period and prior to the acceptance and removal of the taxicab.

This agreement shall be automatically renewed for an additional seven (7) days and thereafter on a week-to-week basis, unless either party gives timely written notice to the other of its desire not to renew. To be timely, such written notice not to renew must be delivered to the other party no later than forty-eight (48) hours prior to the end of the week covered by this Agreement or any other subsequent one-week renewal period.

Notwithstanding the foregoing, this Agreement (including any renewal thereof) may be cancelled by either party at any time for the other's breach of any provision of this Agreement.

Early Cancellation of Lease. LESSOR and YOU agree that this Agreement shall not be cancelled prior to the end of the lease TERM or subsequent renewal TERM as set forth in paragraph 1 of this Agreement. However, notwithstanding any other paragraph of this Agreement, either party may cancel this Agreement (or an subsequent renewal thereof) at any time, without advance notice, in the event that the other party defaults on or breaches any provision of this Agreement.

YOU understand and acknowledge that a breach of this Agreement shall include, but not be limited to, any of the following conduct:

- (a) YOU drive the leased taxicab while under the influence of any alcoholic beverage or illegal drug;
- (b) YOUR California driver's license or municipal taxicab driver's license is suspended or revoked or expires;
- (c) YOUR driving record becomes an unacceptable insurance risk to the insurance carrier providing coverage on the LESSOR's vehicles;
- (d) YOU engage in reckless or dangerous driving or YOU otherwise jeopardize the safety of a passenger, pedestrian or the driver of another motor vehicle;
- (e) YOU are involved in an automobile accident which, in the sole determination of the LESSOR's insurance representatives, was caused either in whole or in part by YOUR fault or negligence;
- (f) YOU use the leased taxicab in connection with unlawful activity; or
- (g) YOU violate any municipal taxicab regulation or ordinance with authority over the leased taxicab.

Remedy for Breach. In the event of a breach by the LESSOR of this Agreement, YOUR sole remedy shall be a recovery of damages in the amount of fifty dollars (\$50.00) from the LESSOR for each day remaining in the lease TERM. YOU understand and acknowledge that, in the event that the LESSOR elects to cancel this Agreement due to a breach by YOU, YOU will be liable for all lease fees for the entire TERM of the lease, and YOU are not entitled to any prorated credit for the remainder of the lease TERM. YOUR initials at the end of this paragraph indicate that YOU have read and understood the meaning of this paragraph and that YOU are making a commitment for the entire lease TERM. \_\_\_\_\_ (YOUR Initials)

~~Security Deposit~~ NO DEPOSIT. In addition to the rental payment, YOU will pay to LESSOR a security deposit of not less than Fifty Dollars (\$50.00) per week until the aggregate amount deposited reaches NO DEPOSIT Dollars (\$ 00.00).

The purpose of this deposit is to ensure your compliance with the terms of this Agreement, including the return of the taxicab in the same condition as accepted by YOU. The deposit shall be returned to YOU no later than thirty (30) days after the termination of this Agreement.

Initials \_\_\_\_\_

7. No Warranties. YOU agree that no representations or warranties have been made by the LESSOR or its agents with respect to said taxicab or this Agreement, unless specifically expressed herein in writing.

8. YOUR Status as a Self-Employed Businessperson. By this Agreement, YOU and the LESSOR acknowledge and agree that there does not exist between the parties the relationship of employer-employee, principle-agent, or master-servant, either expressed or implied, but the relationship of the parties is strictly that of lessor-lessee, YOU being a self-employed businessperson free from interference or control on the part of the LESSOR in the manner or means of operation of the taxicab or the business that YOU conduct with the taxicab. Once the LESSOR conveys possession of the leased taxicab to YOU, YOU shall exercise complete discretion in its lawful operation and YOU shall determine the methods, details and means of performing any and all taxicab services YOU may decide to perform for members of the public in YOUR taxicab business, as follows:

- (a) YOUR earnings, if any, from operating the taxicab are YOURS alone. YOU shall not share YOUR fares with the LESSOR and YOU shall not account to the LESSOR for the amount of fares, if any, YOU collect from YOUR passengers.
- (b) YOU shall not be restricted in any manner as to the area in which YOU may operate said leased taxicab, nor shall YOU be required to remain at any specified place or assigned to any fixed hours.
- (c) YOU shall not be required to answer calls or report the location or whereabouts of said taxicab at any time during the agreed period. Any right to control exists solely with the passenger who is hiring the taxicab at YOUR discretion, and the LESSOR shall do no more than make available to YOUR referrals of prospective passengers received through telephone call service or radio service.
- (d) YOU may use the leased taxicab for any lawful purpose.
- (e) YOU shall be free to decide if and when to work, if and when to take breaks for sleep, meals or otherwise.
- (f) YOU may drive a taxicab at another company and may have any jobs or occupations YOU wish to have.
- (g) YOU agree to market YOUR services independently and advertise YOUR services to the public in **YOUR own name**. YOU are encouraged to use a cellular telephone, a pager, personal business cards and other items necessary to promote and procure business independently. YOU may, if YOU desire, modify the leased vehicle including the installation of a cellular phone and other marketing devices so long as they are in compliance with municipal regulations and subject to paragraph 7 of this Agreement. In addition, the "LESSOR" will relay to YOU orders received by telephone to the dispatch center from customers specifically requesting YOUR services.
- (h) YOU will display during your use of the taxicab, at an appropriate place on or within the taxicab, visible to passengers, a sign indicating YOUR status as a self-employed individual driving a taxicab under a written lease agreement.
- (i) YOU are free to use the taxicab for personal use.
- (j) YOU are free to dress as YOU see fit. LESSOR does not provide any type of uniform or any guidelines on how to dress. YOU acknowledge and agree that, as a self-employed businessperson, free from authority and control of the LESSOR, YOU will not be treated as an employee for purposes of worker's compensation coverage, State Disability Insurance, the Federal Insurance Contribution Act (FICA), the Social Security Act, and State and Federal income tax withholding at the source. LESSOR will not withhold FICA or state or federal income taxes on any payments YOU may receive. YOU understand and agree that YOU are fully and solely responsible for paying any and all federal and state income taxes and self-employment taxes which may be determined to be due as a result of any payments or earnings YOU may receive. Furthermore, because YOU are a self-employed businessperson, it is YOUR responsibility to acquire a business license for the area(s) in which YOU intend to operate your taxicab.

9. Compliance with Laws. Notwithstanding YOUR status as a self-employed businessperson, YOU acknowledge that the taxicab is subject to a permit or license issued by one or more local city or county authorities upon condition that the permit holder shall comply with all local ordinances regulating taxicabs and taxicab drivers. YOU understand and acknowledge that the LESSOR has no right to direct YOU or exercise control over YOU in order to protect against suspension or revocation of any permit for said taxicab, and YOU therefore assume full responsibility for same. YOU agree that YOU will comply with all applicable federal, state and municipal laws, rules, regulations and ordinances in operating the leased taxicab and that YOU will be solely responsible for any fines, penalties or forfeitures resulting from any violations. YOU shall notify LESSOR of any claim, accusation or finding that YOU have violated any provision of the local ordinance regulating taxicabs. YOU agree to indemnify and hold the LESSOR harmless from any and all damages, fines, interest, penalties and costs resulting from YOUR conduct, including but not limited to conduct causing suspension or revocation of any permit for said taxicab. YOU agree to be responsible for parking or traffic violations, citations or fines incurred during the TERM of this lease. YOU will at all times maintain a good and safe driving record in compliance with regulatory and insurance requirements.

Assignment - Sublease. The rights to use the leased taxicab are personal to YOU, based on YOUR personal skills and qualifications. YOU may assign this Lease Agreement or sublease said taxicab only upon written approval of the LESSOR. Such approval shall not be unreasonably withheld. In the event that YOU assign this Agreement, YOUR obligations under this Agreement will not be affected in any way.

10. Cooperation. In the event that legal proceedings arise in connection with YOUR lease of the taxicab, YOU and the LESSOR agree to cooperate with each other's agents and attorneys when asked, and will assist each other as reasonably requested in making

ents, b) securing and giving evidence, c) attending hearings and trials, d) answering questions under oath when asked by and e) signing pleadings. Except voluntarily and at YOUR own cost and expense, YOU agree that YOU will not in relation to any claim or incident, a) make any payment or assume any obligations to others, or b) incur any expense.

Encumbrance. YOUR rights shall not be subject to encumbrance or subject to the claims of YOUR creditors.

and Binding Arbitration of All Disputes Relating to the Cancellation, Termination or Non-Renewal of this Agreement; of Court or Jury Trial.

YOU and the LESSOR agree that in the event that this Agreement is canceled, terminated or not renewed (by either YOU or the LESSOR), any controversy, claim or dispute that may arise relating to, or arising out of such cancellation, termination or non-renewal (including, without limitation, any claim(s) based on common law, any Federal or State statute, any Federal or State constitution and/or any public policy) and any dispute concerning the scope of this paragraph 21 shall be determined by neutral arbitration and not by a lawsuit or resort to court process. Neutral arbitration shall be the exclusive forum for the resolution of any controversy, claim or dispute between YOU and the LESSOR relating to, or arising out of, such cancellation, termination or non-renewal.

WAIVER OF JURY OR COURT TRIAL: AS TO ANY CONTROVERSY, CLAIM OR DISPUTE RELATING TO, OR ARISING OUT OF, THE CANCELLATION, TERMINATION OR NON-RENEWAL OF THIS AGREEMENT. YOU AND THE LESSOR GIVE UP (I.E., WAIVE) ANY CONSTITUTIONAL OR STATUTORY RIGHT TO HAVE ANY SUCH DISPUTE DECIDED IN A COURT OF LAW AND/OR BY A JURY IN A COURT PROCEEDING.

IF YOU and the LESSOR are unable to resolve any controversy, claim or dispute relating to the cancellation, termination or non-renewal of this Agreement, either YOU or the LESSOR may initiate arbitration by giving to the other party a timely written demand for arbitration. A written demand for arbitration may be informal and need not be typed.

One-year limit for making a demand for arbitration: A demand for arbitration by YOU must be given to the LESSOR's Operations Manager or its designated representative within one (1) year after the date of the cancellation, termination or non-renewal of this Agreement. Otherwise, any claim YOU may have against the LESSOR shall be given up and lost (i.e., waived). A demand for arbitration by the LESSOR must be given to YOU within one (1) year after the date of the cancellation, termination or non-renewal of this Agreement. Otherwise, any claim the LESSOR may have against YOU shall be given up and lost (i.e., waived).

After a demand for arbitration has been made, YOU and the LESSOR shall contact the San Diego office of the American Arbitration Association ("AAA") to request a list with the names of seven (7) skilled arbitrators who are attorneys authorized to practice law in the State of California. YOU and the LESSOR shall alternately strike the name of one arbitrator (the first strike shall be determined by lot) until one name remains on the list. That person shall be selected as the neutral arbitrator to hear the dispute.

Payment of initial fees and costs of arbitration: The party demanding arbitration shall pay to the AAA 50% of the AAA's initial administrative fee. The other party shall promptly pay to the AAA the remainder of the AAA's initial administrative fee.

The arbitrator shall have the same scope of authority as would a California state court and/or a federal district court hearing the same type of claim(s) as are brought before the arbitrator, including the authority to order such discovery as the arbitrator may deem appropriate.

The arbitrator shall not have the authority to add to, delete from, change or modify this Agreement.

The arbitrator shall give full effect to the integration clause of this Agreement and shall not admit into evidence or consider any parole evidence which would conflict with, or diminish the effect of, this Agreement.

The arbitrator shall apply the law of the State of California and/or federal law, as applicable. At the conclusion of the arbitration, the arbitrator shall issue a written decision on the merits. The arbitrator's decision shall be final and binding on YOU and the LESSOR.

All fees and expenses of the arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of proofs.

The binding arbitration provisions of this paragraph shall be construed to ensure their enforceability, and shall be construed and enforced pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, et seq., if applicable, and/or Title 9 of Part III of the California Code of Civil Procedure, commencing at §-1280, et seq. Furthermore, the provisions of this paragraph shall survive the cancellation, termination or non-renewal of this Agreement and shall remain in full force and effect thereafter.

Application of California Commercial Code. This Agreement shall be construed and enforced pursuant to Division 10 of the California Commercial Code, § 10101, et seq. ("Personal Property Leases").

Severability Clause. If any part of this Agreement is declared by any court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect and shall not be affected.

15. Execution of Lease. This Agreement is not binding until signed by each individual leasing party named therein and by an authorized representative of the LESSOR.
16. Final, Complete And Entire Agreement; Integration Clause: This Agreement constitutes the final, complete, and entire agreement between YOU and the LESSOR; and each paragraph of this Agreement constitutes the final, complete and entire agreement between YOU and the LESSOR as to the matters referred to in the paragraph in question.
17. Daily Inspection of Taxicab by YOU. YOU agree that, upon receipt of the leased taxicab and thereafter at the beginning of each day, YOU will inspect the condition of the leased taxicab, including the brakes, headlights, taillights, turn signals, all other equipment and fluids, including oil level. YOU shall immediately report any defects or other objections to the LESSOR.
18. YOUR Return of the Taxicab. YOU agree to return the taxicab to the LESSOR upon the expiration of YOUR lease in the same condition as when delivered to YOU, except for reasonable wear and tear. Time is of the essence.
19. YOUR Responsibility for Damage to Vehicle. Except for reasonable wear and tear, YOU agree to compensate the LESSOR for any theft or damage to the taxicab or its equipment regardless of fault up to a maximum \$3,000.00. YOU grant the LESSOR the right to wholly or partially recoup any amounts owed by YOU to the LESSOR from YOUR security deposit held by LESSOR.
20. Services Related to Vehicle. The LESSOR will furnish, without cost to YOU, routine repair and maintenance services, tires, and anti-freeze necessary for the continued operation of the leased taxicab. As used herein, "routine" services does NOT include repairs caused by your neglect of the vehicle or your failure to have the vehicle serviced in accordance with the manufacturer's specifications. LESSOR shall provide towing service at no cost to YOU, unless towing is made necessary by YOUR fault, in which case YOU shall pay for the towing expense. In the event of mechanical or other problems during the lease TERM, YOU may not recover any lost profits or other consequential damages from the LESSOR, except as provided for in paragraph 3 of this Agreement.
21. YOU Pay for Gasoline and Oil. YOU shall be responsible for purchasing all gasoline used while YOU have possession of the leased taxicab. YOU shall also be responsible for maintaining at YOUR own expense the correct amount of oil in the engine while YOU have possession of the taxicab.
22. Insurance. The LESSOR is furnishing only third party liability insurance with regard to the taxicab in a sum not less than is required by law. YOU acknowledge and agree that the LESSOR is neither responsible for, nor liable for, any injury to YOU resulting from the use or operation of the taxicab, or for third party liability in excess of the limits of coverage required by law, which excess is YOUR responsibility. YOU may, at YOUR option, purchase insurance coverage to protect YOU from liability in excess of the limits of coverage on the policy provided by the LESSOR. YOU must give immediate notice to the dispatcher of any accident, loss or incident in which YOU or the taxicab is involved and give notice of same as soon as possible to the LESSOR's insurance company or adjusting facility. The LESSOR will cooperate in giving this notice.

There are no other representations, conditions, warranties, guaranties or collateral agreements, expressed or implied, between YOU and the LESSOR. Any other prior agreements, arrangements or understandings, oral or written, are merged into and superseded by the terms of this Agreement. None of the parties shall be bound by any conditions, definitions, warranties, understandings or representations other than as expressly provided herein. This Agreement may not be added to, or changed in any way, except by an express written agreement signed by YOU and an authorized representative of the LESSOR.

***NOTICE: BY SIGNING THIS AGREEMENT, YOU VERIFY THAT YOU HAVE HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY OR ADVISOR BEFORE SIGNING THIS AGREEMENT, AND THAT YOU HAVE CAREFULLY READ, UNDERSTAND AND AGREE WITH THE CONDITIONS SET FORTH HEREIN.***

***NOTICE: BY SIGNING THIS AGREEMENT, YOU AGREE TO HAVE ANY DISPUTE RELATING TO THE CANCELLATION, TERMINATION OR NON-RENEWAL OF THIS AGREEMENT DECIDED BY NEUTRAL ARBITRATION AND YOU ARE GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL. SEE PARAGRAPH 12 OF THIS AGREEMENT.***



# CITY OF LEMON GROVE

"Best Climate On Earth"

Office of the City Council

November 15, 2012

Dear MTS Board Members:

On August 13, 2012 I announced my retirement from the Lemon Grove City Council after 12 years of service. Today will be my last meeting as a member of your board. I have met with the Mayor and she will be assigning our replacement next month.

I have enjoyed my time working with you and I wish you continued success as you provide safe and quality public transportation to our region.

Sincerely,

  
Mary England  
Council Member City of Lemon Grove







AGENDA ITEM NO.

3

## REQUEST TO SPEAK FORM

ORDER REQUEST RECEIVED

1

PLEASE SUBMIT THIS COMPLETED FORM (AND YOUR WRITTEN STATEMENT)  
TO THE CLERK OF THE BOARD PRIOR TO DISCUSSION OF YOUR ITEM

## 1. INSTRUCTIONS

This Request to Speak form must be filled out and submitted in advance of the discussion of your item to the Clerk of the Board (please attach any written statement to this form). Communications on hearings and agenda items are generally limited to three minutes per person unless the Board authorizes additional time; however, the Chairperson may limit comment to one or two minutes each if there are multiple requests to speak on a particular item. General public comments on items not on the agenda are limited to three minutes. Please be brief and to the point. No yielding of time is allowed. Subjects of previous hearings or agenda items may not again be addressed under General Public Comments.

(PLEASE PRINT)

DATE	12/13/12
Name	Valerie Hightower
Address	4758 Imperial Ave #4
Telephone	
Organization Represented	
Subject of Your Remarks	Bathroom availability & bus stop benches
Regarding Agenda Item No.	
Your Comments Present a Position of:	<input type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSITION

## 2. TESTIMONY AT NOTICED PUBLIC HEARINGS

At Public Hearings of the Board, persons wishing to speak shall be permitted to address the Board on any issue relevant to the subject of the Hearing.

## 3. DISCUSSION OF AGENDA ITEMS

The Chairman may permit any member of the public to address the Board on any issue relevant to a particular agenda item.

## 4. GENERAL PUBLIC COMMENTS ON MATTERS NOT ON THE AGENDA

Public comment on matters not on the agenda will be limited to five speakers with three minutes each, under the Public Comment Agenda Item. Additional speakers will be heard at the end of the Board's Agenda.

NOTE: Subjects of previous hearings or agenda items may not again be addressed under General Public Comments.



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## Agenda Item No. 6

### MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 13, 2012

#### SUBJECT:

INVESTMENT REPORT – OCTOBER 2012

#### RECOMMENDATION:

That the Board of Directors receive a report for information.

#### Budget Impact

None.

#### DISCUSSION:

Attachment A comprises a report of MTS investments as of October 2012. The combined total of all investments has increased from \$233.6 million to \$237.6 million in the current month. This \$4 million increase is attributable to normal variances in scheduled receipts (including \$15.3 million in budgeted subsidy revenue); vendor payments (including payments totaling \$1.3 million for the acquisition of capital assets); and payroll disbursements.

The first column provides details about investments restricted for capital improvement projects and debt service, which are related to the 1995 lease and leaseback transactions. The funds restricted for debt service are structured investments with fixed returns that will not vary with market fluctuations if held to maturity. These investments are held in trust and will not be liquidated in advance of the scheduled maturities. In addition, in the current month, MTS transferred \$9 million in Proposition 1B funding restricted for the acquisition of capital assets from the San Diego County Investment Pool to fund the acquisition of trolley cars and other assets.

The second column (unrestricted investments) reports the working capital for MTS operations allowing payments for employee payroll and vendors' goods and services.

  
Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, [Sharon.Cooney@sdmts.com](mailto:Sharon.Cooney@sdmts.com)

Attachment: A. Investment Report for October 2012

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Metropolitan Transit System (MTS) is a California public agency comprised of San Diego Transit Corp., San Diego Trolley, Inc., San Diego and Arizona Eastern Railway Company (nonprofit public benefit corporations), and San Diego Vintage Trolley, Inc., a 501(c)(3) nonprofit corporation, in cooperation with Chula Vista Transit. MTS is the taxicab administrator for seven cities. MTS member agencies include the cities of Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, San Diego, Santee, and the County of San Diego.



**San Diego Metropolitan Transit System  
Investment Report  
October 31, 2012**

	<u>Restricted</u>	<u>Unrestricted</u>	<u>Total</u>	<b>Average rate of return</b>
Cash and Cash Equivalents				
Bank of America - concentration account	\$ -	\$ 404,048	\$ 404,048	
JP Morgan Chase - concentration account	1,322,629	37,403,726	38,726,355	0.00%
Total Cash and Cash Equivalents	<u>1,322,629</u>	<u>37,807,774</u>	<u>39,130,403</u>	
Cash - Restricted for Capital Support				
US Bank - retention trust account	8,043,460	-	8,043,460	N/A
San Diego County Investment Pool				
Proposition 1B grant funds	23,555,898	214,294	23,770,193	
Proposition 1B TSGP grant funds	5,054,696	70,854	5,125,550	
Total Cash - Restricted for Capital Support	<u>36,654,054</u>	<u>285,148</u>	<u>36,939,202</u>	
Investments - Working Capital				
Local Agency Investment Fund (LAIF)	-	42,038,082	42,038,082	0.340%
Total Investments - Working Capital	<u>-</u>	<u>42,038,082</u>	<u>42,038,082</u>	
Investments - Restricted for Debt Service				
US Bank - Treasury Strips - market value (Par value \$39,474,000)	39,079,895	-	39,079,895	
Rabobank -				
Payment Undertaking Agreement	80,435,481	-	80,435,481	7.69%
Total Investments Restricted for Debt Service	<u>119,515,376</u>	<u>-</u>	<u>119,515,376</u>	
Total cash and investments	<u>\$ 157,492,059</u>	<u>\$ 80,131,004</u>	<u>\$ 237,623,063</u>	

N/A\* - Per trust agreements, interest earned on retention account is allocated to trust beneficiary (contractor)



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## Agenda Item No. 7

### MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 13, 2012

#### SUBJECT:

CLASSROOM DAY TRIPPER PROGRAM FOLLOW-UP – AUDIT REPORT

#### RECOMMENDATION:

That the Board of Directors receive Internal Audit's report on the Classroom Day Tripper Program.

#### Budget Impact

None.

#### DISCUSSION:

The MTS Internal Auditor completed a follow-up review of the Classroom Day Tripper Program, which was audited during FY 12. Evidence reviewed indicated that Management implemented corrective action plans addressing previously reported findings, and those controls were operating as designed and intended.

A handwritten signature in black ink, appearing to read 'Paul G. Jablonski', is written over a horizontal line.

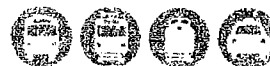
Paul G. Jablonski  
Chief Executive Officer

Key Staff Contact: Karen Landers, 619.557.4512, [karen.landlers@sdmts.com](mailto:karen.landlers@sdmts.com)

Attachment: A. Classroom Day Tripper Program Follow-up

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Metropolitan Transit System (MTS) is a California public agency comprised of San Diego Transit Corp., San Diego Trolley, Inc., San Diego and Arizona Eastern Railway Company (nonprofit public benefit corporations), and San Diego Vintage Trolley, Inc., a 501(c)(3) nonprofit corporation, in cooperation with Chula Vista Transit. MTS is the taxicab administrator for seven cities. MTS member agencies include the cities of Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, San Diego, Santee, and the County of San Diego.





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Att. A, AI 7, 12/13/12

## Memorandum

DATE: 11/1/2012  
TO: John Davenport and Belinda Fragger  
FROM: Daniel Madzellan  
SUBJECT: Follow Up Review – Classroom Day Trip Program

### **Background:**

In accordance with MTS Internal Audit Policies, MTS Auditor is responsible for monitoring the progress of corrective actions taken by Management with respect to audit findings. Accordingly, Internal Audit performed a follow up review on the Classroom Day Trip Program. This review corresponds to the audit report that was formally issued on February 27, 2012. The review focused on:

1. Verifying management actions plans were implemented;
2. Determining if the action plans are working as designed and intended, and
3. Evaluate if residual risks remaining are at acceptable levels.

### **Previous Findings Summary:**

The following is a brief overview of the three primary findings with the previous audit.

1. MTS Allocation Reporting Inconsistent with SANDAG's Revenue Remittance Reporting: MTS based their allocation reporting on the month the actual trip took place (i.e. modified accrual basis). SANDAG's bases their remittance reporting around actual checks received and processed during a month (i.e. cash basis). The different methodologies of reporting leads to timing differences that cannot be reconciled in an efficient, easy manner.
2. Validity and Accuracy of MTS Allocation of Revenue Reporting: There were differences between MTS revenue allocation reports and Audit's expected trip revenues based on passenger counts and pricing as outlined above. Accordingly, Audit cannot reasonably conclude the information reflected with MTS reports is valid and accurate, which in turn impacts Audit's ability to reconcile to SANDAG's actual remittances.
3. Program Rates Charged for Ferry Services is Inconsistent with the Rates Reflected within Program Operating Narratives: The program narratives listed the Coronado/San Diego Bay Ferry cost as \$2 per person. Audit observed there were trips where the reported Ferry charges and allocation was for only \$1 per person. Based on discussion with the prior supervisor and Classroom Day Tripper Coordinator these charges arise if the Ferry use is only one way, not a round trip. There were fifty-three (53) one way trips reflected on MTS reporting where only \$1 per person was charged.



### **Management Action Plans from Previous Report:**

1. Management will take an objective look at the current operation of the day tripper program to determine long term needs of the program including the proper resources and skill levels required to successfully operate the classroom day tripper program.
2. Management has implemented a new reporting system that was reviewed by audit to ensure proper record keeping.
3. MTS Finance will assume the role of SANDAG on February 1, 2012.
4. Management will work closely with Finance to ensure all classroom day tripper records are compliant with MTS financial standards.

### **Follow Up Results:**

Audit reviewed the new reporting system for the two most recently completed months prior to commencement of follow up activities (August and September). Audit performed the following procedures:

1. Traced each reported trip documented within the monthly report to supporting documentation (Classroom Day Trip Request Form);
2. Validated the accuracy of the revenue calculations and allocations based on rates charged for services provided as documented on the request form;
3. Verified there was evidence of Management review of the reporting; and
4. Traced the reported revenues into accounting reconciliations to verify the revenues were properly deposited and recorded in the general ledger.

Based on testing performed, there were no reportable findings. Evidence indicated Management implemented their corrective action plans addressing the reported findings and those controls were operating as designed and intended. As such, Audit considered any residual risks associated with the specific operations at acceptable levels.

For informational purposes, Audit compared prior year reporting periods with the same periods corresponding to the change in reporting system. Total revenues increased by \$27,328, or 68.1%, while MTS's portion of the total revenues increased by \$18,855.25, or 133.8%. NOTE: Classroom Day Trip Program includes utilization of services provided by North County Transit District (Bus, Sprinter and Coaster), as well as the Coronado Ferry.

While some of the increases can be attributed to outside factors, such as a couple of large group outings, the evidence does suggest new reporting system has eliminated the revenue leakage suspected from the previous audit. Please review Appendix A below for comparison of prior years and current year revenue totals.

### **Management Comments:**

Management concurs with Internal Audit that the new program reporting system is working well. The ongoing partnership with MTS Finance has also had a positive impact on the outcome of the internal review. Moving forward, Management does suggest the Agency investigate the feasibility of installing a credit card terminal for classroom day trip payments. This would provide the program a secured payment option and would also help speed up the revenue collection process compared to the current practice of only accepting checks as payment.

### **Report Distribution:**

Paul Jablonski, Cliff Telfer, Karen Landers – MTS

**Appendix A – Revenue Comparison:**

**Total Revenue Comparison: Percentage Increase in Revenues – 68.1%**

<u>Month</u>	<u>Prior Year Revenues Old Procedures</u>	<u>Month</u>	<u>Current Year Revenues New Procedures</u>	<u>Difference – Dollars</u>
Mar 2011	\$ 5,351.00	Mar 2012	\$ 10,278.50	\$ 4,927.50
Apr 2011	\$ 6,230.00	Apr 2012	\$ 5,828.00	(\$ 402.00)
May 2011	\$ 8,653.00	May 2012	\$ 18,846.50	\$ 10,193.50
June 2011	\$ 11,458.50	June 2012	\$ 12,315.00	\$ 856.50
July 2011	\$ 4,613.50	July 2012	\$ 14,367.50	\$ 9,754.00
Aug 2011	\$ 2,218.00	Aug 2012	\$ 4,159.00	\$ 1,941.00
Sept 2011	\$ 1,634.00	Sept 2012	\$ 1,691.50	\$ 57.50
<b>TOTALS</b>	<b>\$ 40,158.00</b>		<b>\$ 67,486.00</b>	<b>\$ 27,328.00</b>

**MTS Total Revenue Comparison: Percentage Increase in Revenues – 133.8%**

<u>Month</u>	<u>Prior Year Revenues Old Procedures</u>	<u>Month</u>	<u>Current Year Revenues New Procedures</u>	<u>Difference – Dollars</u>
Mar 2011	\$ 2,421.00	Mar 2012	\$ 7,712.50	\$ 5,291.50
Apr 2011	\$ 1,905.50	Apr 2012	\$ 2,679.50	\$ 774.00
May 2011	\$ 2,027.25	May 2012	\$ 8,643.00	\$ 6,615.75
June 2011	\$ 4,364.00	June 2012	\$ 685.00	(\$ 3,678.50)
July 2011	\$ 1,705.00	July 2012	\$ 10,802.00	\$ 9,097.00
Aug 2011	\$ 691.00	Aug 2012	\$ 2,429.50	\$ 1,738.50
Sept 2011	\$ 983.00	Sept 2012	\$ 949.50	(\$ 33.50)
<b>TOTALS</b>	<b>\$ 14,096.75</b>		<b>\$ 32,952.00</b>	<b>\$18,855.25</b>



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## Agenda Item No. 8

### MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 13, 2012

#### SUBJECT:

SAN DIEGO TRANSIT CORPORATION (SDTC) NONCONTRACT PENSION FORMULA

#### RECOMMENDATION:

That the Board of Directors:

1. amend the Retirement Plan for Noncontract Employees of the San Diego Transit Corporation (SDTC) (Attachment A) to comply with the California Public Employees' Pension Reform Act of 2013 (PEPRA); and
2. adopt Resolution No. 12-20 (Attachment B) implementing the "pick-up" provisions of Section 414(h)(2) of the Internal Revenue Code with respect to the Retirement Plan for noncontract employees of San Diego Transit Corporation.

#### Budget Impact

Board approval would result in a reduction in future pension costs.

#### DISCUSSION:

SDTC currently provides a 2%-@-55 defined benefits pension plan to its "noncontract" employees (not represented by a union) through a single-employer government plan. SDTC does not contract with CalPERS.

In August 2012, the California Public Employees' Pension Reform Act of 2013 (PEPRA) was enacted with a January 1, 2013, effective date. Reform measures included in the law affect all public agencies that offer governmental pension plans, including MTS and its subsidiaries San Diego Transit Corporation and San Diego Trolley, Inc.



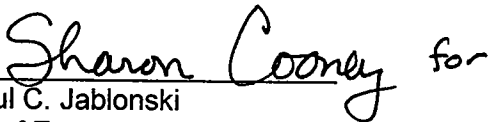


The most notable provisions of PEPPRA require a 2%-at-62-years second-tier retirement formula for employees hired after December 31, 2012, employees contributions for 50% of the "normal cost" of benefits, limitations on pensionable compensation, antispiking provisions, limitations on postretirement employment, forfeiture of pension benefits upon conviction of certain felonies, health benefit equitability, and prohibitions on pension funding holidays.

Attachment A is a strikeout/underline version of the pension plan for SDTC employees entitled, "Third Amended and Restated Retirement Plan for Noncontract Employees of San Diego Transit Corporation," which reflects the provisions and plan modifications required by PEPPRA, the elimination of the Social Security integration provision for new hires, and other cleanup language.

Staff recommends that the Board of Directors: (1) approve the "Third Amended and Restated Retirement Plan for Noncontract Employees of San Diego Transit Corporation" (this action would lower SDTC's pension costs for new hires going forward); and (2) adopt Resolution No. 12-20 implementing the "pick-up" provisions of Section 414(h)(2) of the Internal Revenue Code with respect to the Retirement Plan for noncontract employees of San Diego Transit Corporation.

Staff is continuing to evaluate and seek guidance on the new PEPPRA legislation, and future updates will be provided to the Board as they become available.

  
Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, [Sharon.Cooney@sdmts.com](mailto:Sharon.Cooney@sdmts.com)

Attachments: A. Third Amended and Restated Retirement Plan for Noncontract Employees of SDTC  
B. MTS Resolution No. 12-20

~~SECOND~~THIRD AMENDED AND RESTATED  
RETIREMENT PLAN FOR  
NONCONTRACT EMPLOYEES OF  
SAN DIEGO TRANSIT CORPORATION  
*(as restated through January 1, 2013)*

## TABLE OF CONTENTS

	Page
<del>ARTICLE</del> <u>Article I</u> Definitions .....	1
1.01 Accrued Benefit .....	1
1.02 Actuarial Equivalent .....	1
1.03 Adjusted Monthly Final Earnings .....	1
1.04 Annuity Starting Date .....	1
1.05 Average Monthly Final Earnings .....	1
1.06 Board of Directors .....	21
1.07 Compensation .....	21
1.08 Compensation Earnable .....	21
1.09 Credited Years of Service .....	31
1.10 Date of Employment .....	31
1.11 Disability Retirement Date .....	31
1.12 Early Retirement Date .....	41
1.13 Effective Date .....	41
1.14 Eligible Employee .....	41
1.15 Eligible Spouse .....	41
1.16 Employee .....	51
1.17 Employer .....	51
1.18 Enrolled Actuary .....	51
1.19 ERISA .....	51
1.20 Extension Date .....	5 <u>Fiduciaries</u> 1
1.21 Fiduciaries .....	5
<del>1.22</del> Hour of Service .....	51
<del>1.23</del> Investment Manager .....	7
<del>1.24</del> Joint and Survivor Annuity .....	7
<del>1.25</del> <del>1.22</del> .....	Late Retirement Date 71
<del>1.23</del> New Member .....	1
<del>1.26</del> <del>1.24</del> .....	Normal Form of Benefit 71
<del>1.27</del> <del>1.25</del> .....	Normal Retirement Date 71
<del>1.28</del> <del>1.26</del> .....	One Year Break in Service 81
1.27 Participant .....	1
1.28 "Participant Contributions" .....	1
1.29 Participant .....	8 "PEPRA" 1
1.30 Plan .....	81
1.31 Plan Year .....	81
1.32 Plan Year of Service .....	81
1.33 Retirement Board .....	81
1.34 Table A .....	1
1.35 Service .....	81
<del>1.35</del> <del>1.36</del> .....	Total and Permanent Disability 81
<del>1.36</del> Trust .....	8
1.37 Trust <u>1</u>	

1.38	Trust Agreement .....	81
1.38	Trustee.....	9
1.39	Trustee.....	1
1.40	Year of Service .....	91
ARTICLE	Article II Eligibility and Participation .....	91
2.01	Basic Participation Requirements .....	91
2.02	Eligibility Upon Reemployment.....	91
2.03	Transferred Employees .....	1
ARTICLE	Article III Normal (Late) Retirement.....	91
3.01	Termination of Service On or After Normal Retirement Date .....	91
3.02	Reinstatement From Retirement .....	101
ARTICLE	Article IV Early Retirement.....	101
4.01	Termination of Service On or After Early Retirement Date.....	101
4.02	Form of Payment of Retirement Benefit Upon Early Retirement .....	101
4.03	Reinstatement From Retirement .....	101
ARTICLE	Article V Disability Retirement .....	101
5.01	Termination of Service After Total and Permanent Disability .....	101
5.02	Limitations on Disability Retirement.....	111
5.03	Form of Payment of Retirement Benefit Upon Disability Retirement .....	121
5.04	Reinstatement From Retirement .....	121
ARTICLE	Article VI Termination Prior to Retirement.....	121
6.01	Termination of Service Prior to Death or Retirement.....	121
6.02	Vested Accrued Benefit .....	131
6.03	Form of Payment of Benefit Upon Termination of Service .....	131
6.04	Retirement Benefits at Early Retirement Age .....	131
6.05	Change in Vesting Schedule .....	141
ARTICLE	Article VII Payment of Benefits .....	141
7.01	Form of Payment of Benefit Upon Normal Retirement.....	141
7.02	Alternate Benefit Forms.....	141
7.03	Election .....	141
7.04	Limitation on Optional Benefit Forms.....	151
7.05	Commencement of Benefits.....	151
7.06	Inability to Locate a Participant or Beneficiary .....	161
7.07	Cost-of-Living Adjustment.....	161

<del>ARTICLE</del> <u>Article</u> VIII Pre-retirement Spouse's Benefit .....	<del>171</del> <u>171</u>
8.01 Eligibility .....	171
8.02 Benefits Upon Death.....	171
8.03 Cost of the Pre-retirement Spouse's Benefit.....	181
8.04 Waiver of Pre-retirement Spouse's Benefit .....	181
8.05 Notice Requirements.....	191
8.06 Cancellation and Reelection .....	191
<del>ARTICLE</del> IX Named Fiduciaries .....	19
9.01 Named Fiduciaries .....	19
9.02 Board of Directors Authority .....	20
9.03 Trustee Authority .....	20
9.04 Retirement Board Authority .....	20
9.05 Investment Manager Authority .....	20
9.06 Responsibility .....	20
<u>Article IX Intentionally Omitted.....</u>	<u>1</u>
<del>ARTICLE</del> <u>Article</u> X Administration of the Plan .....	<del>201</del> <u>201</u>
10.01 Appointment of the Retirement Board.....	201
10.02 Retirement Board Action .....	211
10.03 Rules and Decisions.....	211
10.04 Expenses .....	211
10.05 Powers and Duties.....	211
10.06 Records and Reports .....	221
10.07 Proof of Age.....	231
10.08 Elections and Application for Benefits .....	231
10.09 Denial of Application.....	231
10.10 Appeals Procedure .....	241
10.11 Facility of Payment.....	261
10.12 Use of Enrolled Actuary .....	261
10.13 Liability of Retirement Board Members.....	261
10.14 Reliance on Reports and Certificates.....	261
10.15 Member's Own Participation.....	261
10.16 Delegation of Responsibility.....	261
<del>ARTICLE</del> <u>Article</u> XI Method of Financing.....	<del>261</del> <u>261</u>
11.01 Appointment of Trustee .....	261
11.02 Employer Contributions.....	271
11.03 Amount and Timing of Employer Contributions.....	271
11.04 Refund of Employer Contributions.....	271
11.05 Contributions by Participants.....	271
11.06 No Diversion of Corpus or Income.....	271

<del>ARTICLE</del> <u>Article</u> XII Amendment, Merger or Termination .....	<u>271</u>
12.01 Right to Amend.....	<u>271</u>
12.02 Mergers, Consolidations and Transfers .....	<u>281</u>
12.03 Right to Terminate .....	<u>281</u>
12.04 Partial Termination .....	<u>291</u>
12.05 Funds of the Trust .....	<u>291</u>
12.06 Manner of Distribution Upon Termination.....	<u>301</u>
12.07 Residual Amounts.....	<u>311</u>
<del>ARTICLE</del> <u>Article</u> XIII Limitations on Certain Benefits .....	<u>311</u>
13.01 Maximum Benefits.....	<u>311</u>
13.02 Maximum Benefits.....	<u>331</u>
13.03 Maximum Benefits.....	<u>351</u>
<del>ARTICLE</del> <u>Article</u> XIV General Provisions .....	<u>361</u>
14.01 No Guarantee of Employment .....	<u>361</u>
14.02 Nonalienation of Benefits .....	<u>361</u>
14.03 Purchase of Annuities .....	<u>361</u>
14.04 Beneficiary Designations .....	<u>361</u>
14.05 Conditional Establishment.....	<u>361</u>
14.06 Governing Law .....	<u>371</u>
14.07 Interpretation.....	<u>371</u>
14.08 Counterparts.....	<u>371</u>
14.09 Applicability .....	<u>371</u>
<u>14.10 Interpretation.....</u>	<u>1</u>
<u>14.11 Exhibits .....</u>	<u>1</u>
<u>Article XV Special Distribution Rules .....</u>	<u>1</u>
<u>15.01 Election by Distributee .....</u>	<u>1</u>
<u>15.02 Definitions.....</u>	<u>1</u>
<u>15.03 EGTRRA Requirements .....</u>	<u>1</u>
<u>15.04 Notice.....</u>	<u>1</u>

## ARTICLE I

### Definitions

1.01 Accrued Benefit. "Accrued Benefit" means the amount of Normal Retirement Benefit payable at Normal Retirement Date to which a Participant who terminated his Service would have been entitled under Article III hereof if he had continued as a Participant and had at least 1,000 Hours of Service in every Plan Year thereafter until his Normal Retirement Date, multiplied by a fraction, the numerator of which is the total number of Credited Years of Service and the denominator of which is the total number of Credited Years of Service he would have had if he had so continued as a Participant until his Normal Retirement Date, ~~provided, however, that the Accrued Benefit percentage as determined under Section 3.01 and Table A shall not be less than the percentage shown under retirement age 65 based on the Credited Years of Service earned to the date of determination.~~ For the purposes of the foregoing, Average Monthly Final Earnings shall be treated as remaining constant as of the beginning of the Plan Year of termination of Service for all years thereafter.

1.02 Actuarial Equivalent. "Actuarial Equivalent" means equality of value of the aggregate amounts expected to be received under different forms of payment, based on the following actuarial methods and assumptions:

(a) Early Retirement Factors: incorporated in Table A.

(b) Factors for the 100% Contingent Annuity (Option 1), the 50% Contingent Annuity (Option 2), the Joint and Survivor Annuity (Service Retirement) and the Pre-retirement Spouse's Benefit shall be the factors set out in the exhibit attached marked "Table B." *As amended effective January 1, 1985.*

(c) Factors for the Joint and Survivor Annuity (Disability Retirement) shall be the factors for an "ordinary" disability, set out in the exhibit attached marked "Table C." *As amended effective January 1, 1985.*

(d) Factors for determining any computations involving Internal Revenue Code ("IRC") Section 415 maximum benefit limitation under Article XIII shall, solely for that purpose, be based on an interest rate of five percent (5%). *As amended effective July 1, 1982.*

1.03 Adjusted Monthly Final Earnings. "Adjusted Monthly Final Earnings" means the Average Monthly Final Earnings less \$133.33, where the Average Monthly Final Earnings are \$400.00 or more per month and means two thirds of the Average Monthly Final Earnings where such average is less than \$400.00 per month. *Provided, however, that for any Participant whose monthly benefit under the Plan commences after November 27, 1990, Adjusted Monthly Final Earnings shall be equal to Average Monthly Final Earnings.*

1.04 Annuity Starting Date. "Annuity Starting Date" means the first day of the first period with respect to which a Participant's benefit payable in the form of an annuity is to begin.

1.05 Average Monthly Final Earnings. "Average Monthly Final Earnings" means the average monthly compensation, during the sixty (60) consecutive months which produces an Employee's highest average compensation, computed by dividing the Compensation Earnable

for such period by the number of months in such period. Those months (and the associated Compensation Earnable, if any) for which the Employee did not receive Compensation from the Employer equivalent to one half the regular working days of said Employee in said month shall be excluded. The average shall be based on that portion of the sixty (60) month period remaining after the exclusions. *As amended effective July 1, 1982.*

*Effective for Participants whose monthly benefit commences on or after July 1, 1997*, "Average Monthly Final Earnings" means the average monthly compensation, during the thirty-six (36) consecutive months which produce an Employee's highest average compensation, computed by dividing the Compensation Earnable for such period by the number of months in such period. Those months (and the associated Compensation Earnable, if any) for which the Employee did not receive Compensation from the Employer equivalent to one-half the regular working days of said Employee in said month shall be excluded. The average shall be based on that portion of the thirty-six (36) month period remaining after the exclusions.

*Effective for Participants who perform one (1) Hour of Service on or after July 1, 2003*, "Average Monthly Final Earnings" means the average monthly compensation, during the twelve (12) consecutive months which produce an Employee's highest average compensation, computed by dividing the Compensation Earnable for such period by the number of months in such period. Those months (and the associated Compensation Earnable, if any) for which the Employee did not receive Compensation from the Employer equivalent to one-half the regular working days of said Employee in said month shall be excluded. The average shall be based on that portion of the ~~thirty-six (36)~~twelve (12) month period remaining after the exclusions.

*Effective for Participants who are New Members on or after January 1, 2013.*  
"Average Monthly Final Earnings" means the average monthly compensation, during the thirty-six (36) consecutive months which produce an Employee's highest average compensation, computed by dividing the Compensation Earnable for such period by the number of months in such period. For the purposes of this definition, such thirty-six (36) month period shall be deemed designated by the Employee on his/her application for benefits.

1.06 Board of Directors. "Board of Directors" means the Board of Directors of San Diego Transit Corporation, who, effective as of January 1, 2004, are elected by Metropolitan Transit Development Board.

1.07 Compensation. "Compensation" means the remuneration for services paid by the Employer and shall not include the monetary value of board, lodgings, fuel, car allowance, laundry or other advantages furnished to a Participant.

1.08 Compensation Earnable. "Compensation Earnable" means the Compensation actually received by a Participant during the applicable period of employment. For the purposes of this definition:

(a) *Effective January 1, 1989*, any bonuses or retroactive wage increases shall be treated as Compensation Earnable for the period in which such bonuses or retroactive



wage increases are received, rather than the period in which the services generating such bonuses or retroactive wage increases were actually performed.

(b) *Effective September 1, 1992*, Accrued Vacation (defined below) shall be considered in computing a Participant's Compensation Earnable and Average Monthly Final Earnings; however, Prorated Vacation (defined below) and accumulated sick leave shall not be considered in computing a Participant's Compensation Earnable and Average Monthly Final Earnings. Consistent with the foregoing, a Participant is required to exhaust all Accrued Vacation, but not Prorated Vacation or accumulated sick leave, before payments of benefits can commence under the Plan. For the purposes of this Section 1.08(b), vacation earned as of the January 1 immediately preceding the date on which the Participant retires is Accrued Vacation and vacation earned after the Anniversary Date immediately preceding the date on which the participant retirement is Prorated Vacation.

(c) *Effective January 1, 1994*, the Compensation Earnable for any calendar year shall be subject to the limits of Internal Revenue Code Section 401(a)(17).

(d) *Effective for any Plan Year beginning after December 31, 2001*, the annual compensation of each participant ~~Participant~~ taken into account in determining benefit accruals, shall not exceed \$200,000. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). For purposes of determining benefit accruals in a plan year beginning after December 31, 2001, the annual compensation limit in paragraph 1 above, for determination periods beginning before January 1, 2002, shall be \$200,000. The \$200,000 limit on annual compensation shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

(e) *Effective for Participants who are New Members on or after January 1, 2013:*

(i) Compensation Earnable shall mean the normal monthly rate of pay or base pay of the Participant consistent with the requirements of PEPR.

(ii) The Compensation Earnable for any calendar year shall not exceed one hundred percent (100%) of the contribution and benefit base specified in Section 430(b) of Title 42 of the United States Code on January 1, 2013 (the "Base"). The Base shall be adjusted following each actuarial valuation of the Plan based on changes to the Consumer Price Index for All Urban Consumers, to be effective the following January 1 (the "Adjustment"). The Adjustment shall remain in effect until the applicable provision of PEPR is modified or repealed.

(iii) Compensation Earnable shall not include (1) Any compensation determined by the Retirement Board to have been paid to increase a Participant's benefit under the Plan; (2) compensation that had previously been provided in-kind to the Participant by the Employer or paid directly by the Employer to a third party other than the Plan for the benefit of

the Participant and which was converted to and received by the Participant in the form of a cash payment; (3) any one-time or ad hoc payments made to a Participant; (4) severance or any other payment that is granted or awarded to a Participant in connection with or in anticipation of a separation from employment, but is received by the Participant while employed; (5) payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, regardless of when reported or paid; (6) payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise; (7) any employer-provided allowance, reimbursement, or payment, including, but not limited to, one made for housing, vehicle, or uniforms; (8) compensation for overtime work, other than as defined in Section 207(k) of Title 29 of the United States Code; (9) Employer contributions to deferred compensation or defined contribution plans; (10) any bonus paid in addition to the compensation described in clause (i) above.

(iv) Compensation Earnable for any calendar year shall be subject to the limits of Internal Revenue Code Section 401(a)(17).

1.09 Credited Years of Service. "Credited Years of Service" means the sum of (a) plus (b) as modified by (c) where:

(a) Is the period of continuous Service since the last date of employment with the San Diego Transit Corporation and its predecessor company through June 30, 1982; and

(b) Is any Plan Year commencing on or after July 1, 1982 in which the Employee completes at least 1,000 Hours of Service; and

(c) In the case of any Participant who does not have any vested Accrued Benefit under section 6.02 hereof, Credited Years of Service prior to any One Year Break(s) in Service shall be disregarded if the number of consecutive One Year Break(s) in Service equals or exceeds the greater of (a) the total of the aggregate number of credited Years of Service prior thereto (disregarding any Service which was disregarded here by reason of any prior Break(s) in Service) or (b) five (5) consecutive One Year Breaks in Service and those Years of Service which would have been disregarded under the Break in Service rules existing prior to the Effective Date of this Amendment for any Participant who incurred a Break in Service prior to such date. *As amended on January 1, 1985.*

(d) For the purposes of the Plan only, and without setting any precedent for any other individual, the following individuals will receive the following Credited Years of Service in addition to those earned in accordance with Sections 1.09(a)-(c):

Marv Dougall – 3 Years

John Garland – 2 Years, 9 Months, 28 Days

Sandra Showalter – 5 Years, 6 Months

Diane Daley – 2 Years, 3 Months

Tim Price – 8 Months, 14 Days

1.10 Date of Employment. "Date of Employment" means the first date on which an Employee completes an Hour of Service. "Date of Reemployment" means the first date on which an Employee completes an Hour of Service after incurring a One Year Break in Service.

1.11 Disability Retirement Date. "Disability Retirement Date" means the date on which a Participant's employment terminates by reason of a Total and Permanent Disability.

1.12 Early Retirement Date.

(a) *For Employees with Service Before January 1, 1989 but no Service on or after January 1, 1989:*

"Early Retirement Date" means the date on which an Employee has attained age 55, and completed ten (10) Credited Years of Service or any date thereafter prior to Normal Retirement Date.

(b) *For Employees with one (1) Hour or more of Service on or after January 1, 1989 but no Service on or after January 1, 1996:*

"Early Retirement Date" means the date on which an Employee has attained 55 or older and completed five (5) Credited Years of Service or any date thereafter prior to Normal Retirement Date.

(c) *For Employees with one (1) Hour or more of Service on or after January 1, 1996:*

"Early Retirement Date" means the date on which an Employee has attained age 53 and completed five (5) Credited Years of Service, or any date thereafter prior to Normal Retirement Date."

1.13 Effective Date. This document is an amendment and restatement of the Retirement Plan for Noncontract Employees of San Diego Transit Corporation adopted with an Effective Date of July 1, 1982, as amended through December 31, 2001.

1.14 Eligible Employee. "Eligible Employee" means an Employee in a job classification not covered by a collective bargaining agreement between the Employer and a union.

*Effective January 1, 1996*, "Eligible Employee" means a full time and permanent Employee in a job classification not covered by a collective bargaining agreement between the Employer and a union and who is not employed pursuant to a term-limited contract.

*Effective for Plan Years beginning after January 1, 1997*, the term "Eligible Employee" shall not include any individual who is classified by the Employer as an independent contractor, Leased Employee (within the meaning of Section 414(n) or (o) of the Internal Revenue Code), or any other non-employee classification."

1.15 Eligible Spouse. "Eligible Spouse" means the spouse of a Participant who is legally married to the Participant (a), on the Participant's Annuity Starting Date, and (b) continuously during the one-year period ending on the date of such Participant's death, including for this purpose a spouse who married an Employee within one year before the Participant's Annuity Starting Date provided that the Participant and his spouse have been married throughout

the one-year period prior to the Participant's death. If death is from accidental causes the one year requirement is waived except for those Participants on Disability Retirement, in which case it will not be waived. *As amended effective January 1, 1985.*

*Effective January 1, 2005*, the term "Eligible Spouse" shall also include the "Registered Domestic Partner" (within the meaning of California Family Code Section 297, et. seq.) of a Participant with a Declaration of Domestic Partnership validly on file with the California Secretary of State (a) on the Participant's Annuity Starting Date, and (b) continuously during the one year period ending on the date of such Participant's death, including for this purpose a domestic partner who, with the Participant, filed a valid Declaration of Domestic Partnership with the California Secretary of State within one year before the Participant's Annuity Starting Date, provided that such domestic partnership remained in existence throughout the one year period prior to the Participant's death. If death is from accidental causes, the one year requirement is waived except for those Participants on Disability Retirement, in which case it will not be waived.

1.16 Employee. "Employee" means a person who is in the Service of the Employer after the Effective Date.

1.17 Employer. "Employer" means the San Diego Transit Corporation ("Corporation") and any affiliated company that has adopted the Plan with the approval of the Board of Directors. The sole member of the Corporation is the San Diego Metropolitan Transit System.

1.18 Enrolled Actuary. "Enrolled Actuary" means an actuary selected by the Retirement Board who is enrolled in accordance with ERISA and regulations thereunder.

1.19 ERISA. "ERISA" means the Employee Retirement Income Security Act of 1974 as amended from time to time.

~~1.20 Extension Date. "Extension Date" means the effective date of any amendment to the Plan which has the effect of increasing the monthly benefit which may be provided by the Employer's contribution.~~

1.20 ~~1.21~~ Fiduciaries. "Fiduciaries" means those fiduciaries of the Plan as determined under ERISA and named in Article IX hereof including anyone who exercises any discretionary authority or discretionary control respecting the management or disposition of Plan assets, or who renders any investment advice for a fee or other compensation (or has authority or responsibility to do so) or who exercises any discretionary authority or responsibility for Plan administration. Any such person shall be a fiduciary only to the extent he has responsibilities or authority described in this Section.

1.21 ~~1.22~~ Hour of Service. "Hour of Service" means the sum of the following hours of Service of an Employee as determined from the payroll or other records of the Employer or pursuant to any alternative nondiscriminatorily applied by the Retirement Board and allowed by applicable rules or regulations of the Internal Revenue Service and Department of Labor:

(a) each hour for which an employee is directly or indirectly paid, or entitled to payment, by the Employer for the performance of duties plus each hour for which credit is not otherwise given with respect to which back pay is awarded or agreed to by the Employer, computed without regard to any mitigation of damages and credited to the Plan Year in which the Employee performed the duties or with respect to which the back pay awarded or agreement pertains;

(b) each hour, up to a maximum of 501 hours for any single continuous period, for which an Employee is directly or indirectly paid, or entitled to payment, by the Employer for reasons other than the performance of duties (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence, excluding, except as provided in subsection (c) following, any such hours for which payment is made or due under a plan maintained solely for the purpose of complying with the applicable workers' compensation, unemployment or disability insurance laws or which reimburses an employee solely for medical or medically related expenses which he has incurred. Any hours for which back pay is awarded for a period during which no duties are performed shall also be subject to the 501-hour maximum credit for any single continuous period; and

(c) a noncompensated leave of absence approved in writing by the Employer, or during periods when the Employee is receiving, entitled to receive or determining his rights to receive, temporary benefits under the State Workers' Compensation or Disability Laws providing such period of time is reasonable and does not exceed twelve (12) months. For good cause, however, the Retirement Board may extend the time limits in this subparagraph (c). Periods covered in this subparagraph (c) shall be converted to Hours of Service on the basis of 40 hours per week (eight hours per day).

(d) Each hour, up to a maximum of 501 hours for any single continuous period, of absence incurred by an Employee for the purpose of:

- (i) Pregnancy
- (ii) Birth of a child
- (iii) Adoption of a child
- (iv) Caring for a child immediately following birth or an adoption.

Such employee shall be treated as having completed either the number of hours that would have been completed except for such absence or eight (8) Hours of Service for each normal workday where normal work hours are not shown. Any hours required to be credited pursuant to this subsection (d) must be credited only (A) in the Plan Year in which the absence begins, if such crediting is necessary to prevent a Break in Service during such Year or (B) in the following Plan Year; and *As amended effective January 1, 1985.*

(e) Each other hour for which an Employee must be credited, pursuant to any applicable Federal law, provided that the Employee returns to the Service of the Employer within the minimum time specified by such laws.

Any leave of absence shall be granted without discrimination among Employees in like circumstances and on a basis precluding individual selection.

In determining credit for military service, a Participant is absent on military service when he is absent from service with the Employer by reason of service with the Armed Forces or the Merchant Marine of the United States, or on ships operated by or for the United States Government, either during a war involving the United States as a belligerent or in any other national emergency, or in time of peace if he is drafted for such service by the United States Government other than a period of rehabilitation for purely educational purposes, and for six months thereafter; provided, that an absence on military service of a Participant who has voluntarily requested or hereafter so requests or agrees to an extension of his original term of enlistment, service, or tour of duty, shall be deemed terminated upon expiration of the six months following the date of termination of such original term of enlistment, service, or tour of duty, whichever is later. A Participant shall receive credit for all such military service. This shall not be construed to regard military service as time worked in the event the military service is performed prior to commencement of Service for the Employer or as the result of military service performed after employment with the Employer or predecessor employer has been terminated by reason of resignation, voluntary quit, or discharge, even if the Employee later resumes employment with the Employer.

In determining the number of Hours of Service to be credited to an Employee for reasons other than the performance of duties, as well as in determining the Plan year to which all Hours of Service should be credited, the rules of Section 2530-200b-2(b) and (c) of the Department of Labor regulations shall be followed to the extent such rules are not incorporated in this Plan document. *As amended effective January 1, 1985.*

*Effective December 12, 1994*, notwithstanding any provision of the Plan to the contrary (other than a Plan provision granting greater service or benefits credit), benefits and service credits with respect to qualified military service, which shall mean any service in the uniformed services (as defined in chapter 43 of title 38 of the United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service, shall be provided in accordance with Section 414(u) of the Internal Revenue Code.

~~1.23 — Investment Manager. “Investment Manager” means a Fiduciary designated by the Board of Directors under the Plan to whom the Board of Directors has delegated the responsibility and authority to control and manage the assets of the Trust, and (1) who is (i) registered as an investment adviser under the Investment Advisors Act of 1940; (ii) a bank, as defined in that Act; or (iii) an insurance company qualified to perform investment advisory services under the laws of more than one state; and (2) who has acknowledged in writing that he is a Fiduciary with respect to the control and management of the Trust assets.~~

~~1.24 — Joint and Survivor Annuity. “Joint and Survivor Annuity” means a monthly annuity for the life of the Participant with a monthly annuity thereafter for the life of his Eligible Spouse, if any, which is equal to one-half of the amount of the annuity payable during the joint lives of the Participant and his Eligible Spouse.~~

1.22 ~~1.25~~ Late Retirement Date. "Late Retirement Date" means for a Participant who has continued his Service after his Normal Retirement Date, the date on which he actually retires from employment with the Employer.

1.23 New Member. "New Member" shall mean (i) an individual who becomes a Participant in the Plan for the first time after January 1, 2013, and who was not a Participant in the Plan prior to that date, and (ii) an individual who was a Participant in the Plan prior to January 1, 2013, and who, after a break in service of more than six months, returned to active participation in the Plan on or after January 1, 2013; provided however, that a Participant shall not be considered a New Member to the extent that Participant is prohibited from being treated as a New Member by PEPRAs.

1.24 ~~1.26~~ Normal Form of Benefit. "Normal Form of Benefit" means a benefit payable during the lifetime of the Participant only and which benefit ceases with the last payment due before his death.

1.25 ~~1.27~~ Normal Retirement Date.

(a) *For Employees with Service Before January 1, 1989 but no Service on or after January 1, 1989:*

"Normal Retirement Date" shall mean the date on which an Employee attains age 65 (or if later, the 10th Anniversary of the date of employment).

(b) *For Employees with one (1) Hour or more of Service on or after January 1, 1989 but no Service on or after January 1, 1996:*

"Normal Retirement Date" means the date on which an Eligible Employee attains age 65, or if later, the fifth anniversary of such Employee's date of participation.

(c) *For Employees with one (1) Hour or more of Service on or after January 1, 1996:*

"Normal Retirement Date" means the date on which an Employee has attained age 63, or if later, the fifth anniversary of such Employee's date of participation.

1.26 ~~1.28~~ One Year Break in Service. "One Year Break in Service" means a Plan Year during which an Employee has not completed an aggregate of more than 500 Hours of Service.

1.27 ~~1.29~~ Participant. "Participant" means any Eligible Employee who has satisfied the requirements under Article II hereof.

1.28 "Participant Contributions" *Effective January 1, 2013*, means those contributions which Participants are required to make to the Plan pursuant to Section 11.05 of this Plan.

1.29 "PEPRA" shall mean the California Public Employees' Pension Reform Act of 2013, California Assembly Bill Number AB 340, Chapter 296, September 12, 2012.

1.30 Plan. "Plan" means the retirement income plan described in this instrument and known as the Retirement Plan for Noncontract Employees of San Diego Transit Corporation.

1.31 Plan Year. "Plan Year" means the twelve-month period beginning July 1 and ending June 30 of the following year.

1.32 Plan Year of Service. "Plan Year of Service" means a Year of Service during a Plan Year.

1.33 Retirement Board. "Retirement Board" means the administrative board appointed pursuant to Article X.

1.34 ~~1.34~~ Table A. "Table A" means with respect to any Participant, the applicable table selected from Table A-1, Table A-2, etc., as attached to this Plan, based on such Participants' service dates with the employer.

1.35 ~~1.34~~ Service. "Service" means an Employee's period of employment with the Employer.

1.36 ~~1.35~~ Total and Permanent Disability. "Total and Permanent Disability" means as to a Participant, that he is permanently disabled, physically or mentally, through illness or injury, to the extent that he is physically or mentally disqualified from performing his employment with the Employer. The determination of the Participant's Total and Permanent Disability will vest with the Retirement Board and they will make their determination based upon medical evidence of permanent disqualification from the job classification held at the time of such disability.

1.37 ~~1.36~~ Trust. "Trust" means the custodial trust arrangement established to hold the assets of the Plan, to which funds are contributed by the Employer or otherwise and from which the benefits under the Plan are to be paid, and which, consistent with Articles X and XI hereof, shall be administered by the Retirement Board.

1.38 ~~1.37~~ Trust Agreement. "Trust Agreement" means the agreement entered into between the Retirement Board and the Trustee pursuant to Section 11.01, which Trust Agreement shall form a part of the Plan.

1.39 ~~1.38~~ Trustee. "Trustee" means the custodial trustee selected by pursuant to Article XI of the Plan.

1.40 ~~1.39~~ Year of Service. "Year of Service" means a twelve-consecutive-month period in which an Employee has not less than 1,000 Hours of Service.

## **ARTICLE II**

### **Eligibility and Participation**

2.01 Basic Participation Requirements.



(a) Each Eligible Employee as of July 1, 1982 who was a Participant in the Plan in accordance with the provisions thereof prior to the Effective Date shall continue to be a Participant.

(b) Each other Eligible Employee shall become a Participant on the first day of the month coincident with or next following the completion of one Year of Service during the twelve-consecutive-month period beginning on the Employee's Date of Employment, or if the Employee does not complete a Year of Service in said twelve-month period, then upon completion of a Plan Year of Service beginning with the Plan Year which includes the first anniversary of the Eligible Employee's Date of Employment. *As amended effective July 1, 1982.*

2.02 Eligibility Upon Reemployment. Upon the reemployment of any Eligible Employee who has previously been a Participant and who has sustained any One Year Break(s) in Service, such Eligible Employee shall again become eligible to participate following the completion of one Year of Service during the twelve (12) consecutive month period beginning on his Date of Reemployment or, if later, a Plan Year of Service. Having completed the (Plan) Year of Service, his additional Credited Years of Service shall be measured retroactively from his Date of Reemployment.

2.03 Transferred Employees. (Effective January 1, 2005)

If at the time an Eligible Employee becomes a Participant in this Plan, such Eligible Employee has a vested accrued benefit under either (i) the Retirement Plan for A.T.U. Local 1309 Contract Employees of San Diego Transit Corporation or (ii) the Retirement Plan for I.B.E.W. Local 465 Contract Employees of San Diego Transit Corporation (collectively, the "Union Plans"), then, notwithstanding any other provision of this Plan to the contrary, such Participant's benefit under this Plan shall be determined and computed in manner consistent with the following:

(a) Except as provided in Section 2.03(d) below, the Participant's vested accrued benefit under the Union Plan shall be unaffected by Participant's participation in this Plan or Participant's service as an Eligible Employee. At such time as Participant chooses to draw his/her benefit from the Union Plan, such accrued benefit shall be computed as if Participant terminated employment with Employer on the date the Participant became an Eligible Employee under this Plan.

(b) Participant's service with Employer while Participant was a participant in the Union Plan shall be counted in determining Participant's vested percentage under Article VI of this Plan.

(c) For the purposes of computing Participant's benefit under Articles III and IV under this Plan, only Participant's Credited Years of Service as an Eligible Employee shall be counted in computing such benefit. In the event that the Credited Years of Service of Participant as an Eligible Employee are less than five (5), the applicable Table A shall be extrapolated downward in order to derive the appropriate percentage.

(d) For the purposes of computing Participant's Average Monthly Final Earnings, only the periods during which Participant participated in this Plan shall be considered for the purposes of identifying the twelve (12) consecutive months which produce the highest average compensation. If the Participant has less than twelve (12) months of participation in this Plan, Average Monthly Final Earnings shall be computed on the basis of the number of months the Participant has participated in this Plan.

(e) In the event the Participant applies for a Disability Retirement Benefit under Article V, (i) such Disability Retirement Benefit shall be computed and paid by the Plan using the Credited Years of Service earned by the Participant under this Plan and the Union Plan, and (ii) no other retirement or disability benefit shall be paid by the Union Plan to Participant.

(f) Without limiting the foregoing, it is the intent of the Employer that a Participant described in this Section 2.03 not accrue any further benefits under the Union Plan by reason of his/her service as an Eligible Employee. In the event the Employer is ever required to increase such a Participant's benefit under the Union Plan by reason of his/her service as an Eligible Employee, such benefit increase shall offset, on a dollar-for-dollar basis, the benefit to which the Participant would otherwise be entitled under this Plan.

(g) In no event shall the combined monthly benefit received by the Participant under this Plan and the Union Plan exceed 70% of Participant's Average Monthly Final Earnings as computed under this Plan. In the event Participant's combined benefit exceeds such limit, the monthly benefit payable under this Plan shall be reduced until such limit is reached. In no event, however, shall there be any reduction in the monthly benefit payable to Participant under the Union Plan.

(h) The procedures in Sections 2.03(a) through (g) above shall not apply to an Eligible Employee who becomes a Participant in this Plan and who has a nonvested accrued benefit under a Union Plan. In such a case, the Participant shall (i) be credited with an accrued benefit under this Plan based on service with the Employer while a participant in the Union Plan (subject, however, to the break in service rules of this Plan) and (ii) cease to have any accrued benefit under the Union Plan; provided however, that in no event shall the accrued benefit of the Participant under this Plan be less than it was under the Union Plan.

### **ARTICLE III** **Normal (Late) Retirement**

3.01 Termination of Service On or After Normal Retirement Date. Subject to Articles VIII and XIII hereof, when a Participant terminates his Service on or after his Normal Retirement Date, such Participant shall be entitled to receive (payable in the form provided under Section 7.1 hereof) a Normal Retirement Benefit in accordance with the exhibit attached, marked "Table A." Upon attainment of Normal Retirement age each Participant shall be 100% vested in his Accrued Benefit. *As amended effective July 1, 1982.*

The benefit will be calculated from said attached table by applying the appropriate percentages to the Adjusted Monthly Final Earnings of the Participant based upon his applicable Credited Years of Service and age at retirement. For ages and periods of service differing from

those shown on the table, the applicable percentages shall be interpolated, based upon the preceding applicable completed quarter-year of service and the preceding applicable completed quarter-year of age.

The Normal Retirement Benefit is payable in equal monthly installments at the end of the month for which the payment applies beginning with the first day of the month following the month in which the Participant actually retires.

In the event a Participant retires on early retirement or disability retirement and is reemployed by the Employer, his retirement allowance upon subsequent retirement will be reduced by the Actuarial Equivalent of the amount he had received during the period of such previous retirement.

3.02 Reinstatement From Retirement. See Section 5.04.

#### **ARTICLE IV**

##### **Early Retirement**

4.01 Termination of Service On or After Early Retirement Date. Subject to Articles VIII and XIII hereof, if a Participant terminates his Service on or after his Early Retirement Date but prior to his Normal Retirement Date, such Participant shall be entitled to receive his vested Accrued Benefit payable in the form provided under Section 4.02 hereof, commencing either (a) on his Normal Retirement Date, or (b) upon the written election by the Participant at the time of his termination of Service, on the first day of the month coinciding with or next following his termination of Service, provided the amount of vested Accrued Benefit be actuarially reduced to reflect such early commencement. The appropriate percentages to determine the Accrued Benefit including the actuarial reductions, are shown in "Table A." The percentages shall be interpolated as described in Section 3.01.

In the event a Participant on early retirement is reemployed by the Employer, his benefits on subsequent retirement will be actuarially reduced by the amount he had received during such previous retirement.

4.02 Form of Payment of Retirement Benefit Upon Early Retirement. If a Participant is to receive his Accrued Benefit pursuant to Section 4.01 hereof, then the form of payment of the benefit shall be a Joint and Survivor Annuity which is the Actuarial Equivalent of the vested Accrued Benefit unless the Participant elects under Section 7.03 hereof to receive an alternate form of payment of his benefit as described in Section 7.02 hereof.

4.03 Reinstatement From Retirement. See Section 5.04.

#### **ARTICLE V**

##### **Disability Retirement**

5.01 Termination of Service After Total and Permanent Disability. Subject to Articles VIII and XIII hereof, if a Participant terminates his Service (a) after completing at least ten (10) Credited Years of Service, (five (5) Credited Years of Service for Participants with one or more Hours of Service on or after January 1, 1989) and (b) after incurring a Total and Permanent

Disability, such Participant shall be entitled to receive a Disability Retirement Benefit payable in the form provided under Section 5.03 and commencing on his Disability Retirement Date.

The Disability Retirement Benefit shall be equal to 1-1/2% of the Average Monthly Final Earnings times Credited Years of Service, paid monthly during the remainder of his disability. In no event, however, will the Disability Retirement Benefit exceed the Normal Retirement Benefit, based on the Adjusted Monthly Final Earnings as of the date of disability, and on the Credited Years of Service the Participant would have had, had he continued in employment and was retiring at Normal Retirement Age.

5.02 Limitations on Disability Retirement. The Retirement Board may require any recipient of a Disability Retirement Benefit, while under the minimum age for voluntary retirement for Service applicable to Participants of his class, to undergo medical examination. Such examination shall be made by a physician or surgeon appointed by the Retirement Board in the city of residence of the recipient or other place mutually agreed upon. Upon the basis of such examination, the Retirement Board shall determine whether he is still incapacitated, physically or mentally, for duty in the position held by him when retired for disability.

Any failure on a Participant's part to follow reasonable courses of medical care prescribed that would lead to a return to duty will be cause for rejection of his application for Disability Retirement, as may be determined by the Retirement Board.

If the Retirement Board determined that such recipient is not so incapacitated for duty in the position held when retired for disability, his Disability Retirement Benefit shall be cancelled forthwith and he shall become a Participant of the Retirement Plan.

If any recipient of a Disability Retirement Benefit reenters the Plan, and is eligible for participation, his allowance shall be cancelled and he shall immediately become a Participant of this Plan. He shall receive credit for Service in the same manner as though he had never been retired for disability. Upon his subsequent retirement his benefits will be reduced by the Actuarial Equivalent of the amount he has received during such previous retirement.

Any benefits under this Article V will be reduced by 50% of the amount of earned income from other sources in excess of 50% of the Average Monthly Final Earnings during the Participant's last twelve (12) months of Service. This will be determined on a monthly basis.

(a) This offset shall not apply to earnings after the Normal Retirement Date of any retiree;

(b) income from dividends and interest, real property or farm income, or property management, shall not be offset against retirement income;

(c) the nature of the work, rather than the manner of payment, shall control the determination of whether it is income;

(d) earnings shall be considered earned in the year in which it is received provided, however, income received in one year may be allocated to more than one year if, in the

sole discretion of the Retirement Board, such allocation more correctly reflects the year in which the earnings were earned;

(e) retirees must furnish the Retirement Board, from time to time, with such information as may be determined by the Retirement Board to be necessary to properly ascertain earnings. This shall include authorization for access to Social Security records. Retirement benefits will be suspended in the event of failure of a retiree to furnish such information or cooperate with the Retirement Board in obtaining such information;

(f) in the event a retiree receives disability benefit payments to which he is not entitled, such overpayments shall be offset against future retirement benefit payments to which the retiree is entitled.

5.03 Form of Payment of Retirement Benefit Upon Disability Retirement. If a Participant is to receive a Disability Retirement Benefit pursuant to Section 5.01 hereof, then the form of payment of the benefit shall be a Joint and Survivor Annuity which is the Actuarial Equivalent of the Disability Retirement Benefit unless the Participant elects under Section 7.03 hereof to receive the benefit in the Normal Form of Benefit.

5.04 Reinstatement From Retirement. A person who has been retired under this Plan for Service or for disability may be reinstated from retirement by the Retirement Board, and thereafter may be employed by the Employer in accordance with the provisions governing such Service, in the same manner as a person who has not been so retired.

The Retirement Board may reinstate a person from retirement upon (a) his application to the Retirement Board for reinstatement; (b) the determination of the Retirement Board, based upon medical examination, that he is not incapacitated for the duties to be assigned to him; and (c) the determination of the Retirement Board that his age at the date of application for reinstatement is at least six months less than the age of legally allowable compulsory retirement for Service applicable to Participants of the category in which it is proposed to employ him.

When any person is reinstated from retirement under this provision, his retirement allowance shall be cancelled forthwith, and he shall become a Participant of this Plan as of the date of reinstatement. Such Participant shall be given notice with respect to suspension of his benefits by personal delivery or first-class mail; such suspension shall be effective for each month following such notice in which such Participant performs 40 or more Hours of Service as defined in this Plan. No suspension will occur if such Participant does not perform at least 40 Hours of Services. *As amended effective January 1, 1985.*

Upon his later retirement, his retirement allowance shall be increased on account of any service subsequent to the date of reinstatement, but prior to Normal Retirement Age and shall be reduced by the Actuarial Equivalent of the amount he had received during such previous retirement prior to Normal Retirement Age. *As amended effective January 1, 1985.*

**ARTICLE VI**  
**Termination Prior to Retirement**

6.01 Termination of Service Prior to Death or Retirement. Subject to Articles VIII and XIII hereof, if a Participant terminates his Service for reasons other than death or retirement in accordance with the provisions of the Plan, such Participant shall be entitled to receive only his Accrued Benefit to the extent vested under Section 6.02 hereof, payable in the form provided under Section 6.03 hereof.

6.02 Vested Accrued Benefit. The Accrued Benefit under Section 6.01 hereof shall be vested and payable only to the extent of the following percentage corresponding to the number of Credited Years of Service:

(a) *For Employees with Service Before January 1, 1989 but no Service on or after January 1, 1989:*

<u>Credited Years of Service</u>	<u>Vested Percentage</u>
Less than ten	0%
Ten or more	100%

(b) *For Employees with one (1) Hour or more of Service on or after January 1, 1989:*

<u>Credited Years of Service</u>	<u>Vested Percentage</u>
Less than five	0%
Five or more	100%

The vested percentage shall be 100% at Normal Retirement Date or Early Retirement Date.

6.03 Form of Payment of Benefit Upon Termination of Service. If a Participant is to receive a benefit pursuant to Section 6.01 hereof, then the form of payment of the benefit shall be a Joint and Survivor Annuity which is the Actuarial Equivalent of his benefit unless the Participant elects under Section 7.03 hereof to receive an alternate form of payment of his benefit as described in Section 7.02 hereof. Retirements under this section are also subject to Section 7.01.

6.04 Retirement Benefits at Early Retirement Age. Notwithstanding Section 6.01 hereof, if a Participant is terminated from Service with a vested right to an Accrued Benefit under Section 6.02 hereof before Early Retirement Age, such Participant upon attaining Early Retirement Age shall be entitled to elect to receive his vested Accrued Benefit commencing on the first day of the month coinciding with or next following his attainment of Early Retirement Age. Such election shall be subject to the condition that the amount of vested Accrued Benefit shall be actuarially reduced to reflect such early commencement. This benefit shall be payable in the form of a Joint and Survivor Annuity which is the Actuarial Equivalent of the Participant's vested Accrued Benefit unless he elects under Section 7.03 hereof to receive an alternate form of benefit as described in Section 7.02 hereof.

***Effective July 1, 2000***, if a Participant is terminated from Service with a vested right to an Accrued Benefit under Section 6.02 hereof before Early Retirement Age, such Participant upon attaining Early Retirement Age shall be entitled to elect to commence payment of his vested Accrued Benefit anytime on or after the first day of the month coinciding with or next following his or her attainment of Early Retirement Age. Such election shall be subject to the condition that the amount of vested Accrued Benefit shall be actuarially reduced to reflect such early commencement. This benefit shall be payable in the form of a Joint and Survivor Annuity which is the Actuarial Equivalent of the Participant's vested Accrued Benefit unless he or she elects under Section 7.03 hereof to receive an alternate form of benefit as described in Section 7.02 hereof.

6.05 Change in Vesting Schedule. If the Plan should ever be amended to change the vesting schedule thereunder, then each Participant's vested percentage in his Accrued Benefit shall be not less than his vested percentage computed under the Plan without regard to such amendment.

## **ARTICLE VII**

### **Payment of Benefits**

7.01 Form of Payment of Benefit Upon Normal Retirement. The form of benefit to be received for a Participant under Article III hereof shall be a Joint and Survivor Annuity which is the Actuarial Equivalent of the Normal Form of Benefit to be paid thereunder unless such Participant is unmarried, in which case the Normal Form of Benefit shall be applicable, and unless the Participant elects under Section 7.03 hereof to receive an alternate form of benefit as described in Section 7.02 hereof.

If, at the time a married Participant retires, he and his spouse have not been married for at least one (1) year, the benefit will be paid in the Normal Form of Benefit. If, at the time the marriage has been in force for one year, both the Participant and his spouse are still living, then the benefit will be reduced to the Actuarial Equivalent Joint and Survivor Annuity based on their ages at the time of the conversion. Any Participant subject to this paragraph may, at the time of his original retirement, elect an optional form of benefit under the rules of Sections 7.02, 7.03 and 7.04.

7.02 Alternate Benefit Forms. Under Section 7.03, the Participant may, with the consent of the Retirement Board, elect the following alternate forms of benefit which are determined to be the Actuarial Equivalent of the benefit to be paid pursuant to Sections 3.01, 4.01, 6.01 or 6.04 hereof, as the case may be. The only option available for Disability Retirement under Section 5.01 shall be (b) below:

(a) A monthly annuity for the life of the Participant with a monthly annuity thereafter for the life of his designated beneficiary, which is equal to a specified percentage of the amount of the annuity payable during the joint lives of the Participant and his beneficiary. The specified percentage shall be a percentage designated by the Participant, which is either one hundred percent (100%) (Option 1) or fifty percent (50%), (Option 2) or another percentage with the consent of the Retirement Board (Option 3).

(b) Normal Form of Benefit.

(c) For a Participant who retires prior to the age at which he would be entitled to receive Social Security benefits and who has not elected to receive his benefits under Section 7.01 or any other option, a monthly annuity increased prior to the time he is entitled to receive benefits under the Federal Social Security law and reduced thereafter so as to enable him to receive an approximately level income from Social Security benefits and benefits under this Plan (Option 4). The Option 4 form of benefit under this Section 7.02(c) shall not be available to New Members.

7.03 Election. ~~As amended effective January 1, 1985.~~ As amended effective January 1, 1985. Any Participant (including a former Participant with a vested interest) whose benefit under this Plan may be payable in the form of the Joint and Survivor Annuity may, with the consent of the Retirement Board, elect, subject to Section 7.04 hereof, to have the benefit payable to him paid in an optional form described in Section 7.02 hereof, provided, that, a married Participant, pursuant to Code Section 401(a)(11), shall receive his or her benefit in the automatic Joint and Survivor Form unless the Participant with the consent of his/her spouse elects not to receive a distribution in accordance with such method. Such election shall be made no earlier than 90 days prior to the Annuity Starting Date and no later than his Annuity Starting Date, provided, however, that a Participant retiring on Disability Retirement shall make such elections within 90 days after the Retirement Board has determined the existence of his Total and Permanent Disability and further provided that only the option described in Section 7.02(b) shall be available to a disability retiree. Any such election may be revoked by the Participant during such period. Spousal consent evidencing the rejection of either a pre- or post-retirement survivor benefit shall be effective only if the consent of the Participant's spouse is witnessed by a Retirement Board representative or notary public and such spouse's consent acknowledges the effect of the election. Spousal consent shall not be required where the Participant establishes to the satisfaction of the Retirement Board that such spousal consent may not be obtained because there is no spouse or the spouse cannot be located.

Between 30 to 90 days before the Annuity Starting Date, the Participant shall be furnished written notification, in nontechnical terms, of the availability of such election. At the time of such notification, the Participant shall also be furnished, or be advised of the availability of, a written explanation, in nontechnical language, of the terms and conditions of the Joint and Survivor Annuity and the financial effect upon the Participant's annuity (in terms of dollars per annuity payment) of making such an election. Any election made by a Participant hereunder shall be in writing and shall clearly indicate that the Participant is electing to receive his benefits in a form other than that of a Joint and Survivor Annuity. The election provided hereunder may be revoked by the Participant within the period during which an election may be made, and in addition a new election may be made within such period.

Furthermore, under no circumstances will a Participant be able to designate a contingent annuitant other than his spouse.

7.04 Limitation on Optional Benefit Forms. Except as permitted in the succeeding sentence, a Participant may not elect an optional form of retirement income (under any provisions of this Article) providing monthly benefits to a beneficiary unless the actuarial value



of the payment expected to be made to the Participant is more than fifty percent (50%) of the actuarial value of the total payments expected to be made under such optional form. The preceding sentence shall not apply to an optional form of retirement income providing monthly benefits to the Eligible Spouse of a Participant for as long as such Eligible Spouse shall survive the Participant. In no event, however, can the amount of each monthly payment to a beneficiary exceed that payable to the Participant under the optional form of retirement income.

7.05 Commencement of Benefits. Payment of Benefits shall commence as soon after the Participant's retirement date as is administratively possible, and not later than the 60th day after the close of the Plan Year in which the latest of the following occurs:

(a) The date the Participant attains his Normal Retirement Date,

(b) (1) *For Employees with Service before January 1, 1989 but no Service on or after January 1, 1989:*

The tenth anniversary of the Plan Year in which the Participant commenced participation, or

(2) *For Employees with one (1) Hour or more of Service on or after January 1, 1989:*

The fifth anniversary of the Plan Year in which the Participant commenced participation, or

(c) The termination of the Participant's Service.

Notwithstanding anything herein to the contrary, distributions under the Plan shall comply with Section 401(a)(9) of the Code and the regulations promulgated thereunder. Accordingly, the entire interest of each Participant shall commence to be distributed by April 1 of the calendar year following the calendar year in which the Participant attains age 70-1/2; provided, however, that *effective for Plan Years beginning after December 31, 1996*, the entire interest of each Participant shall commence to be distributed by April 1 of the calendar year following the later of (1) the calendar year in which the Participant attains age 70-1/2, and (2) the calendar year in which the Participant terminates Service with the Employer.

7.06 Inability to Locate a Participant or Beneficiary. In the event the Retirement Board is unable to locate a Participant or beneficiary to whom, pursuant to the provisions of this Plan, payment of a benefit is due, such benefit shall be forfeited, provided that if a valid claim is made by the Participant or beneficiary pursuant to Section 10.08, such benefit shall be reinstated.

7.07 Cost-of-Living Adjustment. The monthly benefit of any Participant or Eligible Spouse who meets the requirements of Section 7.07(a) shall be adjusted in accordance with the rules of this Section 7.07. Capitalized terms are defined in Section 7.07(e).

(a) A Participant will be eligible for the benefit adjustment described in this Section 7.07 if (i) he or she was actively employed by Employer on or after June 30, 1999 and (ii) began receiving a monthly benefit from the Plan on or after July 1, 1999. An Eligible Spouse

will be eligible for the benefit adjustment described in this Section 7.07 if he or she is receiving benefits under a Joint and Survivor Annuity or a Pre-retirement Spouse's Benefit with respect to a Participant who (i) was actively employed by Employer on or after June 30, 1999 and (ii) who died on or after July 1, 1999.

(b) No Participant or Eligible Spouse shall receive the benefit adjustment described in this Section 7.07 until he or she has received a monthly benefit from the Plan for at least twelve (12) months. For an Eligible Spouse receiving a benefit under a Joint and Survivor Annuity, monthly benefits paid to the Participant during his or her life shall count in computing such twelve (12) month period.

(c) The monthly benefit of Participants and Eligible Spouses described in Section 7.07(a) above shall be adjusted annually effective with the monthly benefit payable each May. The adjusted monthly benefit shall be the "Base Allowance" multiplied by a fraction, the numerator of which is the "CPI" for the immediately preceding calendar year and the denominator of which is the "CPI" for the "Base Year" of the Participant or Eligible Spouse.

(d) The adjustment provided by this Section 7.07 is subject to the following limitations:

(i) No adjustment shall be made for any year for which the adjustment is less than 1 percent (1%) of the Base Allowance, and the adjustment for any year shall not exceed 6 percent (6%) of the Base Allowance.

(ii) No monthly benefit in any year may exceed an amount equal to the Base Allowance increased by 2 percent (2%) per year compounded for the number of years intervening between the end of the Base Year and the beginning of the calendar year in which the adjustment is made.

(iii) No monthly benefit in any year shall be less than the Base Allowance.

(e) For the purposes of this Section 7.07:

(i) The term "Base Allowance" means the monthly benefit that the Participant or Eligible Spouse would have received but for this Section 7.07.

(ii) The term "Base Year" means, (1) for a Participant or an Eligible Spouse receiving benefits under the Joint and Survivor Annuity, the calendar year in which the Participant commenced receiving benefits from the Plan, and (2) for an Eligible Spouse receiving benefits under the Pre-retirement Spouse's Benefit, the year in which the Participant died.

(iii) The term "CPI" means the United States city average Consumer Price Index for All Urban Consumers.

**ARTICLE VIII**  
**Pre-retirement Spouse's Benefit**

*As amended effective January 1, 1985*

8.01 Eligibility. Subject to Section 8.04, each Participant who has earned a vested Accrued Benefit shall be covered under the Pre-retirement Spouse's Benefit. Also eligible for coverage is (a) any former employee who terminated with a vested Accrued Benefit subsequent to December 31, 1975 and prior to August 23, 1984, and subsequent to his 55th birthday, and (b) any former employee who terminated with a vested Accrued Benefit subsequent to August 23, 1984, and who deferred the commencement of his retirement benefits, with such coverage being effective during such deferred period.

8.02 Benefits Upon Death. An Eligible Spouse shall receive a Pre-retirement Spouse's Benefit upon the death of a covered Participant during the period commencing on the date the Participant first earns a vested Accrued Benefit and ending on the Annuity Starting Date.

In the case of a Participant who is eligible for Early Retirement, the amount of such annuity shall be determined as if the Participant had retired the day before his death (such date then being his Annuity Starting Date) and had elected immediate commencement of his benefits in the form of a Joint and Survivor Annuity. If, however, the Participant is working past his Normal Retirement Date and if he has made an election in accordance with Section 7.03, then the benefit will be paid in accordance with such election. In the case of a Participant who dies prior to becoming eligible for Early Retirement, the amount of such annuity shall be determined as if it commenced on the first day of the month coinciding with or next following the Participant's earliest possible Early Retirement Date in an amount equal to the amount that his Eligible Spouse would have received if the Participant had terminated his Service on the date of death, survived until such Early Retirement Date, and the Participant was then to receive his benefit hereunder in the form of a Joint and Survivor Annuity and died.

8.03 Cost of the Pre-retirement Spouse's Benefit. Each Participant covered under the Pre-retirement Spouse's Benefit will, upon his subsequent retirement, have his benefits reduced to reflect the cost of the coverage in the following manner:

(a) No reduction will be made for any coverage provided to Participant prior to his reaching his 55th birthday.

(b) The reduction will be three and one-half cents (3-1/2¢) for each ten dollars (\$10) of monthly benefit for each year (and pro rata fraction thereof) of coverage subsequent to the Participant's attaining his 55th birthday and prior to the Normal Retirement Date. The monthly benefit used to determine the reduction will be the benefit otherwise payable before any adjustment for the Joint and Survivor Annuity or optional form of payment.

(c) Every Participant will conclusively be presumed to be covered for the Pre-retirement Spouse's Benefit unless he is at least age 55 and (i) he has filed with the Retirement Board a written election meeting the requirements of Section 8.04 not to be covered or (ii) he provides proof satisfactorily to the Retirement Board that he did not have an Eligible Spouse during some portion or all of such coverage period.

(d) No Participant shall be charged for such coverage for any years during which such Participant was not provided the opportunity to waive the Preretirement Spouse's Benefit in accordance with the procedure in Section 8.04.

(e) There shall be no charge for coverage under the Pre-retirement Spouse's Benefit with respect to any Participant whose monthly benefit under the Plan commences after November 27, 1990. The provisions of Sections 8.03(b), 8.03(c), 8.04, 8.05 and 8.06 shall not apply to Participants whose benefits commence after November 27, 1990.

8.04 Waiver of Pre-retirement Spouse's Benefit. Each Participant who has attained age 35 and who meets the requirements of eligibility for the Pre-retirement Spouse's Benefit shall have the right to elect to waive, with the consent of his/her Eligible Spouse, the Pre-retirement Spouse's Benefit coverage during the period beginning on the first day of the Plan Year in which the Participant attains age 35 and ending on the earliest of the date of his death, attainment of Normal Retirement Age or the date any payment of his Retirement benefits commences. Any such election may be made by the Participant at any time during the period described in the preceding sentence and may be revoked by the Participant during such period. Spousal consent evidencing rejection of a Preretirement Spouse's Benefit shall be subject to the rules for spousal consent stated in Section 7.03. Furthermore, the Retirement Board shall provide adequate notice as required by the next section to the Participant of his right to waive survivor coverage and the effects thereof.

8.05 Notice Requirements. During the period beginning on the first day of the Plan Year in which a Participant attains age 32 and ending with last day of the Plan Year during which the Participant attains age 35, each Participant shall be furnished a written notification of the availability of the waiver of survivor coverage. Any Employee who becomes a Participant after attaining age 35 shall be furnished such written notification no later than the later of the last day of the Plan Year in which he commenced participation or became entitled to a vested interest in his accrued benefit.

Any such notice shall be written in nontechnical language and shall include at least the following:

- (a) Advice to Participants of their right to decline the Pre-retirement Spouse's Benefit prior to the start of the applicable election period;
- (b) A detailed explanation of spousal consent requirements;
- (c) The effect of their election to waive such coverage on their Eligible Spouse;
- (d) The effect of their Retirement benefit if they keep such coverage;
- (e) All terms and conditions of the Pre-retirement Spouse's Benefit; and
- (f) The right of the Participants to revoke the election to waive coverage and the effects of any such revocation.

8.06 Cancellation and Reelection. A Participant may cancel coverage under the Preretirement Spouse's Benefit by submitting a signed notice of revocation to the Employer in accordance with Section 8.04. Such notice will become effective 60 days after receipt by the Employer. A Participant who so cancels may reelect the coverage at any time provided he has not reached his Normal Retirement Date. Such reelection will not become effective until receipt of the election by the Employer.

## **ARTICLE IX**

### **Intentionally Omitted**

## **ARTICLE X**

### **Administration of the Plan**

10.01 Appointment of the Retirement Board. There is hereby created a Retirement Board which shall have plenary authority and fiduciary responsibility for the investment of Plan assets and administration of the Plan consistent with the Retirement Board's powers, duties and obligations pursuant to Article 16 Section 17 of the California Constitution, and which shall consist of three (3) members appointed by the Board of Directors of the Corporation. Such members shall be appointed annually by the Board of Directors. ~~Such~~ Directors Such appointments shall be reviewed annually by the Board of Directors.

The Retirement Board shall elect two of its members as chairman and vice chairman, respectively, and shall appoint a secretary who may, but need not, be one of the members of the Retirement Board. No member of the Retirement Board will receive any compensation for his services as such.

10.02 Retirement Board Action. The Retirement Board shall act at meetings held upon 48 hours' notice or upon such notice, and at such place or places, and at such intervals as it may from time to time determine or in writing, without a meeting. All decisions of the Retirement Board shall be made by the vote of a majority of the meeting; actions in writing taken without a meeting shall require signature of a majority of the members. Any direction by the Retirement Board shall be in writing and signed by a member of the Retirement Board so authorized and empowered by the Retirement Board. A dissenting Retirement Board member who, within a reasonable time after he has knowledge of any action or failure to act by the majority, registers his dissent in writing delivered to the other Retirement Board members, the Employer and the Trustee shall not be responsible for any such action or failure to act. A majority of the members of the Retirement Board shall constitute a quorum for all purposes.

10.03 Rules and Decisions. The Retirement Board may adopt such rules and regulations as it deems necessary, desirable, or appropriate. All rules and decisions of the Retirement Board shall be uniformly and consistently applied to all Participants in similar circumstances. When making a determination or calculation, the Retirement Board shall be entitled to rely upon information furnished by a Participant, Eligible Spouse, the Employer, the legal counsel of the Employer, the Actuary, or the Trustee.

10.04 Expenses. The reasonable expenses incident to the operation of the Plan, including errors and omissions insurance, the compensation of the trustee, co trustees, investment managers, investment consultants, actuary, attorney, accountant, advisors, and such other technical and clerical assistance as may be required, shall be paid out of the Trust, but the Employer in its discretion may elect at any time to pay part or all thereof directly. Any such election by the Employer shall not bind the Employer as to its right to elect with respect to the same or other expenses at any other time to have such compensation paid from the Trust. In the event the Retirement Board deems it appropriate to minimize investment management and/or administrative costs, the Retirement Board may enter into joint services agreements with the retirement boards of other plans maintained by the Employer to jointly employ or procure any of the services for which expenditures are authorized pursuant to this section.

10.05 Powers and Duties. In addition to any implied powers and duties which may be needed to carry out the authority granted to the Retirement Board under Article IX hereof, the Retirement Board shall have the following specific powers and duties:

- (a) to construe and interpret the Plan and to decide any and all matters arising hereunder, including the right to remedy possible ambiguities, inconsistencies or omissions; provided, however, that all such interpretations and decisions shall be applied in a uniform and nondiscriminatory manner to all Employees similarly situated;
- (b) to compute the amount, manner and time of payment of any benefit which shall be payable to any Participant, Eligible Spouse or other beneficiary in accordance with the provisions of the Plan;
- (c) to authorize disbursements from the funds of the Trust for payment of benefits hereunder;
- (d) to prescribe procedures to be followed by Participants or beneficiaries filing applications for benefits;
- (e) to prepare and distribute, in such manner as the Retirement Board determines to be appropriate, information explaining the Plan;
- (f) to receive from the Employer and from Participants such information as shall be necessary for the proper administration of the Plan;
- (g) to furnish the Employer, upon request, such annual reports with respect to the administration of the Plan as are reasonable and appropriate;
- (h) to receive and review the periodic valuation of the Plan made by the Enrolled Actuary; and
- (i) to receive, review and keep on file (as it deems convenient or proper) reports of the financial condition, and of the receipts and disbursements, of the funds held by the Trust.

(j) to withhold, and be liable for, payment of the tax required to be withheld from any benefits paid in accordance with the provisions of this Plan, unless the Participant, Eligible Spouse or other beneficiary who is payee for such benefits shall elect to have withholding not apply to such payments. Such election shall remain in effect until revoked by the elector. The maximum amount to be withheld shall not exceed the amount of money received in payment of benefits.

(i) To notify the Participant, Eligible Spouse or other beneficiary who is payee of any periodic payments, otherwise subject to withholding, of the right to elect not to apply withholding to such payments. Notice shall be given no earlier than six months before, and no later than, the date of the first periodic payment subject to withholding. Notice of the right to make and revoke such election shall be given to payees not less frequently than once each calendar year.

(ii) To notify the Participant, Eligible Spouse or other beneficiary who is payee of any nonperiodic distribution otherwise subject to withholding of the right to elect that withholding shall not apply to such distribution. Notice shall be given no later than the date of distribution or at such earlier date as may be prescribed by the Secretary of the Treasury to direct the payor of authorized disbursements from the Trust to withhold payment of the tax required to be withheld by law. In such case, and if the payor is supplied with such information as required by regulations, then the payor shall be liable for payment of the tax withheld. *As amended effective January 1, 1985.*

(k) To establish a procedure for the Plan to deal with qualified domestic relations orders. Such procedures shall comply with the applicable requirements of Code Sections 401(a)(13) and 414(p), as well as ERISA Sections 206(d)(3)(A) and 516(b)(7). *As amended effective January 1, 1985.*

(l) to engage the services of actuaries, accountants, attorneys, administrators, investment managers, advisors and other technical and clerical assistance as may be required in the opinion of the Retirement Board, and to compensate them for their services.

(m) To direct the investments of the Plan; in doing so the Retirement Board shall diversify the investments of the Plan so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly not prudent to do so, subject, however, to any limitations which may be imposed by the California Legislature on such investments pursuant to Article 16, Section 17 of the California Constitution.

(n) The Retirement Board shall have the authority, when and if it deems it prudent to do so and in the interests of Plan Participants and beneficiaries, to cause the assets of this Plan to be co-mingled with the assets of other public retirement plans maintained by the Employer for the purposes of maximizing investment opportunities and saving costs associated with investment management and administration; provided that any such action shall be taken pursuant to a written agreement among the plans participating in joint investment management, and, provided further, that the Retirement Board shall retain ultimate authority and responsibility with respect to this Plan's assets.

The Retirement Board shall have no power to add to, subtract from or modify any of the terms of the Plan, or to change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for benefits under the Plan.

10.06 Records and Reports. The Retirement Board shall exercise such authority and responsibility as it deems appropriate in order to comply with ERISA and governmental regulations issued thereunder relating to records of Participant's Service, Accrued Benefits and the percentage of such benefits which are nonforfeitable under the Plan; notifications to Participants; annual registration with the Internal Revenue Service; annual reports for the use of the Department of Labor; and reports to the Pension Benefit Guaranty Corporation.

10.07 Proof of Age. Proof of age satisfactory to the Retirement Board shall be required of all Participants and beneficiaries of the Plan. After a Participant has once so advised the Retirement Board as to his date of birth, no further correction shall be permitted without the consent of the Retirement Board. This shall not preclude such Retirement Board from, at any time, investigating and demanding correction of the advised date of birth. Any such permitted correction shall require proper actuarial adjustment of retirement benefits.

10.08 Elections and Application for Benefits.

(a) In addition to the elections by a Participant specifically provided by the Plan, a Participant must complete and file an application for benefits under the Plan. Elections (or revocations of elections) or applications for benefits shall include all pertinent information requested by the Retirement Board, including reasonable proof thereof. Elections (or revocations of elections) and applications for benefits must be in writing on the forms prescribed by the Retirement Board and must be signed by the Participant and his Eligible Spouse, if any, and submitted to the Retirement Board. Any such election (or revocation of election) or application for benefits must be notarized.

(b) Subject to Section 8.04, each election (or revocation of election) shall be deemed effective upon receipt by the Retirement Board unless rejected by the Retirement Board within sixty (60) days thereof. If an election (or revocation of election) is rejected, the Retirement Board shall notify the Participant in writing of the specific reasons for such rejection and a description of any additional material or information necessary to perfect such election (or revocation of election).

(c) Each application for benefits shall be acted upon and approved or disapproved within sixty (60) days following its receipt by the Retirement Board. If any application for benefit is denied, in whole or in part, the Retirement Board shall notify the applicant in writing of such denial and of his right to a review by the Retirement Board and shall set forth specific reasons for such denial, specific references to pertinent Plan provisions on which the denial is based, a description of any additional material or information necessary for the applicant to perfect his application, an explanation of why such material or information is necessary, and an explanation of the Plan's review procedure.



(d) If the Retirement Board fails to act upon an application for benefits within the sixty (60) day period referred to above, the applicant may assume that his application for benefits has been denied, in whole or in part.

10.09 Denial of Application. Any time a written application for benefits from the Retirement Plan is received is received by the Retirement Board, it shall furnish a written notice of its decision regarding such application within sixty (60) days. A copy of the Directive to the Trustee will serve as an affirmative decision. If the application is denied, a written notice setting forth the specific reasons (calculated to be understood by the Participant) for the denial will be sent to the Participant.

#### 10.10 Appeals Procedure.

(a) For Claims prior to January 1, 2002:

(i) Any Participant, or his duly authorized representative, whose application for benefits is denied in whole or in part may appeal from such denial to the Retirement Board for a review of the decision by submitting to the Retirement Board, within sixty (60) days after receiving written notice from the Retirement Board of the denial of his claim, a written statement:

(1) requesting a review of his application for benefits by the Retirement Board;

(2) setting forth all the grounds upon which his request for review is based and any facts in support thereof; and

(3) setting forth any issues or comments which the applicant deems relevant to his application. The Retirement Board shall act upon each such application within sixty (60) days after the later of receipt of the applicant's request for review by the Retirement Board or receipt of any additional materials reasonably requested by the Retirement Board from such applicant. If the Retirement Board needs more than these sixty (60) days to act upon such application, the Retirement Board shall notify the Participant of the need for the additional time. In no event, however, shall the Retirement Board take longer than one hundred and twenty (120) days to act upon the Participant's application.

(ii) The Retirement Board shall make a full and fair review of each such application and any written materials submitted by the applicant or the Employer in connection therewith and may require the Employer or the Participant to submit within thirty (30) days of written notice by the Retirement Board therefore, such additional facts, documents, or other evidence as the Retirement Board, in its sole discretion, deems necessary or advisable in making such review. On the basis of its review, the Retirement Board shall make an independent determination of the applicant's eligibility for benefits under the Plan. The decision of the Retirement Board on any application for benefits shall be final and conclusive upon all persons if supported by substantial evidence in the record. If the Retirement Board denies an application in whole or in part, the Retirement Board shall give written notice of its decision to the applicant setting forth the specific reasons for such denial and specific references to the pertinent Plan provisions on which the Retirement Board decision was based.

(b) For Claims On or After January 1, 2002:

(i) Informal Review. Any Participant or Eligible Spouse, or his or her duly authorized representative, who wishes to request an informal review of a claim for benefits or who wishes an explanation of a benefit or its denial may direct to the Plan Administrator a written request for an informal review. The Plan Administrator shall respond to the request by issuing a notice to the claimant as soon as possible but in no event later than ninety days from the date of the request. This notice furnished by the Plan Administrator shall be written in a manner calculated to be understood by the claimant and shall include the following:

- (1) the specific reason or reasons for any denial of benefits;
- (2) the specific Plan provisions on which any denial is based;
- (3) a description of any further material or information which is necessary for the claimant to perfect his claim and an explanation of why the material or information is needed; and
- (4) an explanation of the Plan's formal claim review procedure, including applicable time limits and a statement explaining the claimant's right to bring a civil action following an adverse benefit determination upon review.

If the claimant does not respond to the notice, posted by first class mail to the address of record of the claimant, within one hundred twenty (120) days from the mailing of the notice, the claim shall be considered satisfied in all respects and there shall be no further right to review of the claim by the claimant.

(ii) Formal Review. In the event that the notice concerning the informal review is insufficient to satisfy the claimant, the claimant or his duly authorized representative shall submit to the Plan Administrator, within one hundred and twenty days of the posting of the notice, a written notification of appeal of the claim denial. The notification of appeal of the claim denial shall permit the claimant or his duly authorized representative to utilize the following formal claim review procedures:

- (1) to review pertinent documents (the claimant will be provided, upon request and free of charge, copies of all information relevant to the claim); and
- (2) to submit issues and comments in writing to which the Plan Administrator shall respond (material may be submitted without regard to whether it was submitted or considered in the initial benefit claim).

The Plan Administrator shall furnish a written decision on formal review not later than sixty days after receipt of the notification of appeal, unless special circumstances require an extension of the time for processing the appeal. If special circumstances requiring an extension are present, the claimant will be notified of the extension within the first sixty (60) day period. The notice will indicate the reason for the extension and the date by which a final decision is expected. In no event, however, shall the Plan Administrator communicate the decision on the claim later than one hundred and twenty days

after a request for a formal review. The decision on formal review shall be in writing and shall include specific reasons for the decision and shall be written in a manner calculated to be understood by the claimant and contain specific reference to the pertinent Plan provisions on which the decision is based. The decision shall also include a statement explaining that the claimant may request free of charge copies of all documents relevant to the claim and a statement explaining the claimant's right to bring an action.

10.11 Facility of Payment. Whenever, in the Retirement Board's opinion, a person entitled to receive any payment of a benefit or installment thereof hereunder is under a legal disability or is incapacitated in anyway so as to be unable to manage his financial affairs, the Retirement Board may direct the Trustee to make payments to such person or to his legal representative or to a relative or friend of such person for his benefit, or the Retirement Board may direct the Trustee to apply the payment for the benefit of such person in such manner as the Retirement Board considers advisable. Any payment of a benefit or installment thereof in accordance with the provisions of this Section shall be a complete discharge of any liability for the making of such payment under the provisions of the Plan.

10.12 Use of Enrolled Actuary. The Retirement Board shall (along with the retirement boards of the other Employer plans funded by the Trust if the Retirement Board elects to co-mingle the Plan's assets pursuant to Section 10.05(n) above) employ or engage an actuary to make actuarial valuations of the liabilities under this Plan and to recommend the amount of contributions to be made and to perform such other services deemed necessary or advisable in connection with the administration of the Plan. Such actuary shall be enrolled with the Joint Board for the Enrollment of Actuaries in accordance with Section 3042 of ERISA.

10.13 Liability of Retirement Board Members. No member of the Retirement Board will be liable for any act of omission or commission except as expressly provided by ERISA.

10.14 Reliance on Reports and Certificates. The Retirement Board will be entitled to rely conclusively upon all tables, valuations, certificates, opinions and reports which will be furnished by an Enrolled Actuary, accountant, controller, counsel or other person who is employed or engaged for such purposes and upon the signatures of any Employee or his spouse submitted on any document in connection with any election, revocation of election or application for benefits.

10.15 Member's Own Participation. No member of the Retirement Board may act, vote or otherwise influence a decision of the Retirement Board specifically relating to his own participation under the Plan.

10.16 Delegation of Responsibility. The Retirement Board from time to time may allocate to one or more of its members and/or delegate to any other persons or organizations any of its rights, powers, duties and responsibilities with respect to the operation and administration of the Plan and may employ, either directly or indirectly through any person to whom any of its fiduciary responsibility has been delegated, persons to render advice with regard to any responsibility to the Retirement Board hereunder. Any such allocation and delegation shall be reviewed at least annually by the Retirement Board and shall be terminable upon such notice as

the Retirement Board, in its sole discretion, deems reasonable and prudent under the circumstances.

## **ARTICLE XI**

### **Method of Financing**

11.01 Appointment of Trustee. A Trustee shall be appointed by the Retirement Board (along with the retirement boards of the other Employer plans funded by the Trust if the Retirement Board elects to co mingle the Plan's assets pursuant to Section 10.05(n) above) and a Trust Agreement shall be executed under the terms of which the Trust shall be established to receive and hold contributions, interest and other income, and to pay the benefits provided by the Plan as set forth in the Trust Agreement, as modified from time to time. The Retirement Board (along with the retirement boards of the other Employer plans funded by the Trust if the Retirement Board elects to co mingle the Plan's assets pursuant to Section 10.05(n) above) may remove the Trustee at any time upon the notice required by the terms of such Trust Agreement, and upon such removal or upon the resignation of any such Trustee, will designate a successor Trustee.

11.02 Employer Contributions. The Employer shall contribute to the Trust such amounts, in addition to the amounts contributed under Section 11.05 below, as are deemed necessary by an Enrolled Actuary to fund the benefits provided by the Plan on an acceptable basis in accordance with the funding requirements of ERISA. Any actuarial gains arising from actual experience under the Plan will be used to reduce future Employer contributions and will not be used to increase any benefits payable under the Plan.

11.03 Amount and Timing of Employer Contributions. The Employer shall not be required to make, but may make for any fiscal year, any contributions to the Trust in any amount which is greater than the amount specified in Section 11.02 hereof. The timing of all contributions shall be entirely discretionary with the Employer to the extent permitted by ERISA.

11.04 Refund of Employer Contributions. Once a contribution is made to the Plan by the Employer on behalf of the Participants, it is not refundable to the Employer unless the contribution:

- (a) Was made in error as a result of a mistake in fact;
- (b) Was made conditioned upon an initial favorable ruling from the Internal Revenue Service that the Plan will qualify under Sections 401(a) and 501(a) of the Code and such ruling is not received; or
- (c) Was made conditioned upon the contribution being allowed as a deduction for Federal income tax purposes and such deduction is disallowed.

The permissible refund under (a) must be made within one (1) year from the date the contribution was made to the Plan and under (b) and (c) must be made within one (1) year from the date of disallowance of tax qualification or tax deduction.

11.05 Contributions by Participants.

(a) —For Periods Prior to January 1, 2013, Participants will not be required or permitted to make contributions to the Plan.

(b) For Periods on or after January 1, 2013, a Participant who is not a New Member shall make annual Participant Contributions to the Plan equal such percentage of the Participant's Compensation as set by the Board of Directors from time-to-time (the "Percentage Rate"). Initially, the Percentage Rate shall be two percent (2%) until the Percentage Rate is modified by the Board of Directors.

(c) For Periods on or after January 1, 2013, a Participant who is a New Member shall make annual Participant Contributions to the Plan in an amount equal to the greater of (i) six percent (6%) of Compensation, or (ii) fifty percent (50%) of the Participant's "normal costs". "Normal costs" means the portion of the present value of the Accrued Benefit that is attributable to the Participant's current year of service, as determined by the Plan's Enrolled Actuary according to the most recently completed valuation.

Such Participant Contributions shall be deducted ratably from the Participant's periodic Compensation (paid in accordance with Employer's customary payroll practices), before reduction for income and employment taxes, and shall be contributed to the Trust. A Participant shall at all times be 100% vested in his or her Participant Contributions. Accordingly, in the event Participant terminates employment with the Employer before he or she becomes vested in his or her Accrued Benefit under Section 6.02, Participant shall, upon such termination of employment, be entitled to receive a lump sum distribution from the Plan equal to the sum of his or her Participant Contributions plus interest thereon at the "Reference Rate" from the date of each contribution, compounded annually (a "Lump Sum Distribution"). For the purposes of this Section 11.05, the "Reference Rate" shall be the interest rate on the one-year Federal Treasury Bill on July 1 of each year, as published by the U.S. Federal Reserve System. If a Participant dies prior to becoming vested in his or her Accrued Benefit, such Lump Sum Distribution shall be paid to (i) Participant's surviving spouse or (ii) if Participant does not have a surviving spouse, to the personal representative of Participant's estate. If a Participant who terminates employment prior to becoming vested in his or her Accrued Benefit is re-employed by Employer, such Participant shall be required to return his or her Lump Sum Distribution to the Plan as a condition to reinstatement, if any, of his or her Credited Years of Service earned prior to his or her termination of employment. Once a Participant becomes vested in his or her Accrued Benefit under the Plan, Participant shall not be entitled to a Lump Sum Distribution upon termination of employment and shall only be entitled to receive benefits from the Plan in accordance with Articles III through VIII. For the purposes of Code Section 414(h)(2), any Participant Contributions shall be treated as picked up by Employer and therefore treated as Employer contributions for income tax purposes

11.06 No Diversion of Corpus or Income. Except as provided in Section 11.04 hereof, all Employer contributions when made to the Trust and all property of the Trust, including income from investments and all other sources, shall be retained for the exclusive benefit of Participants, and persons claiming through them, and shall be used to pay benefits provided hereunder or to pay expenses of administration of the Plan and the Trust to the extent not paid by the Employer.

**ARTICLE XII**  
**Amendment, Merger or Termination**

12.01 Right to Amend. This Plan may be amended, altered or modified, or a successor Plan may be adopted at any time by the Board of Directors. No amendment, alteration or modification of the Plan shall adversely affect any accrued rights of any Participant without corresponding advantages, but in all other respects such amendments, alterations or modifications shall be binding upon the Participants of the Plan. Such amendment may include, without limitation, changes which have either or both a retroactive or adverse effect on persons covered hereunder, for the purpose of conforming this Plan to any regulation or regulations affecting pension plans promulgated by any government agency pursuant to law.

Except with the approval of the Internal Revenue Service, no amendment may eliminate or reduce (a) an Early Retirement benefit or (b) retirement-type subsidy (where before or after the amendment the Participant would satisfy the pre-amendment conditions for the subsidy) or (c) change the basis for determining Actuarial Equivalency with respect to any prior accrued benefit or (d) eliminate an optional form of benefit. These restrictions shall not affect the right of the Board of Directors to make changes with respect to any Accrued Benefits earned after the date of any amendment. *As amended effective January 1, 1985.*

12.02 Mergers, Consolidations and Transfers.

(a) In the event of the dissolution, merger, consolidation or reorganization of the Employer, provision may be made by which the Plan will be continued by any successor, and in that event, such successor shall be substituted for the Employer under the Plan. The substitution of the successor shall constitute an assumption of Plan liabilities by the successor and the successor shall have all of the powers, duties and responsibilities of the Employer under the Plan.

(b) In the event of any merger or consolidation of the Plan with, or transfer in whole or in part of its assets and liabilities to, a trust which is part of another plan of deferred compensation maintained or to be established for the benefit of all or some of the Participants of the Plan, the Trust assets applicable to such Participants shall be transferred to the other trust only if:

(i) each Participant would receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation or transfer (for the purpose of this Section 12.02, the benefit to which a Participant is entitled shall be calculated, based upon the assumption that a termination of the respective plan and distribution of its assets occurred on the day as of which the amount of the Participant's entitlement is being determined);

(ii) resolutions of the Board of Directors and the board of directors of any new or successor employer of the affected Participants, shall authorize such transfer of assets and, in the case of the new or successor employer of the affected Participants, its resolutions shall include an assumption of liabilities with respect to such ~~Participants'~~ Participant's inclusion in the new employer's plan, and

(iii) such other plan and trust are qualified under Sections 401(a) and 501(a) of the Internal Revenue Code.

**12.03 Right to Terminate.** In the event of the dissolution, merger, consolidation or reorganization of the Employer, the Plan shall terminate and funds of the Trust shall be liquidated unless the Plan is continued by a successor to the Employer in accordance with Section 12.02 hereof. Subject to applicable requirements, if any, of ERISA governing termination of "Employee Pension Benefit Plans," the Employer shall direct and require the Trustee to liquidate the funds of the Trust, or the applicable portion thereof, in accordance with the provisions of Section 12.05.

**12.04 Partial Termination.** Upon termination of the Plan with respect to a group of Participants, which constitutes a partial termination of the Plan, the Trustee shall allocate and segregate for the benefit of the Employees then or theretofore employed by the Employer, with respect to which the Plan is being terminated, the proportionate interest of such Participants in the funds of the Trust. Such proportionate interest shall be determined by the Enrolled Actuary. The Enrolled Actuary shall make this determination on the basis of the contributions made by the Employer, the provisions hereof, and such other considerations as the Enrolled Actuary deems appropriate. The Fiduciaries shall have no responsibility with respect to the determination of any such proportionate interest. The funds so allocated and segregated shall be used by the Trustee to pay benefits to or on behalf of Participants in accordance with Section 12.05 hereof.

**12.05 Funds of the Trust.** Upon termination of the Plan, or upon termination of employment of a group of Participants constituting a partial termination of the Plan, each such Participant's Accrued Benefit, based on his Credited Years of Service and Compensation prior to the date of termination shall become full vested and nonforfeitable to the extent funded, except as otherwise provided in Treasury Regulation 1.411(a)-4. The assets of the Trust, or the portion thereof segregated in accordance with Section 12.04 hereof, shall be liquidated (after provision is made for the expenses of liquidation) by the payment or provision for the payment of benefits payable in annuity form in the following order of preference which is intended to satisfy the requirements of Section 4044 of ERISA:

(a) **Certain Benefits Payable Three Years Prior to Termination.** The available assets of the Trust shall first be allocated to provide benefits that become payable three or more years before the effective date of Plan termination, or that could have become payable at the beginning of such three-year period had the Participant not deferred the commencement of his benefit by failing to elect earlier commencement, or that could have become payable had a Participant's termination of Service occurred immediately prior to the beginning of such three-year period, provided that,

(i) The portion of the benefit payable to a Participant or the Eligible Spouse of a Participant (or that could have been payable) shall be based on the provisions of the Plan in effect during the five-year period ending on the effective date of Plan termination under which the amount of benefit would be least; and for this purpose, the first Plan Year in which an amendment became effective, or was adopted if later, shall constitute the first year an amendment was in effect; and further provided that,

(ii) If the benefit payable under the Plan had been reduced, either by amendment or due to the form in which the benefit is being paid, during the three-year period ending on the effective date of Plan termination, then the lowest benefit in pay status during such three-year period shall be considered the benefit in pay status for purposes of this category (a).

(b) Guaranteed Benefits. To the extent that the amount of a benefit has not been provided in the foregoing category (a), the remaining assets shall be allocated to provide any benefit provided under the Plan for a Participant whose employment terminated prior to the effective date of Plan termination, or any immediate or deferred benefit that would have been payable to or on behalf of a Participant had his employment terminated for a reason other than death on the effective date of Plan termination, provided that the amount of the benefit to be provided under this category (b) shall be “guaranteed” under Title IV of ERISA.

(c) Other Vested Benefits. To the extent that the amount of a benefit has not been provided in the foregoing categories (a) and (b), the remaining assets shall be allocated to provide the benefit payable under the Plan to or on behalf of a Participant whose employment terminated prior to the effective date of Plan termination, or that would have been payable to or on behalf of a Participant had his employment terminated for a reason other than death on the effective date of Plan termination, and who was receiving or was eligible to receive a benefit under Articles III, IV or V hereof prior to the effective date of Plan termination or whose service had terminated prior to the effective date of Plan termination with entitlement to an Accrued Benefit under Article VI hereof, or who would have been eligible for an Accrued Benefit under that Section had his employment terminated on the effective date of Plan termination. To the extent that the Trust’s assets are not sufficient to satisfy the benefits under this category (c), such assets shall be allocated first, to each Participant’s benefit which would be payable and nonforfeitable under the Plan provisions as in effect at the beginning of the five-year period ending on the date of the Plan termination, and then seriatim to each Participant’s additional benefits which would be payable and nonforfeitable due to each successive Plan amendment thereafter.

(d) Other Benefits. To the extent that the amount of a benefit has not been provided in the foregoing categories (a), (b) and (c), the remaining assets shall be allocated to provide the benefit accrued under the Plan, without regard to the satisfaction of the vesting requirements under Section 6.02 hereof, with respect to each Participant whose employment had not terminated as of the effective date of Plan termination, according to the respective actuarial value of each such Participant’s Accrued Benefit.

Except as indicated under category (b) above, if the assets of the Trust applicable to any of the above categories are insufficient to provide full benefits for all persons in such group, the benefits otherwise payable to such person shall be reduced proportionately. The Enrolled Actuary shall calculate the allocation of the assets of the Trust in accordance with the above priority categories and regulations under Section 4044 of ERISA, and certify his calculations to the Fiduciaries. No liquidation of assets and payment of benefits (or provision therefor) shall actually be made by the Trustee until after it is advised by the Employer in writing that applicable requirements, if any, of ERISA governing termination of “Employee Pension Benefit Plans” have been, or are being, compiled with or that appropriate authorizations, waivers, exemptions or variances have been, or are being, obtained.



12.06 Manner of Distribution Upon Termination. Subject to the provisions of Section 12.05 hereof, any distribution after termination of the Plan may be made, in whole or in part, to the extent that no discrimination in value results, in cash, in securities or other assets in kind, or in nontransferable annuity contracts, as the Retirement Board in its discretion shall determine.

12.07 Residual Amounts. The Employer shall not receive any amounts from the funds of the Trust upon termination of the Plan, except as permitted under Section 11.04 hereof, and except that notwithstanding any other provision of the Plan, the Employer shall receive such amounts, if any, as may remain after the satisfaction of all liabilities of the Plan and arising out of any variations between actual requirements and expected actuarial requirements.

### **ARTICLE XIII** **Limitations on Certain Benefits**

#### **13.01 Maximum Benefits *(for Plan Years beginning prior to December 31, 1994)***

When expressed as a monthly benefit, a benefit under this Plan shall not exceed the lesser of (1) \$7,500 (the "Dollar Limitation"), or (2) 100% of the Participant's average monthly compensation as defined in Section 1.415-2(d) of the Treasury Regulations during the three consecutive calendar years when the total compensation paid to him was the highest (the "Compensation Limitation"), subject to the following:

(a) The maximum shall apply to the benefit payable to the Participant as a Joint and Survivor Annuity; but if the benefit is payable in a form other than the foregoing and other than a single life annuity, the maximum shall apply to the single-life annuity which is the Actuarial Equivalent of such benefit.

(b) If benefits begin prior to age 62, the Dollar Limitation applicable to such benefits shall be equal to the Actuarial Equivalent of the Dollar Limitation where the Dollar Limitation is deemed to be a pension commencing at age 62. However, the reduction under this Section 13.01(b) shall not reduce the Dollar Limitation below (i) \$6,250 if the benefit begins at or after age 55, or (ii) if the benefit begins before age 55, the Actuarial Equivalent of the \$6,250 limitation for age 55.

(c) If benefits begin after age 65, the maximum Dollar Limitation shall be the Actuarial Equivalent of the Dollar Limitation where the Dollar Limitation is deemed to be a pension commencing at age 65. Solely for the purposes of this subsection (c) and subsection (b) above, Actuarial Equivalent shall have the same meaning as described in Section 1.02, except the interest rate assumptions for the purposes of this subsection (c) and subsection (b) above shall be equal to 5%.

(d) If the Participant has fewer than 10 years of Plan participation, the Dollar Limitation shall be multiplied by a fraction, the numerator of which is the number of years (computed to fractional parts of a year) of participation in the Plan, and the denominator of which is 10. If the Participant has fewer than 10 years of Service, the Compensation Limitation shall be multiplied by a fraction, the numerator being the Participant's years of Service (computed to fractional parts of a year) divided by a denominator of 10.

(e) For all purposes of this Plan, the maximum Dollar Limitation of \$7,500 shall be automatically increased as permitted by Treasury Regulations to reflect cost-of-living adjustments. As a result of such an adjustment, an accrued benefit which had been limited by the provisions of this Section in a previous Plan Year may be increased with respect to future payments to the lesser of the adjusted Dollar Limitation amount or the amount of benefits which would have been payable under this Plan without regard to the provisions of this Section 13.01.

Notwithstanding the foregoing, the otherwise permissible annual benefits for any Participant under this Plan may be further reduced to the extent necessary, as determined by the Retirement Board, to prevent disqualification of the Plan under Section 415 of the Internal Revenue Code, which imposes the following additional limitations on the benefits payable to Participants who also may be participating in another tax qualified pension, profit sharing, savings or stock bonus plan of the Employer: If an individual is a Participant at any time in both a defined benefit plan and a defined contribution plan maintained by the Employer, the sum of the defined benefit plan fraction and the defined contribution plan fraction for any Plan Year may not exceed 1.0. The defined benefit plan fraction for any Plan Year is a fraction, the numerator of which is the Participant's projected annual benefit under the Plan (determined at the close of the Plan Year) and the denominator of which is the lesser of (a) 1.25 multiplied by the larger of the Dollar Limitation on an annual basis and as adjusted, or (b) 1.4 multiplied by the Compensation Limitation on an annual basis. The defined contribution plan fraction for any Plan Year is a fraction, the numerator of which is the sum of the annual additions to the Participant's accounts in such Plan Year and for all prior Plan Years and the denominator of which is the sum of the applicable maximum accounts of annual additions which could have been made under Section 415(c) of the Internal Revenue Code for such Plan Year and for all prior years of such Participant's employment (assuming for this purpose, that said Section 415(c) had been in effect during such prior years). The applicable maximum amount for any Plan Year shall be equal to the lesser of 1.25 multiplied by the dollar limitation in effect for such Plan Year under subsection 415(c)(1)(A) of the Internal Revenue Code, or 1.4 multiplied by 25% of the Participant's total annual compensation for such Plan Year.

For purposes of the above limitation, all defined benefit plans of the Employer, whether or not terminated, are to be treated as one defined benefit plan and all defined contributions plans of the employers, whether or not terminated, are to be treated as one defined contribution plan. The extent to which the benefit payable under this Plan shall be reduced as compared with the extent to which the annual benefit under any other defined benefit plans or defined contribution plans shall be reduced in order to achieve compliance with the limitations of Section 415 of the Code shall be determined by the Retirement Board in such a manner so as to maximize the aggregate benefits payable to such Participant. If such reduction is under this Plan, the Retirement Board shall advise affected Participants of any additional limitation on their annual benefits required by this paragraph.

The above limitations are intended to comply with the provisions of Section 415 of the Internal Revenue Code, as amended, so that the maximum benefits provided by plans of the Employer shall be exactly equal to the maximum amounts allowed under Section 415 of the Internal Revenue Code and regulations thereunder. If there is any discrepancy between the provisions of this Section 13.01 and the provisions of Section 415 of the Internal Revenue Code

and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Internal Revenue Code.

**13.02 Maximum Benefits *(for Plan Years beginning after December 31, 1994)***

When expressed as a monthly benefit, a benefit under this Plan shall not exceed the applicable Dollar Limitation (as defined below), subject to the following [Note: for Plan Years beginning prior to January 1, 1995, the monthly benefit shall not exceed the lesser of (1) the then applicable Dollar Limitation, or (2) 100% of the Participant's average monthly compensation as defined in Section 1.415-2(d) of the Treasury Regulations during the three consecutive calendar years when the total compensation paid to him was the highest (the "Compensation Limitation"), subject to the following:

(a) The maximum shall apply to the benefit payable to the Participant as a Joint and Survivor Annuity; but if the benefit is payable in a form other than the foregoing and other than a single life annuity, the maximum shall apply to the single-life annuity which is the Actuarial Equivalent of such benefit.

(b) If benefits begin prior to age 62, the Dollar Limitation applicable to such benefits shall be equal to the Actuarial Equivalent of the Dollar Limitation where the Dollar Limitation is deemed to be a pension commencing at age 62. However, the reduction under this Section 13.01(b) shall not reduce the Dollar Limitation below (i) \$6,250 if the benefit begins at or after age 55, or (ii) if the benefit begins before age 55, the Actuarial Equivalent of the \$6,250 limitation for age 55. For Plan Years beginning after December 31, 1994, the reduction above shall not apply to any amounts paid due to the Participant's death or Total and Permanent Disability.

(c) If benefits begin after age 65, the maximum Dollar Limitation shall be the Actuarial Equivalent of the Dollar Limitation where the Dollar Limitation is deemed to be a pension commencing at age 65. Solely for the purposes of this subsection (c) and subsection (b) above, Actuarial Equivalent shall have the same meaning as described in Section 1.02, except the interest rate assumptions for the purposes of this subsection (c) and subsection (b) above shall be equal to 5%.

(d) If the Participant has fewer than 10 years of Plan participation, the Dollar Limitation shall be multiplied by a fraction, the numerator of which is the number of years (computed to fractional parts of a year) of participation in the Plan, and the denominator of which is 10. For Plan Years beginning prior to January 1, 1995, if the Participant has fewer than 10 years of Service, the Compensation Limitation shall be multiplied by a fraction, the numerator being the Participant's years of Service (computed to fractional parts of a year) divided by a denominator of 10. For Plan Years beginning after December 31, 1994, the reduction above shall not apply to any amounts paid due to the Participant's death or Total and Permanent Disability.

(e) For all purposes of this Plan, the applicable Dollar Limitation shall be the dollar limit set forth in Internal Revenue Code Section 415(b)(1)(A) for the particular Plan Year divided by twelve. The Dollar Limitation shall be automatically increased as permitted by

Treasury Regulations to reflect cost-of-living adjustments. As a result of such an adjustment, an accrued benefit which had been limited by the provisions of this Section in a previous Plan Year may be increased with respect to future payments to the lesser of the adjusted Dollar Limitation amount or the amount of benefits which would have been payable under this Plan without regard to the provisions of this Section 13.01.

Notwithstanding the foregoing, for a Plan Year beginning prior to January 1, 2000, the otherwise permissible annual benefits for any Participant under this Plan may be further reduced to the extent necessary, as determined by the Retirement Board, to prevent disqualification of the Plan under Section 415 of the Internal Revenue Code, which imposes the following additional limitations on the benefits payable to Participants who also may be participating in another tax qualified pension, profit sharing, savings or stock bonus plan of the Employer: If an individual is a Participant at any time in both a defined benefit plan and a defined contribution plan maintained by the Employer, the sum of the defined benefit plan fraction and the defined contribution plan fraction for any Plan Year may not exceed 1.0. The defined benefit plan fraction for any Plan Year is a fraction, the numerator of which is the Participant's projected annual benefit under the Plan (determined at the close of the Plan Year) and the denominator of which is the lesser of (a) 1.25 multiplied by the larger of the Dollar Limitation on an annual basis and as adjusted, or (b) 1.4 multiplied by the Compensation Limitation on an annual basis. The defined contribution plan fraction for any Plan Year is a fraction, the numerator of which is the sum of the annual additions to the Participant's accounts in such Plan Year and for all prior Plan Years and the denominator of which is the sum of the applicable maximum accounts of annual additions which could have been made under Section 415(c) of the Internal Revenue Code for such Plan Year and for all prior years of such Participant's employment (assuming for this purpose, that said Section 415(c) had been in effect during such prior years). The applicable maximum amount for any Plan Year shall be equal to the lesser of 1.25 multiplied by the dollar limitation in effect for such Plan Year under subsection 415(c)(1)(A) of the Internal Revenue Code, or 1.4 multiplied by 25% of the Participant's total annual compensation for such Plan Year. This Limitation shall not apply in Plan Years beginning after December 31, 1999.

For purposes of the above limitation, all defined benefit plans of the Employer, whether or not terminated, are to be treated as one defined benefit plan and all defined contributions plans of the employers, whether or not terminated, are to be treated as one defined contribution plan. The extent to which the benefit payable under this Plan shall be reduced as compared with the extent to which the annual benefit under any other defined benefit plans or defined contribution plans shall be reduced in order to achieve compliance with the limitations of Section 415 of the Internal Revenue Code shall be determined by the Retirement Board in such a manner so as to maximize the aggregate benefits payable to such Participant. If such reduction is under this Plan, the Retirement Board shall advise affected Participants of any additional limitation on their annual benefits required by this paragraph.

The above limitations are intended to comply with the provisions of Section 415 of the Internal Revenue Code, as amended, so that the maximum benefits provided by plans of the Employer shall not exceed the maximum amounts allowed under Section 415 of the Internal Revenue Code and regulations thereunder. If there is any discrepancy between the provisions of this Section 13.01 and the provisions of Section 415 of the Internal Revenue Code and

regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Internal Revenue Code.

**13.03 Maximum Benefits *(for limitation years ending after December 31, 2001)***

(a) Effect on participants. Benefit increases resulting from the increase in the limitations of section 415(b) of the Code will be provided to all participants who one Hour of Service after the first day of a limitation year ending after December 31, 2001.

(b) Definitions.

(i) Defined benefit dollar limitation. The “defined benefit dollar limitation” is \$160,000, as adjusted, effective January 1 of each year, under section 415(d) of the Code in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity or a qualified joint and survivor annuity. A limitation as adjusted under section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies.

(ii) Maximum permissible benefit. The “maximum permissible benefit” is the defined benefit dollar limitation (adjusted where required, as provided in (a) and, if applicable, in (2) or (3) below).

(1) If the participant has fewer than 10 years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of participation in the plan and (ii) the denominator of which is 10.

(2) If the benefit of a participant begins prior to age 62, the defined benefit dollar limitation applicable to the participant at such earlier age is an annual benefit payable in the form of a straight life annuity (or qualified joint and survivor annuity) beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the participant at age 62 (adjusted under (a) above, if required).

(3) If the benefit of a participant begins after the participant attains age 65, the defined benefit dollar limitation applicable to the participant at the later age is the annual benefit payable in the form of a straight life annuity (or qualified joint and survivor annuity) beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the participant at age 65 (adjusted under (a) above, if required).

(c) The limitation on reduction in benefits beginning prior to age 62 contained in Section 13.06 of the Plan is eliminated for Plan years beginning after 2001.

(d) Effective for distributions with benefit commencement dates on or after December 31, 2002, notwithstanding any other provision of the Plan to the contrary, the applicable mortality table used for purposes of adjusting any benefits or limitations under section 415(b)(2)(C) or (D) of the Code is the table described in Revenue Ruling 2001-62.

## **ARTICLE XIV**

### **General Provisions**

14.01 No Guarantee of Employment. The Plan shall not be deemed to constitute a contract between the Employer and any Employee or to be a consideration for, or an inducement for, the employment of any Employees by the Employer. Nothing contained in the Plan shall be deemed to give any Employee the right to be retained in the employment of the Employer or to interfere with the right of the Employer to discharge or to terminate the employment of any Employee at any time without regard to the effect such discharge or termination may have on any rights under the Plan.

14.02 Nonalienation of Benefits. The right of any Participant or any beneficiary in any benefit, as to any payment hereunder or to any separate account, shall not be subject to alienation or assignment and no Participant shall assign, transfer or dispose of any such right nor shall any such right be subjected to attachment, execution, garnishment, sequestration or other legal, equitable or other process to the extent permitted by law. This provision shall not prevent the Plan from complying with the terms of a qualified domestic relations order as defined in Code Sections 401(a)(13) and 414(p) so long as such compliance will not adversely affect the qualified status of the Plan. *As amended effective January 1, 1985.*

14.03 Purchase of Annuities. If the Retirement Board for any reason deems it advisable, the retirement benefits payable at retirement date under the Plan may be provided through the purchase of annuities from such insurance company or companies as may be approved by the Retirement Board. Payment thereof will be made from the funds held by the Trustee under the Trust Agreement.

14.04 Beneficiary Designations. Each Participant who has elected a form of benefit hereunder involving payments in the event of his death shall have the right at any time to designate, and rescind or change any designation of, a primary and contingent beneficiary or beneficiaries to receive such benefits. A designation of beneficiary shall be automatically revoked on the marriage or remarriage (other than a common-law marriage) of a Participant and the designation of the spouse as beneficiary shall automatically be revoked upon any finalized divorce of a Participant subsequent to the date of filing of the designation of the beneficiary. A Participant may not designate a beneficiary other than his or her spouse. If there is no designated beneficiary alive when a death benefit become payable, the benefit shall be paid to the estate of the last to die of the Participant and his designated beneficiaries. If a primary beneficiary dies before receiving all death benefits to which he is entitled, the balance of such payments shall be paid to the contingent beneficiary. If there is no contingent beneficiary or if the contingent beneficiary dies before receiving all death benefit payments to which he is entitled, the balance of such payments shall be paid to the estate of the last to die of such beneficiaries. Neither the Employer nor the Trustee (in its capacity as such) shall be named as beneficiary. A designation or change of beneficiary shall be made in writing on such form or forms as the Retirement Board may require. *As amended effective January 1, 1985.*

14.05 Conditional Establishment. Anything in the foregoing to the contrary notwithstanding, the Plan, including the Trust, is established on the express condition that it will be considered, by the Internal Revenue Service, as qualifying under the provisions of Section

401(a) and 501(a) of the Code. In the event that the Internal Revenue Service determines that the Plan does not qualify under the Code, the Plan will be of no effect and the then value of all contributions will be returned to the Employer by the Trustee.

14.06 Governing Law. The provisions of the Plan shall be construed, administered and governed in all respects under applicable Federal law, and to the extent that Federal law is applicable, under the laws of the State of California; provided, however, that if any provision is susceptible to more than one interpretation, such interpretation shall be given thereto as is consistent with the Plan qualifying as a defined benefit plan under Section 401 of the Code. If any provision of this instrument shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions hereof shall continue to be fully effective.

14.07 Interpretation. Headings and subheadings in the Plan are inserted for convenience only and are not to be considered in the construction of the provisions hereof. Singular nouns may include the plural, and plural nouns may include the singular where appropriate. The masculine gender may mean the feminine and/or neuter gender where appropriate.

14.08 Counterparts. This Plan and any amendments thereto may be executed in an original and any number of counterparts, each of which shall be deemed to be an original of one and the same instrument.

14.09 Applicability. This Plan is only applicable to noncontract Employees of the Corporation. Employees represented by a labor union have their own pension plans which are subject to collective bargaining between their labor union and the Corporation.

14.10 Interpretation. It is the intent of the Employer in adopting this Plan that the Plan shall be in compliance with (i) those provisions of the Internal Revenue Code applicable to governmental plans and (ii) the requirements of PEPRA. Accordingly, to the extent that the Plan is not in compliance with those provisions of the Internal Revenue Code applicable to governmental plans or the requirements of PEPRA, the Plan shall be deemed amended to the limited extent required in order for the Plan to be in compliance with those provisions of the Internal Revenue Code applicable to governmental plans or the requirements of PEPRA.

14.11 Exhibits. All exhibits, schedules, and tables to which reference is made in this Plan are deemed to be incorporated herein by each reference as if fully set forth.

## **ARTICLE XV**

### **Special Distribution Rules**

15.01 Election by Distributee. This Article applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

15.02 Definitions. For purposes of this Article XV, the following definitions shall apply:

(a) Eligible Rollover Distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal period payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more, or a distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9).

(b) Eligible Retirement Plan. An eligible retirement plan is an individual retirement account described in Internal Revenue Code Section 408(a), an individual retirement annuity described in Internal Revenue Code Section 408(b), an annuity plan described in Internal Revenue Code Section 403(a), a tax-sheltered annuity described in Internal Revenue Code Section 403(b), a governmental plan under Internal Revenue Code Section 457, or a qualified trust described in Internal Revenue Code Section 401(a), that accepts the distributee's eligible rollover distribution.

(c) Distributee: A distributee includes an employee or former employee who is entitled to receive benefits from the Plan. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.

(d) Direct Rollover. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

### 15.03 EGTRRA Requirements

(a) Effective date. This section shall apply to distributions made after December 31, 2001.

(b) Modification of definition of eligible retirement plan. For purposes of the direct rollover provisions of the Plan, if any, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

15.04 Notice. With regard to any eligible rollover distribution, the Plan Administrator shall, no more than 180 days prior to such distribution, provide the Participant with the notice required by Code Section 402(f) by providing the "safe harbor" notice prescribed in IRS Notice 2009-68.



IN WITNESS WHEREOF, the Employer has caused this Plan to be executed by its duly authorized officers this      day of   2002  , 20.

SAN DIEGO TRANSIT CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## TABLES

Table	Description	
Table A-1	For Participants who terminated employment prior to January 1, 1996	4
Table A-2	For Participants with one Hour of Service on/after January 1, 1996	4
Table A-3	For Participants who worked as an active Eligible Employee after July 1, 2000	4
Table A-4	For Participants who are New Members on or after January 1, 2013	4
Table B	Option Factors – 100% Contingent Annuity, 50% Contingent Annuity, Joint and Survivor Annuity	5
Table C	Option Factors/Disability - Factors for use Under the Joint and Survivor Annuity After Disability Retirement	6

**TABLE A-1**  
***For Participants who terminated employment prior to January 1, 1996***

Age Credited Years of Service	55	56	57	58	59	60	61	62	63	64	65+
5	5.20%	5.50%	5.90%	6.30%	6.70%	7.20%	7.80%	8.30%	8.90%	9.50%	10.10%
6	6.20%	6.60%	7.10%	7.50%	8.10%	8.70%	9.30%	10.00%	10.70%	11.40%	12.10%
7	7.20%	7.70%	8.20%	8.80%	9.40%	10.10%	10.90%	11.70%	12.40%	13.30%	14.10%
8	8.20%	8.80%	9.40%	10.10%	10.80%	11.60%	12.40%	13.30%	14.20%	15.10%	16.10%
9	9.30%	9.90%	10.60%	11.30%	12.10%	13.00%	14.00%	15.00%	16.00%	17.00%	18.10%
10	10.20%	11.00%	11.80%	12.60%	13.50%	14.40%	15.50%	16.70%	17.80%	18.90%	20.10%
11	11.20%	12.10%	12.90%	13.80%	14.80%	15.90%	17.10%	18.30%	19.50%	20.80%	22.20%
12	12.30%	13.20%	14.10%	15.10%	16.20%	17.30%	18.60%	20.00%	21.30%	22.70%	24.20%
13	13.30%	14.30%	15.30%	16.30%	17.50%	18.80%	20.20%	21.70%	23.10%	24.60%	26.20%
14	14.40%	15.40%	16.50%	17.60%	18.90%	20.20%	21.70%	23.30%	24.90%	26.50%	28.20%
15	15.40%	16.50%	17.60%	18.90%	20.20%	21.70%	23.30%	25.00%	26.70%	28.40%	30.20%
16	16.40%	17.60%	18.80%	20.10%	21.50%	23.10%	24.80%	26.70%	28.40%	30.30%	32.20%
17	17.50%	18.70%	20.00%	21.40%	22.90%	24.50%	26.40%	28.30%	30.20%	32.20%	34.30%
18	18.50%	19.80%	21.20%	22.60%	24.20%	26.00%	27.90%	30.00%	32.00%	34.10%	36.30%
19	19.60%	20.90%	22.30%	23.90%	25.60%	27.40%	29.50%	31.70%	33.80%	36.00%	38.30%
20	20.60%	22.00%	23.50%	25.20%	26.90%	28.90%	31.00%	33.30%	35.50%	37.90%	40.30%
21	21.60%	23.10%	24.70%	26.40%	28.30%	30.30%	32.60%	35.00%	37.30%	39.70%	42.30%
22	22.70%	24.20%	25.90%	27.70%	29.60%	31.80%	34.10%	36.70%	39.10%	41.60%	44.30%
23	23.70%	25.30%	27.00%	28.90%	31.00%	33.20%	35.70%	38.30%	40.90%	43.50%	46.30%
24	24.80%	26.40%	28.20%	30.20%	32.30%	34.60%	37.20%	40.00%	42.60%	45.40%	48.40%
25	25.80%	27.50%	29.40%	31.40%	33.70%	36.10%	38.80%	41.70%	44.40%	47.30%	50.40%
26	26.90%	28.60%	30.60%	32.70%	35.00%	37.50%	40.30%	43.30%	46.20%	49.20%	52.40%
27	27.90%	29.70%	31.70%	34.00%	36.40%	39.00%	41.90%	45.00%	48.00%	51.10%	54.40%
28	29.00%	30.90%	32.90%	35.20%	37.70%	40.40%	43.40%	46.70%	49.80%	52.00%	56.40%
29	30.00%	32.00%	34.10%	36.50%	39.10%	41.90%	45.00%	48.30%	50.00%	55.00%	58.40%
30	31.10%	33.10%	35.30%	37.70%	40.40%	43.30%	46.50%	50.00%	51.00%	55.50%	60.00%
31	32.10%	34.20%	36.50%	39.00%	41.70%	44.80%	48.10%	51.00%	51.50%	56.00%	60.00%
32	33.20%	35.30%	37.60%	40.20%	43.10%	46.20%	49.60%	51.50%	52.00%	56.50%	60.00%
33	34.30%	36.50%	38.80%	41.50%	44.40%	47.60%	50.00%	52.00%	52.50%	57.00%	60.00%
34	35.40%	37.60%	40.00%	42.80%	45.80%	49.10%	51.00%	52.50%	53.00%	57.50%	60.00%
35 or more	36.50%	38.70%	41.20%	44.00%	47.10%	50.00%	51.50%	53.00%	53.50%	58.00%	60.00%

**NOTES TO TABLE A**

**Note 1:** For persons whose benefit under the Plan commenced on or before November 27, 1990, the Adjusted Monthly Final Earnings, when the Average Monthly Final Earnings are over \$400 per month, is the Average Monthly Final Earnings minus \$133.33.

**Note 2:** When using Table A to compute a Participant's benefit, or the benefit of a surviving spouse under the Joint and Survivor Annuity or the Pre-Retirement Spouse's Benefit, (i) six (6) percentage points shall be added to the percentage derived from Table A provided that the Participant was an active Eligible Employee and a Participant in the Plan on July 1, 1994, and (ii) two (2) percentage points shall be added to the percentage derived from Table A and the foregoing clause (i), provided that the Participant was an active Eligible Employee and a Participant in the Plan on July 1, 1995. Provided, however, that in no event shall the percentage obtained by adding the foregoing percentage points to the percentage derived from Table A ever exceed sixty percent (60%).

TABLE A-2

To be used to compute the Normal Retirement Benefit, Early Retirement Benefit, or Pre-Retirement Spouse's benefit, as applicable, for a Participant who has one Hour of Service after January 1, 1996 and (i) with respect to whom payment of benefits from the Plan commence on or before July 1, 2000; or (ii) such Participant is not an Eligible Employee and actively reporting for work with Employer for at least one day after July 1, 2000.

Age	53	54	55	56	57	58	59	60	61	62	63+
Credited Years of Service											
5	5.20%	5.50%	5.90%	6.30%	6.70%	7.20%	7.80%	8.30%	8.90%	9.50%	10.10%
6	6.20%	6.60%	7.10%	7.50%	8.10%	8.70%	9.30%	10.00%	10.70%	11.40%	12.10%
7	7.20%	7.70%	8.20%	8.80%	9.40%	10.10%	10.90%	11.70%	12.40%	13.30%	14.10%
8	8.20%	8.80%	9.40%	10.10%	10.80%	11.60%	12.40%	13.30%	14.20%	15.10%	16.10%
9	9.30%	9.90%	10.60%	11.30%	12.10%	13.00%	14.00%	15.00%	16.00%	17.00%	18.10%
10	10.20%	11.00%	11.80%	12.60%	13.50%	14.40%	15.50%	16.70%	17.80%	18.90%	20.10%
11	11.20%	12.10%	12.90%	13.80%	14.80%	15.90%	17.10%	18.30%	19.50%	20.80%	22.20%
12	12.30%	13.20%	14.10%	15.10%	16.20%	17.30%	18.60%	20.00%	21.30%	22.70%	24.20%
13	13.30%	14.30%	15.30%	16.30%	17.50%	18.80%	20.20%	21.70%	23.10%	24.60%	26.20%
14	14.40%	15.40%	16.50%	17.60%	18.90%	20.20%	21.70%	23.30%	24.90%	26.50%	28.20%
15	15.40%	16.50%	17.60%	18.90%	20.20%	21.70%	23.30%	25.00%	26.70%	28.40%	30.20%
16	16.40%	17.60%	18.80%	20.10%	21.50%	23.10%	24.80%	26.70%	28.40%	30.30%	32.20%
17	17.50%	18.70%	20.00%	21.40%	22.90%	24.50%	26.40%	28.30%	30.20%	32.20%	34.30%
18	18.50%	19.80%	21.20%	22.60%	24.20%	26.00%	27.90%	30.00%	32.00%	34.10%	36.30%
19	19.60%	20.90%	22.30%	23.90%	25.60%	27.40%	29.50%	31.70%	33.80%	36.00%	38.30%
20	20.60%	22.00%	23.50%	25.20%	26.90%	28.90%	31.00%	33.30%	35.50%	37.90%	40.30%
21	21.60%	23.10%	24.70%	26.40%	28.30%	30.30%	32.60%	35.00%	37.30%	39.70%	42.30%
22	22.70%	24.20%	25.90%	27.70%	29.60%	31.80%	34.10%	36.70%	39.10%	41.60%	44.30%
23	23.70%	25.30%	27.00%	28.90%	31.00%	33.20%	35.70%	38.30%	40.90%	43.50%	46.30%
24	24.80%	26.40%	28.20%	30.20%	32.30%	34.60%	37.20%	40.00%	42.60%	45.40%	48.40%
25	25.80%	27.50%	29.40%	31.40%	33.70%	36.10%	38.80%	41.70%	44.40%	47.30%	50.40%
26	26.90%	28.60%	30.60%	32.70%	35.00%	37.50%	40.30%	43.30%	46.20%	49.20%	52.40%
27	27.90%	29.70%	31.70%	34.00%	36.40%	39.00%	41.90%	45.00%	48.00%	51.10%	54.40%
28	29.00%	30.90%	32.90%	35.20%	37.70%	40.40%	43.40%	46.70%	49.80%	52.00%	56.40%
29	30.00%	32.00%	34.10%	36.50%	39.10%	41.90%	45.00%	48.30%	50.00%	55.00%	58.40%
30	31.10%	33.10%	35.30%	37.70%	40.40%	43.30%	46.50%	50.00%	51.00%	55.50%	60.00%
31	32.10%	34.20%	36.50%	39.00%	41.70%	44.80%	48.10%	51.00%	51.50%	56.00%	60.00%
32	33.20%	35.30%	37.60%	40.20%	43.10%	46.20%	49.60%	51.50%	52.00%	56.50%	60.00%
33	34.30%	36.50%	38.80%	41.50%	44.40%	47.60%	50.00%	52.00%	52.50%	57.00%	60.00%
34	35.40%	37.60%	40.00%	42.80%	45.80%	49.10%	51.00%	52.50%	53.00%	57.50%	60.00%
35+	36.50%	38.70%	41.20%	44.00%	47.10%	50.00%	51.50%	53.00%	53.50%	58.00%	60.00%

## NOTES TO TABLE A

**Note 1:** For persons whose benefit under the Plan commenced on or before November 27, 1990, the Adjusted Monthly Final Earnings, when the Average Monthly Final Earnings are over \$400 per month, is the Average Monthly Final Earnings minus \$133.33.

**Note 2:** When using Table A to compute a Participant's benefit, or the benefit of a surviving spouse under the Joint and Survivor Annuity or the Pre-Retirement Spouse's Benefit, (i) six (6) percentage points shall be added to the percentage derived from Table A provided that the Participant was an active Eligible Employee and a Participant in the Plan on July 1, 1994, and (ii) two (2) percentage points shall be added to the percentage derived from Table A and the foregoing clause (i), provided that the Participant was an active Eligible Employee and a Participant in the Plan on July 1, 1995. Provided, however, that in no event shall the percentage obtained by adding the foregoing percentage points to the percentage derived from Table A ever exceed sixty percent (60%).

TABLE A-3

To be used to compute the Normal Retirement Benefit, Early Retirement Benefit, or Pre-Retirement Spouse's Benefit, as applicable, for a Participant (i) with respect to whom benefits commence after July 1, 2000; and (ii) who is an Eligible Employee actively reporting for work with the Employer for at least one day after July 1, 2000.

Age	53	54	55	56	57	58	59	60	61	62	63+
Benefit Factor	1.742	1.866	2.000	2.052	2.104	2.156	2.210	2.262	2.314	2.366	2.418
Credited Years of Service											
5	8.71%	9.33%	10.00%	10.26%	10.52%	10.78%	11.05%	11.31%	11.57%	11.83%	12.09%
6	10.45%	11.20%	12.00%	12.31%	12.62%	12.94%	13.26%	13.57%	13.88%	14.20%	14.51%
7	12.19%	13.06%	14.00%	14.36%	14.73%	15.09%	15.47%	15.83%	16.20%	16.56%	16.93%
8	13.94%	14.93%	16.00%	16.42%	16.83%	17.25%	17.68%	18.10%	18.51%	18.93%	19.34%
9	15.68%	16.79%	18.00%	18.47%	18.94%	19.40%	19.89%	20.36%	20.88%	21.29%	21.76%
10	17.42%	18.66%	20.00%	20.52%	21.04%	21.56%	22.10%	22.62%	23.14%	23.66%	24.18%
11	19.16%	20.53%	22.00%	22.57%	23.14%	23.72%	24.31%	24.88%	25.45%	26.03%	26.60%
12	20.90%	22.39%	24.00%	24.62%	25.25%	25.87%	26.52%	27.14%	27.77%	28.39%	29.02%
13	22.65%	24.26%	26.00%	26.68%	27.35%	28.03%	28.73%	29.41%	30.08%	30.76%	31.43%
14	24.39%	26.12%	28.00%	28.73%	29.46%	30.18%	30.94%	31.67%	32.40%	33.12%	33.85%
15	26.13%	27.99%	30.00%	30.78%	31.56%	32.34%	33.15%	33.93%	34.71%	35.49%	36.27%
16	27.87%	29.86%	32.00%	32.83%	33.66%	34.50%	35.36%	36.19%	37.02%	37.86%	38.69%
17	29.61%	31.72%	34.00%	34.88%	35.77%	36.65%	37.57%	38.45%	39.34%	40.22%	41.11%
18	31.36%	33.59%	36.00%	36.94%	37.87%	38.81%	39.78%	40.72%	41.65%	42.59%	43.52%
19	33.10%	35.45%	38.00%	38.99%	39.98%	40.96%	41.99%	42.98%	43.97%	44.95%	45.94%
20	34.84%	37.32%	40.00%	41.04%	42.08%	43.12%	44.20%	45.24%	46.28%	47.32%	48.36%
21	36.58%	39.19%	42.00%	43.09%	44.18%	45.28%	46.41%	47.50%	48.59%	49.69%	50.78%
22	38.32%	41.05%	44.00%	45.14%	46.29%	47.43%	48.62%	49.76%	50.91%	52.05%	53.20%
23	40.07%	42.92%	46.00%	47.20%	48.39%	49.59%	50.83%	52.03%	53.22%	54.42%	55.61%
24	41.81%	44.78%	48.00%	49.25%	50.50%	51.74%	53.04%	54.29%	55.54%	56.78%	58.03%
25	43.55%	46.65%	50.00%	51.30%	52.60%	53.90%	55.25%	56.55%	57.85%	59.15%	60.45%
26	45.29%	48.52%	52.00%	53.35%	54.70%	56.06%	57.46%	58.81%	60.16%	61.52%	62.87%
27	47.03%	50.38%	54.00%	55.40%	56.81%	58.21%	59.67%	61.07%	62.48%	63.88%	65.29%
28	48.78%	52.25%	56.00%	57.46%	58.91%	60.37%	61.88%	63.34%	64.79%	66.25%	67.70%
29	50.52%	54.11%	58.00%	59.51%	61.02%	62.52%	64.09%	65.60%	67.11%	68.61%	70.00%
30	52.26%	55.98%	60.00%	61.56%	63.12%	64.68%	66.30%	67.86%	69.42%	70.00%	70.00%
31	54.00%	57.85%	62.00%	63.61%	65.22%	66.84%	68.51%	70.00%	70.00%	70.00%	70.00%
32	55.74%	59.71%	64.00%	65.66%	67.33%	68.99%	70.00%	70.00%	70.00%	70.00%	70.00%
33	57.49%	61.58%	66.00%	67.72%	69.43%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%
34	59.23%	63.44%	68.00%	69.77%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%
35	60.97%	65.31%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%
36	62.71%	67.18%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%
37	--	69.04%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%
38	--	--	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%
39	--	--	--	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%
40+	--	--	--	--	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%	70.00%

## NOTES TO TABLE A

**Note 1:** For persons whose benefit under the Plan commenced on or before November 27, 1990, the Adjusted Monthly Final Earnings, when the Average Monthly Final Earnings are over \$400 per month, is the Average Monthly Final Earnings minus \$133.33.

**Note 2:** When using Table A to compute a Participant's benefit, or the benefit of a surviving spouse under the Joint and Survivor Annuity or the Pre-Retirement Spouse's Benefit, (i) six (6) percentage points shall be added to the percentage derived from Table A provided that the Participant was an active Eligible Employee and a Participant in the Plan on July 1, 1994, and (ii) two (2) percentage points shall be added to the percentage derived from Table A and the foregoing clause (i), provided that the Participant was an active Eligible Employee and a Participant in the Plan on July 1, 1995. Provided, however, that in no event shall the percentage obtained by adding the foregoing percentage points to (i) the percentage derived from Table A ever exceed seventy percent (70%).

TABLE A-4

To be used to for Participants who are New Members on or after January 1, 2013

[TABLE TO BE INSERTED]

TABLE A-4

To be used to for Participants who are New Members on or after January 1, 2013

TABLE B

*As amended effective January 1, 1987*

Option Factors

1. 100% Contingent Annuity.

Employee

<u>Beneficiary</u>	<u>Age 65</u>	<u>Age 60</u>	<u>Age 55</u>
45	.634	.708	.772
50	.662	.735	.797
55	.695	.767	.829
60	.734	.801	.862
65	.776	.841	.894
70	.822	.880	.923

2. 50% Contingent Annuity, Joint and Survivor Annuity (service retirement) or Pre-retirement Death Benefit.

Employee

<u>Beneficiary</u>	<u>Age 65</u>	<u>Age 60</u>	<u>Age 55</u>
45	.774	.828	.870
50	.794	.846	.887
55	.818	.866	.907
60	.844	.889	.926
65	.872	.914	.944
70	.901	.936	.960

Factors for other ages shall be calculated by interpolation.

TABLE C  
*As amended on January 1, 1985*

Factors for Use Under the Joint and  
Survivor Annuity After  
Disability Retirement (50% Contingent Basis)

Employee

<u>Beneficiary</u>	<u>Age 65</u>	<u>Age 60</u>	<u>Age 55</u>
45	.634	.673	.718
50	.656	.695	.738
55	.684	.722	.763
60	.716	.752	.790
65	.752	.785	.821
70	.791	.821	.853

Factors for other ages shall be calculated by interpolation. Notwithstanding anything in Tables B and C to the contrary, the application of the new factors shall not reduce the amount of a Participant's Benefit below the amount that would have been payable had the Participant terminated employment on December 31, 1985.



SAN DIEGO METROPOLITAN TRANSIT SYSTEM

Resolution No. 12-20

Resolution Implementing the "Pick-Up" Provisions of Section 414(h)(2)  
Of the Internal Revenue Code With Respect to the Retirement Plan for  
Noncontract Employees of San Diego Transit Corporation

WHEREAS, San Diego Metropolitan Transit System is the sole statutory member of San Diego Transit Corporation; and

WHEREAS, San Diego Transit Corporation maintains for the benefit of its noncontract employees the Retirement Plan for Noncontract Employees of San Diego Transit Corporation (the Plan"); and

WHEREAS, by virtue of certain amendments to the Plan, and the requirements of the California Public Employees' Pension Reform Act of 2013, the noncontract employees will be required to make contributions to the Plan; and

WHEREAS, San Diego Metropolitan Transit System desires to provide the tax benefit under Internal Revenue Code Section 414(h)(2) to the noncontract employees who are participants in the Plan, which will enable such employees to make contributions to the Plan on a pretax basis;

NOW THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED that San Diego Metropolitan Transit System and San Diego Transit Corporation will implement the provisions of Section 414(h)(2) of the Internal Revenue Code by making "employee contributions" to the Plan. "Employee contributions" shall mean those contributions to the Plan which are deducted from the wages of noncontract employees;

RESOLVED FURTHER, that for the purposes of Section 414(h)(2) of the Internal Revenue Code, the "employee contributions," although designated as employee contributions, are being paid by San Diego Metropolitan Transit System and San Diego Transit Corporation to the Plan in lieu of contributions by the employees; and

RESOLVED FURTHER, that the officers of San Diego Metropolitan Transit System and San Diego Transit Corporation, and any one of them, are hereby authorized to take any and all action, and execute any and all documents, necessary to carry out the purposes of these resolutions.

PASSED AND ADOPTED by the Board of Directors this \_\_\_\_\_ day of \_\_\_\_\_ 2013 by the following vote:

AYES:

NAYES:

ABSENT:

ABSTAINING:

\_\_\_\_\_  
Chairperson  
San Diego Metropolitan Transit System

Filed by:

Approved as to form:

\_\_\_\_\_  
Clerk of the Board  
San Diego Metropolitan Transit System

\_\_\_\_\_  
Office of the General Counsel  
San Diego Metropolitan Transit System



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## Agenda Item No. 9

### MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 13, 2012

#### SUBJECT:

TRANSMISSIONS AND IN-FRAME ENGINE OVERHAUL SERVICES – CONTRACT  
AWARD

#### RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to:

1. execute MTS Doc. No. B0595.0-13 (in substantially the same format as Attachment A) with Dartco Transmission Sales and Service for the provision of transmission and in-frame engine overhaul services for Group III-Transmission Rebuilds for a three-year base period with 2 one-year options; and
2. exercise each option year at his discretion.

#### Budget Impact

The three-year base contract would total \$484,422.50. The 2 one-year options would total \$370,229.00. The total contract amount would not exceed \$854,651.50.

The funding for this contract would be allocated under the MTS Bus Maintenance operation budget (312/322/801/820/926-53810), which uses 80 percent federal and 20 percent local funds.

#### DISCUSSION:

An Invitation for Bids (IFB) for the provision of transmissions and in-frame engine overhaul services was issued on March 1, 2012. On July 26, 2012, four bids were received and announced for Group III-Transmission Rebuilds. After further analysis of the bids, Dartco Transmission Sales and Service was deemed the lowest responsive and responsible bidder.



On August 29, 2012, a Notice of Intent for award was sent out to the bidders, which triggered a formal protest alleging technical defects in Dartco's bid by the next lowest bidder. In accordance with MTS's Protest Procedures, an independent Protest Committee was convened to study the protest and present recommendations for a resolution. In its findings, the committee determined to uphold the award to Dartco Transmission Sales and Service. Therefore, staff is recommending that MTS Doc. No. B0595.0-13 (Attachment A) be awarded to Dartco Transmission Sales and Service to provide rebuilt transmission services on the Group III-Transmission Rebuilds for three years with 2 one-year options effective January 1, 2013.



for

Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, [Sharon.Cooney@sdmts.com](mailto:Sharon.Cooney@sdmts.com)

Attachments: A. Draft MTS Doc. No. B0595.0-13  
B. Bid Summary

**DRAFT**

**STANDARD PROCUREMENT AGREEMENT  
FOR  
REBUILT TRANSMISSIONS**

B0592.0-13 CONTRACT NUMBER
OPS 960.6 FILE/PO NUMBER(S)

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, in the state of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following hereinafter referred to as "Contractor":

Name: Dartco Transmission Sales and Service, Inc. Address: 2830 E. Gretta Lane  
 Form of Business: Corporation Anaheim, CA 92806  
 (Corporation, Partnership, Sole Proprietor, etc.)  
 Telephone: 714-237-0911

Authorized person to sign contracts: Jim Peek Vice President  
 Name Title

**The attached Standard Conditions are part of this agreement. The Contractor agrees to furnish to MTS services, as follows:**

Rebuilt Transmissions as specified in the Technical Specifications, Contractor's Bid, Standard Conditions Procurement, and Federal Requirements.

This contract shall be for a three-year base period with 2 one-year options. The total amount for the base period shall be \$484,422.50, effective January 1, 2013, through December 31, 2015. The total amount for the two option years is \$370,229.00, which shall be effective January 1, 2016 through December 31, 2018.

The total amount of this contract shall not exceed \$854,651.50 for the three-year base period, including all applicable sales taxes which is subject to increase with the California Sales and Income Tax Increase Initiative (November 2012) and 2 one-year options.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM	CONTRACTOR AUTHORIZATION
By: _____ Paul C. Jablonski, Chief Executive Officer	Firm: _____
Approved as to form:	By: _____ Signature
By: _____ Office of General Counsel	Title: _____
AMOUNT ENCUMBERED	BUDGET ITEM
\$854,651.50	312/322/801/820/926-53810
	FISCAL YEAR
	FY 13-FY 15

By: \_\_\_\_\_  
Chief Financial Officer

(\_\_\_\_\_ total pages, each bearing contract number)

<b>GRAND TOTALS - GROUP III (Transmission Rebuilds)</b>	<b>Danco Transmission Sales and Service, Inc.</b>
Total Year 1 (1/1/13 - 12/31/13):	\$ 145,247.00
Total Year 2 (1/1/14 - 12/31/14):	\$ 165,698.00
Total Year 3 (1/1/15 - 12/31/15):	\$ 173,477.50
<b>Sub-Total Base Years (CA sales tax included):</b>	<b>\$ 484,422.50</b>
Total Year 4 - Opt. Yr. 1: (10/1/15 - 9/30/16):	\$ 181,235.50
Total Year 5 - Opt. Yr. 2 (10/1/16 - 9/30/17):	\$ 188,993.50
<b>CONTRACT GRAND TOTAL -CA SALES TAX INCLUDED - GROUP III:</b>	<b>\$ 854,651.50</b>

**GRAND TOTALS**

<b>GROUP III</b>		<b>Miramar Truck</b>	<b>**Distributor Independent</b>	<b>Valley Power Systems</b>	<b>Dartco</b>	<b>*United Trans. Exchange</b>
Grand Total Year 1:		\$ 176,268.23		\$ 199,811.60	\$ 145,247.00	\$ 117,490.00
Grand Total Year 2:		\$ 196,072.68		\$ 221,967.16	\$ 165,698.00	\$ 128,470.33
Grand Total Year 3:		\$ 201,417.08		\$ 228,593.78	\$ 173,477.50	\$ 135,797.33
Grand Total Year 4 (Option Yr. 1):		\$ 206,944.65		\$ 235,444.52	\$ 181,235.50	\$ 135,797.33
Grand Total Year 5 (Option Yr. 2):		\$ 212,655.40		\$ 235,444.52	\$ 188,993.50	\$ 135,797.33
<b>GRAND TOTAL BID AMOUNT (Basis of Award):</b>		<b>\$ 993,358.04</b>		<b>\$ 1,121,261.58</b>	<b>\$ 854,651.50</b>	<b>\$ 653,352.32</b>

\* NON-RESPONSIVE

\*\* NO BID



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## Agenda Item No. 30

### MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 13, 2012

#### SUBJECT:

OPERATING AGREEMENT AND LEASE FOR DESERT LINE WITH PACIFIC  
IMPERIAL RAILROAD, INC. (PIR) (KAREN LANDERS)

#### RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer to execute a long-term Operating Agreement and Lease for the Desert Line with PIR (in substantially the same format as Attachment A).

#### Budget Impact

Additional income to San Diego and Arizona Eastern Railway, Inc. (SD&AE) of at least \$1,000,000 per year beginning in fiscal year 2014.

#### DISCUSSION:

In 1984, SD&AE and MTS entered into an operating agreement for SD&AE's freight railroad assets with San Diego & Imperial Valley Railway Company (SD&IV) ("1984 Operating Agreement"). The 1984 Operating Agreement gave SD&IV the exclusive right to operate freight on the SD&AE right-of-way, including the portion called the "Desert Line." The 1984 Operating Agreement includes 5 ten-year terms through March 8, 2034. SD&IV has the right to unilaterally exercise each option period.

In 2002, SD&AE and MTS consented to an assignment by SD&IV to Carrizo Gorge Railway, Inc. (CZRY) of its rights to operate the Desert Line ("CZRY Operating Agreement"). The term of the CZRY Operating Agreement coincides with the 1984 Operating Agreement but is subject to SD&IV's reasonable discretion, and SD&AE/MTS consent, to extend the CZRY Operating Agreement for each new ten-year term. The current term for each agreement ends on March 8, 2014. CZRY's performance of its obligations on the Desert Line, especially its obligation to repair the line and generate freight business, was impeded by long-running, divisive disputes between the majority





and minority shareholders of CZRY. The fighting between these factions between approximately 2008 and 2010 diverted attention from the Desert Line business. In early 2011, court rulings resulted in the majority shareholder group gaining control of CZRY's assets. A new entity, Pacific Imperial Railroad, Inc. (PIR), was formed. CZRY's rights related to the Desert Line were ultimately transferred to PIR.

On May 17, 2012, subject to certain conditions, the Board consented to the assignment of the CZRY Operating Agreement to PIR. On September 20, 2012, the Board consented to the extinguishment of SD&IV's residual rights and obligations to the Desert Line.

For the past 12 months, PIR and MTS have been engaged in negotiating a new lease and operating agreement to accommodate a long-term investment in the Desert Line and resurrection of freight operations. This was the intent behind the 1984 Operating Agreement and the 2002 CZRY Operating Agreement.

The Proposed Amended and Restated Desert Line Lease and Operating Agreement contains the following protections for MTS and SD&AE, which were not included in the 1984 Operating Agreement or the CZRY Operating Agreement:

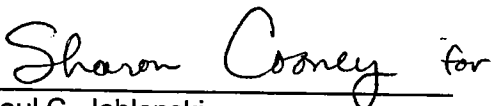
1. Performance Milestone Requirements. The proposed term of the Agreement is 50 years plus a 49-year option. That term will only be realized if PIR meets the initial performance milestones for the first 5 years of the Agreement. The performance milestones set forth in the agreement set an aggressive but achievable schedule for performance of the agreement.
  - a. Submittal of Business Plan to SD&AE within 30 days.
  - b. Desert Line Reconstruction Plan submitted to SD&AE for review and approval within 90 days.
  - c. Initial Repairs shall be completed within 12 months.
  - d. Within 30 days of completion of Initial Repairs, PIR shall commence conducting Test Train Operations.
  - e. PIR shall commence Limited Operations on the Desert Line (3 trains a week) within 36 months.
  - f. Full Scale Repairs shall be completed within 60 months.
  - g. Full Scale Operations shall commence 30 days after the completion of Full Scale Repairs and shall consist of full-time, uninterrupted, and efficient flow of freight shipments in an economically viable transportation mode.
2. Desert Line Reconstruction Plan (DLRP). The Agreement provides detailed specifications for a DLRP that must be prepared and submitted to MTS for approval. It establishes annual maintenance of way requirements to ensure the Desert Line is properly maintained and requires regular reporting to MTS of PIR activities.
3. Compensation. Guarantees MTS compensation of \$1,000,000 per year, or 15% of gross freight revenue, whichever is greater. This revenue is unrestricted and may be spent as designated by SD&AE and MTS.

Market conditions are particularly ripe for this Agreement and the favorable terms negotiated for MTS.

Repairs and investments necessary to allow full-scale operation of the Desert Line have been estimated at \$50 million to \$140 million. PIR is in the process of obtaining a line of credit to fund such repairs. The Line of Credit will be secured by assets held by PIR. Previously, the freight business available to the Desert Line did not support such a large investment. Growth in the cross-border manufacturing industry near Tecate, Mexico has dramatically changed the financial feasibility of operating the Desert Line. Aside from the port of entry at San Ysidro, the Desert Line is the only rail connection from Mexico to the United States in San Diego County. The main line at San Ysidro shares tracks with the MTS Blue Line Trolley and cannot support double-stacked freight cars. It also has limited hours of operation (1:00 a.m. to 4:00 a.m.). Currently, most parts/supplies and product shipments to and from the plants in Mexico are done by truck from Los Angeles rail facilities. Trucking is substantially more expensive than shipping by rail. In addition, trucking causes congestion at the border entry points. Transloading of shipments between truck and rail causes delays in the supply chain for the manufacturing businesses.

Shipment by rail over the Desert Line has been identified as a major efficiency for manufacturers such as Toyota. Toyota has been identified as an initial, major customer for the Desert Line freight operation. Since shipping costs and delays are a current, ongoing operational concern for Toyota, determining the viability of the Desert Line freight plan for shipping to and from Toyota's Tecate facility is a very high priority for Toyota and the cross-border business community. If shipping is successfully commenced from the Toyota manufacturing facility in Mexico, it is anticipated that many of the other manufacturing facilities in the Tecate region will also consider freight as an option substantially increasing the profitability of the Desert Line. It is unknown if these opportunities will still be available if this project is delayed.

Restoring basic service to and modernizing the Desert Line are identified as the 4<sup>th</sup> and 5<sup>th</sup> ranked rail projects in SANDAG's California-Baja California Border Master Plan Final Report (issued in September 2008). This study evaluated and ranked binational port of entry and transportation projects in San Diego and Imperial Counties and in the Baja California municipalities of Tijuana, Tecate, Playas de Rosarito, parts of Mexicali, and the urban area of Ensenada. Approval of the PIR agreement would mean that no local funds are required to complete these projects. The project may be eligible for certain federal freight railroad funding sources.

  
Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Karen Landers, 619.557.4512, [Karen.Landers@sdmts.com](mailto:Karen.Landers@sdmts.com)

Attachment: A. Operating Agreement and Lease

**AMENDED AND RESTATED**  
**DESERT LINE LEASE AND OPERATING AGREEMENT**

THIS OPERATING AGREEMENT ("Lease"), dated as of this 13<sup>th</sup> day of December, 2012 (the "Effective Date"), by and between Pacific Imperial Railroad, Inc. ("PIR"), a Delaware corporation with principal offices and place of business in San Diego County, California; San Diego and Arizona Eastern Railway Company ("SD&AE"), a Nevada nonprofit corporation; and San Diego Metropolitan Transit Development Board also known as the San Diego Metropolitan Transit System ("MTS"), a California public agency, with principal offices and place of business in San Diego, California. PIR, SD&AE and MTS may hereinafter be referred to collectively as the "parties", or individually as a "party" hereto.

**RECITALS**

WHEREAS, MTS is the sole member of SD&AE;

WHEREAS, SD&AE owns the Desert Line railroad right of way stretching approximately 70 miles from Mileposts 59.6 at or near the U.S. Border in Division, California to Milepost 130.0 at Plaster City, California ("Desert Line");

WHEREAS, PIR is the successor-in-interest to an exclusive right to operate the Desert Line which expires on March 8, 2014;

WHEREAS, PIR desires to make a substantial investment in infrastructure and operations on the Desert Line, but needs additional time to support such an investment;

WHEREAS, SD&AE is willing to extend PIR's exclusive operating rights, subject to the terms and conditions stated herein.

**AGREEMENT**

NOW THEREFORE, for good and valuable consideration, including the mutual covenants and promises herein contain, and for other consideration, the receipt and sufficiency of which are hereby acknowledged to be adequate, intending to be legally bound hereby, the parties hereby agree as follows:

**1. TERM**

- 1.1. Subject to the Performance Milestone Requirements set forth in Section 1.2 below, PIR shall have a fifty (50) year term to operate freight rail service on the Desert Line, beginning upon the date hereof and ending on December 13, 2062. Notwithstanding this base term of fifty (50) years, SD&AE and PIR expressly acknowledge that the purpose of this agreement is to provide for the repair and rebuilding of the Desert Line and the ultimate resumption of freight service upon the Desert Line for the benefit of local, state, federal and international commerce. Therefore, an express prerequisite for PIR receiving the full fifty (50) year term, and any extension thereof, is that PIR meet the Performance Milestones established herein. In the event PIR fails to meet a specific milestone, then

SD&AE shall have the right, in its sole and absolute discretion, to declare PIR in default and terminate this Agreement. In the alternative, the parties may mutually agree to extend a particular milestone. Extension of any milestones shall be by written amendment to this Agreement.

- 1.1.1. Option to Renew. Provided PIR is not in default at the time of any right to exercise its option to renew, PIR shall have the right to renew this Lease for an additional Forty-Nine (49) years.

- 1.2. Performance Milestone Requirements.

- 1.2.1. Submittal of Business Plan to SD&AE. The Business Plan described in Section 3.2 shall be submitted to SD&AE for review and approval no later than 30 days from the Effective Date of this Lease.

- 1.2.2. Desert Line Reconstruction Plan. The Desert Line Reconstruction Plan (DLRP) described in Section 3.3 shall be submitted to SD&AE for review and approval no later than 90 days from the Effective Date of this Lease. No repairs shall be commenced until SD&AE has approved the plan. PIR may, at its option, submit the DLRP to SD&AE according to the stages set forth in Section 3.3. PIR may not commence with a specific milestone unless and until the DLRP for that stage has been approved by SD&AE.

- 1.2.3. Initial Repairs. Initial Repairs shall be completed within 12 months of the Effective Date of this Lease. Initial Repairs shall be those repairs and/or maintenance required to rehabilitate the Desert Line to qualify the Class of Track at a minimum as a Class I Track pursuant to the Federal Railroad Administrations ("FRA") track safety standards. Essentially at this track level, the track has defects serious enough to make it unsuitable for operations greater than 10 mph. The Initial Repairs shall be inspected and approved by an independent structural and track engineer and subjected to ultrasonic rail flaw detection, loaded gauge, and track geometry testing by a contractor approved by SD&AE before Test Train Operations pursuant to Section 1.2.4 may begin.

- 1.2.4. Test Train Operations. Within 30 days of completion of Initial Repairs as defined in section 1.2.3., PIR shall commence conducting Test Train Operations. Test Train Operations shall consist of railroad operations in conformity with FRA Track Safety Standards for, at a minimum, Class I Track. The test shall consist of a single locomotive plus three loaded rail cars over the entire Desert Line. Test Train Operations shall be overseen by an independent structural and track engineer approved by SD&AE.

- 1.2.5. Operating Plan. Limited Operations pursuant to Section 1.2.6, shall not commence until SD&AE has approved the Operating Plan required by Section 3.4.

- 1.2.6. Limited Operations. Within 36 months after the Effective Date, PIR shall commence Limited Operations on the Desert Line. Limited Operations shall consist of operating over the Desert Line, at a time in which repairs and/or maintenance shall be consistent to qualify the Class of Track at a minimum as a Class II Track pursuant to FRA track safety standards, and PIR shall commence part time (at least three trains a week) freight service on the Desert Line sufficient to insure an uninterrupted and efficient flow of freight shipments in an economically viable transportation mode, subject to normal closures due to renovation, repairs and maintenance. No hazardous materials may be transported over the Desert Line unless it meets Class II Track standards, with no exceptions.
- 1.2.7. Full Scale Repairs. Full Scale Repairs shall be completed no later than 60 months from the Effective Date, which shall consist of repairs and renovation sufficient to operate freight service on the Desert Line on a full time basis and sufficient to insure an uninterrupted and efficient flow of freight shipments in an economically viable transportation mode. The Full Scale Repairs shall be inspected and approved by an independent structural and track engineer and subjected to ultrasonic rail flaw detection, loaded gauge, and track geometry testing by a contractor approved by SD&AE before Full Scale Operations pursuant to Section 1.2.8 may begin.
- 1.2.8. Full Scale Operations. Full Scale Operations shall commence thirty (30) days after the completion of Full Scale Repairs and shall consist of full time uninterrupted and efficient flow of freight shipments in an economically viable transportation mode.
- 1.2.9. FRA Track Safety Standards. Qualification for the Class of Track to a particular FRA Track Safety Standard shall be independently verified by a construction or engineering firm capable of rendering such a report. SD&AE shall have the right to approve or reject the independent inspector assigned this duty.

## **2. CONSIDERATION**

### **2.1. Rent/Lease Revenue. PIR shall pay rent to SD&AE as follows:**

- 2.1.1. By July 1, 2013, a lump sum payment of \$500,000. Semiannually thereafter, until Limited Operations begin pursuant to Section 1.2.6, PIR shall pay SD&AE an additional \$500,000, or a pro-rata portion thereof.
- 2.1.2. For purposes of determining freight operating revenues hereunder, all freight revenues attributable to the movement of freight over the Desert Line shall constitute freight operating revenues. PIR shall not manipulate freight revenues or tariffs so as to assign additional revenue to the Mexico portion of the railroad and unreasonably diminish freight revenue attributable to the Desert Line. Unless SD&AE and PIR mutually agree to a different calculation method, freight revenue

between the Desert Line and the Mexico Line shall be assigned on pro-rata mileage basis.

- 2.1.3. Upon commencement of Limited Operations, as defined in Section 1.2.6 above, PIR's payments to SD&AE pursuant to Section 2.1.1 shall increase as follows, and be paid on a quarterly basis:

- 2.1.3.1. Year 1: 10% of PIR's gross freight revenue
- 2.1.3.2. Year 2: 11% of PIR's gross freight revenue
- 2.1.3.3. Year 3: 12% of PIR's gross freight revenue
- 2.1.3.4. Year 4: 13% of PIR's gross freight revenue
- 2.1.3.5. Year 5: 14% of PIR's gross freight revenue
- 2.1.3.6. Year 6 and thereafter: 15% of PIR's gross freight revenue
- 2.1.3.7. Under no circumstances shall each quarterly payment to SD&AE be less than \$250,000. Starting in 2017, this minimum payment shall be increased by 5% every five years.

- 2.1.3 Collateral Revenue. All collateral revenue ("Collateral Revenue"), as defined in 4.3.1, shall be subject to the approval of SD&AE as set forth in Section 4.3 below.

2.2 Right of First Refusal to Purchase. Should SD&AE, during the lease term (or any extension thereof), elect to sell all or any portion of the leased premises (separately or as a part of the larger parcel of which the leased premises are a part), PIR shall have the right of first refusal to meet any bona fide offer of sale on the same terms and conditions of such offer, and on failure to meet such bona fide offer within sixty (60) days after written notice thereof from SD&AE, SD&AE shall be free to sell the leased premises or any portion so designated in the proposal, to such third person in accordance with the terms and conditions of the offer. Should the terms in the offer change from the bona fide purchaser, then in that event PIR shall be given an additional notice period as provided herein above to meet such offer.

2.3 Right of First Refusal to Lease or Contract Rights in regard to Collateral Revenue. Should SD&AE, during the lease term (or any extension thereof), elect to lease, or alternatively enter into a contract right ("Contract Right") over Collateral Revenue such as mineral rights, billboards, etc., all or any portion of the leased premises (separately or as a part of the larger parcel of which the leased premises are a part), which lease or Contract Right may not interfere with PIR's lease herein, PIR shall have the right of first refusal to meet any bona fide offer of lease or Contract Right on the same terms and conditions of such offer, and on failure to meet such bona fide offer within sixty (60) days after written notice thereof from SD&AE, SD&AE shall be free to lease or enter into contractual agreements in regards to the leased premises or any portion so designated in the proposal, to such third person in accordance with the terms and conditions of the offer. Should the terms in the offer change from the bona fide purchaser, then in that event PIR shall be given an additional notice period as provided herein above to meet such offer.

### **3. PIR RIGHT TO OPERATE DESERT LINE**

- 3.1. **Exclusive Operating Right.** SD&AE hereby grants PIR the exclusive right to operate freight services along the Desert Line. All PIR freight operations shall be based upon an SD&AE-approved Business Plan. The Business Plan shall be updated whenever material changes are proposed, but no less than every five (5) years.
- 3.2. **Business Plan.** The Desert Line Business Plan shall include the following components: Executive Summary, Proposed Make Up of Initial Management Team, Financing Plan, Marketing Plan, Strategy & Implementation Plan, Desert Line Reconstruction Plan (see §3.3) and Operating Plan (see § 3.4). SD&AE shall have the right to review and approve the Desert Line Business Plan. If deficiencies are identified by SD&AE, PIR shall correct the deficiencies and submit a revised Business Plan to SD&AE for review and approval.
  - 3.2.1. The Business Plan submitted to SD&AE pursuant to Section 1.2.1 shall include the following elements:
    - 3.2.1.1. **Executive Summary.** A brief summary of the overall plan to develop and operate the Desert Line.
    - 3.2.1.2. **Proposed Make Up of Management Team.** Identify key personnel who will develop and operate the Desert Line. To the extent a specific management team member has not been identified or hired, the plan should describe the essential job functions and qualifications for each open position.
    - 3.2.1.3. **Financing Plan.** The Financing Plan, at a minimum, shall include an existing description of PIR's assets and cash flow, and the plan and status of obtaining outside funding to complete each stage of the Performance Milestones set forth in Section 1.2.
    - 3.2.1.4. **Marketing Plan.** The Marketing Plan, at a minimum, shall describe PIR's plan to attract customers, including a description of each potential customer and the freight volume, revenue estimated, and a proposed schedule for service to begin.
    - 3.2.1.5. **Strategy & Implementation Plan.** The Strategy & Implementation Plan, at a minimum, shall include the steps PIR must take to reach each stage of the Performance Milestones set forth in Section 1.2, and PIR's plan for meeting each stage in a timely manner. The plan shall also include a description and plan to achieve PIR's long-term goals for the Desert Line, including any related development of freight lines in Mexico.
- 3.3. **Desert Line Reconstruction Plan.** The Desert Line Reconstruction Plan (DLRP) required in Section 1.2.2 shall include, at a minimum, a detailed schedule and description of the work to be completed prior to and in conjunction with each stage of operations (i) Test

Train Operations as described in Section 1.2.4, (ii) Limited Operations as described in Section 1.2.6, and (iii) Full Scale Operations as described in Section 1.2.8.

- 3.3.1. Prior to Test Train Operations the DLRP shall be updated and submitted to SD&AE and at a minimum shall contain; (a) update the October 2007 Osmose Services Bridge Report, (b) repair and/or remediate the deficiencies identified in the Osmose Services Bridge Report, (c) commission a study of the tunnel and track conditions on the Desert Line including ultrasonic rail flaw, loaded gauge, track geometry and tunnel clearance testing by a contractor approved by SD&AE, and (d) repair and/or remediate any track or tunnel deficiencies identified. If additional repairs or modifications are planned for the Desert Line infrastructure, PIR shall submit such plans to SD&AE for review and approval. The DLRP shall ensure that the Desert Line bridges meet Cooper Loading System standards based on maximum axle loading for the freight to be carried by PIR, but not less than 286 pounds per car.
- 3.4. Operating Plan. The Operating Plan required by Section 1.2.5 shall include the following elements:
  - 3.4.1. Personnel & Staffing Plan. PIR will provide such personnel as shall be necessary to perform its obligations hereunder, and will maintain a business office in San Diego County, California. PIR shall identify the principal persons to manage this operation. Such principal personnel and any future substitutes therefor shall be subject to approval of the President of SD&AE, which approval shall not be unreasonably withheld but shall be based upon generally accepted criteria of experience and qualifications with short line railroad operations.
  - 3.4.2. Revenue/Budget Estimates. Revenue and budget estimates shall be provided with a year-by-year analysis for the first five years of this Agreement, and shall be updated every year thereafter.
  - 3.4.3. Operating Rules. PIR shall develop and submit to SD&AE for approval a set of General Code of Operating Rules ("GCOR"), similar to the GCORs adopted by other freight rail carriers in the same class of carriers as PIR. The GCOR shall cover such topics as employee responsibilities, signaling equipment, procedures for safe train movement, dealing with accidents and other topics that directly and indirectly affect railroad safety.
  - 3.4.4. Maintenance of Way Plan. PIR shall develop and submit to SD&AE for approval a Maintenance of Way Plan identifying scheduled inspection, repair, maintenance work, and projects to be undertaken by PIR, and detailing PIR's specific maintenance schedule for accomplishing such work and projects during the Term. The plan shall address rail maintenance activities including but not limited to Rail Grinding, Rail Transposition, Rail Slotting, Rail Surface Welding Repair, Rail Joint Elimination and Rail Cascading. PIR shall update such plans on an annual basis not later than thirty (30) days prior to the anniversary date of the initial plan



submittal and submit to the SD&AE for approval. In addition, SD&AE may request changes to any such plans in order to maintain compliance with state and federal rules for operating a Class II Railroad, and PIR shall make and agree to implement such proposed changes.

- 3.4.5. Safety & Security Plans. PIR shall establish SD&AE approved Safety & Security Program Plans. The Safety Plan shall include Roadway Worker Safety and all other FRA mandatory training based on appropriate FRA, STB, CPUC, and SD&AE regulations, ordinances, standards and guidelines, which will identify, eliminate, minimize, and control safety hazards and their attendant risks. The Security Plan shall provide for, without limitation, e-RailSafe employee verification, an identification badge system for PIR employees; a vehicle control system for PIR employee vehicles on the Service Property; and a plan for restricting access to facilities. Such plans shall meet all applicable federal and other legal requirements and regulations, and must be provided to SD&AE no less than sixty (60) calendar days before the Maintenance Commencement Date. SD&AE shall review such plan, and shall either accept the plan or shall, within thirty (30) calendar days, direct PIR to revise such plan. PIR shall revise such plan accordingly within thirty (30) calendar days of receipt of such revisions from SD&AE.
- 3.4.6. Anti-Smuggling & Customs Enforcement Plan. PIR shall develop a plan to fully comply with federal laws in Title 18, Chapters 27 (Smuggling) & 77 (Human Trafficking) and Title 8, Sections §§1321-1324 (Aliens) of the United States Code.
- 3.4.7. Homeland Security Plan. PIR shall develop a plan to monitor and protect the Desert Line from vandalism, terrorism and other threats. The Homeland Security Plan shall require reporting of any threat or potential threat to the MTS Chief of Police within twelve (12) hours. PIR shall be responsible for providing security for the Desert Line facilities. To the extent PIR establishes a law enforcement force, the jurisdiction for PIR law enforcement shall only extend to the Desert Line. MTS, through its Chief of Police, shall have the right, but not the obligation, to assert jurisdiction to investigate and respond to an incident on the Desert Line. In the event MTS exercises this right, all PIR law enforcement personnel shall be subordinate to the MTS Chief of Police.
- 3.4.8. The Operating Plan shall ensure that PIR's freight operations comply with 49 C.F.R. Part 200 through 299 and applicable Surface Transportation Board (STB) and Association of American Railroads (AAR) rules.

#### **4. RIGHTS & OBLIGATIONS OF PIR**

- 4.1. Right to Provide Transportation Service. Beginning on the Effective Date and throughout the term of this Lease, subject to compliance with the terms and conditions of this Agreement, SD&AE hereby grants and PIR hereby acquires and assumes the exclusive

right to provide rail transportation service on the Desert Line, and to lease or sublease the rail line in accordance with the provisions of this agreement to provide the common carrier obligation for rail freight service on the Desert Line.

- 4.2. Common Carrier Service. PIR shall provide service as a common carrier with the power to establish through routes, make and collect rates, and enter into contracts with customers subject to the provisions of divisions or handling line agreements with connecting carriers.
  - 4.2.1. Frequency. PIR shall provide service "on demand" with a frequency no less than once per week or as otherwise set forth in a SD&AE-approved Operating Plan. Subject to agreement between the parties and connecting railroads, PIR shall publish tariffs, enter into rail transportation agreements, and shall be entitled to bill and collect all rates on intraline and interline traffic and all revenues received from connecting railroads on interline traffic whether through divisions, handling line agreements, or other arrangements.
  - 4.2.2. Nondiscrimination. PIR shall not discriminate unreasonably with respect to rates, transportation, and services against any shipper and shall provide transportation or service on reasonable request.
- 4.3. Rights Not Transferred to PIR. The rights granted to PIR in this Agreement shall not include mineral or mining rights of any kind. All mineral and mining rights, including the right to mine sand along the Desert Line right-of-way, are expressly retained by SD&AE or its predecessors-in-interest, unless SD&AE approves a Concession Agreement pursuant to Sections 4.3.1 through 4.3.6. Any movements of sand necessary for the maintenance work set forth in Section 4.5.2 shall be pre-approved by SD&AE. The proceeds from the sale of any sand removed shall belong to SD&AE, subject to the Right of First Refusal as set forth in Section 2.2 and/or 2.3.
  - 4.3.1. Concessions. Concessions refers to any product or business which originates as the result of utilizing the Desert Line right-of-way and is not considered freight revenue under Section 2.1.2. To further the development and growth of joint revenues for both PIR and SD&AE, PIR shall be designated as the "Master Concessionaire" with the right to seek the development of collateral revenue ("Collateral Revenue") on the Desert Line right-of-way.
  - 4.3.2. Collateral Revenue. Collateral Revenue shall be all revenue generated from the sale of products, including but not limited to; mineral rights, sand and gravel, wind power, solar power, and advertising such as billboards, herein referred to as the Concession, located on the Desert Line right-of-way.
  - 4.3.3. Collateral Revenue Agreement. Prior to entering into any agreements regarding Collateral Revenue, (the "Collateral Revenue Agreement"), PIR shall first provide SD&AE a proposal summary which shall outline the details of the proposed Collateral Revenue Agreement, for SD&AE approval. SD&AE may approve or disapprove a proposed Collateral Revenue project, in its sole and absolute

discretion. Upon approval of the preliminary terms and conditions of the proposal, PIR shall negotiate on behalf of PIR and SD&AE the Concession. The final Collateral Revenue Agreement shall be subject to the approval of SD&AE.

- 4.3.4. Collateral Revenue Allocation. The allocation of Collateral Revenue between PIR and SD&AE shall be negotiated at the time SD&AE approves each Collateral Revenue project.
- 4.3.5. Collateral Revenue Payments. The payment of Collateral Revenue to PIR shall be based upon revenue actually received and shall be paid concurrent with quarterly reports submitted pursuant to Section 5.1.2.
- 4.3.6. Collateral Revenue Reports. PIR shall be responsible for submitting reports to SD&AE pursuant to Section 5.1.2, which reports shall contain details of the various Concessions entered into by PIR, and the Gross Revenues achieved by each Concession.
- 4.4. Rates, Charges, Divisions, Revenues. PIR shall immediately commence and use its best efforts to negotiate appropriate rates, charges and divisions for the shipment of goods over the Desert Line and obtain shipper commitments for future shipments of bulk commodities.
  - 4.4.1. Tariffs, Rates, & Revenues. So long as it is not in default, PIR shall have the exclusive right and obligation in the name of, and on behalf of SD&AE, to file with appropriate governmental agencies and to adopt and negotiate, modify existing tariffs, rates, and charges for the shipment of goods over the Desert Line, and shall be solely responsible for collecting those rates from its customers and for payment of fees to other connecting carriers.
  - 4.4.2. Freight Commitments Progress Reports. Upon commencement of Limited Operations as defined herein, PIR shall advise SD&AE on a quarterly (45 days after the end of each Quarter) basis of its progress in obtaining commitments for sufficient operating revenues to meet operating expenses projected.
  - 4.4.3. Economic Viability. PIR shall take all actions necessary for and commence operations of such through service on the Desert Line at such time as PIR determines that the commencement of operations appears economically viable considering progress made in obtaining funds to reimburse part or all of PIR's expenses in opening the Desert Line and the time period reasonably necessary to amortize any expense of PIR incurred and not reimbursed from other sources.
    - 4.4.3.1. The economic viability of operation of through service on the line is a factor of capital and operating costs including trackage rate payments as well as operating revenue based upon rates, charges and divisions and car loads. The determination of economic viability is not contingent upon a projection of any specific level of profits or losses by PIR.

- 4.4.3.2. A decision by PIR not to commence or continue operations on the Desert Line because of a lack of economic viability shall not impact or restrict SD&AE's right to terminate if PIR fails to meet the Performance Milestone Requirements in Section 1.
- 4.5. Desert Line Management and Maintenance. PIR or its approved sub-lessee or designee shall have exclusive control and responsibility in the management, maintenance, and operation of freight rail service on the Desert Line at PIR's sole cost and expense.
- 4.5.1. Management. Upon the Effective Date hereof, SD&AE hereby grants to PIR the right to manage the Desert Line. PIR shall be responsible for the operating policies, billing rates, and scheduling of transportation over the Desert Line and the relationship with all shippers and connecting rail carriers. PIR agrees to provide the following services as reasonably necessary for the efficient operation of the Desert Line and the transportation of freight:
- 4.5.1.1. Marketing. Actively promote and solicit additional shipments by rail, routine marketing consistent with the business plan of PIR;
- 4.5.1.2. Employees and Labor Relations. PIR shall ensure that all of its employees who shall operate its trains, locomotives, cars and equipment over the Leased Premises have received all necessary training, certification, and licensure required to operate in accordance with applicable Federal Railroad Administration ("FRA") rules and regulations and with all generally accepted industry standards, including those standards promulgated by the AAR. PIR shall be responsible for all labor relations matters related to its employees and/or its operations.
- 4.5.1.3. Assignment of Cars and Crews. PIR shall be responsible for the assignment of all cars and crews as relates to the Desert Line.
- 4.5.1.4. Dispatching of trains. Subject to dispatching with regard to all joint use facilities and operations pursuant to a joint use rule book promulgated by SD&AE, which directions and rule book shall not unduly interfere with provision of adequate freight service, PIR shall be responsible for dispatching on the Desert Line.
- 4.5.1.5. PIR shall provide all equipment (locomotives, cars and other equipment and buildings or other structures within the Desert Line's right-of-way), maintenance, repair, and supply, car repair and maintenance, and sufficient motive power, including fuel and supplies, and establishing a routine system in order to facilitate operations and compliance with industry rules, regulations and practices.
- 4.5.1.6. Subagreements. PIR shall be responsible for negotiating directly with all connecting railroads with respect to switch charges, divisions of

revenue, car hire agreements, interchange agreements, and clerical/data exchange agreements. PIR may, with the written consent of SD&AE, allow the use of the Desert Line by other railroads for rail freight operations, and may enter into agreements with other railroads for such use.

- 4.5.1.7. Regional Cooperation. PIR shall cooperate in all reasonable respects with BNSF, Union Pacific, the Mexican Government, Port of San Diego, San Diego & Imperial Valley Railroad, and other similar parties to insure an uninterrupted and efficient flow of freight shipments in an economically viable transportation mode as determined by SD&AE with the advice of PIR.
- 4.5.2. Maintenance. PIR shall maintain and safely operate adequate freight service on the Desert Line as provided herein. At minimum, PIR shall maintain the Desert Line infrastructure according to the following standards:
  - 4.5.2.1. General Maintenance, Inspection and Repair. Maintain the Desert Line in compliance with all state and federal statutes, rules and regulations, or as otherwise agreed to by the parties, and upon commencement of Limited Operations as defined in Section 1.2.6, maintain the track on Leased Premises to at least Class II standards, as defined by the Federal Railroad Administration ("FRA") track safety standards, at PIR's own cost and expense and to a standard that is sufficient to continue rail freight service commensurate with the needs of the rail users located thereon, provided that if on the Effective Date the condition of any portion of the Leased Premises is better than Class II standards, that portion of the Leased Premises shall be maintained at no worse condition than exists on the Effective Date.
    - 4.5.2.1.1. PIR's obligations shall include routine inspection and maintenance of the Desert Line (including, but shall not be limited to, highway grade crossings, grade crossing signal protection devices, railroad bridges and trestles, culverts and other structures, signs, road crossing signals, crossings, lighting, sub-roadbed and all other improvements on the Desert Line.)
    - 4.5.2.1.2. PIR's maintenance obligations shall include vegetation control and removal of fire hazards consistent with California Department of Forestry and Fire Protection (Cal Fire) and other related requirements.
    - 4.5.2.1.3. PIR agrees that all grade crossings and grade crossing protection devices will be given a high priority in PIR's maintenance program.

4.5.2.1.4. PIR is expressly prohibited from adding, removing, or modifying any grade crossings (either public or private) or grade crossing protection devices on the Desert Line without prior written consent from SD&AE.

4.5.2.2. Excepted Track. No main line track may be maintained in an Excepted condition.

4.5.2.3. Encroachments. Protect the Desert Line against unauthorized encroachments or uses. Any unauthorized encroachments, uses or third-party damage to the Desert Line shall be reported to SD&AE as soon as reasonably practicable, but no later than ten (10) days, after PIR is on notice of the unauthorized act. Depending on the nature of the encroachment or unauthorized use, PIR and SD&AE will mutually agree on which party will take the lead in removing the encroachment or unauthorized use. SD&AE retains the right to approve encroachments or crossings of the Desert Line right of way. SD&AE agrees to consult with PIR concerning all crossing or related requests. No crossing will be granted if it materially impairs PIR's operations. Any crossings granted will include protections for PIR in the form of third party insurance and indemnification obligations.

## **5. RECORDKEEPING AND SD&AE AUDIT RIGHTS.**

5.1. PIR shall maintain books and records of all operations its conducts on the Desert Line, including revenue, expenses, shipper information, and any other records required by law. SD&AE shall have the right to inspect and audit the books and records of PIR, pertaining to its operations on the Desert Line, at all reasonable times.

5.1.1. Accounting & Reporting. PIR shall report and pay directly to owners of any cars for all mileage and per diem accruing by way of PIR's use of such cars. PIR agrees that it is a signatory to the American Association of Railroads ("AAR") for reporting purposes, and shall abide by AAR rules and regulations. PIR shall indemnify and hold SD&AE and MTS (including its subsidiaries) harmless from any and all liability or claim for such charges.

5.1.2. Periodic Reports to SD&AE. Copies of unaudited financial reports pertaining to PIR and the Desert Line prepared in the normal course of PIR's business shall be provided to SD&AE on a quarterly basis, submitted to SD&AE no later than 45 days after the end of each quarter, commencing with the first quarter report following commencement of Limited Operations as defined in Section 1.2.4 above. Copies of reviewed annual financial statements, reviewed by an independent accounting firm, shall be submitted to SD&AE no later than 90 days after the end of each year end, commencing with the first year end after commencement of Limited Operations as defined in Section 1.2.4 above. SD&AE

shall take the same precautions to protect the confidentiality of non-public financial information provided under this Section that it uses to protect its own confidential non-public financial information. Failure to provide these periodic reports to SD&AE will constitute default or breach under the Lease Agreement in addition to financial penalties under state and federal law.

- 5.1.3. Reports of Agency Contacts. PIR shall make timely and accurate reports to all Mexican, federal, state and local regulatory and safety agencies having jurisdiction over PIR's activities and file with SD&AE one copy of every report filled with a Mexican, federal, state or local regulatory or safety agency at the same time such report is filled with any such agency.
- 5.1.4. Quarterly Reports to SD&AE Board. PIR shall report to the first meeting of the Board of Directors of SD&AE following each quarter-year, both orally and in writing, on the operations of the Desert Line. Included in the report shall be a discussion of those items listed in Section 4.5 of this Agreement and the status of matters in the areas of labor, shippers, or with railroad maintenance. A summary of freight services lost and gained during the quarter shall be included. The report should be concluded with a summary of the expectations of PIR on continued operations.

## **6. PIR COMPLIANCE WITH LAWS**

- 6.1. Local, State and Federal Laws. PIR shall comply with all local, state, and federal laws and regulations applicable to its operations and capital projects, inclusive of but not limited to rules as promulgated by the Federal Railroad Administration and the Surface Transportation Board.
- 6.2. FELA, Railway Labor Act, Federal Locomotive Inspection Act. PIR shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal, state, and local laws, regulations or rules, applicable to the operation, condition, inspection, or safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars and equipment are being operated The Desert Line. PIR shall further indemnify, protect, defend, and hold harmless SD&AE and MTS from and against all fines, penalties, and liabilities imposed upon any party or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in or over the Desert Line, to the extent attributable to any failure of PIR to comply with its obligations in this regard. PIR shall not provide any car cleaning, transloading or removal of any Hazardous Materials (as defined in Section 9.3) from any cars on the Leased Premises, including but not limited to cleaning of any residue material in any tank cars, without SD&AE's prior written consent.
- 6.3. Taxes & Fees. PIR shall be responsible for and pay all taxes due and payable by it as a result of its performance of its obligations hereunder, including, without limitation, all

federal, state, and local taxes or fees. SD&AE and MTS shall be held harmless from, indemnified against, and defended against all claims and liabilities with regard thereto.

- 6.4. Regulatory STB/SD&AE Approval. PIR agrees not to suspend or discontinue any operations provided in this Lease, and, if such operations are subject to Surface Transportation Board ("STB") jurisdiction, such operations shall not be discontinued, over all or any part of the Desert Line without first applying for and obtaining from the STB, SD&AE, and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and necessity or other approvals or exemptions from regulation for such discontinuance of operations over the Desert Line. PIR shall obtain all necessary regulatory approvals required to operate the Desert Line as a common carrier and shall solely be responsible for compliance with all federal, state, and local regulations, including, without limitation, those of the Federal Railroad Administration, Surface Transportation Board, and the State of California.

- 6.4.1. Six Months' Notice Prior to Suspension or Discontinuance. PIR shall not seek such regulatory authority, or if no regulatory authority is needed, take any action to suspend or discontinue its operations on the Desert Line, without first giving SD&AE six (6) months advance written notice of PIR's intent to do so. Notwithstanding PIR's failure to obtain such approvals and provide such advance notice, PIR will remove itself from the premises and will discontinue operations under this Agreement immediately upon termination or expiration of this Agreement by SD&AE.

- 6.5. Environmental Laws. PIR shall comply with all applicable ordinances, regulations, statutes, rules, decisions and orders (including, but not limited to, those relating to safety, rail operations, air and water quality, noise, hazardous substances and hazardous wastes) issued by any court or federal, state or local governmental entity, including without limitation, the federal Department of Transportation, the Federal Railroad Administration, the federal Environmental Protection Agency, the California Environmental Quality Act (CEQA), and the National Environmental Policy Act (NEPA), ("Laws").

## **7. RIGHTS & OBLIGATIONS OF SD&AE**

- 7.1. Reversion of Ownership. Upon a decision by PIR to discontinue providing rail freight service, a failure by PIR to exercise a renewal option, or termination of this Agreement pursuant to Section 8 hereof, exclusive operating rights on the Desert Line shall, subject to approval by the STB, or any successor thereto, revert to SD&AE as the owner of the Desert Line (the "residual common carrier obligation"). The residual common carrier obligation retained by SD&AE, and SD&AE's complete and exclusive ownership of the Desert Line includes the exclusive right to commence abandonment proceedings for the Desert Line or any portion thereof following the termination of this Agreement.
- 7.2. SD&AE Ownership. PIR and SD&AE both acknowledge and agree that SD&AE has and shall continue to have during the term of this Agreement the complete and exclusive



ownership of the Desert Line, including the exclusive right to commence abandonment proceedings for the Desert Line or any portion thereof, following the termination of this Agreement. For all purposes relating to the ownership of the Desert Line, including all filings with or appearances before the STB or any other federal or state authority, SD&AE shall be shown as the owner of the Desert Line.

7.3. Right of Inspection. SD&AE and its agents or its authorized representatives, after three (3) days written prior notice to the PIR (except in an emergency, which for purposes of this Section 5.3 shall mean an immediate risk to human life or of bodily injury or of material damage to the Desert Line), shall have the right to enter at all times the premises, workings or operations of PIR in order to inspect and examine the same for the purpose of ascertaining the conditions of the operation, the methods of operation practiced or any other lawful purpose; provided, however, that such inspections shall not unreasonably interfere with PIR's operations. Additionally, responsible officers of the PIR shall be available to consult with SD&AE from time to time as may be necessary or required by SD&AE in order to advise SD&AE of ongoing activities and services performed by PIR on the Desert Line. It is mutually understood and agreed that SD&AE's agents or authorized representatives, when in or on the Desert Line or any of PIR's operations for any purpose, shall not be regarded under the law or otherwise as employees of the PIR. During any such inspection, PIR shall have the right to have appropriate personnel available to accompany the inspection party. In the event of a dispute between SD&AE and PIR with respect to PIR's fulfillment of its duties under Section 4.4.2 "Maintenance" it is agreed between the parties that an inspection by a qualified third party inspector agreed upon between the parties shall be arranged by the parties and such third party inspector shall inspect those segments or portions of track in dispute and his findings in this regard shall be binding upon the parties. If the parties are unable to agree on a third party inspector, then the parties will engage an FRA inspector to resolve such dispute and his findings in this regard shall be binding upon the parties.

7.4. Joint Inspection. The parties shall, at least once annually, jointly inspect the Desert Line to determine whether the Desert Line has been maintained in accordance with Section 4.5 of this Agreement. SD&AE and its agents or its authorized representatives shall have the right to inspect, at other times determined by SD&AE and after three (3) days written prior notice to PIR (except in an emergency, which for purposes of this Section 5.4 shall mean an immediate risk to human life or of bodily injury or of material damage to the Desert Line), the Desert Line to ascertain whether it has been properly maintained by the PIR, provided, however, that such inspections shall not unreasonably interfere with the PIR's operations. To assist SD&AE in its inspections, the PIR shall provide SD&AE with copies of all FRA inspection reports within sixty (60) days of receipt. If SD&AE and PIR disagree concerning the condition of the Desert Line or any determination by PIR of the appropriate level of maintenance, it is agreed by the parties that an inspection by a qualified representative of the FRA shall be arranged and such representative shall inspect those segments or portions of track in dispute. The representative's findings in this regard shall be binding upon the parties.

- 7.5. Federal Assistance. If PIR makes application for federal grant funding, federal loan assistance, or any other federal, state or local financial aid, redevelopment or other assistance program for rehabilitation of the Desert Line, SD&AE shall, upon the request of PIR, provide reasonable assistance to PIR in PIR's application for purposes of improving freight operations. To the extent that obtaining such funds requires matching funds, any local share of such matching funds shall be the sole obligation of PIR, if it desires to participate. To the extent legally permissible, PIR funds shall be allocated to specific buildings and structures and PIR shall be considered to be the owner of such buildings and structures, provided that upon termination of its contract with SD&AE, for whatever reason, SD&AE shall become the sole owner of all such improvements.
- 7.6. Grant of Access. Notwithstanding any other provision of this Agreement, SD&AE reserves the right to grant access for the installation of telecommunications or other utility facilities along, across, over, in, or on, the real property portion of the Desert Line, and to authorize a grantee to enter upon the Desert Line for purposes of installation, adjustment, relocation, and maintenance of those facilities, provided that such installation, adjustment, relocation, and maintenance does not unreasonably interfere with Lessee's operations.
- 7.7. Future Passenger Service. SD&AE reserves the right to provide passenger and/or commuter rail services on the rail line. Any passenger or commuter services implemented on the line shall have priority over any freight services existing or implemented on the line. Any passenger or commuter services implemented on the Desert Line shall be coordinated with PIR to provide for the safe and efficient operation of services on the line. SD&AE shall have the right at its expense to erect, construct or install any structures, guards, devices, rails, ties, ballast, tracks, sidings, bridges, buildings, stations, communication facilities or other improvements upon the Desert Line for passenger or commuter services. To the extent that passenger and/or commuter rail services have material, adverse impacts on the revenue being generated by PIR, SD&AE agrees to modify the consideration owed to SD&AE under Section 2 to offset the loss of revenues.
- 7.8. Joint Facilities. As to the joint use facilities, SD&AE through San Diego Trolley, Inc. shall have exclusive dispatching control, provided that reasonable provisions shall be made for orderly, scheduled freight service during a nighttime "window" or such other times acceptable to San Diego Trolley, Inc. so as not to unreasonably interfere with PIR's obligation to maintain effective freight service. As to non joint use facilities, PIR shall have exclusive dispatching control, until such time as SD&AE through San Diego Trolley, Inc. require utilization of the Desert Line for passenger or commuter services.
- 7.9. Cooperation with PIR. SD&AE agrees within their resources and without subsidy to:
- 7.9.1. Cooperate with and assist PIR to maintain and obtain all necessary permits, clearances, agreements and other requirements for operations and maintenance.

- 7.9.2. Cooperate with PIR to obtain federal, state, or local grants which may be available from time to time for upgrading or insuring the continued operation of the railroad.
- 7.9.3. Cooperate with and assist PIR with regard to negotiations with BNSF, UP, the Mexican Government, Port of San Diego and other federal, state and local governmental agencies as may be appropriate to insure continued and expanded freight service.
- 7.9.4. Assist PIR to the maximum extent feasible in the solicitation of additional shipments by rail; and
- 7.9.5. Work with PIR to insure that track design, construction and operating schedules for transit operations are planned and implemented to insure minimum disruption of either freight service or passenger service.

## **8. TERMINATION**

- 8.1. Upon default of PIR hereunder, SD&AE may terminate this Agreement at any time, upon furnishing 30 days written notice to PIR of its default, except that such notice with regard to payment of monies shall be 10 days, provided that if such default is cured within the applicable notice period, this Agreement shall continue in full force and effect, and such notice of default shall be deemed rescinded.
- 8.2. Causes for termination of PIR for default shall be as follows:
  - 8.2.1. Failure to meet the Performance Milestone Requirements set forth in Section 1.
  - 8.2.2. Failure to provide freight services as required under this Agreement or by the Surface Transportation Board.
  - 8.2.3. A filing of bankruptcy by PIR, or assignment for the benefit of creditors, or actual insolvency.
  - 8.2.4. Failure to maintain the right-of-way and physical properties in accordance with the terms hereof.
  - 8.2.5. A course of conduct of operation by PIR in a manner which, upon proper administrative hearings, is found to jeopardize the health or safety of the general public.
  - 8.2.6. Failure of PIR to make required payments to SD&AE.
  - 8.2.7. Any other material violation of the terms of this Agreement, including the payment of monies.

- 8.3. If the default (other than the payment of money) of PIR cannot be cured within 30 days, then provided PIR commences such cure within the 30-day period, and diligently in good faith proceeds to complete such cure, then the time within which such default must be cured shall be extended for a time which is reasonable under all the circumstances.
- 8.4. In addition, the parties agree that in the event of termination, a final accounting shall be rendered by an independent certified public accountant experienced in railroad accounting, mutually agreeable to the parties, the cost of which shall be equally shared between the parties, and that the indicated final settlements shall be paid by the appropriate party within 30 days' notice, or may be withheld from funds, which would otherwise be payable, as such accountant shall deem appropriate.
- 8.5. PIR may, at any time after the initial term of this Agreement, terminate this Agreement by providing six (6) months' advance notice. In the event of such termination, the parties agree that a final accounting shall be rendered by an independent certified public accountant under the same terms and conditions outlined above.
- 8.6. Both parties recognize that the termination and replacement of PIR may require prior CPUC and STB approval before such termination or replacement can be effective, and agree to cooperate in effecting an orderly transfer of responsibilities and to abide by related final PUC and final STB findings, subject to the right of such party to appeal such findings to a court of competent jurisdiction.

## **9. INSURANCE AND INDEMNIFICATION**

- 9.1. Except as provided herein, MTS or its agents, directors, officers and employees, shall not be held liable for any claims, liabilities, penalties, fines or for damage to any goods, properties or effects of any person whatsoever, nor for personal injuries to or deaths of them, or any of them, caused by or resulting from any acts or omissions of PIR, its agents, employees, independent contractors, joint ventures, partners or representatives (including, but not limited to failure to comply with any obligation under Section 2); PIR further agrees to indemnify and save free and harmless MTS and its authorized agents, directors, officers and employees against any of the foregoing liabilities and any cost and expense, including reasonable attorney's fees incurred by MTS on account of any claim therefore, including claims by reason of alleged defects in service, changes in services, or any other work or services done or provided by PIR pursuant to this Agreement.
- 9.2. PIR, its agents, directors, officers and employees shall not be held liable for damage to any goods, properties or effects of any person whatsoever, nor for personal injuries to or deaths of them, or any of them, caused by or resulting from any acts or omissions of MTS, SD&AE or their respective agents, employees, independent contractors, joint ventures, partners or representatives (including but not limited to failure to comply with any obligation under Section 3); MTS further agrees to indemnify and save free and harmless PIR and its authorized agents, directors, officers and employees against any of the foregoing liabilities and any cost and expense, including reasonable attorney's fees incurred by PIR on account of any claim therefore, including claims by reason of alleged

defects in services, changes in services, or any other work or services done or provided pursuant to this Agreement.

- 9.3. Insurance Required. During the performance of services hereunder PIR shall maintain policies of insurance as described below. Prior to beginning work, PIR shall furnish evidence of insurance satisfactory to the Chief Executive Officer of MTS as to contents and insurance carriers which will contain a provision for 30 days prior written notice to the Chief Executive Officer of any cancellation, reduction, or any material change in coverage. The insurance required shall be as follows:

- 9.3.1. Comprehensive Railroad Liability insurance for bodily injury (including death) to persons, and property damage including damage to the environment, which provides total limits of not less than \$100 million per occurrence, subject to a self-insured retention of a dollar amount acceptable to MTS. Coverage included shall be:

9.3.1.1. Premises and operations;

9.3.1.2. Products/completed operations;

9.3.1.3. Contractual liability expressly including liability assumed under this Agreement, with deletion of the exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, underpass and crossway;

9.3.1.4. Explosion, collapse, and underground hazards;

9.3.1.5. Personal injury liability with standard exclusions a) liability assumed under contract and b) suits brought by employees deleted;

9.3.1.6. Independent contractors;

9.3.1.7. Deletion of any exclusion applicable to MTS/SD&AE/SDTI property in Contractor's care, custody, and control.

9.3.1.8. Cross liability clause providing that the insurance applies separately to each insured except with respect to the limits of liability. Such insurance shall include the following endorsements, copies of which shall be provided:

9.3.1.9. Inclusion of the San Diego Metropolitan Transit System (MTS), the San Diego and Arizona Eastern Railway Company (SD&AE) and the San Diego Trolley, Inc. (SDTI), their directors, officers, agents and employees as additional insureds as respects services or operations under this Agreement performed by or on behalf of PRI.

- 9.3.1.10. Stipulation that the insurance is primary insurance and that no insurance of MTS/SD&AE/SDTI will be called upon to contribute to a loss.
- 9.3.1.11. Claims made under the Federal Employers Liability Act.
- 9.3.1.12. Coverage for the release of pollutants and Hazardous Materials.
- 9.4. Comprehensive Automobile Liability Insurance for bodily injury (including death) and property damage which provides total limits of not less than \$5 million combined single limit per occurrence applicable to all owned, non-owned, and hired vehicles.
- 9.5. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease, with an insurer's waiver of subrogation in favor of MTS/SD&AE/SDTI, their directors, officers, representatives, agents and employees.
- 9.6. Contractors equipment insurance on all "all-risk" basis covering equipment owned, leased or used by Contractor. Such insurance shall include an insurer's waiver of subrogation in favor of MTS/SD&AE/SDTI. Contractor hereby releases and holds harmless MTS/SD&AE/SDTI for any loss or damage to its equipment.
- 9.7. "All Risk" Property insurance for all MTS railroad assets utilized within the Scope of this Agreement, and in the care, custody and control of contractor, for the full replacement cost of such property. Coverage for the perils of earthquake and flood should be included at a limit of not less than \$10 million per occurrence. Coverage shall be subject to a deductible of a dollar amount acceptable to MTS.
- 9.8. Environmental Legal Liability for bodily injury and property damage arising out of PRI operations within the scope of this agreement, including clean-up costs resulting from a pollution condition, in the amount of \$10,000,000 per occurrence. Coverage shall be subject to a deductible of a dollar amount acceptable to MTS. MTS/SD&AE/SDTI, its officers, officials, employees, and volunteers are to be covered as additional insureds on this policy with respect to liability arising out of work or operations performed by or on behalf of PRI.
- 9.9. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:
  - 9.9.1. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to MTS.
  - 9.9.2. Claims Made Policies: If any of the required policies provide claims-made coverage:
    - 9.9.2.1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.

9.9.2.2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

9.9.2.3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

9.9.3. Verification of Coverage. PRI shall furnish MTS with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by MTS before work commences, and annually thereafter. However, failure to obtain the required documents prior to the work beginning shall not waive the PRI's obligation to provide them. MTS reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

9.9.4. Special Risks or Circumstances. MTS reserves the right to modify these requirements, including limits and type of insurance required, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## **10. GENERAL PROVISIONS.**

10.1. Status of PIR. PIR is an independent contractor, and in no way shall it be deemed to be an affiliate, partner, subsidiary, joint venturer, or associated in any manner whatsoever with SD&AE or MTS.

10.2. Conflict of Interest. No employee, officer, or Board member of SD&AE or MTS shall have a financial or other personal interest in this Agreement, or any contract or subcontract, or with PIR, in any way directly or indirectly.

10.3. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. PIR's rights hereunder shall not be assignable whether by way of assignment, sublease, license or otherwise, directly or indirectly, without SD&AE's prior written consent, except that an assignment to a wholly owned subsidiary may be accomplished upon notice to SD&AE, and provided that such assignment shall not relieve PIR of any of its obligations hereunder except as agreed upon by SD&AE. This Agreement is not intended, nor shall it be construed to be for the benefit of any person or entity not a party to this Agreement.

10.4. Warranties and Representations.

10.4.1. MTS and SD&AE each warrants and represents to Operating Company as follows:

10.4.1.1. That it is duly organized, validly existing and in good standing under the laws of, as to MTS, the State of California and as to SD&AE, the State of Nevada.

10.4.1.2. That it has the power and authority to enter into this Agreement to carry out its obligations under this Agreement.

10.4.1.3. That entering into and performance of this Agreement on the part of such party does not violate any agreement with any person or entity, statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body, or its organic documents applicable to the parties hereto.

10.4.1.4. That the execution of this Agreement and the operation of the rail freight service shall not violate any agreement with any person or entity, statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency, or governmental body applicable to the parties hereto.

10.4.2. PIR warrants and represents to SD&AE and MTS as follows:

10.4.2.1. That it is duly organized, validly existing and in good standing under the laws of the State of Delaware.

10.4.2.2. That it has the power and authority to enter into this Agreement to carry out its obligations under this Agreement.

10.4.2.3. That entering into and performance of this Agreement on the part of such party does not violate any agreement with any person or entity, statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body, or its organic documents applicable to the parties hereto.

10.4.2.4. That the execution of this Agreement and the operation of the rail freight service shall not violate any agreement with any person or entity, statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency, or governmental body applicable to the parties hereto.

10.5. Notice.

10.5.1. Any notice required or permitted under this Agreement shall be in writing and may be personally served on the other party, by the party giving notice, or may be served by United States Mail to the following address, or such other addresses/persons as the parties may direct:



10.5.1.1. SD&AE

Paul C. Jablonski  
President  
San Diego & Arizona Eastern Railway Co.  
1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101

10.5.1.2. PIR

Donald J. Stoecklein  
President  
Pacific Imperial Railroad, Inc.  
401 West A Street, Suite 1150  
San Diego, California 92101

10.5.1.3 MTS

Paul C. Jablonski  
Chief Executive Officer  
San Diego Metropolitan Transit System  
1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101

- 10.6. Attorneys' Fees and Costs. In the event any party to this Agreement brings legal action or requests arbitration to enforce its rights hereunder, the court or arbitrator shall have discretion to award the prevailing party reasonable attorney's fees and costs.
- 10.7. Choice of Law. This Agreement shall be interpreted in accordance with the statutes and laws of the United States of America and the State of California.
- 10.8. Severability. If any term, covenant, condition or provision (or part thereof) of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision (or remainder thereof) to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.
- 10.9. Force Majeure. The parties hereto will be excused from performance of any of their respective obligations hereunder, during the existence of and occasioned by any event beyond their respective control (not due to their own fault or actions inconsistent with good faith operations under this Lease), which shall include without limitation, actions of Mexican, federal, state or local agencies; acts of God; strikes or other labor troubles beyond the reasonable anticipation or control of the parties; temporary interruption of service caused by explosions, fires, vandalism, malicious mischief, and unavoidable

interruption or cessation of service by a connecting railroad. However, nothing herein shall relieve the parties of their respective obligations to undertake all reasonably available actions necessary and all possible reasonable corrective measures to resume the provision of freight services to customers of the railroad and specifically the obligations of PIR as set forth in Section 4 of this Lease.

10.10. Dispute Resolution. The parties acknowledge and agree that this Agreement and any dispute hereunder shall be subject to and governed by the dispute resolution provisions set forth in this section 10.10.

10.10.1. Informal Resolution. SD&AE and PIR recognize that disputes as to certain matters may from time to time arise during the effectiveness of this Agreement which relate to either party's rights and/or obligations hereunder or thereunder. It is the objective of the parties to establish procedures to facilitate the resolution of disputes arising under any of the Agreements in an expedient manner by mutual cooperation and without resort to litigation. To accomplish this objective, the parties agree to follow the procedures set forth in this Article if and when a dispute arises under any of the Agreements. In the event of a dispute between the Parties, any party may, by written notice to the other, have such dispute referred to their respective chief executive officers for attempted resolution by good faith negotiations within fourteen (14) days after such notice is received. In the event the chief executive officers are not able to resolve such dispute, either party may at any time after the fourteen (14) day period seek to resolve the dispute through the other means provided in Section 10.10.2.

10.10.2. Mediation. If the informal efforts outlined in Section 10.10.1 are unsuccessful, then the Parties agree to participate in mediation. Within five (5) business days of the request of any party, the parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. If the Parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may arrange for the office of the American Arbitration Association in downtown San Diego, California, to perform the mediation. The initiating party shall then schedule the mediation so that it is conducted within five (5) business days of the mediator's appointment. The costs of the mediation and fees of the mediator, if any, shall be shared equally by the Parties.

10.10.3. Any dispute not resolved through the mediation required by Section 10.10.2 may proceed to litigation unless the Parties agree in writing to submit the dispute to binding arbitration.

[Signature Page to Follow]

In Witness Whereof, each of the parties has caused this Agreement to be duly executed on its behalf as of the day and year first above written.

**San Diego and Arizona Eastern Railway Company**  
a Nevada nonprofit corporation

By: \_\_\_\_\_  
Paul C. Jablonski  
President

**Pacific Imperial Railroad**  
a Delaware corporation

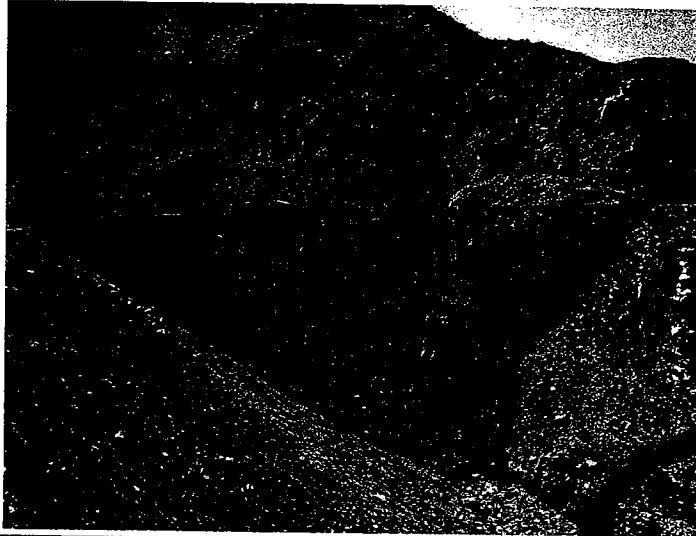
By: \_\_\_\_\_  
Donald Stoecklein  
President

**San Diego Metropolitan Transit System**  
a California Public Agency

By: \_\_\_\_\_  
Paul C. Jablonski  
Chief Executive Officer



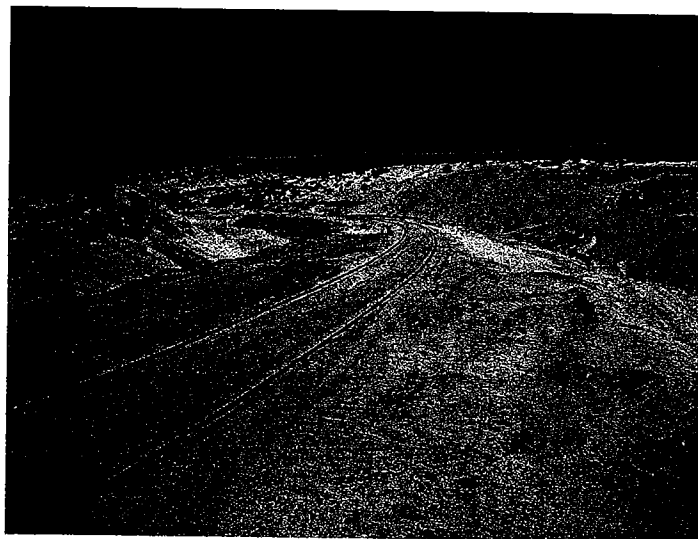
**Goat Canyon Trestle Looking South**



**MTS**



(3)



**MTS**



(4)

### Timeline:

- 1979 - Purchase of SDAE
- 1984 - Operating Agreement with Rail America's predecessor in interest (good thru 2034)
- 2002 - Sub-Operating Agreement with Carrizo Gorge Railway (CZRY)
- 2008-2012 - CZRY shareholder disputes
- 2012 - Assignments to PIR



5

### Proposed Agreement Terms

- Upto 99 year term
- Estimated \$50-100 million investment
- Performance Milestones for first 5 years:
  - Business Plan (30 days) - January 2013
  - Reconstruction Plan (90 days) - March 2013
  - Initial Repairs (12 months)/Test Train Op (13 months) - December 2013 & January 2014
  - Limited Operations (36 months) - December 2015
  - Full Scale Repairs (60 months)/Full Scale Op (61 months) - December 2017 & January 2018



6

## Proposed Agreement Terms

- Agreement provides detailed specifications for repairs and maintenance, with MTS review and approval rights
- Compensation:
  - Minimum \$1,000,000 per year (first \$500K payment due July 1, 2013) or
  - 15% of gross freight revenues



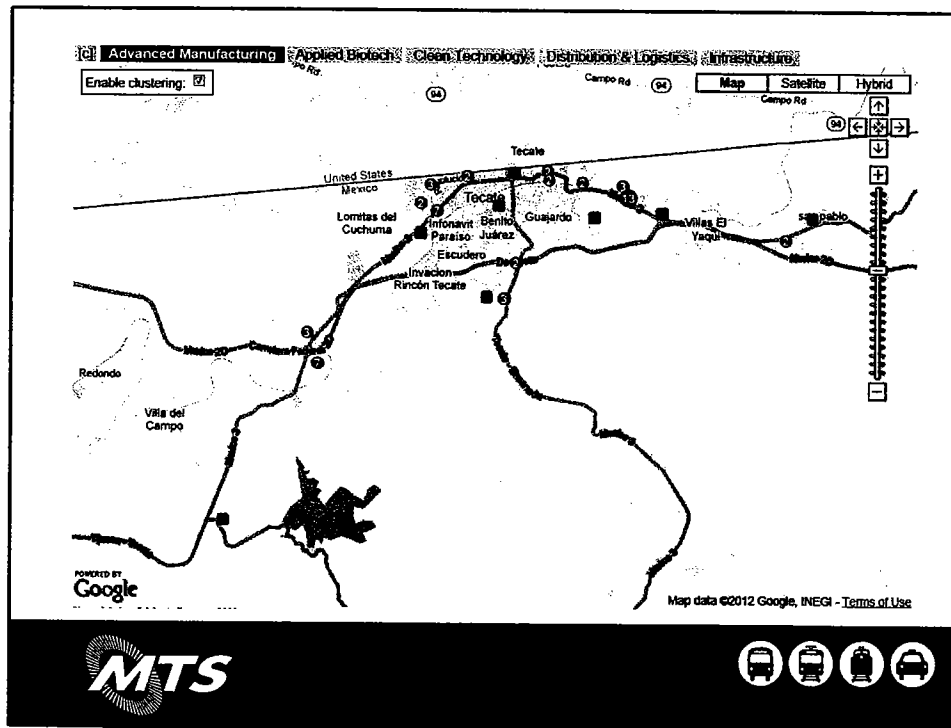
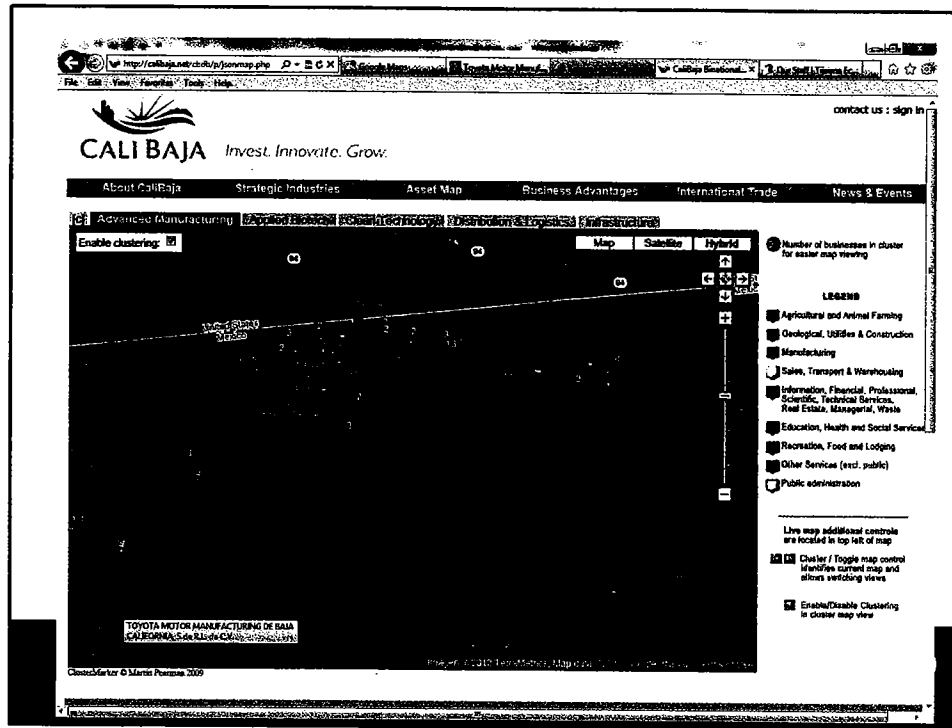
⑦

## Market Conditions

- Priority project for Toyota (time sensitive)
- Extremely favorable terms for MTS
- Will reduce truck traffic at border entry points
- Improve supply chain for shipment of parts and products between US and Mexico manufacturing operations



⑧





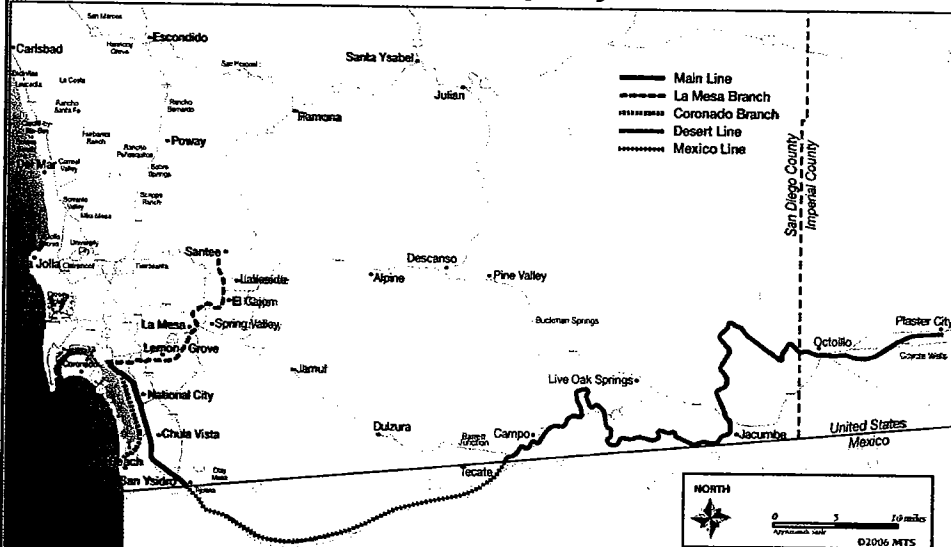
## Staff Recommendation

- Authorize CEO to execute Amended and Restated Operating Agreement and Lease with Pacific Imperial Railroad, Inc.



11

## SD&AE Property



12



AGENDA ITEM NO.

30

## REQUEST TO SPEAK FORM

ORDER REQUEST RECEIVED

1

PLEASE SUBMIT THIS COMPLETED FORM (AND YOUR WRITTEN STATEMENT)  
TO THE CLERK OF THE BOARD PRIOR TO DISCUSSION OF YOUR ITEM

## 1. INSTRUCTIONS

This Request to Speak form must be filled out and submitted in advance of the discussion of your item to the Clerk of the Board (please attach any written statement to this form). Communications on hearings and agenda items are generally limited to three minutes per person unless the Board authorizes additional time; however, the Chairperson may limit comment to one or two minutes each if there are multiple requests to speak on a particular item. General public comments on items not on the agenda are limited to three minutes. Please be brief and to the point. No yielding of time is allowed. Subjects of previous hearings or agenda items may not again be addressed under General Public Comments.

(PLEASE PRINT)

DATE	12/13/2012		
Name	Geoffrey T. Scheuerman		
Address	3749 Kingsley St. San Diego CA 92106		
Telephone	(619) 340-6541		
Organization Represented	Corrizo Gorge Railway Inc		
Subject of Your Remarks	Fraud Complaint against principles of PIR		
Regarding Agenda Item No.	30		
Your Comments Present a Position of:	<input type="checkbox"/>	SUPPORT	<input checked="" type="checkbox"/> OPPOSITION

## 2. TESTIMONY AT NOTICED PUBLIC HEARINGS

At Public Hearings of the Board, persons wishing to speak shall be permitted to address the Board on any issue relevant to the subject of the Hearing.

## 3. DISCUSSION OF AGENDA ITEMS

The Chairman may permit any member of the public to address the Board on any issue relevant to a particular agenda item.

## 4. GENERAL PUBLIC COMMENTS ON MATTERS NOT ON THE AGENDA

Public comment on matters not on the agenda will be limited to five speakers with three minutes each, under the Public Comment Agenda Item. Additional speakers will be heard at the end of the Board's Agenda.

NOTE: Subjects of previous hearings or agenda items may not again be addressed under General Public Comments.

December 12, 2012

Chairman Mathis, Members of the Board of Directors of MTS, Members of the Board of Directors of SD&AE and Ms. Landers:

On December 13, 2012, the Meeting of the MTS Board of Directors is scheduled to hear Agenda Item No. 30 "Operating Agreement and Lease for Desert Line with Pacific Imperial Railroad, Inc. (PIR) (Karen Landers)." The purpose of this communication is to ask the MTS Board of Directors to consider tabling any action on Agenda Item No. 30 while it takes into account the very recent and very closely related fraud action filed December 5, 2012 against Donald Stoecklein, president of PIR, and Charles McHaffie, president of CZRY and consultant to PIR.

The fraud action takes the form of a Complaint filed in San Diego County Superior Court by Amad Attisha, Mark Arabo and Bashar Aballo (Plaintiffs). All are represented by Joseph Samo and Christine Gilbert of the Law Offices of Joseph Samo. A copy of the Complaint is attached for convenience.

In the Complaint, Plaintiffs allege Eduardo Valerio introduced them to Donald Stoecklein and Charles McHaffie. Eduardo Valerio is a reported associate of Nick Inzunza, a former local politician who, when running for state assembly on the platform of improving the lives of poor people, was outed by the San Diego Union Tribune December 15, 2005 for very public indiscretions related to being somewhat of a slumlord. Mr. Inzunza subsequently withdrew from political office.

Valerio introduced McHaffie as a "silent investor" and Stoecklein as an attorney who would represent Plaintiffs in the purchase of a 50% share of the restaurant "Seau's" in the days following the recent death of Junior Seau. Valerio indicated to Plaintiffs he, too, was an investor in Seau's.

The MTS Board of Directors may recall it was informed at an earlier meeting in July 2012 that Gina Seau, former wife of Junior Seau, sued Charles McHaffie for fraud arising out of monies given to McHaffie that ended up being invested in a railroad. As it turns out, Plaintiffs Attisha, Arabo and Aballo are claiming McHaffie and Stoecklein perpetrated that same fraud.

The MTS Board of Directors may recall it was informed at an earlier meeting in July 2012 that Donald Stoecklein agreed to an Administrative Offer and Settlement with the SEC (Securities and Exchange Commission) and agreed to an Order Instituting Cease and Desist proceedings against him under the '33 and '34 Acts. Here, Donald Stoecklein is accused of fraud and breach of fiduciary duty arising out of investment monies he held in trust.

The MTS Board of Directors may recall it was informed at an earlier meeting in July 2012 that Charles McHaffie recently consented to a six-figure fraud judgment against him and additionally consented to a mid-six-figure IRS judgment against him for non-payment of CZRY payroll taxes. Here, Charles McHaffie is accused on master-minding a mid-six-figure fraud against innocent persons.

Finally, the MTS Board of Directors may recall it was informed at an earlier meeting in July 2012 that on May 30, 2012, Karen Landers, General Counsel of MTS, submitted a declaration under penalty of perjury that stated as follows (paraphrased for brevity here as the complete content of her declaration was previously provided July 2012):

- Ms. Landers declared PIR has the ability to finance this project as opposed to CZRY; that MTS met with PIR and its bankers and confirmed “the project is moving forward and that PIR appears able to obtain the financing needed. This financing will be secured by assets controlled by PIR and not associated with CZRY” and that if PIR “is unable to fulfill its obligation...then it is not in MTS or the public’s interest to allow them to continue in an exclusive operating rights position.”

Here, fraudulently taking money from innocent third parties cannot under any circumstances be interpreted as supporting the declaration made by Ms. Landers “that PIR appears able to obtain the financing needed.” Unless fraud is a form of acceptable financing, that is.

As stated in the Complaint, Plaintiffs handed \$400,000 to Stoecklein for the purchase of their share of Seau’s and were given assurances by Stoecklein, McHaffie and Valerio the purchase of the restaurant was “going through fine.” Though Plaintiffs were given assurances by Stoecklein he “could be trusted,” Stoecklein, according to the Complaint, wrongfully took all of Plaintiffs’ money and instead and without Plaintiffs’ knowledge or permission, invested the money in his private railroad partnership with McHaffie.

That railroad partnership is, of course, PIR, and it also sheds light on McHaffie’s role as a silent owner of PIR. Coincidentally, the large amount of money taken by Stoecklein and McHaffie almost matches the amount they owe MTS under the proposed terms being considered in Agenda Item No. 30.

After the fraud was discovered, McHaffie and Stoecklein shamelessly tried to convince Plaintiffs to let McHaffie and Stoecklein keep the money as an investment in PIR. Plaintiffs declined because of the fraud and filed the Complaint in order to recover their monies which McHaffie and Stoecklein refuse to return or are incapable of paying back. Plaintiffs also seek punitive damages.

The MTS Board of Directors in addition to the Board of SD&AE and Karen Landers have been cautioned on several occasions about the character, reputation and intentions of Stoecklein and McHaffie. The very serious allegations provided in the referenced Complaint provide further and strong proof McHaffie and Stoecklein, acting as partners, committed fraud on innocent third parties in order to make themselves appear financially competent and viable to MTS and SD&AE when in fact they are not. How else can MTS and SD&AE explain why McHaffie and Stoecklein, an attorney entrusted with the highest of fiduciary duties, would take an innocent person's money and hold it out and use it as their own? At least until they got caught. Again.

Anyone who provides information such as I am providing here can always be questioned for bias. Do I have a bias? Yes, I admittedly do. However, I am a concerned citizen foremost. And where fraud goes, trouble always follows. I do not want to see MTS bless the fraudulent circumstances underlying Agenda Item No. 30 without further, much more careful consideration. Litigation is underway and more is likely forthcoming on this issue.

What are MTS' and SD&AE's biases? How does rushing the approval of Agenda Item No. 30 protect the public? The public will want to know why, for example, negotiations for Agenda Item No. 30 have always been held behind closed doors with persons now accused in public of perpetrating a fraud. What did MTS and SD&AE know in advance about this and, if it knew nothing of the fraudulent conduct of McHaffie and Stoecklein but do now, are they prepared to tacitly approve that fraud by rushing to judgment and approving Agenda Item No. 30?

Clearly, if the leaders and founders of PIR had to resort to fraud to obtain money and cannot now even afford to pay that money back, then one would think PIR, as Ms. Landers so accurately presaged in her sworn declaration, "is unable to fulfill its obligation [and] it is not in MTS or the public's interest to allow them to continue in an exclusive operating rights position."

Under the circumstances, it is very necessary for MTS to not approve Agenda Item No. 30 at this time as PIR is clearly not able to fulfill its obligations and doesn't even have any money, apparently. At least not any rightfully its own even after over a year and one half of planning and seeking such financing.

2012 DEC -5 P 3:44

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

Joseph Samo (California Bar Number 208836)  
Christine Gilbert (California Bar Number 272834)  
LAW OFFICES OF JOSEPH SAMO  
2221 Camino Del Rio South #207  
San Diego, CA 92108  
Telephone: (619) 672-1741  
Facsimile: (619) 795-2908  
Joseph@Samolaw.com

Counsel for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN DIEGO**

Case No.: 37-2012-00086988-CU-FR-CTL

AMAD ATTISHA, an individual, MARK  
ARABO, an individual, BASHAR BALLO, an  
individual,

Plaintiffs,

v.

DON STOECKLEIN, an individual,  
STOECKLEIN LAW GROUP, LLP, a limited  
liability partnership, EDUARDO VALERIO, an  
individual, CHARLES MCHAFFIE, an  
individual, AND DOES 1 through 10,

Defendants.

**COMPLAINT FOR DAMAGES BASED  
ON:**

- (1) FRAUD
- (2) LEGAL MALPRACTICE
- (3) NEGLIGENT  
MISREPRESENTATION
- (4) PROFESSIONAL NEGLIGENCE
- (5) BREACH OF FIDUCIARY DUTY
- (6) BREACH OF IMPLIED COVENANT  
OF GOOD FAITH AND FAIR  
DEALING

Plaintiffs AMAD ATTISHA, MARK ARABO, and BASHAR BALLO, complain and allege as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff AMAD ATTISHA is an individual who is a resident of San Diego County, California.
2. Plaintiff MARK ARABO is an individual who is a resident of San Diego County, California.

- 1 13. Plaintiffs asked STOCKLIEN several questions regarding his experience in these types of  
2 investments, who he would represent, and if they could trust Mr. Stocklien to hold such a  
3 large amount of money in escrow.
- 4 14. STOCKLIEN insisted he could be trusted, he would help represent Plaintiffs in the purchase  
5 of Seau's and Plaintiffs had nothing to worry about.
- 6 15. Plaintiffs agreed to hire STOCKLIEN as their attorney to represent them as partners going  
7 into this purchase, and they entered into a fee agreement with STOCKLIEN. (Exhibit 1).
- 8 16. Plaintiffs handed STOCKLIEN \$400,000 for the purchase of Seau's. STOCKLIEN also  
9 helped advise Plaintiffs on the entity to be established, and how the partnership would run.
- 10 17. According to STOCKLIEN, Plaintiffs had to sign a release of some of their funds so he could  
11 transfer the money as soon as the deal had gone through, and he had already started talking to  
12 Seau's attorneys about the deal. Plaintiff MARK ARABO signed the release. (Exhibit 2).
- 13 18. VALERIO introduced a silent investor by the name of CHARLES MCHAFFIE  
14 ("MCHAFFIE").
- 15 19. Plaintiffs met again with Defendant STOCKLIEN, and the steps of the purchase were  
16 reviewed. STOCKLIEN told Plaintiffs about each step of the purchase that needed to happen,  
17 including a purchase of the Furniture, Fixtures, and Equipment, licenses that were needed,  
18 and other paper work that STOCKLIEN, VALERIO and MCHAFFIE would take care of.  
19 STOCKLIEN assured Plaintiffs he had already begun negotiations with the attorney's at  
20 Seau's.
- 21 20. DON STOCKLIEN, CHARLES MCHAFFIE, and EDUARDO VALERIO all assured  
22 Plaintiffs the deal was going through fine, and the Furniture, Fixtures and Equipment  
23 (FF&Es) had been purchased.
- 24 21. DON STOCKLIEN told Plaintiffs he was still working on the purchase deal with the  
25 attorney's from Seau's, and CHARLES MCHAFFIE was working on purchasing things for  
26 the restaurant. Plaintiffs were told by STOCKLIEN and VALERIO that VALERIO had  
27 invested his money as well.

- 1 22. However, as it turns out, Plaintiffs money was used by DON STOECKLEIN, CHARLES  
2 MCHAFFIE, and EDUARDO VALERIO on other 'investments' Plaintiffs were not involved  
3 in, including a purchase of a railroad by DON STOCKLIEN and CHARLES MCHAFFIE.  
4 23. In July, 2021, Plaintiffs learned a church had purchased Seau's even though this was never  
5 mentioned by DON STOCKLIEN, CHARLES MCHAFFIE, or EDUARDO VALERIO,  
6 even though STOCKLIEN continuously assured Plaintiffs the deal had gone through.  
7 24. Once Plaintiff's realized their money was being used for things other than the Seau's deal,  
8 they requested to have their money back from DON STOCKLIEN, who promised to hold it  
9 only for the purchase of Seau's. (Exhibit 3).  
10 25. Defendant MCHAFFIE and the other defendants wanted us to invest in. The investment is a  
11 lease of a short railroad system that goes from San Diego to Yuma through cross border  
12 agreements they have with Mexico.  
13 26. Some of the money was finally returned, but DON STOCKLIEN, CHARLES MCHAFFIE  
14 and EDUARDO VALERIO spent \$145,000 of Plaintiffs' money before the money was  
15 returned.  
16 27. Plaintiffs have requested to have their \$145,000 that was wrongfully spent on things  
17 unrelated to the Seau's deal by all of the Defendants.  
18 28. Defendants have failed to give back this money.

19  
20 **FIRST CAUSE OF ACTION**

21 (Fraud against All Defendants)

- 22 29. Plaintiff's re-allege and incorporate herein by reference Paragraphs 1 through 27, inclusive,  
23 of this Complaint as though fully set forth herein.  
24 30. Defendants and each of them engaged in a course of fraudulent conduct to solicit funds for  
25 investments without disclosing the true nature of the investment and purposely  
26 misrepresenting what the investment was for.  
27



1 31. Defendants represented that the risk of such investments was low when in fact it was a  
2 completely different high risk investment which was never returned. Said representation was  
3 made to induce plaintiffs to part with their funds and place them at risk.

4 32. Plaintiffs relied on the representations of Defendants and lost \$145,000 of their investment,  
5 not including profits that would be received had the investment been legitimate.

6 33. As a proximate cause of said fraudulent representations the Plaintiff has been damaged.

7  
8 **SECOND CAUSE OF ACTION**

9 (Legal Malpractice against DON STOECKLEIN and STOECKLEIN LAW GROUP, LLP)

10 34. Plaintiffs hereby incorporate herein by reference Paragraphs 1 through 32 of this Complaint  
11 as though fully set forth herein.

12 35. Defendant, DON STOECKLEIN, was a member of the California Bar and represented  
13 plaintiffs on an investment matter.

14 36. An attorney-client relationship was formed and created between plaintiffs and defendants  
15 STOECKLEIN and STOECKLEIN LAW GROUP, LLP.

16 37. As a result of this relationship, Defendants had a duty to represent Plaintiffs to the very best  
17 of their ability and with undivided loyalty, and to use such skill, prudence, and diligence as  
18 other members of the professional community commonly possess and exercise.

19 38. Plaintiffs invested \$400,000 into a joint venture purchase of a restaurant. The money was  
20 controlled by Defendant STOECKLEIN. STOECKLEIN assured Plaintiffs he would hold the  
21 money in a trust and only release the money specifically for the purchase of the restaurant.

22 39. STOECKLEIN advised Plaintiffs on the partnership formed between Plaintiffs and  
23 Defendants VALERIO and MCHAFFIE. Defendant STOECKLEIN assured Plaintiffs would  
24 not lose any money and would most likely make many hundreds of thousands of dollars of  
25 profits in the restaurant.

26 40. Plaintiffs relied on the advice of attorney STOECKLEIN and gave STOECKLEIN \$400,000  
27 in cash. Thereafter, Defendant STOECKLEIN repeatedly assured Plaintiff s this investment

1 was safe and STOECKLEIN would make sure that no loss occurred to plaintiffs as a result of  
2 making said investment.

3 41. STOECKLEIN misrepresented to Plaintiffs he had been dealing with the attorney's at Seau's  
4 and needed a release of the money in order to further the purchase of the restaurant. Plaintiffs  
5 agreed to release the money so the deal could go through.

6 42. In July of 2012, Plaintiffs found out another entity had purchased the restaurant they believed  
7 they had purchased with the help of their attorney, Defendant STOECKLEIN.

8 43. Plaintiffs have not received \$145,000 of the original investment, money for the loss of the  
9 use of the funds since May 29, 2012, or any profits as promised at the time of the initial  
10 investment.

11 44. Defendant STOECKLEIN violated his standard of care expected from a licensed attorney by  
12 representing Plaintiffs when a clear conflict existed with Defendant STOECKLEIN's  
13 partnership with MCHAFFIE. Defendant STOECKLEIN violated his standard of care  
14 expected from a licensed attorney by misrepresenting the purchase with Seau's as going  
15 through, when in reality he was using Plaintiffs' money to purchase a railroad for himself.  
16 Defendant STOECKLEIN violated his standard of care expected from a licensed attorney by  
17 helping form the partnership without explaining any conflict of interest that existed at the  
18 present time or may form in the future, both with a future conflict that may arise between  
19 Plaintiffs, Defendant MCHAFFIE, and Defendant VALERIO, and also the present conflict  
20 which existed between STOECKLEIN's partnership with MACCASSIE.

21 45. Despite this knowledge Defendant STOECKLEIN encouraged the investment, received the  
22 money and issued a receipt therefore. Plaintiffs trusted the fact Defendant STOECKLEIN  
23 was a member of the California Bar and he had a fiduciary duty to protect Plaintiffs from any  
24 undisclosed risk with respect to any investment that Defendant STOECKLEIN recommended  
25 or helped with.

26 46. Plaintiffs are informed and believe and thereon allege Defendant STOECKLEIN had an  
27 undisclosed interest in Plaintiff's money and the investment with MCHAFFIE, and thus had  
28

1 a conflict of interest with respect to his recommendation to Plaintiffs. This undisclosed  
2 conflict of interest would make Defendant STOECKLEIN liable for all losses incurred by  
3 Plaintiffs as a result of the investment. The undisclosed conflict of interest constitutes  
4 malpractice.

5 47. STOECKLEIN and STOECKLEIN LAW GROUP LLP breached the duties owing to  
6 Plaintiffs by the actions hereinabove alleged.

7 48. As a direct result of the negligence of Defendants and the Defendants failure to use due care  
8 as alleged herein, Plaintiffs have suffered, and will continue to suffer in the future, damages,  
9 the full extent of which are unknown at this time but which will be made according to proof  
10 at the time of trial.

11 49. The actions hereinabove alleged were done with a conscious disregard of the rights and  
12 safety of Plaintiffs, and constitute malice, fraud and oppression, thereby entitling plaintiffs to  
13 recover punitive damages under Civil Code Section 3294 in an amount to punish and deter  
14 the defendants and each of them.

15  
16 **THIRD CAUSE OF ACTION**

17 (Negligent Misrepresentation against all Defendants)

18 50. Plaintiffs incorporate by reference as though fully set forth all of the allegations contained in  
19 paragraphs 1 through 48 above, inclusive, and makes those paragraphs a part hereof.

20 51. At the time Defendants, and each of them, made the misrepresentations to Plaintiffs as set  
21 forth previously in this Complaint, they had no reasonable basis to believe that they were  
22 true, in fact they knew them to be false.

23 52. Because Defendants were Plaintiffs friends and attorneys, Plaintiffs were justified in their  
24 reliance on their representations, counsel, and advice.

25 53. At the time the misrepresentations occurred, Plaintiffs were ignorant of the true facts and  
26 were ignorant of Defendants' wrongful acts. Had Plaintiffs known the actual facts, Plaintiffs  
27 would not have entered into a partnership or agreement with Defendants to purchase or invest  
28

1 in anything. Plaintiffs justifiably relied on Defendants' representations, actions, and silence  
2 regarding all these issues, and were harmed in doing so.

3 54. Defendants made several representations regarding the investment in the restaurant named  
4 Seau's, including the fact the deal had gone through, the fact the furniture, fixtures and  
5 electronics had been purchased, the fact Defendants were working on getting the proper  
6 licenses with both the County and the state, and the fact that Defendant STOCKLEIN was  
7 representing only Plaintiffs' interests. Plaintiffs reasonably relied on the truth of such  
8 representations in hiring defendant STOECKLEIN as counsel and entering into a partnership  
9 with Defendants MCHAFFIE and VALERIO, agreeing to be represented by STOECKLEIN  
10 and following STOECKLEIN's advice on both the partnership as well as the purchase of  
11 Seau's.

12 55. Plaintiffs allege the wrongful acts of Defendants were undertaken in bad faith, were against  
13 Plaintiffs' interests, or with harmful or wrongful intent.

14 56. As a direct and proximate result of Defendants breach of duty of care and loyalty, Plaintiffs  
15 have suffered damages, the exact amount of which will be proven at the time of trial,  
16 according to proof, but in excess of the jurisdictional minimum of this Court.

17 57. The aforementioned acts of Defendants, and each of them, were done maliciously,  
18 oppressively and with the intent to defraud and Plaintiffs are entitled to punitive and  
19 exemplary damages in the amount to be ascertained at the time of trial according to proof.  
20

#### 21 **FOURTH CAUSE OF ACTION**

22 (Professional Negligence against DON STOECKLEIN and STOECKLEIN LAW GROUP, LLP)

23 58. Plaintiffs hereby incorporate herein by reference Paragraphs 1 through 35 of this Complaint  
24 as though fully set forth herein.

25 59. Defendants STOECKLEIN and STOECKLEIN LAW GROUP LLP were negligent in  
26 providing their services as attorney, trustee, director, officer, and securities broker, by among  
27 other things, failing to monitor, supervise, advise and control the investment activities of the  
28

1 trust; representing conflicting interests (including those of Plaintiffs as well as Stoecklein and  
2 charls) without disclosure of the conflicting interests to their clients and without advising  
3 them to seek and obtain independent legal counsel; engaging in self-dealing; acquiring a  
4 financial interest in the client without disclosure to the client of the inherent conflict of  
5 interest; allowing the trust to hold or acquire a minority limited partnership interests in other  
6 entities that was not properly funded and without a proper business plan; failing to diversify  
7 trust investments, so as to protect the trust from the loss of all of its assets that would occur  
8 and did occur by the investment being in only limited and extremely high risk investments;  
9 incurring debt and other obligations on behalf of the trust or the corporation when  
10 Defendants knew or in the exercise of reasonable care should have known that the trust and  
11 corporation could not repay the debt, resulting in the loss of property and assets; failing to  
12 provide regular accountings; failing to obtain probate court supervision and approval over the  
13 trust's financing and administration; failing to have a written fee contract with Defendants'  
14 clients; failing to provide regular detailed billing showing the activities Defendants were  
15 performing or claiming to have performed; obtaining or retaining a financial interest in the  
16 business and funds of the client; placing Defendants interests over the interests of the clients  
17 and the trust's principal beneficiary; failing to keep themselves informed and fully apprised  
18 of the assets, liabilities and activities of the corporation and trust and instead delegating those  
19 responsibilities to a third party while knowing of the history of that person in being unable to  
20 handle such responsibilities in a reasonable and competent manner; preparing and executing  
21 promissory notes and "certificates of investment" and incurring other obligations on behalf of  
22 the corporation and trust with no reasonable belief that they could be repaid, so as to result in  
23 the loss of the investments securing those debts and so as to expose the Plaintiffs to liabilities  
24 asserted by third parties; failing to undertake any due diligence or meaningful inquiry and  
25 investigation into investments, debts and business activities of the trust or the corporation;  
26 failing to exercise any reasonable degree of oversight or control of the individual or  
27 individuals to whom Defendants delegated investment and debt obligations; and investing

1 trust assets in highly speculative, illiquid assets; and failing to do or provide any due  
2 diligence or disclosures to third party investors regarding the risks of their investments  
3 subjecting the Corporation and its assets to claims of securities fraud.

4 60. As a direct and legal result of the negligence of Defendants and each of them, as alleged  
5 herein, Plaintiffs have been damaged in a sum of not less than \$145,000 representing the loss  
6 in the investment, without including the loss of profits, which will be ascertained at the time  
7 of trial according to proof .  
8

9 **FIFTH CAUSE OF ACTION**

10 (Breach of Fiduciary duty against DON STOECKLEIN and STOECKLEIN LAW GROUP, LLP)

11 61. Plaintiffs repeat and re-allege, as if set forth fully herein, each of Paragraphs 1 through 59  
12 above.

13 62. An attorney-client relationship was formed and created between plaintiffs and Defendants  
14 STOECKLEIN and STOECKLEIN LAW GROUP LLP. In accordance with the decisional  
15 law, statutes, rules of professional conduct and other legislative enactments of the State of  
16 California, STOECKLEIN and STOECKLEIN LAW GROUP LLP, owed plaintiffs fiduciary  
17 duties of the very highest character at all times pertinent herein, including the obligation to  
18 disclose to plaintiffs all material and otherwise pertinent information bearing upon the  
19 matters of which they sought legal advice, including any present or future conflicts of  
20 interest.

21 63. Defendants STOECKLEIN and STOECKLEIN LAW GROUP LLP, breached the fiduciary  
22 duties owing to plaintiffs by the actions hereinabove alleged.

23 64. As a direct result of the negligence of Defendants and the Defendants failure to use due care  
24 as alleged herein, Plaintiffs have suffered, and will continue to suffer in the future, damages,  
25 the full extent of which are unknown at this time but which will be made according to proof  
26 at the time of trial.  
27


1 65. The actions hereinabove alleged were done with a conscious disregard of the rights of  
2 Plaintiffs, and constitute malice, fraud and oppression, thereby entitling the plaintiff to  
3 recover punitive damages under Civil Code Section 3294 in an amount to punish and deter  
4 the defendants and each of them.  
5

6 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

- 7 1. For the principal sum of \$145,000.00;  
8 2. For the profits lost estimated at \$100,000;  
9 3. For interest on the principal sum at the rate of 10% per month from and after the dates  
10 due;  
11 4. For reasonable attorneys' fees;  
12 5. For costs of suit incurred herein;  
13 6. For punitive and exemplary damages;  
14 5. For such other and further relief as the Court deems just and proper.  
15

16 Dated: December 4, 2012

17 Respectfully submitted,

18 By:   
19 Christine Gilbert  
20 Attorney for Plaintiff  
21  
22  
23  
24  
25  
26  
27



AGENDA ITEM NO.

30

## REQUEST TO SPEAK FORM

ORDER REQUEST RECEIVED

2

PLEASE SUBMIT THIS COMPLETED FORM (AND YOUR WRITTEN STATEMENT)  
TO THE CLERK OF THE BOARD PRIOR TO DISCUSSION OF YOUR ITEM

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(PLEASE PRINT)

DATE	12/13/12
Name	MARK A MAASCH
Address	550 West C St Ste 1160 SDCA 92101
Telephone	619-237-1212
Organization Represented	CARRIZO Gorge Relay Inc
Subject of Your Remarks	Address concerns Raised by Bd
Regarding Agenda Item No.	30
Your Comments Present a Position of:	<input checked="checked" type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSITION

## 2. TESTIMONY AT NOTICED PUBLIC HEARINGS

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## REQUEST TO SPEAK FORM

ORDER REQUEST RECEIVED

3

PLEASE SUBMIT THIS COMPLETED FORM (AND YOUR WRITTEN STATEMENT)  
TO THE CLERK OF THE BOARD PRIOR TO DISCUSSION OF YOUR ITEM

## 1. INSTRUCTIONS

This Request to Speak form must be filled out and submitted in advance of the discussion of your item to the Clerk of the Board (please attach any written statement to this form). Communications on hearings and agenda items are generally limited to three minutes per person unless the Board authorizes additional time; however, the Chairperson may limit comment to one or two minutes each if there are multiple requests to speak on a particular item. General public comments on items not on the agenda are limited to three minutes. Please be brief and to the point. No yielding of time is allowed. Subjects of previous hearings or agenda items may not again be addressed under General Public Comments.

(PLEASE PRINT)

DATE	12/13/2012		
Name	DON STOECKLEIN		
Address	401 W. A. Street, #1150, San Diego		
Telephone	(619) 704-1310		
Organization Represented	Pacific Imperial Railroad		
Subject of Your Remarks	Respond to any Board Questions		
Regarding Agenda Item No.	30		
Your Comments Present a Position of:	<input checked="" type="checkbox"/>	SUPPORT	<input type="checkbox"/> OPPOSITION

## 2. TESTIMONY AT NOTICED PUBLIC HEARINGS

At Public Hearings of the Board, persons wishing to speak shall be permitted to address the Board on any issue relevant to the subject of the Hearing.

## 3. DISCUSSION OF AGENDA ITEMS

The Chairman may permit any member of the public to address the Board on any issue relevant to a particular agenda item.

## 4. GENERAL PUBLIC COMMENTS ON MATTERS NOT ON THE AGENDA

Public comment on matters not on the agenda will be limited to five speakers with three minutes each, under the Public Comment Agenda Item. Additional speakers will be heard at the end of the Board's Agenda.

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AGENDA ITEM NO.

30

## REQUEST TO SPEAK FORM

ORDER REQUEST RECEIVED

4

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(PLEASE PRINT)

DATE	12-13-12		
Name	J. JEFFERY KINSELL		
Address	2776 GATEWAY RD. CARLSBAD 92009		
Telephone	858 344-6294		
Organization Represented	PACIFIC EMPIREAL RAILROAD		
Subject of Your Remarks	FINANCE		
Regarding Agenda Item No.	30		
Your Comments Present a Position of:	<input checked="checked" type="checkbox"/>	SUPPORT	<input type="checkbox"/> OPPOSITION

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AGENDA ITEM NO.

30

## REQUEST TO SPEAK FORM

ORDER REQUEST RECEIVED

5

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(PLEASE PRINT)

DATE	12-13
Name	C. R. McHaffie
Address	PO BOX 3774 Rancho Santa Fe, CA
Telephone	
Organization Represented	CZRY RAILROAD
Subject of Your Remarks	statement of fact
Regarding Agenda Item No.	30
Your Comments Present a Position of:	<input checked="checked" type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSITION

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AGENDA ITEM NO.

30

## REQUEST TO SPEAK FORM

ORDER REQUEST RECEIVED

6

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(PLEASE PRINT)

DATE	12-13-2012
Name	Xavier Benche Bustamante
Address	50 Admiralty Cross S.D. 92118
Telephone	(619) 518 3893
Organization Represented	P.I.R.
Subject of Your Remarks	FACTUAL STATEMENTS
Regarding Agenda Item No.	30
Your Comments Present a Position of:	<input checked="checked" type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSITION

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1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
(619) 231-1466 • FAX (619) 234-3407

## Agenda Item No. 31

### MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 13, 2012

#### SUBJECT:

EXTENSION OF CHIEF EXECUTIVE OFFICER'S EXECUTIVE EMPLOYMENT  
AGREEMENT (KAREN LANDERS)

#### RECOMMENDATION:

That the Board of Directors authorize the Chairman to execute a five-year extension of the CEO's Executive Employment Agreement (upon terms and conditions set forth in Attachment A).

#### Budget Impact

The CEO's agreement to begin paying a portion of the CalPERS Employee Share, consistent with payments for all other MTS unrepresented employees, will result in a \$5,100 reduction of MTS costs in calendar year 2013 with additional savings in future years. The action proposed today does not provide for an increase in CEO salary or benefits for the extension term. Any salary increases or benefit adjustments would have to be approved by separate action of the Board on an annual basis.

#### DISCUSSION:

The CEO's current Executive Employment Agreement (EEA) expires on December 31, 2013. The EEA provides that "[t]he parties shall, if mutually desired, renegotiate this agreement one year prior to the termination date."

Based on his superior performance, which has been recognized in each of his performance evaluations, the Executive Committee believes it would be in MTS's best interest if Mr. Jablonski is retained as CEO. Mr. Jablonski has stated that he is willing to continue as MTS CEO.



Consistent with the practice for other MTS unrepresented employees, MTS has paid the full "Employee Share" (8% of pensionable wages) of the CEO's pension contribution. Based on instructions from the Board of Directors with the adoption of the fiscal year 2013 budget, the CEO has put in place a plan for all MTS unrepresented employees to begin paying the Employee Share. Employee contributions will be phased in over time beginning with 2% on January 1, 2013.

As a show of support and equity with the other MTS unrepresented employees, Mr. Jablonski has volunteered to begin paying the Employee Share consistent with the percentage put in place for all current MTS unrepresented employees. The current EEA does not require that Mr. Jablonski contribute to the Employee Share. Therefore, this will require an amendment to the EEA for the final year of the contract term.

For the Extension Term, it is proposed that Mr. Jablonski's contract be continued on the same terms except for the voluntary contributions to the Employee Share recommended by Mr. Jablonski and certain changes that are required by recent changes in the law.

The proposed revisions to the EEA are summarized as follows:

1. Require the CEO to contribute to the Employee Share consistent with the percentage contributed by all other MTS unrepresented employees. Effective January 1, 2013, the CEO would contribute 2% of his pensionable compensation toward the Employee Share of his CalPERS pension payment.
2. Extend the term of the CEO's contract for an additional 5 years. This would take the term to December 31, 2018.
3. The terms of the CEO's contract during the Extension Term would remain the same with the following exceptions:
  - a. CEO's contribution toward Employee Share would increase commensurate with all other MTS unrepresented employees.
  - b. The automatic 5% pay increase is deleted for the Extension Term and replaced with a provision that allows the Board of Directors to determine each year if a salary increase, bonus, or other adjustment is warranted. This is consistent with the requirements of newly enacted Government Code section 3511.2, which prohibits an automatic salary increase (beyond a CPI) in local agency executive contracts entered into after January 1, 2012.
  - c. Limits the severance payment provisions to 18 months or the remainder of the term, whichever is less. This is consistent with the requirements of newly enacted Government Code sections 3511.2 and 53260, which prohibit severance payments in excess of 18 months for local agency executive contracts entered into after January 1, 2012. (The current contract requires a severance payment equal to the time remaining on the contract term without limitation.)

4. The proposed contract amendment also includes a technical revision to the CEO's Special Executive Cafeteria Plan benefit. This revision simply clarifies that this benefit continues and is equal to 3.5% of base salary for the Extension Term. In the current contract, since the CEO's base salary was known for each year of the contract term, this amount was listed as a set dollar amount each year.

A handwritten signature in black ink, appearing to read "Harry Mathis", written over a horizontal line.

Harry Mathis  
Chairman

Key Staff Contact: Karen Landers, 619.557.4512, [karen.landiers@sdmts.com](mailto:karen.landiers@sdmts.com)

Attachment: A. Draft MTS Doc. No. G0912.5-04

December 13, 2012

MTS Doc. No. G0912.5-04

Mr. Paul Jablonski  
Chief Executive Officer  
San Diego Metropolitan Transit System  
1255 Imperial Avenue, Suite 1000  
San Diego, California 92101

Dear Mr. Jablonski:

Subject: AMENDMENT 5 TO MTS DOC. NO. G0912.0-04  
EXECUTIVE EMPLOYMENT AGREEMENT (CHIEF EXECUTIVE OFFICER)

This letter shall serve to modify our agreement for professional services pursuant to the Executive Employment Agreement dated July 1, 2008 and modified by amendments dated March 5, 2009 and March 24, 2011 ("Agreement"), as set forth below:

A. Changes Affecting Current Term:

1. Effective January 1, 2013, Mr. Jablonski shall contribute 2% of his pensionable compensation towards the "Employee Share" of his CalPERS pension payment.

B. Extension of Term:

1. The current term of the Executive Employment Agreement expires on December 31, 2013. By this Amendment 5, an additional five year term shall be added, from January 1, 2014 to December 31, 2018 ("Extension Term").
2. Beginning on January 1, 2014, and each year thereafter, Mr. Jablonski shall continue to contribute to the "Employee Share" of his CalPERS pension payment in an amount consistent with the percentage contributed by all MTS unrepresented employees employed as of December 31, 2012.
3. All other terms and conditions of the Agreement shall carryover to the Extension Term, except for the following:
  - a. Agreement §4b, "Performance and Salary Review" is deleted and replaced with the following: "Each year, beginning in January 2014, the Board of Directors shall review the performance of Mr. Jablonski and determine a salary adjustment, bonus or fringe benefit adjustment, if any. An award of a salary adjustment, bonus and/or fringe benefit adjustment, if any, will be made by the Board of Directors in its sole and absolute discretion."



- b. The conversion of the Special Executive Cafeteria Plan benefit into a designated 401(a) employer contribution in Amendment 3 (MTS Doc No. G0912.3-04) shall continue in the Extension Term in an amount equal to the Special Executive Cafeteria Plan set forth in Section 3.6 of the Management Employee Handbook (3.5% of base salary) upon the terms and conditions set forth in Amendment 3.
- c. Agreement §7c, "Termination without Cause by MTS/Severance", sections (ii) and (iii) are replaced with the following:
  - ii. A "Severance Payment" equivalent to his then-in-effect Base Salary plus benefit accruals for 18 months or the remainder of the Extension Term, whichever is less, payable in a lump sum;
  - iii. A Supplemental Retirement Payment for 18 months or the remainder of the Extension Term, whichever is less, at the maximum IRS rate in effect on the date of termination, payable in a lump sum into his 401(a). If the amount owed exceeds the 401(a) limit, it shall be paid in cash; and

If you agree with the above, please sign in the space provided below and return one document marked "Original" to MTS. All other terms and conditions shall remain in effect.

Sincerely,

Accepted:

Harry Mathis  
Chairman

\_\_\_\_\_  
Paul C. Jablonski

Approved as to Form:

By: \_\_\_\_\_  
Karen Landers, General Counsel



1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
(619) 231-1466 • FAX (619) 234-3407

## Agenda Item No. 32

### MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 13, 2012

#### SUBJECT:

MANAGEMENT PENSION FORMULA (JEFF STUMBO)

#### RECOMMENDATION:

That the Board of Directors adopt Resolution No. 12-19 (Attachment A) establishing a new MTS employee pension formula of 2% at 60.

#### Budget Impact

Board approval would result in a reduction in future pension costs.

#### DISCUSSION:


On November 15, 2012, the Board of Directors adopted Resolution No. 12-17 establishing a second-tier 2%-at-60 pension formula for MTS new hires. To make this official, CalPERS requires that the Board adopt a "final resolution" authorizing the requested contract amendment.

The Board's goal in introducing the new 2%-at-60-years tier is to achieve long-term sustainability of MTS's pension benefit program. The new tier helps realize this by enrolling all employees hired by MTS between December 24, 2012, and December 31, 2012, in the 2%-at-60-years benefit, whereas the current formula is 2.7%-at-55 years. Even more significantly, going forward, individuals hired on or after January 1, 2013, who are already members of CalPERS (or a reciprocal pension system) would receive the 2%-at-60-years benefit. This "grandfathering" is pursuant to the recent passage of the Public Employee Pension Reform Act of 2013 (PEPRA).



PEPRA also further supports MTS's goal of pension sustainability by implementing a new pension benefit of 2%-at-62 years for all new employees who were hired on or after January 1, 2013, and are not current members of CalPERS (or a reciprocal system); these are referred to as "new members" in the legislation.

Staff is continuing to evaluate and seek guidance on the new PEPRA legislation, and future updates will be provided to the Board as they become available.

  
Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Jeff Stumbo, 619.557.4509, [Jeff.Stumbo@sdmts.com](mailto:Jeff.Stumbo@sdmts.com)

Attachments: A. Resolution No. 12-19 (with Certification of Final Action of Governing Body)  
B. Letter from CalPERS dated 11/27/12

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

RESOLUTION NO. 12-19

Resolution Authorizing Amendment to the Contract between the  
Board of Administration California Public Employees' Retirement System and the  
Governing Board San Diego Metropolitan Transit System

WHEREAS, the Board of Administration of the California Public Employees' Retirement System and the Governing Board of the San Diego Metropolitan Transit System entered into contract effective on April 4, 1977 providing the participation of said public agency in the California Public Employees' Retirement System; and

WHEREAS, it is now desirable to take advantage of certain benefits provided under said Retirement System and not included in said contract; and

NOW, THEREFORE, BE IT RESOLVED, that said governing body authorized, and it does hereby authorize, an amendment to said contract, a copy of said amendment attached hereto and by such reference made a part hereof as though herein set out in full, and

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED that the presiding officer of said governing body of the above agency is hereby authorized, empowered and directed to execute said amendment for and on behalf of said public agency.

PASSED AND ADOPTED by the Board of Directors this \_\_\_\_ day of \_\_\_\_\_ 2012,  
by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAINING:

\_\_\_\_\_  
Chairman  
San Diego Metropolitan Transit System

Filed by:

Approved as to form:

\_\_\_\_\_  
Clerk of the Board  
San Diego Metropolitan Transit System

\_\_\_\_\_  
Office of the General Counsel  
San Diego Metropolitan Transit System

Attachment: Exhibit – Amendment to Contract (Certification of Final Action of Governing Board)

**CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**  
Actuarial and Employer Services Branch  
Public Agency Contract Services  
P.O. Box 942709  
Sacramento, CA 94229-2709  
(888) CalPERS (225-7377)

**CERTIFICATION  
OF  
FINAL ACTION OF GOVERNING BODY**

I hereby certify that the \_\_\_\_\_ of the  
(governing body)

\_\_\_\_\_  
(public agency)

considered and adopted on \_\_\_\_\_, \_\_\_\_\_, by an affirmative  
(date)

vote of a majority of the members of said Governing Body, **Ordinance / Resolution** No.  
\_\_\_\_\_ approving the attached contractual agreement between the Governing  
Body of said Agency and the Board of Administration of the California Public  
Employees' Retirement System, a certified copy of said **Ordinance / Resolution** in the  
form furnished by said Board of Administration being attached hereto.

Adoption of the retirement benefit increase/change was not placed on the consent  
calendar.

\_\_\_\_\_  
Clerk/Secretary

\_\_\_\_\_  
Title

Date \_\_\_\_\_



California Public Employees' Retirement System  
Customer Account Services Division  
Retirement Account Services Section  
P.O. Box 942709  
Sacramento, CA 94229-2709  
TTY: (877) 249-7442  
888 CalPERS (or 888-225-7377) phone • (916) 795-3005 fax  
[www.calpers.ca.gov](http://www.calpers.ca.gov)

Att. B, AI 32, 12/13/12

November 27, 2012

CalPERS ID #7490546841

Mr. Brendan R. Shannon  
Manager of Human Resources  
San Diego Metropolitan Transit System  
1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490

Dear Mr. Shannon:

We have received the Resolution of Intention to amend your CalPERS contract to provide Section 20475 (Different Level of Benefits). Section 21353 (2% @ 60 Full formula) is applicable to local miscellaneous members entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract.

Enclosed are the following documents necessary to complete the proposed amendment:

1. Amendment to Contract.
2. Resolution (Form CON-13). This Resolution must be adopted by affirmative vote of a majority of the members of the governing body no earlier than twenty days after the adoption of the Resolution of Intention. Failure to comply may result in the delay of the anticipated effective date of the amendment.
3. Certification of Final Action of Governing Body (Form CON-5).

Your agency adopted the Resolution of Intention on November 15, 2012, therefore, the earliest date the final Resolution may be adopted is December 5, 2012, pursuant to Government Code Section 20471. THERE ARE NO EXCEPTIONS TO THIS LAW.

The effective date of this amendment cannot be earlier than the first day of a payroll period following the adoption of the final Resolution. Please insert the effective date on the last page of the Amendment to Contract.

The following documents must be submitted through myCalPERS and the original documents must be returned to this office by mail. ORIGINAL SIGNATURES ARE REQUIRED ON ALL CONTRACTS.

1. Amendment to Contract, two original executed sets.

San Diego Metropolitan Transit  
System

-2-

November 27, 2012

2. Resolution (CON-13), original or certified copy.
3. Certification of Final Action of Governing Body (CON-5), original.

Please notify your personnel/payroll staff and any others who submit payroll or membership documents to CalPERS on behalf of the agency, such as county courts and port districts, of the following information as of the day after the effective date of the amendment to the contract:

- The local miscellaneous member contribution rate will be 7% of reportable earnings for those miscellaneous members entering membership for the first time in the miscellaneous classification after the effective date of this amendment to the contract.
- The employer contribution rate for local miscellaneous members affected by this contract amendment will be 8.311% of reportable earnings.

**Please do not retype the Amendment to Contract and/or agreement documents. Only documents provided by this office will be accepted. If you have a problem with any of the documents, please contact this office prior to presenting to your governing body for adoption. Another contract amendment cannot be started until this amendment is completed or cancelled.**

A copy of the contract will be returned for your records after it has been executed by CalPERS.

If you have any questions, please call (888) CalPERS (225-7377).

Sincerely,



Irene Ho  
Employer Representative  
Public Agency Contract Services

IH :rj

Enclosures



**MTS  
BOARD OF DIRECTORS**

**RESOLUTION TO AMEND  
MANAGEMENT PENSION FORMULA**

**December 13, 2012**



①

**Resolution - Pension Amendment**

**Executive Summary**

- On November 15, 2012, the Board of Directors adopted Resolution No. 12-17 establishing a second-tier 2%-at-60 pension formula for MTS new hires.
- To make this official, CalPERS requires that the Board adopt a "final resolution" authorizing the contract amendment.



②

## Resolution - Pension Amendment

### Background:

- The Board's goal in introducing the new 2%-at-60-years tier is to achieve long-term sustainability of MTS's pension plan.
- The new tier helps realize this by enrolling all employees hired by MTS between December 24, 2012, and December 31, 2012, in the 2%-at-60-years benefit, whereas the current formula is 2.7%-at-55 years.



3

## Resolution - Pension Amendment

- Even more significantly, individuals hired on or after January 1, 2013, who are already members of CalPERS (or a reciprocal pension system) would receive the 2%-at-60-years benefit.
- This will close a loophole in the Public Employee Pension Reform Act of 2013 (PEPRA).



4

## Resolution - Pension Amendment

- Staff is continuing to evaluate and seek guidance on the new PEPPRA legislation, and future updates will be provided to the Board as they become available.



5

## Resolution - Pension Amendment

### Recommendation:

That the Board of Directors adopt Resolution No. 12-19 (Attachment A) establishing a new MTS employee pension formula of 2% at 60.



6



1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
(619) 231-1466 • FAX (619) 234-3407

## Agenda Item No. 33a

### MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 13, 2012

#### SUBJECT:

40-FOOT LOW-FLOOR COMPRESSED NATURAL GAS (CNG) TRANSIT BUSES -  
CONTRACT AWARD (ERNESTO DEGUZMAN)

#### RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to:

1. execute MTS Doc. No. B0589.0-13 (in substantially the same format as Attachment A) with Gillig, LLC for the purchase of fifty 40-foot, low-floor compressed natural gas (CNG) transit buses; and
2. make additional purchases of up to 300 buses for a period not to exceed five years from the date of the initial contract with Gillig, LLC.

All purchases would be contingent upon the successful completion of the federally required Buy America audit and available funding.

#### Budget Impact

The CEO's total authorization would not exceed \$183,998,834.55 without prior MTS Board authorization.

1. The cost for fifty 40-foot, low-floor, compressed natural gas (CNG) transit buses and associated manuals would not exceed \$24,547,249.24, and contract spare parts would not exceed \$108,000.00 for a total of \$24,655,249.24.
2. The cost for 300 buses subject to available funding would not exceed \$159,343,585.31.

See Attachment B for additional pricing details.



## DISCUSSION:

On July 13, 2012, staff publicly advertised a Request for Proposals (RFP) MTS Doc. No. B0589.0-13 to solicit offers from qualified manufacturers for 40-foot, low-floor, CNG buses. Considering the technical complexity of the procurement and given that technical details and features must be mutually resolved before award, staff deemed it prudent to use the competitive negotiated-procurement approach. Proposals were received from New Flyer Industries, Inc. (New Flyer) and Gillig, LLC by the due date of September 19, 2012. The initial review of the technical proposal showed both proposals to be responsive and responsible to the requirements of the solicitation.

The RFP included the following evaluation criteria mandated for federally funded procurements of rolling stock (buses and rail vehicles) and also incorporated recommendations as published in the American Public Transportation Association's (APTA) Bus Procurement Guidelines 2011:

Pass/Fail Criteria to include: the company must be an existing transit vehicle manufacturer with an existing manufacturing facility; must provide a 40-foot, low-floor vehicle with a CNG-propulsion system; and must have the ability to meet the Buy America requirements as required by Title 49 of the U.S. Code of Federal Regulations, Part 661.

In addition to price, other factors used in the evaluation of proposals included:

1. Minimum Vehicle Performance Requirements
2. Projected Operating Cost and Reliability
3. Technical Support
4. Warranty and After-Market Parts Support
5. Proposed Technical Deviations
6. Maintainability
7. Manufacturing Process
8. Project Management
9. Deviations from Contract Terms and Conditions
10. Advanced Design Provisions
11. Emissions
12. Vehicle Structure
13. System Safety Provisions
14. Past Performance, Customer References, and Current Commitments
15. Qualifications and Financial Stability of the Proposer

MTS developed an evaluation scale system for rating contractor proposals against the evaluation factors identified above. For technical and cost proposals, the appropriate evaluation rating would be assigned to each evaluation factor consistent with the narrative evaluation of strengths, weaknesses, and risks.

A procurement evaluation panel was comprised of representatives from the MTS Bus Maintenance and Bus Operations Departments, MTS Finance, and MTS Contract Services. The evaluation panel met and communicated with both proposers at various stages of the procurement process to obtain clarifications and to conduct subsequent negotiations. This was followed by a request for a Best and Final Offer. After clarifications, negotiations and the best and final offer, the evaluation panel

determined that Gillig's proposal represented the best value and most advantageous offer to MTS after considering both price and technical factors.

The up-to-50 buses would replace current vehicles reaching the end of their useful lives. Future planned purchases of up to 200 buses would replace current vehicles reaching the end of their useful lives. The option for up to an additional 100 buses would accommodate potential needs due to increased ridership, service expansion, or other project funding, such as increased services funded by the San Diego Association of Governments (SANDAG).

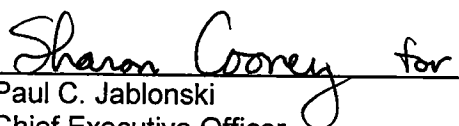
All vehicles purchased would have the current MTS onboard video surveillance systems preinstalled, enhanced wheelchair restraint systems with forward-facing safety barriers for improved efficiency, as well as other technical enhancements that would also contribute to cost-effective vehicle maintenance and safety.

Based on the evaluation panel's analysis of the technical proposal, discussions, negotiations and evaluation of price, MTS staff has determined that Gillig's proposed pricing is fair and reasonable, and its proposal represents the best overall value of fulfilling MTS's requirements as outlined in the RFP.

Therefore, staff is requesting that the MTS Board of Directors authorize the CEO to:

1. execute MTS Doc. No. B0589.0-13 (in substantially the same format as Attachment A) with Gillig, LLC for the purchase of fifty 40-foot, low-floor CNG transit buses; and
2. make additional purchases of up to 300 buses for a period not to exceed five years from the date of the initial contract with Gillig, LLC.

All purchases would be contingent upon the successful completion of the federally required Buy America audit and available funding.

  
Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, [Sharon.Cooney@sdmts.com](mailto:Sharon.Cooney@sdmts.com)

Attachments: A. Draft MTS Doc. No. B0589.0-13  
B. Pricing Details

## STANDARD PROCUREMENT AGREEMENT

B0589.0-13  
 CONTRACT NUMBER  
 CIP11310  
 FILE NUMBER(S)

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2012, in the state of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following, hereinafter referred to as "Contractor":

Name: Gillig, LLC.

Address: 25800 Clawiter Road

Form of Business: Corporation

Hayward, CA 94545

(Corporation, partnership, sole proprietor, etc.)

Telephone: 510.264.5017

Authorized person to sign contracts: Joseph Policarpo  
 Name

V.P. Sales & Marketing  
 Title

**The attached Standard Conditions are part of this agreement. The Contractor agrees to furnish to MTS the following:**

Fifty (50) Gillig forty (40) foot, low-floor, compressed natural gas (CNG), heavy-duty transit buses, spare parts up to one-hundred thousand dollars (\$100,000.00), subject to eight percent (8%) sales tax, and up to three hundred (300) additional units, subject to availability of funding, over a period of time not to exceed five years from the date of this agreement, as specified in the vehicle delivery schedule and Gillig's best and final pricing proposal dated November 19, 2012, the Scope of Supply, the MTS Standard Procurement Agreement, Standard Conditions, and the Federal Requirements.

Delivery of the initial order shall be completed no later than December 31, 2013 unless otherwise specified by MTS in writing.

Vehicle shall be delivered to: **San Diego Metropolitan Transit System (MTS)**  
 100 16<sup>th</sup> Street  
 San Diego, CA 92101  
 Attn: Julio Ortiz – 619.238.0100 Ext. 6500

The registered owner will be: **San Diego Metropolitan Transit System (MTS)**  
 1255 Imperial Avenue, Suite 1000  
 San Diego, CA 92101

This is a firm-fixed-price contract subject to escalation based on the United States Department of Labor, Producer Price Index (PPI) Commodity Code 1413, Truck and Bus Bodies. The total cost for the fifty (50) buses and the option to purchase up to \$100,000.00 of spare parts shall not exceed \$24,547,249.24 for buses (inclusive of 8% sales tax) and \$108,000.00 for spare parts (inclusive of 8% sales tax) for a total of \$24,655,249.24 and includes all other applicable California licensing, fees, training, manuals, and delivery. The total estimate cost for up to three hundred (300) additional buses, subject to availability of funding, if exercised at MTS's sole discretion, shall not exceed \$159,343,585.31 (subject to PPI adjustments) for a grand total estimate value of \$183,998,834.55.

MTS Board of Directors Meeting  
December 13, 2012  
Agenda Item 33a, Attachment B  
40-FT LOW-FLOOR COMPRESSED NATURAL GAS (CNG) TRANSIT BUSES

Forecasted Quantity	Base Price	Sales Tax	Base Price + Sales tax	Total Purchase Price	Manuals & Other	Sales Tax (Manuals)	Grand Total
Year 1 (Base)							
50	\$ 452,570.00	\$ 34,384.32	\$ 486,954.32	\$ 24,347,716.00	\$ 184,763.00	\$ 14,780.24	\$ 24,547,249.24
Year 2							
50	\$ 466,121.15	\$ 35,468.41	\$ 501,589.56	\$ 25,079,478.10	\$ 52,064.00	\$ 4,165.12	\$ 25,135,707.22
Year 3							
50	\$ 480,078.83	\$ 36,585.03	\$ 516,663.86	\$ 25,833,193.06	\$ 52,064.00	\$ 4,165.12	\$ 25,889,422.18
Year 4							
50	\$ 494,455.25	\$ 37,735.14	\$ 532,190.39	\$ 26,609,519.47	\$ 52,064.00	\$ 4,165.12	\$ 26,665,748.59
Year 5							
50	\$ 509,262.96	\$ 38,919.76	\$ 548,182.71	\$ 27,409,135.68	\$ 52,064.00	\$ 4,165.12	\$ 27,465,364.80
Year 4 (Option)							
50	\$ 494,455.25	\$ 37,735.14	\$ 532,190.39	\$ 26,609,519.47	\$ 78,096.00	\$ 6,247.68	\$ 26,693,863.15
Year 5 (Option)							
50	\$ 509,262.96	\$ 38,919.76	\$ 548,182.71	\$ 27,409,135.68	\$ 78,096.00	\$ 6,247.68	\$ 27,493,479.36
Contract Spares							
	\$ 100,000.00	\$ 8,000.00	\$	\$ 108,000.00	\$ -	\$ -	\$ 108,000.00
350				\$ 183,405,697.47	\$ 549,201.00	\$ 43,936.08	\$ 183,998,834.55

Year 1 Total (50 buses & spares)	\$ 24,655,249.24
Year 2-5 (300 buses)	\$ 159,343,585.31
Total	\$ 183,998,834.55



SAN DIEGO METROPOLITAN TRANSIT SYSTEM	CONTRACTOR AUTHORIZATION
<p>By: _____ Chief Executive Officer</p> <p>Approved as to form:</p> <p>By: _____ Office of General Counsel</p>	<p>Firm: _____</p> <p>By: _____ Signature</p> <p>Title: _____</p>

AMOUNT ENCUMBERED	BUDGET ITEM	FISCAL YEAR
\$183,998,834.55	CIP 11310 (MTS Bus Replacement)	FY 14 - 18

By: \_\_\_\_\_  
Chief Financial Officer

(\_\_\_ total pages, each bearing contract number)

DRAFT

## 40 Ft. Low-Floor CNG Transit Bus Procurement B0589.0-13

Metropolitan Transit System  
Board of Directors Meeting

Agenda Item No. 32a

December 13, 2012



1



### QUANTITY TO PURCHASE

- ☐ Up to 250 buses with the option to purchase up to an additional 100 buses for a total up to 350 buses.

### REASON FOR PURCHASE

- ☐ Replacement Buses - FY 2014; Immediate purchase of 50 buses to replace buses that have reached the end of their useful life.
- ☐ Replacement Buses – FY 2015 – 2018; Estimate purchases at a rate of approximately 50 buses per year to replace buses that have reached the end of their useful life for a total of 200 buses.
- ☐ Option Buses - Fiscal Year 2014 – 2018; Option quantities of 100 buses will be utilized in the event of fleet expansion due to increased ridership, additional routes, or increased services for existing routes.



2



#### BUDGETARY IMPACT

- ☐ FY 2014 - 50 Buses, including spare parts and sales tax at an estimate cost of \$24,655,249.24
- ☐ FY 2014 – 2018 up to 300 Buses, including sales tax at an estimate cost of \$159,343,585.31



#### HIGHLIGHTS OF THE NEW 40 Ft. BUSES:

- ☐ Wheelchair restraint system with forward passenger barrier wall for reduced securement times and additional passenger safety.
- ☐ Disc Brakes; provides improved braking efficiency and reduced maintenance costs.
- ☐ Improved CNG Tank Life; rated for 20 years vs. 15 years.
- ☐ On-Board Video Surveillance; Installed during factory assembly.
- ☐ EMP Cooling System; replaces the hydraulic cooling system which reduces power draw on engine horsepower and improves maintenance and repair efficiencies.
- ☐ Manufactured 100% in the U.S.A. (Hayward, CA)



#### PROCUREMENT PROCESS

- ☐ A negotiated procurement process was selected in order to accommodate the need for significant technical discussion between MTS and OEM proposers and in order to obtain the best value buses which meet the requirements and needs of MTS.
- ☐ Procurement process conducted in accordance with applicable local, state, and federal requirements:
  - *MTS Policy 52 (Procurement of Goods and Services)*
  - *Title 49 United States Code, Chapter 53*
  - *Federal Transit Administration Circular 4220.1F; Third Party Contracting Guidance*
  - *Federal Transit Administration's Best Practices Procurement Manual*




#### Recommendation:

That the Board of Directors authorize the Chief Executive Officer (CEO) to:

1. execute MTS Doc. No. B0589.0-13 (in substantially the same format as Attachment A) with Gillig, LLC. for the purchase of 50 40-foot, low-floor, compressed natural gas (CNG) transit buses; and
2. make additional purchases of up to 300 buses for a period not to exceed five years from the date of the initial contract with Gillig, LLC.

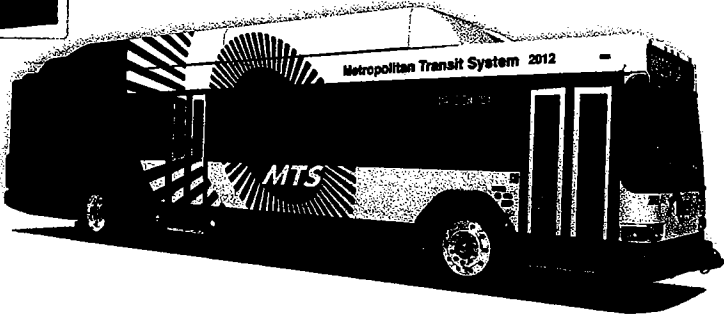




Rear | STD Cap

San Diego MTS | GILLIG 40' Low Floor CNG STD

Alternative 1




Metropolitan Transit System 2012

MTS


MADE IN THE  
USA

*Thank You for Supporting American Jobs!*

GILLIG



7





1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
(619) 231-1466 • FAX (619) 234-3407

## Agenda Item No. 33b

### MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 13, 2012

#### SUBJECT:

60-FOOT LOW-FLOOR ARTICULATED CNG TRANSIT BUSES - CONTRACT AWARD  
(ERNESTO DEGUZMAN)

#### RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to:

1. execute MTS Doc. No. B0570.0-12 (in substantially the same format as Attachment A) with New Flyer Industries for the purchase of up to 165 60-foot, low-floor, articulated, compressed natural gas (CNG) transit buses plus associated contract spare parts, manuals, training, special tools, and use-tax payments; and
2. issue a Notice to Proceed for 47 buses for the I-15 Corridor Bus Rapid Transit (BRT) and Mid-City Rapid Projects.

All purchases would be contingent upon the successful completion of the federally required Buy America audit and available funding.

#### Budget Impact

The proposed five-year contract would not exceed \$159,463,591.18. Prices are inclusive of applicable licenses, fees, and delivery. Use tax would be paid by MTS directly to the California Franchise Tax Board. The contract includes 47 buses for the I-15 Corridor BRT and Mid-City Rapid Projects to be funded by the San Diego Association of Governments (SANDAG); 13 buses replace the existing MTS fleet (to be funded in FY 2016 by MTS Capital Improvement Project 11310 – MTS Bus Replacement), and up to 105 option buses in the event MTS or SANDAG capacity needs increase and additional funding is available.

See Attachment B for detailed pricing information.



## DISCUSSION:

On May 25, 2012, staff publicly advertised a Request for Proposals (RFP) (MTS Doc. No. B0570.0-12) to solicit offers from qualified manufacturers for 60-foot, low-floor, CNG, articulated transit buses. Considering the technical complexity of the procurement and given that technical details and features must be mutually resolved before award, staff deemed it prudent to use the competitive, negotiated procurement approach. A single response was received from New Flyer Industries, Inc. (New Flyer) by the due date of September 19, 2012. The initial review of the technical proposal showed the single proposal to be responsive and responsible with regards to the requirements of the solicitation. Staff also held a price-reasonableness analysis to ascertain that the proposed costs were reasonable.

In accordance with MTS Policy No. 52 (Procurement of Goods and Services), Federal Transit Administration (FTA) Circular 4220.1F, and the FTA Best Practices Procurement Manual (BPPM), MTS publicly advertised a Request for Proposals (RFP) and conducted the procurement for MTS Doc. No. B0570.0-12 for the purchase of 60-foot, low-floor, CNG, articulated transit buses. The RFP included the following evaluation criteria, which includes criteria mandated for federally funded procurements of rolling stock (buses and rail vehicles) and also incorporated recommendations as published in the American Public Transportation Association's (APTA) Bus Procurement Guidelines, 2011:

Pass/Fail Criteria to include: the company must be an existing transit vehicle manufacturer with an existing manufacturing facility; must provide a 60-foot, low-floor, articulated vehicle with a CNG propulsion system; and must have the ability to meet the Buy America requirements as required by Title 49 of the U.S. Code of Federal Regulations, Part 661.

In addition to price, other factors used in the evaluation of proposals included:

1. Minimum Vehicle Performance Requirements
2. Projected Operating Cost and Reliability
3. Technical Support
4. Warranty and After-Market Parts Support
5. Proposed Technical Deviations
6. Maintainability
7. Manufacturing Process
8. Project Management
9. Deviations from Contract Terms and Conditions
10. Advanced Design Provisions
11. Emissions
12. Vehicle Structure
13. System Safety Provisions
14. Past Performance, Customer References, and Current Commitments
15. Qualifications and Financial Stability of the Proposer

MTS developed an evaluation scale system for rating contractor proposals against the evaluation factors identified above. For technical and cost proposals, the appropriate evaluation rating would be assigned to each evaluation factor consistent with the narrative evaluation of strengths, weaknesses, and risks.

A procurement evaluation panel was comprised of representatives from the MTS Bus Maintenance and Bus Operations Departments, MTS Finance, and SANDAG. The evaluation panel met and communicated with the proposer at various stages of the procurement process to obtain clarifications and to conduct subsequent negotiations. This was followed by a request for a Best and Final Offer. After clarifications, negotiations, and the best and final offer, the evaluation panel determined that New Flyer's proposal represented the best value and most advantageous offer to MTS considering both price and technical factors.

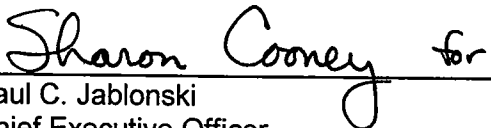
The up-to-72 buses funded by SANDAG shall operate on the Mid-City Rapid, I-15, and I-805 Corridor BRT routes. The MTS articulated buses will replace 13 diesel-powered 60-foot articulated buses that will be at the end of their useful lives. The option of up to an additional 80 buses will accommodate potential needs due to increased ridership, service expansion, and future SANDAG projects anticipated to be on line within the five-year contractual period.

The I-15 and I-805 Corridor buses will feature high-back, thick-cushioned seats with minimal transverse facing positions and no rear-facing seating for premium ride and passenger comfort as well as Traffic Signal Priority Systems and Intelligent Vehicle Network systems that include automated passenger announcements and diagnostic equipment.

All vehicles purchased will have the current MTS onboard video surveillance systems preinstalled, enhanced wheelchair restraint systems with forward-facing safety barriers for improved efficiency to secure wheelchair passengers, and additional seated passenger safety as well as other technical enhancements that will also contribute to cost-effective vehicle maintenance and safety.

Based on the EP's analysis of the technical proposal, discussions, negotiations, and evaluation of price, MTS staff has determined that New Flyer's proposed pricing is fair and reasonable, and its proposal represents the best overall value of fulfilling MTS's requirements as outlined in the RFP.

MTS staff recommends authorizing the CEO to execute MTS Doc. No. B0570.0-12 (in substantially the same format as Attachment A) with New Flyer Industries, Inc. for the purchase of up to 165 60-foot, low-floor, CNG, articulated transit buses over a 5-year period.

  
Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557-4513, [Sharon.Cooney@sdmts.com](mailto:Sharon.Cooney@sdmts.com)

Attachments: A. Draft MTS Doc. No. B0570.0-12  
B. Bus Pricing Spreadsheet



STANDARD PROCUREMENT AGREEMENT

B0570.0-12  
CONTRACT NUMBER  
CIP11310  
FILE NUMBER(S)

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2012, in the state of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following, hereinafter referred to as "Contractor":

Name: New Flyer Industries, Inc.

Address: 711 Kernaghan Ave

Form of Business: Corporation  
(Corporation, partnership, sole proprietor, etc.)

Winnipeg, Manitoba R2C 3T4, Canada

Telephone: 204-224-6379

Authorized person to sign contracts: Paul Smith Executive V.P. Sales & Marketing  
Name Title

**The attached Standard Conditions are part of this agreement. The Contractor agrees to furnish to MTS the following:**

Forty-seven (47) New Flyer Xcelsior sixty (60) foot, low-floor, compressed natural gas (CNG), articulated heavy-duty transit buses, and up to one hundred-eighteen (118) additional units, subject to availability of funding, over a period of time not to exceed five years from the date of this agreement, as specified in the estimated vehicle schedule and New Flyer's best and final pricing proposal dated November 20, 2012, attached as Exhibit A, the Technical Specification, attached as Exhibit B, the MTS Standard Procurement Agreement, Standard Conditions, Attached as Exhibit C, and the Federal Requirements, attached as Exhibit D. MTS shall also have the right to purchase up to \$100,000.00 in spare parts consistent with the pricing as referenced in Exhibit B. All prices are stated in United States Dollars (USD).

Delivery of the initial order shall be completed no later than December 31, 2013 unless otherwise specified by MTS in writing.

Vehicle shall be delivered to: **San Diego Metropolitan Transit System (MTS)**  
100 16<sup>th</sup> Street  
San Diego, CA 92101  
Attn: Julio Ortiz – 619.238.0100 xt. 6500

The registered owner will be: **San Diego Metropolitan Transit System (MTS)**  
1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101

This is a firm-fixed-price contract subject to escalation based on the United States Department of Labor, Producer Price Index (PPI) Commodity Code 1413, Truck and Bus Bodies. The PPI shall not exceed three percent (3%) per contract year. The total cost for the forty-seven (47) buses shall not exceed \$40,008,864.92 and spare parts, if purchased at the sole discretion of MTS, shall not exceed \$100,000.00, which excludes California Use Tax, payable directly by MTS, and includes all other applicable California licensing, fees, training, manuals, and delivery. The total cost shall not exceed \$40,108,864.92.

The total estimate cost for additional buses up to one hundred-eighteen (118), subject to availability of funding, if exercised at MTS's sole discretion, shall not exceed \$107,818,340.77 excluding California Use Tax. The grand total cost estimate inclusive of all purchases, spare parts, and options if exercised by MTS, shall not exceed \$147,927,205.69.

<b>SAN DIEGO METROPOLITAN TRANSIT SYSTEM</b>	<b>CONTRACTOR AUTHORIZATION</b>
--	---------------------------------

By: \_\_\_\_\_  
                     Chief Executive Officer

Approved as to form:

By: \_\_\_\_\_  
                     Office of General Counsel

Firm: \_\_\_\_\_

By: \_\_\_\_\_  
                     Signature

Title: \_\_\_\_\_

AMOUNT ENCUMBERED	BUDGET ITEM	FISCAL YEAR
\$147,927,205.69	11310	FY 14 - 18

By: \_\_\_\_\_  
 Chief Financial Officer  
 (\_\_\_ total pages, each bearing contract number)

DEC13.12.AttA.B0570.0-12.NEWFLYER 60FT.BUS.SREED.doc

DRAFT

MTS Articulated 60-Foot Bus Replacement									
Forecasted Quantity	Base Price	Use Tax	Base Price + Sales tax	Total Purchase Price	Manuals & Other	Use Tax (Manuals)	Grand Total		
2014 (Base)									
13	\$ 811,379.00	\$ 62,780.40	\$ 874,159.40	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2015	\$ 835,578.65	\$ 64,716.45	\$ 900,295.10	\$ 11,703,836.33	\$ 26,664.00	\$ 2,133.12	\$ 11,732,633.45	\$ -	\$ -
2016	\$ 860,504.29	\$ 66,710.58	\$ 927,214.87	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2017	\$ 886,177.70	\$ 68,764.54	\$ 954,942.23	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2018	\$ 912,621.31	\$ 70,880.10	\$ 983,501.41	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Contract Spares				\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
13				\$ 11,703,836.33	\$ 26,664.00	\$ 2,133.12	\$ 11,732,633.45	\$ -	\$ -
I-15 Bus Rapid Transit (BRT)									
Forecasted Quantity	Base Price	Use Tax	Base Price + Sales tax	Total Purchase Price	Manuals & Other	Use Tax (Manuals)	Grand Total		
2014 (Base)									
29	\$ 843,458.36	\$ 65,713.71	\$ 909,172.07	\$ 26,365,990.00	\$ 203,493.60	\$ 14,963.31	\$ 26,584,446.91	\$ -	\$ -
2015	\$ 868,621.36	\$ 67,726.75	\$ 936,348.11	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2016 (Option)	\$ 894,539.22	\$ 69,800.18	\$ 964,339.40	\$ 24,108,484.98	\$ 26,664.00	\$ 2,133.12	\$ 24,137,282.10	\$ -	\$ -
2017	\$ 921,234.59	\$ 71,935.81	\$ 993,170.40	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2018	\$ 948,730.79	\$ 74,135.50	\$ 1,022,866.29	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Contract Spares				\$ 108,000.00	\$ -	\$ -	\$ 108,000.00	\$ -	\$ -
54				\$ 50,582,474.98	\$ 230,157.60	\$ 17,096.43	\$ 50,829,729.01	\$ -	\$ -
Mid-City Rapid Services									
Forecasted Quantity	Base Price	Use Tax	Base Price + Sales tax	Total Purchase Price	Manuals & Other	Use Tax (Manuals)	Grand Total		
2014 (Base)									
18	\$ 845,487.36	\$ 65,876.03	\$ 911,363.39	\$ 16,404,541.00	\$ 126,306.40	\$ 9,287.57	\$ 16,540,134.97	\$ -	\$ -
2015 (Option)	\$ 870,710.26	\$ 67,893.86	\$ 938,604.12	\$ 9,386,041.22	\$ -	\$ -	\$ 9,386,041.22	\$ -	\$ -
2016 (Option)	\$ 896,689.85	\$ 69,972.23	\$ 966,662.08	\$ 9,666,620.77	\$ -	\$ -	\$ 9,666,620.77	\$ -	\$ -
2017 (Option)	\$ 923,448.82	\$ 72,112.95	\$ 995,561.77	\$ 9,955,617.70	\$ 26,664.00	\$ 2,133.12	\$ 9,984,414.82	\$ -	\$ -
2018 (Option)	\$ 951,010.57	\$ 74,317.89	\$ 1,025,328.45	\$ 51,266,422.72	\$ 53,328.00	\$ 4,266.24	\$ 51,324,016.96	\$ -	\$ -
Contract Spares				\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
98				\$ 96,679,243.40	\$ 206,298.40	\$ 15,686.93	\$ 96,901,228.72	\$ -	\$ -

Grand Total Estimate Project Cost \$ 159,463,591.18  
Total Estimate Contract Value \$ 147,927,205.69  
Total Estimate Use Tax \$ 11,536,385.49

## 60 Ft. Low-Floor Articulated CNG Transit Bus Procurement B0570.0-12

Metropolitan Transit System  
Board of Directors Meeting

Agenda Item No. 32b

December 13, 2012



1



### QUANTITY TO PURCHASE

- ☐ 85 buses with the option to purchase an additional 80 buses.
  - 54 "I-15" / "Southbay"; 18 "Mid-City"; 13 "MTS"

### REASON FOR PURCHASE

- ☐ New Service - Immediate purchase of 29 buses for the I-15 Corridor route: purchase and operations funded by SANDAG.
- ☐ New/Expanded Service - Immediate purchase of 18 buses for the Mid-City Rapid route: purchase and operations funded by SANDAG.
- ☐ Fiscal Year 2016 Diesel Bus Replacement - the MTS fleet will require replacement of 13 60 ft. articulated diesel buses.
- ☐ 80 Option units will be available between FY2014 and FY 2018 in the event of increased ridership, additional service, and pending future projects funded by SANDAG.



2



#### BUDGETARY IMPACT

- ❑ 165 Buses, including spare parts and use tax at an estimate cost of \$159,463,591.18 during Fiscal Years 2014 – 2018.
- ❑ Initial Notice to Proceed to purchase 47 buses for delivery in Fiscal Year 2014 for the I-15 Corridor and Mid-City Rapid Buses, inclusive of spare parts and use tax at an estimated cost of up to \$43,232,581.87, funded by SANDAG.



#### HIGHLIGHTS OF THE NEW 60 FT. BUSES

- ❑ I-15 buses will feature high-back seating, thicker seat cushions, and forward facing seating with minimal transverse positions for improved rider comfort during longer average transit time.
- ❑ I-15 and Mid-City buses will feature Traffic Signal Priority Systems; emits a signal to traffic lights to obtain a green light , maintaining vehicle movement and contribute to on-time performance.
- ❑ Intelligent Vehicle Network (IVN); Includes Automated Voice Announcements, Vehicle Diagnostics, Computer Aided Dispatch and Automated Vehicle Location system (CAD/AVL)



#### HIGHLIGHTS OF THE NEW 60 FT. BUSES - Continued

- ☐ On-Board Video Surveillance; Installed during factory assembly.
- ☐ Wheelchair restraint systems with forward passenger barrier wall for reduced securement times and additional passenger safety.
- ☐ Improved CNG Tank Life; rated for 20 years vs. 15 years.



#### PROCUREMENT PROCESS

- ☐ A negotiated procurement process was selected in order to accommodate the need for significant technical discussion between MTS and OEM proposers and in order to obtain the best value buses which meet the requirements and needs of MTS.
- ☐ Procurement process conducted in accordance with applicable local, state, and federal requirements:
  - *MTS Policy 52 (Procurement of Goods and Services)*
  - *Title 49 United States Code, Chapter 53*
  - *Federal Transit Administration Circular 4220.1F; Third Party Contracting Guidance*
  - *Federal Transit Administration's Best Practices Procurement Manual*



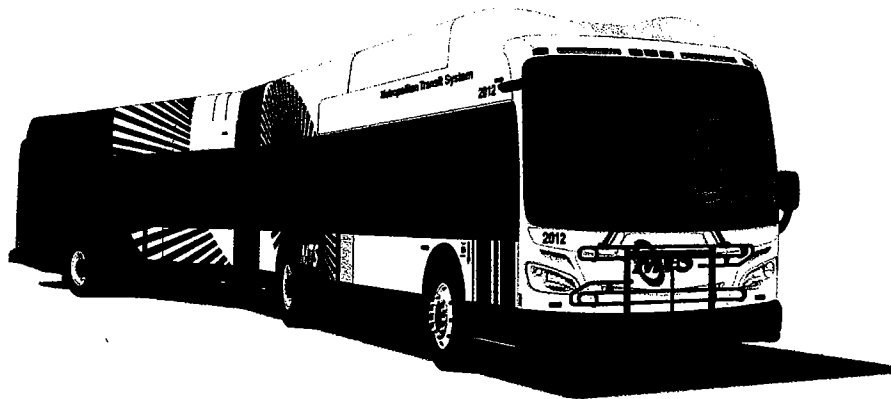
Recommendation:

That the Board of Directors authorize the Chief Executive Officer (CEO) to:

1. execute MTS Doc. No. B0570.0-12 (in substantially the same format as Attachment A) with New Flyer Industries for the purchase of up to 165 60-foot, low-floor, articulated, compressed natural gas (CNG) transit buses plus associated contract spare parts, manuals, training, special tools, and use-tax payments; and
2. issue a Notice to Proceed for 47 buses for the I-15 Corridor Bus Rapid Transit (BRT) and Mid-City Rapid Projects.



7



8





1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
(619) 231-1466 • FAX (619) 234-3407

## Agenda Item No. 45

### MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 13, 2012

#### SUBJECT:

FISCAL YEAR 2012 COMPREHENSIVE ANNUAL FINANCIAL REPORT  
(LINDA MUSENGO)

#### RECOMMENDATION:

That the Board of Directors receive the Fiscal Year 2012 Comprehensive Annual Financial Report (CAFR).


#### Budget Impact

None at this time.

#### DISCUSSION:

MTS staff and auditors Pun & McGeady will present the Fiscal Year 2012 CAFR.

Gary Caporicci of Pun & McGeady will present a brief overview of new Government Accounting Standards Board Statements 63, 65, 67, and 68.

  
Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, [Sharon.Cooney@sdmts.com](mailto:Sharon.Cooney@sdmts.com)

Attachment: A. Comprehensive Annual Financial Report (Board Only Due to Volume)







# **SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS PRESENTATION**

*For the year ended June 30, 2012*

Presented by:  
Greg M. Caporice, CFA, CFE, CFF, CFP  
David H. Pon, CFA, CFE, CFP

①

## **SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS PRESENTATION**

### **Contents**

- ▶ Project Team
- ▶ Management's Responsibilities
- ▶ Auditors' Responsibilities
- ▶ Approach to the Audit
- ▶ Audit Results
- ▶ Thank you

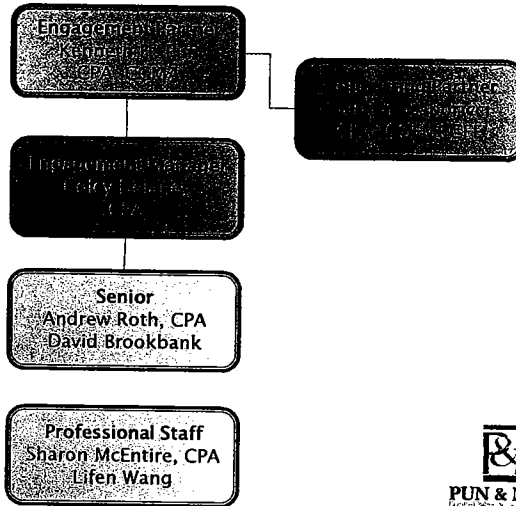


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## SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS PRESENTATION

### Project Team



3

3

## Kenneth H. Pun, CPA, CGMA Engagement Partner



#### Resident offices:

6265 Greenwich Drive  
Suite 220  
San Diego, CA 92122

9 Corporate Park  
Suite 130  
Irvine, CA 92606

Telephone:  
(949) 777-8801

Email:  
kpun@pm-llp.com

#### Professional Experience

Kenneth H. Pun is the Founding Partner and the Director of the Assurance Services of Pun & McGeady LLP. Prior to founding his own practice, Mr. Pun was employed by Caponici & Larson, a specialty CPA firm recognized as one of California's foremost experts in governmental and not-for-profit accounting, auditing, and advisory service, since 2001 and was promoted as a partner since 2008. He has performed numerous audits for cities, counties, transportation agencies, community college districts, other special districts, and non-profit healthcare entities of various sizes.

By leveraging more than 13 years of public accounting experience with a high level of expertise, Mr. Pun is often engaged by clients as a result of premier level of service he provides, his commitment, and his innovative methods of increasing operational efficiencies and reducing costs. Mr. Pun is a trusted advisor and a leader of accounting services to governmental and not-for-profit organizations.

In addition to working with clients, Mr. Pun provides the audit teams with direction and technical guidance to ensure adherence to the Firm's quality controls and assists with the development of the Assurance Services practice.

A recognized industry leader, Mr. Pun speaks on topics related to audits and quality control and shares his expertise with clients through annual educational seminars.

#### Education

- BS Degree in Accounting from the University of California, Riverside

#### Professional & Civic Affiliations

- Member, American Institute of Certified Public Accountants (AICPA)
- Member, California Society of Certified Public Accountants (CalCPA)
- Member, CalCPA Government Accounting and Auditing Committee
- Member, Government Finance Officers Association (GFOA)
- Member, California Society of Municipal Finance Officers (CSMFO)



4

4

## Gary M. Caporicci, CPA, CGFM, CFF

### Concurring Partner



**Resident office:**  
9 Corporate Park  
Suite 130  
Irvine, CA 92606

**Telephone:**  
(949) 777-8803

**Email:**  
gcaporicci@pm-lip.com

#### Professional Experience

Gary M. Caporicci has more than 30 years of diversified business experience, including a specialization in audit and management consulting for government organizations. Mr. Caporicci's clients include public and private universities and colleges, city and county governments, state agencies, joint power authorities, healthcare agencies, transportation agencies and special districts. Known for his expertise in the areas of construction and government, Mr. Caporicci wrote the AICPA audit guides on these topics, and authored many audit and accounting courses for professional groups, as well as academic institutions. He frequently speaks and lectures at many professional organizations, governmental seminars and conferences including industry associations, other accounting firms and universities. In addition, he authors white papers for the California Committee on Municipal Accounting. Prior to working with the Firm, Mr. Caporicci founded his own accounting practice. He also spent 11 years with a "Big Eight" professional services firm where he was an Audit Manager and gained broad experience in a wide range of industries such as government, construction, manufacturing, mutual funds and insurance. Mr. Caporicci's earlier experience includes a consultant position with a "Big Four" practice and Vice President of a national insurance and financial services company.

#### Education

- BS Degree in Accounting and Finance from the Armstrong University

#### Professional & Civic Affiliations

- Member, American Institute of Certified Public Accountants (AICPA)
- Member, California Society of Certified Public Accountants (CalCPA)
- Chair, CalCPA Government Accounting and Auditing Committee
- Chair and Speaker, CalCPA Governmental Accounting and Auditing State Conferences
- Member, CalCPA Council
- Chair, California Committee on Municipal Accounting (CCMA)
- Member, Government Finance Officers Association (GFOA)
- Member, California Society of Municipal Finance Officers (CSMFO)
- Member, Governmental Accounting Standards Board (GASB),
- Deposits and Investment Risks Disclosure Task Force
- National Reviewer & Speaker Government Finance Officers Association
- Adjunct Professor, National University
- Past Member, Texas Governmental Accounting and Auditing Committee



5

5

## SAN DIEGO METROPOLITAN TRANSIT SYSTEM

### BOARD OF DIRECTORS PRESENTATION

#### Management's Responsibilities

- Present the Financial Statements in accordance with Generally Accepted Accounting Principles
- Adopt Sound Accounting Policies
- Establish and Maintain Internal Controls over Financial Reporting and Compliance
- Provide evidence supporting to the financial statements and disclosures
- Prevent and detect fraud



6

6

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM  
BOARD OF DIRECTORS PRESENTATION**

**Auditor's Responsibilities**

- Assess Audit Risk of Internal Controls Over Financial Reporting and Compliance
- Determine compliance with Generally Accepted Accounting Principles in the United States of America
- Determine the Fairness and Accuracy of Financial Statements Presentation
- Issue Audit Opinion on the Financial Statements
- Issue Recommendations to Management, if any

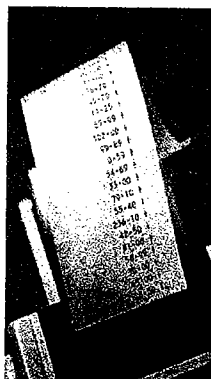


7

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**SAN DIEGO METROPOLITAN TRANSIT SYSTEM  
BOARD OF DIRECTORS PRESENTATION**

**Approach To The Audit**



- P&M's Audit Approach for MTS
  - Phase I - Detailed Planning
  - Phase II – Risk Based Review of Systems and Compliance
  - Phase III – Validation of Account Balances
  - Phase IV – Prepare and Review Financial Statements and Issue Opinions



8

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## SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS PRESENTATION

### Approach To The Audit

• **Overall Objectives:**

- System Evaluations, including IT Systems and Controls
- Internal Control Analysis and Audit Risk Assessment
- Compliance Verification
- Account Balance Validation
- Reconciliation and Account Analysis
- Analytical Reviews
- Review Implementation of New Accounting Standards
- Financial Reporting



9

(9)

## San Diego Metropolitan Transit System Summary Statement of Net Assets June 30,

	2012	2011
<b>Assets</b>		
Current assets	\$ 134,420,000	\$ 122,827,000
Non-current assets	242,894,000	176,527,000
Property and equipment, net	1,295,206,000	1,198,153,000
<b>Total assets</b>	<u>1,672,520,000</u>	<u>1,497,507,000</u>
<b>Liabilities:</b>		
Current liabilities	69,755,000	46,572,000
Long-term liabilities	193,730,000	197,238,000
<b>Total liabilities</b>	<u>263,485,000</u>	<u>243,810,000</u>
<b>Net Assets:</b>		
Invested in Capital Assets, Net of Related Debt	1,172,816,000	1,073,562,000
Restricted	78,378,000	7,007,000
Unrestricted	157,841,000	173,128,000
<b>Total liabilities and net assets</b>	<u>\$ 1,409,035,000</u>	<u>\$ 1,253,697,000</u>



10

(10)

**San Diego Metropolitan Transit System  
Summary Statements of Revenues, Expenses  
and Changes in Net Assets  
For the years ended June 30,**

	<u>2012</u>	<u>2011</u>
<b><u>Revenues</u></b>		
Operating revenues	\$ 93,509,000	\$ 90,202,000
Nonoperating revenues	332,661,000	179,257,000
Total Revenues	<u>426,170,000</u>	<u>269,459,000</u>
<b><u>Expenses</u></b>		
Operating expenses	306,931,000	291,893,000
Nonoperating expenses	8,019,000	8,559,000
Total Expenses	<u>314,950,000</u>	<u>300,452,000</u>
Change in net assets before Capital Contribution	<u>111,220,000</u>	<u>(30,993,000)</u>
Capital Contribution	44,118,000	26,806,000
Change in Net Assets	<u>\$ 155,338,000</u>	<u>\$ (4,187,000)</u>

  
**PUN & McGEADY**  
CPA's and Accountants

11

(11)

**San Diego Metropolitan Transit System  
Summary Statement of Cash Flows  
June 30,**

	<u>2012</u>	<u>2011</u>
Cash flows from Operating	\$ (124,274,000)	\$ (112,998,000)
Cash Flows from Noncapital Financing	336,075,000	158,223,000
Cash Flows from Capital and Related Financing	(126,144,000)	(60,776,000)
Cash Flows from Investing	<u>89,000</u>	<u>240,000</u>
Changes in cash and cash equivalents	<u>\$ 85,746,000</u>	<u>\$ (15,311,000)</u>

  
**PUN & McGEADY**  
CPA's and Accountants

12

(12)

**San Diego Metropolitan Transit System  
Schedule of Funding Progress  
of Defined Benefits Plans  
For the years ended June 30, 2012**

	<u>Transit</u>	<u>Trolley</u>
Actuarial Value of Assets	\$ 151,113,000	\$ 71,032,000
Entry Age Normal Actuarial Accrued Liabilities	236,875,000	79,497,000
Unfunded Actuarial Accrued Liabilities	\$ (85,762,000)	\$ (8,465,000)
Funded Status	<u>63.79%</u>	<u>89.35%</u>

**B&M**  
**PUN & McGEADY**  
CONSULTANTS TO THE METROPOLITAN TRANSIT SYSTEM

13

(13)

**San Diego Metropolitan Transit System  
Schedule of Funding Progress  
of Other Post Employment Healthcare Plan  
For the years ended June 30, 2012**

	<u>MTS</u>	<u>Transit</u>	<u>Trolley</u>
Actuarial Value of Assets	\$ -	\$ -	\$ -
Entry Age Normal Actuarial Accrued Liabilities	3,276,000	24,326,000	9,417,000
Unfunded Actuarial Accrued Liabilities	\$ (3,276,000)	\$ (24,326,000)	\$ (9,417,000)
Funded Status	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>

**B&M**  
**PUN & McGEADY**  
CONSULTANTS TO THE METROPOLITAN TRANSIT SYSTEM

14

(14)

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM  
BOARD OF DIRECTORS PRESENTATION**

**Audit Results**

- Unqualified Opinion
  - Financial Statements are fairly presented in all material respect
  - Significant accounting policies have been consistently applied
  - Estimates are reasonable
  - Disclosures are properly reflected in the financial statements



15

(15)

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM  
BOARD OF DIRECTORS PRESENTATION**

**Other Results**

- No disagreement with Management
- No material weaknesses or significant deficiencies in internal controls were noted
- No accounting issues
- No material irregularities discovered



16

(10)



**SAN DIEGO METROPOLITAN TRANSIT SYSTEM  
BOARD OF DIRECTORS PRESENTATION**

**Update on GASB Standards**

- GASB Statement No. 63, *Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources and Net Position* (Fiscal Year 2012-2013)
- GASB Statement No. 65, *Items Previously Reported as Assets and Liabilities* (Fiscal Year 2013-2014)
- GASB Statement No. 67, *Financial Reporting for Pension Plans* (Fiscal Year 2013-2014)
- GASB Statement No. 68, *Accounting and Financial Reporting for Pension Plans* (Fiscal Year 2014-2015)



17

(17)

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM  
BOARD OF DIRECTORS PRESENTATION**

**Update on GASB Standards**

- **Pensions Significant Matters from the Standards:**
  - **Accounting-Based**, Not Funding Based
  - Financial Statements to display **Net Pension Liability**
  - Amortize difference of **Projected Investment Earnings to Actual Investment Earnings** over 5 years
  - **Changes to Plan Benefits or Assumptions** should be expensed as follows:
    - Inactives or retirees, expense immediately
    - Active employees, expense over average expected remaining service lives
  - Cost-sharing, special funding situations and small groups should also follow and report pensions as a liability.



18

(18)

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM  
BOARD OF DIRECTORS PRESENTATION**

**Update on GASB Standards**

► **Selected Future Standards**

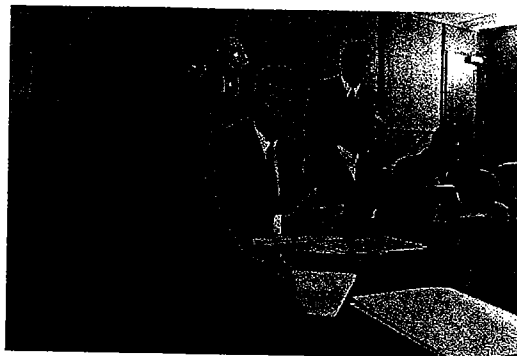
- Postemployment Benefits Accounting and Financial Reporting
- Economic Reporting Measures
- GASB Statement No. 34



19

19

**Thank You  
For Allowing Pun & McGeedy LLP  
to provide services to  
San Diego Metropolitan Transit System**



20

20



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## Agenda Item No. 46

### MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 13, 2012

#### SUBJECT:

FY 2012 FINAL BUDGET COMPARISON (TOM LYNCH)

#### RECOMMENDATION:

That the Board of Directors receive a report for information.

#### Budget Impact

None.

#### DISCUSSION:

With the completion of the FY 2012 Comprehensive Annual Financial Report (CAFR), the FY 2012 budget can be reviewed with audited numbers. Attachment A-1 summarizes the results with the variances to budget on a consolidated basis for the agency as a whole. Attachments A2-A7 show the results for transit operations (San Diego Transit Corporation [SDTC]), rail operations (San Diego Trolley, Inc. [SDTI]), Contract Services, General Fund, Taxicab Administration, and San Diego and Arizona Eastern (SD&AE) Railway Company, respectively.

#### Overall Results

For FY 2012, MTS had an excess of revenues over expenses of \$6,387,000. The amended budget assumed an excess of revenues over expenses of \$5,276,000 bringing in an additional \$1,205,000.

A comparison of the results against the amended budget is outlined below.



## REVENUES

### Fare Revenue

Passenger revenues were \$88,094,000 compared to \$88,728,000 in the amended budget for an unfavorable variance of \$634,000 (-0.7%). This was due to lower-than-anticipated ridership.

### Other Operating Revenue

Other operating revenues were \$5,341,000 compared to \$5,384,000 in the amended budget for an unfavorable variance of \$43,000 (-0.8%).

## EXPENSES

Overall, operating expenses were \$218,785,000 compared to an amended budget of \$219,782,000 for a favorable variance of \$997,000. The larger variances were in outside services and energy.

Total outside service expenses for the fiscal year totaled \$66,050,000 compared to an amended budget of \$67,156,000, which resulted in a favorable variance of \$1,106,000 (1.6%). Services across the board (purchased transportation, general services, repairs, and security) were favorable.

Total year-end energy costs were \$22,689,000 compared to the amended budget of \$22,059,000, which resulted in an unfavorable variance of \$630,000 (-2.9%). The unfavorable variances were in diesel fuel and traction power. Prices came out:

- Diesel: cost per gallon was \$3.39 versus a budgeted rate of \$3.45
- Gasoline: cost per gallon was \$3.53 versus a budgeted rate of \$3.44
- CNG: cost per therm was \$0.85 versus a budgeted rate of \$0.909

### Subsidy Revenue and Other Nonoperating Revenue and Expenses

Attachment A-8 details subsidy revenue and other nonoperating revenue and expenses. Subsidy revenues were \$134,228,000 compared to \$133,340,000 in the amended budget for a favorable variance of \$888,000 (0.7%); \$660,000 of this variance was in TransNet revenues as sales tax receipts were higher than anticipated.

### Reserves

Attachment A-9 details MTS's contingency reserve. The ending reserve balance on June 30, 2011, was \$21,686,000.

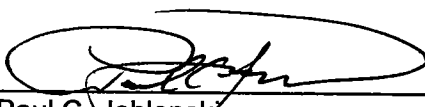
For FY 2012, MTS had an excess of revenues over expenses before reserves of \$6,355,000. After adjusting for interest, other adjustments, and the income or loss from SD&AE and Taxicab Administration results (which are self-funded), the change for the

year totals \$6,460,000. The new contingency reserve balance on June 30, 2012, thus became \$28,146,000.

In developing the FY 2013 budget, the Board of Directors approved using \$5,200,000 from the contingency reserve to help pay off variable pension obligation bonds with Dexia. This was an intended use of the surplus from FY 2012 described above.

After taking into account the \$5,200,000 to be used in FY 2013, the net contingency reserve of \$22,946,000 represents 9.9% of the FY 2013 operations budget of \$231,655,000.

MTS has a number of other reserves, and the balances are listed on Attachment A-10.

  
\_\_\_\_\_  
Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, [Sharon.Cooney@sdmts.com](mailto:Sharon.Cooney@sdmts.com)

Attachment: A. Schedules and Balance Tables

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**FINAL YEAR END COMPARISON OF ACTUAL TO BUDGET**  
**FY 2012**  
**CONSOLIDATED**  
(in \$000's)

Att. A, AI 46, 12/13/12

	<b>ACTUALS ON A BUDGET BASIS</b>	<b>AMENDED BUDGET</b>	<b>DOLLAR VARIANCE</b>	<b>PERCENT VARIANCE</b>
Passenger Revenue	\$ 88,094	\$ 88,728	\$ (634)	-0.7%
Other Revenue	<u>5,341</u>	<u>5,384</u>	<u>(43)</u>	<u>-0.8%</u>
<b>Total Operating Revenue</b>	<b><u>93,435</u></b>	<b><u>94,112</u></b>	<b><u>(677)</u></b>	<b><u>-0.7%</u></b>
Personnel costs	111,531	111,629	98	0.1%
Outside services	66,050	67,156	1,106	1.6%
Transit operations funding	3,721	3,952	231	5.8%
Materials and supplies	7,977	7,778	(199)	-2.6%
Energy	22,689	22,059	(630)	-2.9%
Risk management	3,651	3,983	332	8.3%
Miscellaneous operating expenses	<u>3,166</u>	<u>3,225</u>	<u>59</u>	<u>1.8%</u>
<b>Total Operating Expenses</b>	<b><u>218,785</u></b>	<b><u>219,782</u></b>	<b><u>997</u></b>	<b><u>0.5%</u></b>
<b>Operating income (loss)</b>	<b><u>(125,350)</u></b>	<b><u>(125,670)</u></b>	<b><u>320</u></b>	<b><u>0.3%</u></b>
Subsidy Revenue	134,228	133,340	888	0.7%
Other Non-Operating Revenue	<u>(2,523)</u>	<u>(2,531)</u>	<u>8</u>	<u>-0.3%</u>
<b>Total Non-Operating Revenue</b>	<b><u>131,705</u></b>	<b><u>130,809</u></b>	<b><u>896</u></b>	<b><u>0.7%</u></b>
<b>Income (loss) before Reserve Utilization</b>	<b>6,355</b>	<b>5,139</b>	<b>1,216</b>	<b>23.7%</b>
Reserve Usage	<u>32</u>	<u>43</u>	<u>(11)</u>	<u>-25.6%</u>
<b>Net Income (loss)</b>	<b>\$ <u><u>6,387</u></u></b>	<b>\$ <u><u>5,182</u></u></b>	<b>\$ <u><u>1,205</u></u></b>	<b><u><u>23.3%</u></u></b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**

Att. A, AI 46, 12/13/12

**FINAL YEAR END COMPARISON OF ACTUAL TO BUDGET**

**FY 2012**

**TRANSIT SERVICES (SAN DIEGO TRANSIT CORPORATION)**

(in \$000's)

	<b>ACTUALS ON A BUDGET BASIS</b>	<b>AMENDED BUDGET</b>	<b>DOLLAR VARIANCE</b>	<b>PERCENT VARIANCE</b>
Passenger Revenue	\$ 27,497	\$ 27,813	\$ (316)	-1.1%
Other Revenue	196	10	186	1860.0%
<b>Total Operating Revenue</b>	<b>27,693</b>	<b>27,823</b>	<b>(130)</b>	<b>-0.5%</b>
Personnel costs	65,224	65,382	158	0.2%
Outside services	1,889	2,094	205	9.8%
Transit operations funding	0	0	0	-
Materials and supplies	4,542	4,532	(10)	-0.2%
Energy	5,605	5,681	76	1.3%
Risk management	1,982	1,775	(207)	-11.7%
Miscellaneous operating expenses	9,165	9,165	0	0.0%
<b>Total Operating Expenses</b>	<b>88,407</b>	<b>88,629</b>	<b>222</b>	<b>0.3%</b>
<b>Operating income (loss)</b>	<b>(60,714)</b>	<b>(60,806)</b>	<b>92</b>	<b>0.2%</b>
Subsidy Revenue	62,626	62,697	(71)	-0.1%
Other Non-Operating Revenue and Expense	(1,912)	(1,891)	(21)	1.1%
<b>Total Non-Operating Revenue</b>	<b>60,714</b>	<b>60,806</b>	<b>(92)</b>	<b>-0.2%</b>
<b>Income (loss) before Reserve Utilization</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>-</b>
Reserve Usage	0	0	0	-
<b>Net Income (loss)</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>-</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**

Att. A, AI 46, 12/13/12

**FINAL YEAR END COMPARISON OF ACTUAL TO BUDGET**

**FY 2012**

**RAIL OPERATIONS (SAN DIEGO TROLLEY, INCORPORATED)**

(in \$000's)

	<b>ACTUALS ON A BUDGET BASIS</b>	<b>AMENDED BUDGET</b>	<b>DOLLAR VARIANCE</b>	<b>PERCENT VARIANCE</b>
Passenger Revenue	\$ 35,216	\$ 35,108	\$ 108	0.3%
Other Revenue	552	664	(112)	-16.9%
<b>Total Operating Revenue</b>	<b>35,768</b>	<b>35,772</b>	<b>(4)</b>	<b>0.0%</b>
Personnel costs	30,371	30,548	177	0.6%
Outside services	3,921	4,165	244	5.9%
Transit operations funding	0	0	0	-
Materials and supplies	3,404	3,203	(201)	-6.3%
Energy	8,523	8,017	(506)	-6.3%
Risk management	1,350	1,771	421	23.8%
Miscellaneous operating expenses	13,970	14,018	48	0.3%
<b>Total Operating Expenses</b>	<b>61,540</b>	<b>61,722</b>	<b>183</b>	<b>0.3%</b>
<b>Operating income (loss)</b>	<b>(25,772)</b>	<b>(25,950)</b>	<b>178</b>	<b>0.7%</b>
Subsidy Revenue	25,772	25,950	(178)	-0.7%
Other Non-Operating Revenue	0	0	0	-
<b>Total Non-Operating Revenue</b>	<b>25,772</b>	<b>25,950</b>	<b>(178)</b>	<b>-0.7%</b>
<b>Income (loss) before Reserve Utilization</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>-</b>
Reserve Usage	0	0	0	-
<b>Net Income (loss)</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>-</b>



**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**FINAL YEAR END COMPARISON OF ACTUAL TO BUDGET**

Att. A, AI 46, 12/13/12

**FY 2012**

**CONTRACT SERVICES**

(in \$000's)

	<b>ACTUALS ON A BUDGET BASIS</b>	<b>AMENDED BUDGET</b>	<b>DOLLAR VARIANCE</b>	<b>PERCENT VARIANCE</b>
Passenger Revenue	\$ 25,381	\$ 25,807	\$ (426)	-1.7%
Other Revenue		0	0	-
<b>Total Operating Revenue</b>	<b>25,381</b>	<b>25,807</b>	<b>(426)</b>	<b>-1.7%</b>
Personnel costs	542	567	25	4.4%
Outside services	50,606	50,918	312	0.6%
Transit operations funding	0	0	0	-
Materials and supplies	8	4	(4)	-100.0%
Energy	8,345	8,144	(201)	-2.5%
Risk management	16	15	(1)	-6.7%
Miscellaneous operating expenses	1,638	1,644	6	0.4%
<b>Total Operating Expenses</b>	<b>61,155</b>	<b>61,293</b>	<b>137</b>	<b>0.2%</b>
<b>Operating income (loss)</b>	<b>(35,774)</b>	<b>(35,486)</b>	<b>(288)</b>	<b>-0.8%</b>
Subsidy Revenue	35,774	35,486	288	0.8%
Other Non-Operating Revenue	0	0	0	-
<b>Total Non-Operating Revenue</b>	<b>35,774</b>	<b>35,486</b>	<b>288</b>	<b>0.8%</b>
<b>Income (loss) before Reserve Utilization</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>-</b>
Reserve Usage	0	0	0	-
<b>Net Income (loss)</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>-</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**FINAL YEAR END COMPARISON OF ACTUAL TO BUDGET**  
**FY 2012**

Att. A, AI 46, 12/13/12

**GENERAL OPERATIONS (less Taxicab and SD&AE)**

(in \$000's)

	ACTUALS ON A BUDGET BASIS	AMENDED BUDGET	DOLLAR VARIANCE	PERCENT VARIANCE
Passenger Revenue	\$ 0	\$ 0	\$ 0	-
Other Revenue	3,628	3,689	(61)	-1.7%
<b>Total Operating Revenue</b>	<b>3,628</b>	<b>3,689</b>	<b>(61)</b>	<b>-1.7%</b>
Personnel costs	14,726	14,470	(256)	-1.8%
Outside services	9,542	9,821	279	2.8%
Transit operations funding	3,721	3,952	231	5.8%
Materials and supplies	13	34	21	61.8%
Energy	209	206	(3)	-1.5%
Risk management	279	395	116	29.4%
Miscellaneous operating expenses	(21,803)	(21,804)	(1)	0.0%
<b>Total Operating Expenses</b>	<b>6,688</b>	<b>7,074</b>	<b>387</b>	<b>5.5%</b>
<b>Operating income (loss)</b>	<b>(3,060)</b>	<b>(3,385)</b>	<b>325</b>	<b>9.6%</b>
Subsidy Revenue	10,056	9,207	849	9.2%
Other Non-Operating Revenue	(611)	(640)	29	-4.5%
<b>Total Non-Operating Revenue</b>	<b>9,445</b>	<b>8,567</b>	<b>878</b>	<b>10.2%</b>
<b>Income (loss) before Reserve Utilization</b>	<b>6,385</b>	<b>5,182</b>	<b>1,203</b>	<b>23.2%</b>
Reserve Usage	0	0	0	-
<b>Net Income (loss)</b>	<b>\$ 6,385</b>	<b>\$ 5,182</b>	<b>\$ 1,203</b>	<b>23.2%</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**FINAL YEAR END COMPARISON OF ACTUAL TO BUDGET**

Att. A, AI 46, 12/13/12

**FY 2012**

**TAXICAB ADMINISTRATION**

(in \$000's)

	ACTUALS ON A BUDGET BASIS	AMENDED BUDGET	DOLLAR VARIANCE	PERCENT VARIANCE
Passenger Revenue	\$ 0	\$ 0	\$ 0	-
Other Revenue	845	881	(36)	-4.1%
<b>Total Operating Revenue</b>	<b>845</b>	<b>881</b>	<b>(36)</b>	<b>-4.1%</b>
Personnel costs	584	584	0	0.0%
Outside services	92	128	36	28.1%
Transit operations funding	0	0	0	-
Materials and supplies	10	5	(5)	-100.0%
Energy	7	11	4	36.4%
Risk management	0	0	0	-
Miscellaneous operating expenses	196	200	4	2.0%
<b>Total Operating Expenses</b>	<b>889</b>	<b>927</b>	<b>39</b>	<b>4.2%</b>
<b>Operating income (loss)</b>	<b>(44)</b>	<b>(46)</b>	<b>2</b>	<b>4.3%</b>
Subsidy Revenue	0	0	0	-
Other Non-Operating Revenue	0	0	0	-
<b>Total Non-Operating Revenue</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>-</b>
<b>Income (loss) before Reserve Utilization</b>	<b>(44)</b>	<b>(46)</b>	<b>2</b>	<b>-4.3%</b>
Reserve Usage	44	46	(2)	-4.3%
<b>Net Income (loss)</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>-</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**FINAL YEAR END COMPARISON OF ACTUAL TO BUDGET**  
**FY 2012**

Att. A, AI 46, 12/13/12

**SAN DIEGO & ARIZONA EASTERN RAILWAY (SD&AE)**  
**(in \$000's)**

	<b>ACTUALS ON A BUDGET BASIS</b>	<b>AMENDED BUDGET</b>	<b>DOLLAR VARIANCE</b>	<b>PERCENT VARIANCE</b>
Passenger Revenue	\$ 0	\$ 0	\$ 0	-
Other Revenue	120	140	(20)	-14.3%
<b>Total Operating Revenue</b>	<b>120</b>	<b>140</b>	<b>(20)</b>	<b>-14.3%</b>
Personnel costs	84	78	(6)	-7.7%
Outside services		30	30	-
Transit operations funding	0	0	0	-
Materials and supplies	0	0	0	-
Energy	0	0	0	-
Risk management	24	27	3	11.1%
Miscellaneous operating expenses		2	2	-
<b>Total Operating Expenses</b>	<b>108</b>	<b>137</b>	<b>29</b>	<b>21.2%</b>
<b>Operating income (loss)</b>	<b>12</b>	<b>3</b>	<b>9</b>	<b>-300.0%</b>
Subsidy Revenue	0	0	0	-
Other Non-Operating Revenue	0	0	0	-
<b>Total Non-Operating Revenue</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>-</b>
<b>Income (loss) before Reserve Utilization</b>	<b>12</b>	<b>3</b>	<b>9</b>	<b>300.0%</b>
Reserve Usage	(12)	(3)	(9)	300.0%
<b>Net Income (loss)</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>-</b>

## FINAL YEAR END COMPARISON OF ACTUAL TO BUDGET

FY 2012

## COMBINED SUBSIDY AND OTHER NON OPERATING REVENUE AND EXPENSES

(in \$000's)

	ACTUALS ON A BUDGET BASIS	AMENDED BUDGET	DOLLAR VARIANCE	PERCENT VARIANCE
<b><u>Subsidy Revenue</u></b>				
Federal Revenue	\$ 38,512	\$ 38,403	\$ 109	0.3%
Transportation Development Act	65,342	65,342	0	0.0%
State Transit Assistance	1,697	1,697	0	0.0%
State Revenue - Other	1,471	1,400	71	5.1%
TransNet funds	22,390	21,750	640	2.9%
Other Local subsidies	4,816	4,748	68	1.4%
<b>Total Subsidy Revenue</b>	<b>134,228</b>	<b>133,340</b>	<b>888</b>	<b>0.7%</b>
<b><u>Other Non Operating Revenue and Expense</u></b>				
Investment Earnings	7,604	7,667	(63)	-0.8%
Other Non Operating Income	0	0	0	-
Other Non Operating Expenses	(10,127)	(10,198)	71	-0.7%
<b>Total Other Non Operating Revenue Revenue and Expense</b>	<b>(2,523)</b>	<b>(2,531)</b>	<b>8</b>	<b>-0.3%</b>
<b>Total Subsidy and Non Operating Revenue and Expense</b>	<b>\$ 131,705</b>	<b>\$ 130,809</b>	<b>\$ 896</b>	<b>0.7%</b>

# SAN DIEGO METROPOLITAN TRANSIT SYSTEM

Atty. A: A-146 12/13/12

## Contingency Reserve

FY 2012

(in \$000's)

Balance, June 30, 2011		21,686
FY 2012 Operations	6,355	
Interest allocation/other	73	
Addback (deduct)		
SDAE	(12)	
Taxi	44	
Operations, Net		6,460
		<hr/>
Balance, June 30, 2012		<u>28,146</u>

Note - \$5,200,000 of the contingency reserve has been approved via the FY 2013 budget to help pay off the variable Pension Obligation Bonds (POBs) with Dexia.

## Reserve Balances

FY 2012

(in \$000's)

Title	Amount	Explanation
Contingency	28,146,079	For ongoing operations, future matching of grants; minimum 4% of operating budget per Policy 36
Capital Project Reserve	3,748,706	To hold prior year's revenue for the FY 2013 capital budget
Taxicab capital	11,815	For replacement of office equipment and vehicles
Insurance	2,000,000	Established for potential future liability claims, minimum \$2 million per policy 46
Billboard San Diego	108,042	Per agreement with city, used for improvements to right of way
Billboard Chula Vista	1,169,007	Per agreement with city, used for improvements to right of way
SD&AE	916,413	Established from 1984 state payments for storm damage, restricted for repair/improvement of line
MTS JPA residual	535,527	Established from proceeds of legal settlement, restricted for repairs to MTS Tower
Land management	436,648	For for repair and maintenance of rental property
	<u>37,072,237</u>	

# Metropolitan Transit System Final Year End Budget Comparison FY 2012

Board of Directors Meeting  
December 13, 2012



①

## SAN DIEGO METROPOLITAN TRANSIT SYSTEM FINAL YEAR END BUDGET COMPARISON - FY 2012 COMPARISON OF OPERATIONS TO BUDGET (in \$ 000's)

	Actual	Amended Budget	Variance
Operating Revenue	\$ 93,435	\$ 94,112	\$ (677)
Operating Expenses	<u>218,785</u>	<u>219,782</u>	<u>997</u>
Operating Income (Loss)	(125,350)	(125,670)	320
Non Operating Revenue	<u>131,705</u>	<u>130,809</u>	<u>896</u>
Income (Loss) before Reserve Utilization	6,355	5,139	1,216
Reserve Usage	<u>32</u>	<u>43</u>	<u>11</u>
Net Income (Loss)	<u>\$ 6,387</u>	<u>\$ 5,182</u>	<u>\$ 1,205</u>



②



**SAN DIEGO METROPOLITAN TRANSIT SYSTEM  
FINAL YEAR END BUDGET COMPARISON - FY 2012  
NON OPERATING REVENUE**

(in \$ 000's)

	Actual	Amended Budget	Variance
Federal Revenue	\$ 38,512	\$ 38,403	\$ 109
TDA Revenue	65,342	65,342	0
TransNet Revenue	22,390	21,750	640
Other Subsidy Revenue	<u>7,984</u>	<u>7,845</u>	<u>139</u>
Total Subsidy Revenue	134,228	133,340	888
Other Non Operating Revenue/(Expense)	<u>(2,523)</u>	<u>(2,531)</u>	<u>8</u>
Total Non Operating Revenue	<u>\$ 131,705</u>	<u>\$ 130,809</u>	<u>\$ 896</u>



3

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM  
FINAL YEAR END BUDGET COMPARISON - FY 2012  
CONTINGENCY RESERVE**

(in \$ 000's)

Balance, June 30 , 2011	21,686
FY 2012 operations	6,355
Interest and other adjustments	73
Taxicab/SD&AE Net Income to their reserves	<u>32</u>
Adjusted total from operations	<u>6,460</u>
Balance, June 30 , 2012	<u>\$ 28,146</u>

Note - \$5.2 million of the contingency reserve has been approved via the FY 2013 budget to pay off the variable \$30 Million Pension Obligation Bonds with Dexia



4

# Metropolitan Transit System Final Year End Budget Comparison FY 2012

Board of Directors Meeting  
December 13, 2012



5



1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
619.231.1466 FAX 619.234.3407

## Agenda Item No. 47

### MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 13, 2012

#### SUBJECT:

OPERATIONS BUDGET STATUS REPORT FOR OCTOBER 2012 (MIKE THOMPSON)

#### RECOMMENDATION:

That the Board of Directors receive a report for information.

#### Budget Impact

None at this time.

#### DISCUSSION:

This report summarizes MTS's operating results for October 2012 compared to the fiscal year 2013 budget. Attachment A-1 combines the operations, administration, and other activities results for October 2012. Attachment A-2 details the October 2012 combined operations results, and Attachments A-3 to A-8 present budget comparisons for each MTS operation. Attachment A-9 details budget comparisons for MTS Administration, and A-10 provides October 2012 results for MTS's other activities (Taxicab/San Diego and Arizona Eastern Railway Company).

#### MTS NET-OPERATING SUBSIDY RESULTS

As indicated within Attachment A-1, the MTS net-operating income favorable variance totaled \$1,040,000 (2.3%) for the year-to-date period ending October 2012. Operations produced a \$1,019,000 (2.3%) favorable variance, and the administrative/other activities areas were favorable by \$21,000.



Metropolitan Transit System (MTS) is comprised of the Metropolitan Transit Development Board (MTDB) a California public agency, San Diego Transit Corp., and San Diego Trolley, Inc., in cooperation with Chula Vista Transit and National City Transit. MTS is Taxicab Administrator for eight cities. MTDB is owner of the San Diego and Arizona Eastern Railway Company. MTDB Member Agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.

## MTS COMBINED RESULTS

### Revenues

Year-to-date combined revenues through October 2012 were \$34,359,000 compared to the year-to-date budget of \$33,451,000 representing a \$908,000 (2.7%) positive variance. This is primarily due to a favorable variance within passenger revenue.

### Expenses

Year-to-date combined expenses through October 2012 were \$78,358,000 compared to the budget of \$78,490,000, resulting in a \$132,000 (0.2%) favorable variance.

Personnel Costs. Year-to-date personnel-related costs totaled \$39,968,000 compared to a budgetary figure of \$40,791,000, producing a favorable variance of \$823,000 (2.0%). This is primarily due to favorable variances within Transit Operations.

Outside Services and Purchased Transportation. Total outside services for the first four months of the fiscal year totaled \$24,725,000 compared to a budget of \$25,121,000, resulting in a favorable variance of \$396,000 (1.6%). This is primarily due to a favorable experience with repairs/maintenance costs and engines/transmissions costs within Operations.

Materials and Supplies. Total year-to-date materials and supplies expenses were \$3,328,000 compared to a budgetary figure of \$2,822,000, resulting in an unfavorable expense variance of \$507,000 (-18.0%). This unfavorable variance is primarily due to revenue parts costs within Rail Operations.

Energy. Total year-to-date energy costs were \$8,065,000 compared to the budget of \$7,529,000 resulting in an unfavorable variance of \$536,000 (-7.1%). Energy rates for the fiscal year are as follows:


- Diesel: cost per gallon was \$3.45 versus a budgeted rate of \$3.85
- Gasoline: cost per gallon was \$3.62 versus a budgeted rate of \$3.83
- CNG: cost per therm was \$0.68 versus a budgeted rate of \$0.72
- Electricity: cost per kWh was \$0.164 versus a budgeted rate of \$0.149

Risk Management. Total year-to-date expenses for risk management were \$1,292,000, compared to the budget of \$1,345,000, resulting in a favorable variance totaling \$54,000 (4.0%).

General and Administrative. The year-to-date general and administrative costs, including vehicle and facilities leases, were \$98,000 (-11.1%) unfavorable to budget totaling \$980,000 through October 2012 compared to a budget of \$882,000.

## YEAR-TO-DATE SUMMARY

The October 2012 year-to-date net-operating income totaled a favorable variance of \$1,040,000.00 (2.3%). These factors include favorable variances in passenger revenue, other operating revenue, personnel costs, and outside services, partially offset by unfavorable variances in energy, materials and general and administrative expenses.

  
Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, [Sharon.Cooney@sdmts.com](mailto:Sharon.Cooney@sdmts.com)

Attachment: A. Comparison to Budget

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**MTS**  
**CONSOLIDATED**  
**COMPARISON TO BUDGET - FISCAL YEAR 2013**  
**OCTOBER 31, 2012**  
**(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	VAR. %
Passenger Revenue	\$ 32,423	\$ 31,741	\$ 681	2.1%
Other Revenue	1,936	1,709	227	13.3%
<b>Total Operating Revenue</b>	<b>\$ 34,359</b>	<b>\$ 33,451</b>	<b>\$ 908</b>	<b>2.7%</b>
Personnel costs	\$ 39,968	\$ 40,791	\$ 823	2.0%
Outside services	24,725	25,121	396	1.6%
Transit operations funding	-	-	-	-
Materials and supplies	3,328	2,822	(507)	-18.0%
Energy	8,065	7,529	(536)	-7.1%
Risk management	1,292	1,345	54	4.0%
General & administrative	696	596	(100)	-16.7%
Vehicle/facility leases	284	286	2	0.6%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	(0)	0	0	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 78,358</b>	<b>\$ 78,490</b>	<b>\$ 132</b>	<b>0.2%</b>
<b>Operating income (loss)</b>	<b>\$ (43,999)</b>	<b>\$ (45,039)</b>	<b>\$ 1,040</b>	<b>2.3%</b>
<b>Total public support and nonoperating revenues</b>	<b>1,257</b>	<b>1,243</b>	<b>14</b>	<b>1.1%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ (42,743)</b>	<b>\$ (43,797)</b>	<b>\$ 1,054</b>	<b>-2.4%</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**CONSOLIDATED OPERATIONS**  
**COMPARISON TO BUDGET - FISCAL YEAR 2013**  
**OCTOBER 31, 2012**  
**(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	VAR. %
Passenger Revenue	\$ 32,423	\$ 31,741	\$ 681	2.1%
Other Revenue	140	226	(86)	-38.1%
<b>Total Operating Revenue</b>	<b>\$ 32,563</b>	<b>\$ 31,967</b>	<b>\$ 595</b>	<b>1.9%</b>
Personnel costs	\$ 34,433	\$ 35,461	\$ 1,029	2.9%
Outside services	21,231	21,693	462	2.1%
Transit operations funding	-	-	-	-
Materials and supplies	3,318	2,813	(506)	-18.0%
Energy	7,851	7,314	(537)	-7.3%
Risk management	1,191	1,212	20	1.7%
General & administrative	138	86	(53)	-61.5%
Vehicle/facility leases	207	214	8	3.6%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	8,338	8,338	0	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 76,706</b>	<b>\$ 77,130</b>	<b>\$ 424</b>	<b>0.5%</b>
<b>Operating income (loss)</b>	<b>\$ (44,144)</b>	<b>\$ (45,163)</b>	<b>\$ 1,019</b>	<b>2.3%</b>
<b>Total public support and nonoperating revenues</b>	<b>1,246</b>	<b>1,243</b>	<b>4</b>	<b>0.3%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ (42,898)</b>	<b>\$ (43,920)</b>	<b>\$ 1,023</b>	<b>-2.3%</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**TRANSIT SERVICES (SAN DIEGO TRANSIT CORPORATION)**  
**COMPARISON TO BUDGET - FISCAL YEAR 2013**  
**OCTOBER 31, 2012**  
**(in \$000's)**

	<b>YEAR TO DATE</b>			
	<b>ACTUAL</b>	<b>BUDGET</b>	<b>VARIANCE</b>	<b>VAR. %</b>
Passenger Revenue	\$ 9,903	\$ 9,600	\$ 303	3.2%
Other Revenue	3	3	(1)	-16.6%
<b>Total Operating Revenue</b>	<b>\$ 9,906</b>	<b>\$ 9,604</b>	<b>\$ 302</b>	<b>3.1%</b>
Personnel costs	\$ 23,380	\$ 24,470	\$ 1,091	4.5%
Outside services	639	762	123	16.1%
Transit operations funding	-	-	-	-
Materials and supplies	1,594	1,597	3	0.2%
Energy	1,666	1,614	(52)	-3.2%
Risk management	565	600	35	5.8%
General & administrative	49	49	(0)	-0.8%
Vehicle/facility leases	94	95	1	0.8%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	3,135	3,135	-	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 31,122</b>	<b>\$ 32,321</b>	<b>\$ 1,199</b>	<b>3.7%</b>
<b>Operating income (loss)</b>	<b>\$ (21,216)</b>	<b>\$ (22,718)</b>	<b>\$ 1,501</b>	<b>6.6%</b>
<b>Total public support and nonoperating revenues</b>	<b>(578)</b>	<b>(571)</b>	<b>(6)</b>	<b>1.1%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ (21,794)</b>	<b>\$ (23,289)</b>	<b>\$ 1,495</b>	<b>-6.4%</b>



**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**RAIL OPERATIONS (SAN DIEGO TROLLEY, INCORPORATED)**  
**COMPARISON TO BUDGET - FISCAL YEAR 2013**  
**OCTOBER 31, 2012**  
**(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	VAR. %
Passenger Revenue	\$ 12,714	\$ 12,284	\$ 430	3.5%
Other Revenue	137	222	(85)	-38.4%
<b>Total Operating Revenue</b>	<b>\$ 12,851</b>	<b>\$ 12,507</b>	<b>\$ 344</b>	<b>2.8%</b>
Personnel costs	\$ 10,584	\$ 10,505	\$ (79)	-0.7%
Outside services	1,146	1,301	155	11.9%
Transit operations funding	-	-	-	-
Materials and supplies	1,724	1,213	(511)	-42.1%
Energy	3,231	2,787	(445)	-16.0%
Risk management	621	607	(14)	-2.3%
General & administrative	86	29	(57)	-194.6%
Vehicle/facility leases	107	113	6	5.3%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	4,691	4,691	-	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 22,191</b>	<b>\$ 21,247</b>	<b>\$ (945)</b>	<b>-4.4%</b>
<b>Operating income (loss)</b>	<b>\$ (9,340)</b>	<b>\$ (8,740)</b>	<b>\$ (600)</b>	<b>-6.9%</b>
<b>Total public support and nonoperating revenues</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Income (loss) before capital contributions</b>	<b>\$ (9,340)</b>	<b>\$ (8,740)</b>	<b>\$ (600)</b>	<b>6.9%</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**MULTIMODAL OPERATIONS (FIXED ROUTE)**  
**COMPARISON TO BUDGET - FISCAL YEAR 2013**  
**OCTOBER 31, 2012**  
**(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	VAR. %
Passenger Revenue	\$ 8,288	\$ 8,172	\$ 116	1.4%
Other Revenue	-	-	-	-
<b>Total Operating Revenue</b>	<b>\$ 8,288</b>	<b>\$ 8,172</b>	<b>\$ 116</b>	<b>1.4%</b>
Personnel costs	\$ 148	\$ 147	\$ (1)	-1.0%
Outside services	13,582	13,836	255	1.8%
Transit operations funding	-	-	-	-
Materials and supplies	0	2	1	85.1%
Energy	1,944	1,959	15	0.8%
Risk management	-	-	-	-
General & administrative	1	1	1	61.9%
Vehicle/facility leases	5	6	1	17.2%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	353	353	0	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 16,033</b>	<b>\$ 16,304</b>	<b>\$ 271</b>	<b>1.7%</b>
<b>Operating income (loss)</b>	<b>\$ (7,745)</b>	<b>\$ (8,132)</b>	<b>\$ 387</b>	<b>4.8%</b>
<b>Total public support and nonoperating revenues</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Income (loss) before capital contributions</b>	<b>\$ (7,745)</b>	<b>\$ (8,132)</b>	<b>\$ 387</b>	<b>-4.8%</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM  
OPERATIONS  
MULTIMODAL OPERATIONS (PARATRANSIT)  
COMPARISON TO BUDGET - FISCAL YEAR 2013  
OCTOBER 31, 2012  
(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	VAR. %
Passenger Revenue	\$ 619	\$ 651	\$ (32)	-4.9%
Other Revenue	-	-	-	-
<b>Total Operating Revenue</b>	<b>\$ 619</b>	<b>\$ 651</b>	<b>\$ (32)</b>	<b>-4.9%</b>
Personnel costs	\$ 47	\$ 50	\$ 3	5.3%
Outside services	3,835	3,747	(88)	-2.3%
Transit operations funding	-	-	-	-
Materials and supplies	-	-	-	-
Energy	882	781	(101)	-12.9%
Risk management	5	5	-	0.0%
General & administrative	2	2	(0)	-11.1%
Vehicle/facility leases	-	-	-	-
Amortization of net pension asset	-	-	-	-
Administrative Allocation	118	118	0	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 4,889</b>	<b>\$ 4,703</b>	<b>\$ (186)</b>	<b>-4.0%</b>
<b>Operating income (loss)</b>	<b>\$ (4,270)</b>	<b>\$ (4,052)</b>	<b>\$ (218)</b>	<b>-5.4%</b>
<b>Total public support and nonoperating revenues</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Income (loss) before capital contributions</b>	<b>\$ (4,270)</b>	<b>\$ (4,052)</b>	<b>\$ (218)</b>	<b>5.4%</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**CONSOLIDATED CHULA VISTA TRANSIT OPERATIONS**  
**COMPARISON TO BUDGET - FISCAL YEAR 2013**  
**OCTOBER 31, 2012**  
**(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	VAR. %
Passenger Revenue	\$ 898	\$ 1,034	\$ (136)	-13.1%
Other Revenue	-	-	-	-
<b>Total Operating Revenue</b>	<b>\$ 898</b>	<b>\$ 1,034</b>	<b>\$ (136)</b>	<b>-13.1%</b>
Personnel costs	\$ 85	\$ 100	\$ 15	15.2%
Outside services	1,817	1,835	18	1.0%
Transit operations funding	-	-	-	-
Materials and supplies	0	1	1	95.6%
Energy	127	173	46	26.6%
Risk management	-	-	-	-
General & administrative	0	4	4	96.6%
Vehicle/facility leases	-	-	-	-
Amortization of net pension asset	-	-	-	-
Administrative Allocation	41	41	(0)	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 2,071</b>	<b>\$ 2,155</b>	<b>\$ 84</b>	<b>3.9%</b>
<b>Operating income (loss)</b>	<b>\$ (1,173)</b>	<b>\$ (1,121)</b>	<b>\$ (51)</b>	<b>-4.6%</b>
<b>Total public support and nonoperating revenues</b>	<b>1,758</b>	<b>1,758</b>	<b>(0)</b>	<b>0.0%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ 585</b>	<b>\$ 637</b>	<b>\$ (51)</b>	<b>-8.1%</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**CORONADO FERRY**  
**COMPARISON TO BUDGET - FISCAL YEAR 2013**  
**OCTOBER 31, 2012**  
**(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	VAR. %
Passenger Revenue	\$ -	\$ -	\$ -	-
Other Revenue	-	-	-	-
<b>Total Operating Revenue</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>-</b>
Personnel costs	\$ -	\$ -	\$ -	-
Outside services	56	56	-	0.0%
Transit operations funding	-	-	-	-
Materials and supplies	-	-	-	-
Energy	-	-	-	-
Risk management	-	-	-	-
General & administrative	-	-	-	-
Vehicle/facility leases	-	-	-	-
Amortization of net pension asset	-	-	-	-
Administrative Allocation	-	-	-	-
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 56</b>	<b>\$ 56</b>	<b>\$ -</b>	<b>0.0%</b>
<b>Operating income (loss)</b>	<b>\$ (56)</b>	<b>\$ (56)</b>	<b>\$ -</b>	<b>0.0%</b>
<b>Total public support and nonoperating revenues</b>	<b>66</b>	<b>56</b>	<b>10</b>	<b>17.9%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ 10</b>	<b>\$ -</b>	<b>\$ 10</b>	<b>-</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**ADMINISTRATION**  
**CONSOLIDATED**  
**COMPARISON TO BUDGET - FISCAL YEAR 2013**  
**OCTOBER 31, 2012**  
**(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	VAR. %
Passenger Revenue	\$ -	\$ -	\$ -	-
Other Revenue	1,639	1,355	284	20.9%
<b>Total Operating Revenue</b>	<b>\$ 1,639</b>	<b>\$ 1,355</b>	<b>\$ 284</b>	<b>20.9%</b>
Personnel costs	\$ 5,297	\$ 5,100	\$ (197)	-3.9%
Outside services	3,458	3,385	(73)	-2.2%
Transit operations funding	-	-	-	-
Materials and supplies	6	7	2	22.0%
Energy	211	211	(0)	-0.2%
Risk management	93	126	33	26.4%
General & administrative	524	475	(49)	-10.4%
Vehicle/facility leases	78	72	(6)	-8.3%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	(8,371)	(8,371)	-	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 1,295</b>	<b>\$ 1,004</b>	<b>\$ (291)</b>	<b>-29.0%</b>
<b>Operating income (loss)</b>	<b>\$ 344</b>	<b>\$ 351</b>	<b>\$ (7)</b>	<b>2.1%</b>
<b>Total public support and nonoperating revenues</b>	<b>10</b>	<b>-</b>	<b>10</b>	<b>-</b>
<b>Income (loss) before capital contributions</b>	<b>\$ 354</b>	<b>\$ 351</b>	<b>\$ 3</b>	<b>0.9%</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OTHER ACTIVITIES**  
**CONSOLIDATED**  
**COMPARISON TO BUDGET - FISCAL YEAR 2013**  
**OCTOBER 31, 2012**  
**(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	VAR. %
Passenger Revenue	\$ -	\$ -	\$ -	-
Other Revenue	157	128	29	22.7%
<b>Total Operating Revenue</b>	<b>\$ 157</b>	<b>\$ 128</b>	<b>\$ 29</b>	<b>22.7%</b>
Personnel costs	\$ 239	\$ 231	\$ (8)	-3.6%
Outside services	36	43	7	16.3%
Transit operations funding	-	-	-	-
Materials and supplies	4	2	(3)	-151.1%
Energy	3	4	1	19.4%
Risk management	8	7	(0)	-1.3%
General & administrative	33	36	2	5.9%
Vehicle/facility leases	-	-	-	-
Amortization of net pension asset	-	-	-	-
Administrative Allocation	34	34	-	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 357</b>	<b>\$ 355</b>	<b>\$ (1)</b>	<b>-0.3%</b>
<b>Operating income (loss)</b>	<b>\$ (199)</b>	<b>\$ (227)</b>	<b>\$ 28</b>	<b>12.3%</b>
<b>Total public support and nonoperating revenues</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Income (loss) before capital contributions</b>	<b>\$ (199)</b>	<b>\$ (227)</b>	<b>\$ 28</b>	<b>-12.3%</b>

# Metropolitan Transit System FY 2013 - October 2012 Financial Review

MTS Board of Directors Meeting  
December 13, 2012

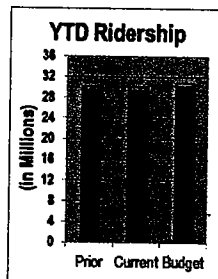


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## COMBINED MTS TRANSIT OPERATORS COMPARISON TO BUDGET - OCTOBER 31, 2012 - FY 2013 (in \$000's)

	ACTUAL	BUDGET	VARIANCE	VAR %
Fare Revenue	\$ 32,423	\$ 31,741	\$681	2.1%
Other Revenue	140	226	(86)	-38.1%
<b>Total Operating Revenue</b>	<b>\$32,563</b>	<b>\$31,967</b>	<b>\$595</b>	<b>1.9%</b>

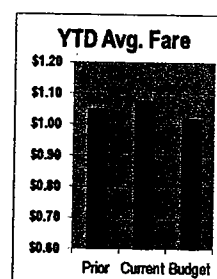


**Ridership Comparison**

- Budget: -2.9% lower
- \$930K negative variance
- Prior Year: -0.2% lower

**Average Fare Comparison**

- Budget: 5.6% higher
- \$1.7M positive variance
- \$1.077 versus \$1.02 budgeted
- Prior Year: 2.5% higher
- \$1.077 versus \$1.051



2





**COMBINED MTS TRANSIT OPERATORS  
COMPARISON TO BUDGET - OCTOBER 31, 2012 - FY 2013  
(in \$000's)**

	<u>ACTUAL</u>	<u>BUDGET</u>	<u>VARIANCE</u>	<u>VAR %</u>
Personnel Costs	\$ 34,433	\$ 35,461	\$1,029	2.9%
Purchased Transportation	18,836	18,857	22	0.1%
Other Outside Services	2,396	2,836	440	15.5%
Energy	7,851	7,314	(537)	-7.3%
Other Expenses	13,192	12,662	(530)	-4.2%
<b>Total Expenses</b>	<b>\$76,706</b>	<b>\$77,130</b>	<b>\$424</b>	<b>0.5%</b>

**Personnel Costs**

- Transit Operations: \$1,091K favorable variance

**Other Expenses**

- Materials and Supplies: \$506K unfavorable variance



**METROPOLITAN TRANSIT SYSTEM  
COMPARISON TO BUDGET - OCTOBER 31, 2012 - FY 2013  
TOTAL OPERATING REVENUE LESS EXPENSES (\$000's)**

**Combined Net Operating Variance**

MTS Operating Revenue	\$ 595	
MTS Operating Expenses	<u>424</u>	
Combined MTS Operators		\$ 1,019
MTS Administration / Other Activities		<u>21</u>
<b>Total Combined Net Operating Variance</b>		<b>\$ 1,040</b>
Variance Percentage		2.3%

\* FY13 Operating Budget includes \$6.4M in one-time funding (\$5.0M TDA, \$0.8M CNG Credits, \$0.6M STA)



**METROPOLITAN TRANSIT SYSTEM**  
**COMPARISON TO BUDGET - OCTOBER 31, 2012 - FY 2013**  
**ON-GOING CONCERNS**

	<b>FY13</b>			<b>Status</b>
	<b>Budget</b>	<b>YTD Actual</b>	<b>Projection</b>	
<b>Sales Tax Subsidy Revenue</b>	4.5%	7.2%	4.5%	<b>G</b>
<b>Energy Prices</b>				
CNG	\$ 0.72	\$ 0.68	\$ 0.72	
Diesel	\$ 3.85	\$ 3.45	\$ 3.85	<b>Y</b>
Gas	\$ 3.83	\$ 3.62	\$ 3.83	
Electricity	\$0.149	\$0.164	\$ 0.149	
<b>Passenger Levels</b>	91.6 M	30.1 M	91.6 M	<b>Y</b>
<b>State of California Budget</b>	\$22.2M	\$4.5 M	\$22.2M	<b>Y</b>

**G** Positive    **Y** Holding    **R** Negative





1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
(619) 231-1466 • FAX (619) 234-3407

## Agenda

Item No. 62

Chief Executive Officer's Report

ADM 121.7

December 13, 2012

In accordance with Board Policy No. 52, Procurement of Goods and Services, attached are listings of contracts, purchase orders, and work orders that have been approved within the CEO's authority (up to and including \$100,000) for the period November 7, 2012, through November 30, 2012.



EXPENSE CONTRACTS				
Doc #	Organization	Subject	Amount	Day
G1425.1-12	LIEBMAN, QUIGLEY, SHEPPARD & S	LEGAL SERVICES - GENERAL & TORT LIABILT	\$60,000.00	11/19/2012

REVENUE OR NO-VALUE CONTRACTS				
Doc #	Organization	Subject	Amount	Day
L1117.0-13	CAVALIA USA, INC.	ROE PERMIT - PRODUCTION OPS	(\$1,500.00)	11/7/2012
L4615.0-13	ENSLEY ELECTRIC, INC.	ROE PERMIT - SD UNIFIED FIBER OPTIC	(\$2,000.00)	11/15/2012
B0563.2-11	TRAPEZE SOFTWARE GROUP, INC.	MODIFY SOW IVR SYSTEM	\$0.00	11/15/2012
L1032.1-12	SIEMENS INDUSTRY, INC.	BATTERY ADJUSTMENT	\$0.00	11/15/2012
G1413.1-12	JPMORGAN CHASE BANK, N.A.	ADDITION OF CHASE CREDIT/PURCHASE CARDS	\$0.00	11/15/2012
S200-13-541	SECC CORP	ROE PERMIT - SD UNIFIED FIBER OPTIC	(\$2,000.00)	11/15/2012
S200-13-559	SDG&E	ROE PERMIT - TRANSFORMER REMOVAL LEMON G	(\$1,400.00)	11/26/2012
G1505.0-13	CAPTURE THE MARKET	ROE PERMIT - FILMING ONBOARD LRV/PLATFOR	\$0.00	11/28/2012
G0930.19-04	SANDAG	TRANSFER OF TOKEN PROGRAM SANDAG TO MTS	\$0.00	11/29/2012
L1128.0-13	JACOBS CENTER FOR NEIGHBORHOOD	ROE PERMIT - HOLIDAY MUSIC SERIES	\$0.00	11/29/2012
S200-13-557	AES PROPERTY SERVICES	DURABLE ROE PERMIT - GRAFFITI MAINT	\$0.00	11/29/2012
L1122.0-13	AECOM TECHNICAL, INC.	ROE PERMIT - ARCHITECTURAL/ENGINEERING	\$0.00	11/29/2012
L4617.0-13	BWM, INC.	ROE PERMIT - WINDOW MAINTENANCE ELECTRA	(\$1,000.00)	11/30/2012
M6697.0-13	MAHMOUD AKHAVEN - EURO SPORTS	LEASE AGREEMENT	(\$2,400.00)	11/30/2012

PURCHASE ORDERS (IFAS)			
DATE	Organization	Subject	AMOUNT
11/7/2012	BMC SOFTWARE, INC.	MAC AUDIT NODE - TRACK IT SUPPORT	\$270.00
11/8/2012	SAN DIEGO TRUCK BODY & EQUIP	LIGHTING EQUIP INSTALL LABOR/PARTS	\$1,709.69
11/9/2012	MADDEN CONSTRUCTION, INC.	DEMOLITION/REPAIR FIXTURE	\$346.13
11/9/2012	CDW GOVERNMENT, INC.	AXIS SURVEILLANCE KIT	\$1,353.95
11/9/2012	ROTO ROOTER SERVICE	EMERGENCY REPAIR STORM DRAIN/SEWER	\$42,164.53
11/14/2012	CDW GOVERNMENT, INC.	HARD DRIVES	\$961.73
11/21/2012	FISHER WIRELESS SERVICES	TRANSIT ANTENNA/CABLE/CONNECTORS	\$8,893.13
11/21/2012	AZTEC FENCE	SPRING STREET FENCING	\$4,880.00

# WORK ORDERS

Doc #	Organization	Subject	Amount	Day
G1496.0-13.01	RAILPROS, INC.	ON-CALL ENGINEERING - ROE/REAL EST	\$25,000.00	11/15/2012
PWL136.0-12.04.1	HMS CONSTRUCTION, INC.	SAN MIGUEL SIGNAL WIRE REPLACEMENT	\$7,613.36	11/16/2012
G1245.0-09.08	KIMLEY-HORN & ASSOC.	ENGINEERING SVCS ENVIRONMENTAL INSP	\$15,500.00	11/28/2012
PWL136.0-12.05	HMS CONSTRUCTION, INC.	47TH STREET FEEDER CABLE REPLACEMENT	\$21,510.83	11/28/2012
PWL132.0-11.19	SOUTHLAND ELECTRIC, INC.	REVENUE DEPARTMENT CCTV IMPROVEMENT	\$1,874.18	11/29/2012



**COUNCILMEMBER  
DAVID ALVAREZ**

**CITY OF SAN DIEGO**

December 12, 2012

Mr. Paul Jablonski  
Chief Executive Officer  
Metropolitan Transit System  
1255 Imperial Avenue, Suite 100  
San Diego, CA 92101

**RE: MTS Lease for Management of the San Ysidro Intercity Bus Terminal Facility**

Dear Mr. Jablonski:

Thank you for taking the time to meet to discuss the recently approved authorization for an MTS agreement and lease for the management of the San Ysidro Bus Terminal Facility. I greatly appreciate your assistance, and the efforts of Ms. Cooney, in setting up and facilitating our November 29, 2012 on-site meeting with Tim Allison, Richard Gomez, Miguel Aguirre, and the representative from Tufesa Bus Lines.

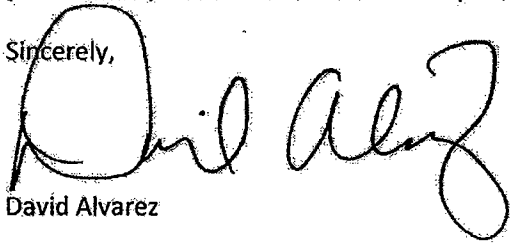
As you know, since our October 18, 2012 MTS Board vote on this item, I have grown increasingly concerned with moving forward with an agreement with SYPS, LLC without further discussion and clarity. At the October MTS hearing, I understood your purpose in presenting the item to the Board to be focused on providing appropriate management, including extra security (more than one officer) and addressing wildcatting and traffic flow. I continue to share your commitment to addressing these problems. However, the financial model presented included out-of-date information, and discrepancies could endanger our ability to resolve the issues above. Further, my constituents believe the current agreement could eliminate businesses from service and leave management issues in place.

I believe we were able to review many of the community concerns at our November meeting and I appreciate your commitment not to move forward with the agreement until Mr. Aguirre/Grand Central West, LLC has an opportunity to submit his management proposal.

Ultimately, I am convinced that we need to consider the issue in a comprehensive manner by restarting the Request for Proposal process. The process should start with outreach to all the affected stakeholders, to make sure we understand the on-the-ground factors and that the proposal selected fits these needs.

Thank you again for your commitment to resolving these concerns in an open and constructive manner. Should you need any other information from my office, please do not hesitate to ask.

Sincerely,

A handwritten signature in black ink, appearing to read "David Alvarez". The signature is fluid and cursive, with the first name "David" being more prominent than the last name "Alvarez".

David Alvarez

San Diego Councilmember, Eighth District

Cc:

San Ysidro Chamber of Commerce  
Border Transportation Council  
MTS Board Member Marti Emerald  
MTS Board Member Tony Young  
MTS Board Member Todd Gloria

DAA: gs