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Agenda

MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

February 21, 2013

9:00 a.m.

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

This information will be made available in alternative formats upon request. To request an agenda in an alternative format, please call the Clerk of the Board at least two working days prior to the meeting to ensure availability. Assistive Listening Devices (ALDs) are available from the Clerk of the Board/Assistant Clerk of the Board prior to the meeting and are to be returned at the end of the meeting.

ACTION RECOMMENDED

1. Roll Call
2. Approval of Minutes - January 17, 2013
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



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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.

CONSENT ITEMS

- | | | |
|-----|--|--------------------|
| 6. | <u>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 January 15, 2013</u> 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 January 15, 2013. | Receive/ Ratify |
| 7. | <u>Investment Report - November 2012</u> Action would receive a report for information. | Receive |
| 8. | <u>Pay Phone Services - Contract Award</u> Action would authorize the CEO to: (1) execute MTS Doc. No. L1086.0-12 with Western Communication Systems, Inc. (WESCOMM) as a revenue contract for pay phone services for a five-year base period with 2 one-year option terms; and (2) exercise each option year at the CEO's discretion. | Approve |
| 9. | <u>Excess Insurance Renewals for Liability and Workers' Compensation Program</u> Action would approve the purchase of excess liability insurance (at limits of \$75 million less a \$2 million self-insured retention) and excess workers' compensation insurance (at statutory limits less a \$1 million self-insured retention) The new policies would be in effect from March 1, 2013, through March 1, 2014. | Approve |
| 10. | <u>Fiber-Optics Link Project - Funds Transfer</u> Action would approve the transfer of funds from the Fiber-Optics Link Project (CIP 11340) to the Orange/Green Lines Fiber-Optics Cable Project (CIP 1144400) to complete the fiber loop from Old Town to Santa Fe Depot. | Approve |
| 11. | <u>Investment Report - December 2012</u> Action would receive a report for information. | Receive |
| 12. | <u>Kearny Mesa Division Garage Floor Epoxy Coating - Job Order Contract Work Order</u> Action would authorize the CEO to execute Job Order Contract (JOC) MTSJOC1431-04 with ABC Construction for the Kearny Mesa Division (KMD) Garage Floor Epoxy Coating Project. | Approve |
| 13. | <u>Onboard CCTV System Installation - Contract Amendment</u> Action would authorize the CEO to execute MTS Doc. No. L0955.2-10 with UTC Fire and Security for the provision of onboard video surveillance systems on 8 additional S70 light rail vehicles (LRVs). | Approve |
| 14. | <u>Proposed Revisions to MTS Policy No. 50 (Engineering and Construction Expense Cost Recovery for Plan Review, Real Estate Actions, and Right of Entry Permits)</u> Action would approve revisions to MTS Policy No. 50 (Engineering and Construction Expense Cost Recovery for Plan Review, Real Estate Actions, and Right of Entry Permits) to increase the current right of entry permit fee as recommended by the San Diego and Arizona Eastern Railway Company (SD&AE) Board of Directors at its quarterly meeting on January 15, 2013. | Approve |

CONSENT ITEMS - Continued

15. California Department of Transportation (Caltrans) Program of Projects for Federal Transit Administration (FTA) Section 5311 Funding - Fiscal Year 2013 Approve
Action would approve Resolution No. 13-3 authorizing the application for and use of FTA Section 5311 funding for operating assistance and miscellaneous improvements in nonurbanized areas.

CLOSED SESSION

24. a. CLOSED SESSION - PUBLIC EMPLOYEE PERFORMANCE EVALUATION/CONFERENCE WITH LABOR NEGOTIATORS CHIEF EXECUTIVE OFFICER Pursuant to California Government Code Sections 54957 and 54957.6; Agency-Designated Representative: Harry Mathis; Employee: Paul C. Jablonski Possible Action
- b. CLOSED SESSION - CONFERENCE WITH LABOR NEGOTIATORS Pursuant to California Government Code section 54957.6 Possible Action
Agency-Designated Representative: Jeff Stumbo
Employee Organization: Amalgamated Transit Union, Local 1309
- c. CLOSED SESSION - CONFERENCE WITH REAL PROPERTY NEGOTIATORS Pursuant to California Government Code Section 54956.8 Possible Action
Property: 6645 Imperial Avenue, San Diego, California (Assessor Parcel No. 549-181-05)
Agency Negotiators: Paul Jablonski, Chief Executive Officer; Karen Landers, General Counsel; Tim Allison, Manager of Real Estate Assets; and Bruce W. Beach, Best Best & Krieger LLP
Negotiating Parties: Thomas and Tiffany Mannion
Under Negotiation: Price and Terms of Payment

Oral Report of Final Actions Taken in Closed Session

NOTICED PUBLIC HEARINGS

25. None.

DISCUSSION ITEMS

30. 2013 State and Federal Legislative Programs (Sharon Cooney and Peter Peyser and Beth Boehlert of Peyser Associates, LLC) Approve
Action would: (1) receive a report on state and federal issues and advocacy; and (2) approve staff recommendations for 2013 state and federal legislative programs.
31. Taxicab Administration Contract Renewal (Sharon Cooney) Approve
Action would approve the draft "Eighth Amendment to Agreement for Administration of Taxicab and Other For-Hire Vehicle Regulations Between San Diego Metropolitan Transit System and City of San Diego" and authorize the Chief Executive Officer to negotiate the final contract.

DISCUSSION ITEMS - Continued

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| 32. | <u>Gas Service Provider Agreement Extension (Mike Thompson)</u> Action would authorize the CEO to: (1) extend the gas service provider agreement with BP Energy Company (BP) for a five-year base term with 2 one-year option terms; (2) exercise each option year at the CEO's discretion; and (3) execute any documents necessary for MTS to participate in the BP direct market, federal Renewable Identification Number (RIN), and state low-carbon fuel standard (LCFS) | Approve |
|-----|---|---------|

REPORT ITEMS

- | | | |
|-----|---|-------------|
| 45. | <u>Los Angeles-San Diego-San Luis Obispo Rail Corridor (LOSSAN) Joint Powers Authority (Sharon Cooney)</u> Action would receive an update on efforts to amend the LOSSAN Joint Powers Authority (JPA). | Receive |
| 46. | <u>Bus Rapid Transit (BRT) Project Updates (Denis Desmond)</u> Action would receive a report for information. | Receive |
| 47. | <u>Bus Rapid Transit (BRT) Branding (Rob Schupp)</u> Action would receive a report on Bus Rapid Transit (BRT) branding for buses procured for Interstate 15 (I-15), Mid-City, and South Bay BRT services. | Receive |
| 48. | <u>Service Performance Monitoring Report for July 2012 through December 2012 (Sharon Cooney)</u> Action would receive a report for information. | Receive |
| 49. | <u>Budget Update (Mike Thompson)</u> 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> 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> March 21, 2013 (Finance Workshop starts at 9:00 a.m.) | |
| 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)

DRAFT MINUTES

January 17, 2013

MTS - 1255 Imperial Avenue, Suite 1000, San Diego

1. Roll Call

Chairman Mathis called the Board meeting to order at 9:03 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 December 13, 2012, MTS Board of Directors meeting. Mr. McClellan seconded the motion, and the vote was 11 to 0 in favor (with Messrs. Alvarez, Gloria, Roberts and Ms. Emerald absent).

3. Public Comments

John L. Wood – Mr. Wood asked when the Orange Line construction would be completed. Mr. Wood questioned as to why there are no benches on the west side of the Lemon Grove Depot. Mr. Wood advised the construction fence on the west side of the Lemon Grove depot is an eyesore as there are sand and gravel bags holding up the fence and the bags are open with the sand and gravel spilling out. Mr. Wood questioned why there is a fare machine on the east side of the Lemon Grove Depot, but not the west side. Mr. Wood asked why station announcements are only made at the specific station or not at all. Mr. Wood inquired whether the Lemon Grove Depot would be extended towards North Avenue or stay status quo.

Mr. Mathis advised that Wayne Terry, Chief Operating Officer (Rail) would answer Mr. Wood's questions.

Susan Lesch – Ms. Lesch advised she is a Clairemont resident and is a regular rider and completely dependent on public transportation. Ms. Lesch asked that MTS limit the use of cellphones on buses and trolleys. Ms. Lesch provided the Board with a flyer from MetroTransit (serving the Minneapolis and St. Paul areas) that references cell phone etiquette for a rider of public transportation.

Mr. Mathis advised there seems to be a free speech issue associated with this issue.

4. Elect Vice Chair, Chair Pro Tem, and Committee Appointments

Ms. Karen Landers, General Counsel advised this agenda item is in regard to the election of the Vice Chair and Chair Pro Tem for 2013 and to consider the nominating slate proposed by the Ad Hoc Nominating Committee for appointment of representatives to MTS Committees for 2013 and to vote to appoint those representatives. Ms. Landers discussed the election and appointment procedures.

Chairman Mathis took nominations from the floor. No additional nominations were proposed.

Actions Taken

1. Mr. Ovrom moved to elect Ron Roberts as Vice Chair and Ernest Ewin as Chair Pro Tem for 2013. Mr. Rindone seconded the motion and the vote was 11-0 in favor (with Mr. Alvarez and Ms. Emerald absent and Messrs. Roberts and Ewin abstaining).
2. Mr. Minto moved to consider the nominating slate proposed by the Ad Hoc Nominating Committee for the appointment of representatives to MTS committees for 2013 and vote to appoint representatives to those committees. Mr. McClellan seconded the motion and the vote regarding the proposed slate of nominations is detailed below:

Accessible Services Advisory Committee (ASAC)

- Lorie Bragg, Chairman: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Ms. Bragg abstaining.

Airport Authority Advisory Committee

- Harry Mathis, Committee Representative: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. Mathis abstaining.
- Ron Roberts, Alternate: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. Roberts abstaining.

Ad Hoc Public Security Committee

- Jim Cunningham, Committee Representative: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. Cunningham abstaining.
- Harry Mathis, Committee Representative: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. Mathis abstaining.
- John Minto, Committee Representative: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. Minto abstaining.
- David Alvarez, Committee Representative: 13 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent.
- Mona Rios, Committee Representative: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Ms. Rios abstaining.

Audit Oversight Committee

- Ernie Ewin, Chairman: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. Ewin abstaining.
- Remaining members set by Board policy.

Budget Development Committee

- Harry Mathis, Committee Representative: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. Mathis abstaining.
- Bob McClellan, Committee Representative: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. McClellan abstaining.
- Ron Roberts, Committee Representative: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. Roberts abstaining.
- Todd Gloria, Committee Representative: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. Gloria abstaining.
- John Minto, Committee Representative: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. Minto abstaining.

Executive Committee

- Set by Board Policy.

Joint Committee on Regional Transit (JCRT)

- Jim Cunningham, Committee Representative: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. Cunningham abstaining.
- Harry Mathis, Committee Representative: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. Mathis abstaining.
- Ernie Ewin, Committee Representative: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. Ewin abstaining.

Los Angeles-San Diego Rail Corridor Agency (LOSSAN)

- Jerry Rindone, Committee Representative: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. Rindone abstaining.
 - Ernie Ewin, Alternate: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. Mathis abstaining.
- (Note: Appointment until establishment of Managing Agency)

SANDAG Board

- Harry Mathis, Advisory Representative: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. Mathis abstaining.
- Ron Roberts, Alternate: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. Roberts abstaining.

SANDAG Regional Planning Committee

- Mona Rios, Committee Representative: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Ms. Rios abstaining.
- Al Ovrom, Alternate: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. Ovrom abstaining.

Taxicab Committee

- Lorie Zapf, Chair: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Ms. Zapf abstaining.
- Bob McClellan, Alternate: 12 to 0 in favor, with Mr. Alvarez and Ms. Emerald absent and Mr. McClellan abstaining.

CONSENT ITEMS

6. Internal Revenue Service-Required CalPERS Pension Resolution

Action would adopt Resolution No. 13-1 to allow MTS employees to make pension contributions on a pretax basis.

7. Light Rail Vehicle Vandalism and Accident Repair - Ratification and Amendment

Action would authorize the CEO to execute MTS Doc. No. L0884.2-09 with Carlos Guzman, Inc. to increase the amount of the contract due to a higher-than-expected rate of body repair and paint work services and clarify the scope of work.

8. Semiannual Uniform Report of Disadvantaged Business Enterprise Awards or Commitments and Payments

Action would receive the Semiannual Uniform Report of Disadvantaged Business Enterprise (DBE) Awards or Commitments and Payments.

9. Transfer of Ten Retired Paratransit Vehicles

Action would approve staff's recommendation to donate ten (10) retired 2006 El Dorado paratransit vehicles to Facilitating Access to Coordinated Transportation (FACT) to assist nonprofit service providers in the MTS Service Area. The recipients will be agencies that provide services to persons with disabilities who may qualify for Americans with Disabilities Act (ADA) paratransit services.

10. Audit Report - Carlos Guzman Contract Review (MTS Doc. No. L0844.0-09)

Action would receive a report for information.

11. California Sales Tax Increase (Impact on MTS Contracts)

Action would authorize the CEO to: (1) amend contracts, or to otherwise pay invoices on existing contracts, substituting the 8.00% sales tax rate for the sales tax rate included in the individual contract; and (2) make future amendments or payments in response to future sales tax rate changes, if any.

12. LiveScan Authorization

Action would approve a minor revision to previously approved MTS Resolution No. 12-13 as required by the California Department of Justice to become a contributing agency for LiveScan fingerprinting.

Action on Consent Items 6-12

Mr. Ewin moved to approve Consent Items 6-12. Mr. McClellan seconded the motion, and the vote was 13 to 2 in favor (with Mr. Alvarez and Ms. Emerald absent).

DISCUSSION ITEMS

30. San Diego Transit Corporation Employee Retirement Plan's Actuarial Valuation as of July 1, 2012 (Cliff Telfer) (TAKEN OUT OF ORDER)

Cliff Telfer, Chief Financial Officer, introduced Bob McCrory, FSA of EFI Actuaries. Mr. McCrory discussed the actuarial valuation and outlook including cost and funding projections. Mr. McCrory discussed the plan for today including the history, 2012 actuarial valuation, cost and funding projections, recent changes with regard to the Governmental Accounting Standards Board ("GASB"), Public Employees Pension Reform Act ("PEPRA") and Critical Asset Assurance Program ("CAAP") and the proposed changes in funding policy. Mr. McCrory spoke to the plan's history including experience study, valuation results, plan cost, plan-funded ratios, active membership and projection of future cost and funding.

Mr. Gloria questioned if unrepresented workers are still in the plan and asked why represented workers are increasingly not in the plan. Mr. Gloria asked for clarification as MTS has been trying to work with equity with regard to MTS's benefit structure.

Mr. Jablonski advised the unrepresented workers are compliant with PEPRA and existing

employees under pension reform have been protected across the board whether represented or unrepresented. Mr. Jablonski stated the major change with both groups is the installation of employee contributions and provided the following example: with the Trolley Bargaining Unit they have been contributing for a long time primarily because they don't have social security. In the new Labor Agreement, MTS instituted contributions by the Amalgamated Transit Union ("ATU") for existing employees and their defined benefit plan which ramps up over the next three years. MTS has instituted contributions in line with Board direction and the Budget Development Committee for all non-represented employees beginning January 1, 2013. All new unrepresented employees are subject to the rules of PEPR.

Mr. Ewin questioned how Mr. McCrory arrived at the the 7.5% average assumption, what the balance effects would be on the investments and how would MTS meet these assumptions?

Mr. McCrory advised several scenarios are simulated, a compound average is taken and a recommendation is made based on this information which for MTS is 7.5%. Mr. McCrory explained that most investment consultants are also in this range after inflation adjustment. Mr. McCrory advised the compound effect has been removed. Mr. McCrory stated a possible mistake is not allowing for a margin for error. Mr. McCrory stated he could easily make a case changing the compound rate of return from 7.5% to 7% to allow for a margin of safety, but because the impact of cost has been so severe in changing this rate MTS has been staying close to a no-margin position. Mr. McCrory explained that if the Board and Committees wanted to go with a margin of safety Mr. McCrory would agree with this position. Mr. McCrory further explained that increasing mortality of those in the plan raises the cost of the plan as well.

Mr. Ewin advised it has always been known there is a problem of coverage for those within the plan and for those who are not contributing; even more of a challenge is created especially when amortizing over a 30-year period. Mr. Ewin stated that when MTS looks at the returns California Public Employees' Retirement System ("CALPERS") has had over the last 6-8 years how can MTS cover its employees who are retired now let alone those who are 5-10 years away from retirement.

Mr. Roberts stated within the last week Moody's has suggested some new standards, one of them being a 5.5% assumption. Mr. Roberts asked if this percentage is more for comparative purposes and requested insight from Mr. McCrory.

Mr. McCrory responded that this 7% is based on an inflation rate of 2 or 2.5%, therefore if you look at the real return versus the inflation rate MTS assumes, it is about the same so there is no adjustment. Mr. McCrory stated that Moody's is trying to standardize assumptions and make everything comparable but in doing so they are getting rid of important differences.

Mr. Roberts stated that from Mr. McCrory's slides it appears that MTS's funding requirements will decrease and questioned that for MTS in terms of budget perspective and policy this number will need to be looked at and redefined with regard to employee contributions and will need to be reflected in the future presentations as it would be helpful.

Mr. McCrory advised the existing ATU and International Brotherhood of Electrical Workers ("IBEW") clerical members of the corporation are currently making contributions and the contributions for the declining group will need to be included. Mr. McCrory stated the non-represented employees will make contributions under PEPR and the contributions to the defined contribution plans for the new members would also need to be included as well. Mr. McCrory advised MTS has a pension obligation bond that still has payments outstanding which would also need to be reflected.

Mr. Minto questioned if there is a way of predicting or estimating when the last person will be out of the plan, what kind of money will be in the plan at that time and what happens to surplus funds left in the plan.

Mr. McCrory advised that based on his calculations the assets would be exhausted. If there happened to be surplus, IRS law stipulates that the money cannot be retrieved, but there are other possible legal ways to utilize these funds for other benefits. Mr. McCrory stated the IRS lays out these laws on what to do with the surplus funds. Mr. McCrory stated there cannot be a deficiency as MTS is responsible to maintain the fund and with a defined benefit plan you use the normal cost to determine the fixed employee contribution and whatever is required beyond that, this is employer responsibility to pay the benefits and assume the associated risk.

Action Taken

Mr. Minto moved to receive the San Diego Transit Corporation (SDTC) Employee Retirement Plan's actuarial valuation as of July 1, 2012, and adopt the pension contribution rate of 36.106 percent for SDTC's pension plans in FY 14. Mr. Cunningham seconded the motion, and the vote was 14 to 0 in favor (with Mr. Alvarez absent).

CLOSED SESSION

24. Closed Session Items (Taken out of Order)

The Board convened to Closed Session at 9:43 a.m.

- a. **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 (IBEW)
- b. **CLOSED SESSION - PUBLIC EMPLOYEE PERFORMANCE EVALUATION CHIEF EXECUTIVE OFFICER** Pursuant to California Government Code Section 54957

The Board reconvened to Open Session at 11:09 a.m.

Oral Report of Final Actions Taken in Closed Session

Karen Landers, General Counsel, reported the following:

- a. The Board ratified the tentative agreement for a new collective bargaining agreement between San Diego Trolley and International Brotherhood of Electrical Workers, Local 465 (IBEW). The Board voted 14-0 in favor (with Mr. Alvarez absent).
- b. The Board received a report and conducted a performance evaluation.

31. Taxicab Administration Contract Renewal (TAKEN OUT OF ORDER)

No report was given. At the request of Councilwoman Emerald, this agenda item was carried over to the following February 21, 2013 Board meeting.

Action Taken

Mr. Ovrom moved to table the agenda item until the February 21, 2013 Board meeting. Mr. Roberts seconded the motion, and the vote was 14 to 0 in favor (with Mr. Alvarez absent).

32. LOSSAN Joint Powers Authority and Managing Agency (TAKEN OUT OF ORDER)

Paul Jablonski, Chief Executive Officer gave an introduction and provided background. Mr. Jablonski provided an example of the Capital Corridor JPA which went through a similar process. Mr. Jablonski introduced Brent Boyd, Sr. Transportation Planner. Mr. Boyd gave background on the LOSSAN Rail Corridor. Mr. Boyd advised of the main issues with regard to the Joint Powers Authority ("JPA"). Mr. Boyd stated the first issue is the potential approval of the amended JPA which would provide MTS authority to take over operation of Pacific Surfliner and the second issue is whether or not MTS has the desire to become the managing agency of LOSSAN which is essentially the agency that would house the JPA staff. Mr. Boyd provided background on the current JPA. Mr. Boyd discussed the various terms and purposes of the JPA. Mr. Boyd reviewed the advantages, risks and other challenges for local authority. Mr. Boyd discussed the voting structure and the termination requirements should MTS not be satisfied with the JPA. Mr. Boyd advised North County Transit District ("NCTD") is opposed to the JPA.

Mr. Boyd introduced Sharon Cooney, Chief of Staff. Ms. Cooney discussed the negotiations and proposals currently in process in order to address NCTD's concerns. Ms. Cooney advised NCTD's main concern is with regard to funding and continued funding of service once service is taken over locally from the State. Ms. Cooney stated there are provisions in SB 1225 that stipulate the State cannot ask the JPA to use local funding and there are provisions in the JPA that reiterate this. Ms. Cooney explained there is another provision that states if MTS loses funding in any way MTS can terminate its relationship with the JPA with 90 days' notice. Ms. Cooney stated further safeguards are recommended to reinforce the aforementioned protections. Ms. Cooney advised the one outstanding item which needs to be negotiated before LOSSAN can take over service locally is the Inter Agency Transfer Agreement ("ITA") which is an agreement with the State. Ms. Cooney advised of the additional provisions recommended for inclusion in the ITA. Ms. Cooney stated NCTD has requested members be elected officials. Ms. Cooney advised San Diego gets two votes for the region which are currently split between MTS and NCTD. Should one of these agencies disagree SANDAG will be the tiebreaker.

Mr. Boyd discussed the Managing Agency responsibilities, funding, staffing estimates, key components, next steps and recommendations. Mr. Boyd advised MTS is qualified to submit an application for the Managing Agency role.

Mr. Cunningham commented that the State does not normally comply with budget requirements and questioned Mr. Jablonski whether MTS is in a position to handle the managing agency position.

Mr. Jablonski responded that MTS is an operating agency which operates rail and although not heavy inter-city rail MTS has a number people on staff with heavy rail experience. Mr. Jablonski advised MTS has experience with the California Public Utilities Commission ("CPUC"), experience with the State and State departments regarding transit related issues and MTS's staff members are good negotiators. Mr. Jablonski stated MTS would do a job that protected our interests and discussed MTS's concerns if it did not become Managing Agency. Mr. Jablonski explained that MTS stands strongly with SANDAG and NCTD in the belief that should MTS take over as Managing Agency, it should never take MTS's resources that fund public transit. Mr. Jablonski said ultimately it is a process of elimination and there was a consensus among CEO's that it should be an operating agency who takes on the Managing Agency role.

Mr. Jablonski discussed the additional possible candidates for the Managing Agency role. Mr. Jablonski advised there is a sense of obligation for MTS to apply as Managing Agency.

Mr. Roberts commented that it was important MTS and NCTD resolve their issues. Mr. Roberts indicated it is important that unanimity to avoid confusion.

Mr. Jablonski advised that the voting is critical since the legislation was amended to provide that if NCTD's vote stands as opposed, no action can be taken by LOSSAN. Mr. Jablonski indicated that most of the other entities in the LOSSAN group approve of the JPA and MTS's application for Managing Agency. Mr. Jablonski said that these entities would create a new legislative initiative to create a new JPA absent those entities that voted unfavorably therefore the process to create a JPA would continue. Mr. Jablonski emphasized that it is important to have all entities involved, quell concerns, and go collectively to LOSSAN.

Action Taken

Mr. Cunningham moved to approve MTS Resolution No. 13-2, the amended Joint Powers Authority (JPA) for the LOSSAN Rail Corridor Agency on condition that the following amendments to the JPA be made: a. that the Interagency Transfer Agreement (ITA) must be approved by a supermajority vote as defined in Section 17.1; b. that the LOSSAN ITA be required to include a provision that should the State cut funding for a mutually agreed-upon minimum level of service, service will revert back to State authority within 30 days; c. that if an ITA cannot be agreed upon, the JPA would revert back to 2011 version; and d. direct staff to submit a proposal to become the LOSSAN Managing Agency. Ms. Emerald seconded the motion, and the vote was 13-0 in favor (with Messrs. Alvarez and McClellan absent).

NOTICED PUBLIC HEARINGS:

25. None.

DISCUSSION ITEMS CONT.

33. 2013 State and Federal Legislative Programs

Report continued to the next meeting.

REPORT ITEMS

45. Operations Budget Status Report for November 2012

Mike Thompson, Budget Manager presented the financial results for the first 5 months of the fiscal year through November 30, 2012. Mr. Thompson discussed the operating revenue, passenger revenue variance, ridership, fair revenue, variances in personnel costs and variances in energy. Mr. Thompson advised MTS is \$1.3M favorable for our operations and MTS administration and other activities are favorable by \$19,000 leading to a total favorable variance for the first 5 months of the year of almost \$1.4M or 2.4%. Mr. Thompson stated that items of ongoing concern and those which can have a dramatic impact on our budget if they are to change direction are items such as sales tax related to revenues, energy prices, passenger levels and the State of CA budget. Mr. Thompson stated that currently everything is looking favorable with regard to the operations budget.

Action Taken

Ms. Emerald moved to receive the MTS operations budget status report for November 2012. Mr. Ovrom seconded the motion, and the vote was 14 to 0 in favor (with Mr. Alvarez absent).

60. Chairman's Report

There was no Chairman's report.

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

There was no Chairman's report.

62. Chief Executive Officer's Report

Mr. Jablonski advised there had been no travel since his previous report to the Board.

63. Board Member Communications

There were no Board Member communications.

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 February 21, 2013.

66. Adjournment

Chairman Mathis adjourned the meeting at 11:48 a.m.

Chairperson
San Diego Metropolitan Transit System

Filed by:

Approved as to form:

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

Office of the General Counsel
San Diego Metropolitan Transit System

Attachments: 1. Roll Call Sheet
2. MetroTransit (serving Minneapolis & St. Paul area) Flyer re: cellphone usage

METROPOLITAN TRANSIT SYSTEM
BOARD OF DIRECTORS
ROLL CALL

MEETING OF (DATE): January 17, 2013

CALL TO ORDER (TIME): 9:03 a.m.

RECESS: _____

RECONVENE: _____

CLOSED SESSION: 9:43 a.m.

RECONVENE: 11:09 a.m.

PUBLIC HEARING: _____

RECONVENE: _____

ORDINANCES ADOPTED: _____

ADJOURN: 11:48 a.m.

| BOARD MEMBER | (Alternate) | PRESENT (TIME ARRIVED) | ABSENT (TIME LEFT) |
|--------------|---|---------------------------|-----------------------|
| ALVAREZ | <input type="checkbox"/> (Faulconer) <input type="checkbox"/> | ABSENT | ABSENT |
| BRAGG | <input checked="" type="checkbox"/> (Bilbray) <input type="checkbox"/> | 9:00 a.m. | |
| VACANT | <input type="checkbox"/> (Rindone) <input checked="" type="checkbox"/> | 9:00 a.m. | |
| CUNNINGHAM | <input checked="" type="checkbox"/> (Mullin) <input type="checkbox"/> | 9:00 a.m. | |
| EWIN | <input checked="" type="checkbox"/> (Arapostathis) <input type="checkbox"/> | 9:00 a.m. | |
| EMERALD | <input checked="" type="checkbox"/> (Faulconer) <input type="checkbox"/> | 9:23 a.m. | |
| GASTIL | <input checked="" type="checkbox"/> (Jones) <input type="checkbox"/> | 9:00 a.m. | |
| GLORIA | <input checked="" type="checkbox"/> (Faulconer) <input type="checkbox"/> | 9:06 a.m. | |
| MATHIS | <input checked="" type="checkbox"/> | 9:00 a.m. | |
| MCCLELLAN | <input checked="" type="checkbox"/> (Ambrose) <input type="checkbox"/> | 9:00 a.m. | |
| MINTO | <input checked="" type="checkbox"/> (McNelis) <input type="checkbox"/> | 9:00 a.m. | |
| OVROM | <input checked="" type="checkbox"/> (Denny) <input type="checkbox"/> | 9:00 a.m. | |
| RIOS | <input checked="" type="checkbox"/> (VACANT) <input type="checkbox"/> | 9:00 a.m. | |
| ROBERTS | <input checked="" type="checkbox"/> (Cox) <input type="checkbox"/> | 9:08 a.m. | |
| ZAPF | <input checked="" type="checkbox"/> (Faulconer) <input type="checkbox"/> | 9:00 a.m. | |

SIGNED BY THE CLERK OF THE BOARD: _____

CONFIRMED BY THE GENERAL COUNSEL: _____


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Agenda Item No. 6

MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

February 21, 2013

SUBJECT:

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 JANUARY 15, 2013

RECOMMENDATION:

That the Board of Directors:

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 (Attachment A) for information; and
2. ratify actions taken by the SD&AE Board at its quarterly meeting on January 15, 2013.

Budget Impact

None.

DISCUSSION:

Pursuant to the Agreement for Operation of Freight Rail Services, SD&IV, Museum, and PIR have provided operations reports during the fourth quarter of 2012 (Attachment A).


Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Karen Landers, 619.557.4512, Karen.Landers@sdmts.com

Attachment: A. SD&AE Meeting Agenda & Materials (Board Only Due to Volume)





AGENDA

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

January 15, 2013

9:00 a.m.

Executive Committee Room
James R. Mills Building
1255 Imperial Avenue, 10th Floor

San Diego & Arizona Eastern
Railway Company

A Nevada Nonprofit
Corporation

1255 Imperial Avenue,
Suite 1000
San Diego, CA 92101-7490
619.231.1466

BOARD OF DIRECTORS
Randy Perry, Chairman
Bob Jones
Paul Jablonski

OFFICERS
Paul Jablonski, President
Bob Jones, Secretary
Linda Musengo, Treasurer

GENERAL COUNSEL
Karen Landers

This information will be made available in alternative formats upon request. To request an agenda in an alternative format, please call the Clerk of the Board at least five working days prior to the meeting to ensure availability. Assistive Listening Devices (ALDs) are available from the Clerk of the Board prior to the meeting and are to be returned at the end of the meeting.

ACTION RECOMMENDED

1. Approval of the Minutes of October 16, 2012 Approve
Action would approve the SD&AE Railway Company Minutes of October 16, 2012.
2. Statement of Railway Finances (Linda Musengo) Receive
Action would receive a report for information.
3. Report on San Diego and Imperial Valley (SD&IV) Railroad Operations (Matt Domen) Receive
Action would receive a report for information.
4. Report on Pacific Southwest Railway Museum (Diana Hyatt) Receive
Action would receive a report for information.
5. Report on the Desert Line (Chas McHaffie/Donald Stoecklein) Receive
Action would receive a report for information.
6. Real Property Matters (Tim Allison)
 - a. Summary of SD&AE Documents Issued Since October 16, 2012 Receive
Action would receive a report for information.
 - b. Right of Entry Permit Process Finances Receive
Action would receive a report for information.
 - c. Motor Transport Museum Request for Spur Track Fee Waiver Possible Action
Action would provide direction to staff on the request for a fee waiver connected with the plan review and agreement execution for a spur track previously approved by the SD&AE Board.

SD&AE Board.

7. Donation of Unused Rail Cars to the Pacific Southwest Railway Museum and the Baja California Railway Foundation or Affiliated Nonprofit Organization (Karen Landers) Approve
Action would authorize the SD&AE President to take any action necessary to donate the unused rail cars with historical value to the Pacific Southwest Railway Museum (Box Cars "SDAE 1084" and "SP 116033") and the Baja California Railway Foundation (Tank Car 1025) or affiliated nonprofit organizations.
8. Extension of Pacific Southwest Railway Museum Operating Agreement (Karen Landers) Approve
Action would: (1) negotiate with Pacific Southwest Railway Museum (PSRM) to extend its operating agreement for passenger-excursion services on a portion of the Desert Line and operation of a museum on the Campo Depot property; and (2) execute such agreement consistent with the terms.
9. Board Member Communications
10. Public Comments
11. Next Meeting Date: April 16, 2013
12. Adjournment

MINUTES

BOARD OF DIRECTORS MEETING OF THE SAN DIEGO & ARIZONA EASTERN RAILWAY COMPANY

October 16, 2012

A meeting of the Board of Directors of the San Diego & Arizona Eastern (SD&AE) Railway Company, a Nevada corporation, was held at 1255 Imperial Avenue, Suite 1000, San Diego, California 92101, on October 16, 2012, at 9:05 a.m.

The following persons, constituting the Board of Directors, were present: Bob Jones and Paul Jablonski. Randy Perry was absent. Also in attendance were members from:

| | |
|--|---|
| San Diego Metropolitan Transit System: | Tim Allison, Karen Landers, Wayne Terry, Linda Musengo |
| San Diego & Imperial Valley Railroad: | Matt Domen |
| Pacific Southwest Railway Museum: | Diana Hyatt |
| Pacific Imperial Railroad, Inc./Carrizo: | Chas McHaffie |
| Tierra Madre Railway/FPN: | R. Mitchell Beauchamp |
| Burlington Northern Santa Fe: | John Hoegemeier |
| Public: | Bob Nickles |

1. Approval of Minutes

Mr. Jablonski moved to approve the Minutes of the July 10, 2012, SD&AE Railway Board of Directors meeting. Mr. Jones seconded the motion, and it was unanimously approved.

2. Statement of Railway Finances

Linda Musengo reviewed the financial statement for the second quarter of 2012 (attached to the agenda item). Mr. Jablonski asked about cost-recovery for staff time in relation to processing right of entry permits. Mr. Allison responded that he has not done an analysis lately, but his guess is that all costs are not recouped. Mr. Jones added that other agencies are recouping their costs. Board members agreed that staff should research current permitting recovery costs and come back to the Board with a report at the next meeting in January.

Action Taken

Mr. Jablonski moved to direct staff to research cost recovery for staff time spent processing right of entry permits and if the current reimbursement rate needs revision. Mr. Jones seconded the motion, and it was unanimously approved.

3. Report on San Diego & Imperial Valley Railroad (SD&IV) Operations

Matt Domen reviewed the report of activities for the second quarter of 2012 (attached to the agenda item). Mr. Jones added that RailAmerica has added an independent marketing company south of the border, which is getting results in new business. Mr. Domen clarified that there has been an increase in gas movements compared to 2010. Board members discussed new business and continued growth.

Action Taken

Mr. Jablonski moved to receive the report for information. Mr. Jones seconded the motion, and it was unanimously approved.

4. Report on Pacific Southwest Railway Museum Operations

Diana Hyatt presented the second quarter of 2012 report (attached to the agenda item). Ms. Hyatt asked Chas McHaffie to follow up on a Federal Communications Commission (FCC) requirement to convert Carrizo-owned radios to narrow band for road frequencies and at repeater stations. Ms. Hyatt added that the frequency itself expires at the end of the year. Mr. McHaffie responded that he will follow up.

Ms. Hyatt clarified for the Board that the Museum is contracting with Anthony Anderson for engineering work. Ms. Landers reiterated that engineers' credentials and all corresponding reports be submitted to Tim Allison. Mr. Allison also reiterated that he needs to be notified whenever there will be any inspections.

Action Taken

Mr. Jablonski moved to receive the report for information. Mr. Jones seconded the motion, and it was unanimously approved.

5. Report on the Desert Line

Chas McHaffie apologized for submitting the quarterly report late. Mr. McHaffie stated that Carrizo's main focus has been to work with Pacific Imperial Railroad (PIR) to understand the forward-moving rights and obligations regarding the Museum and the Mexican border.

Ms. Landers stated that she has been waiting on information that was requested at the previous meeting in July regarding the track damage related to SDG&E's subcontractor PAR Electrical Contractors, Inc. (PAR) so that she can follow up with SDG&E. The quarterly report submitted states that Carrizo is unable to confirm who is at fault for the damage.

Mr. McHaffie responded that it was difficult to find out who was responsible for the damage. Ms. Landers reiterated that she needs all information from Carrizo outlining where and when the damage was discovered. She added that she needs to address the damage with SDG&E, but all there is currently is a statement from the July meeting that Carrizo discovered it and traced it back to PAR. Mr. McHaffie agreed to bring Ms. Landers the whole file. Discussion ensued regarding possible causes of the damage by a fire on the line. Mr. McHaffie confirmed that the damage has been repaired. Mr. Allison requested that Mr. McHaffie provide the fire damage report of the line as soon as possible.

- Public Speaker - R. Mitchell Beauchamp: Please see attached comments.

Action Taken

No action taken.

6. Real Property Matters

Tim Allison submitted the documents described below that have been processed by staff since the July 10, 2012, meeting.

- S200-12-518: Lease to Innovative Cold Storage, Inc. for building use at the San Ysidro Freight Yard.
- S200-12-521: Right of Entry Permit to Navy Region Southwest Morale, Welfare and Recreation Department for the Bay Bridge Run/Walk.

6. Real Property Matters - Continued

- **S200-12-528:** Right of Entry Permit to Outdoor Dimensions to install banners at the Grossmont Trolley Station.
- **S200-12-529:** Right of Entry Permit to the City of La Mesa for the Flag Day Parade.
- **S200-12-530:** Right of Entry Permit to Hazard Construction, Inc. to construct the COMM 22 project in the City of San Diego.
- **S200-12-513:** Right of Entry Permit to Peterson Chase General Engineering Construction, Inc. to repair bridge railings at the Grossmont Trolley Station.
- **S200-12-532:** Right of Entry Permit to Ninyo & Moore to perform field investigations for various SANDAG projects.
- **S200-12-534:** Construction and Maintenance Agreement to the Ocotillo Express LLC for crossings in the Ocotillo area of the Desert Line.

Action Taken

Mr. Jablonski moved to receive the report for information. Mr. Jones seconded the motion, and it was unanimously approved.

7. Approval of the 2013 SD&AE Board of Directors Meeting Schedule

Karen Landers stated that staff is proposing the following meeting schedule for 2013:

| | | |
|---------------------------|-----------|-------------------------------|
| Tuesday, January 15, 2013 | 9:00 a.m. | (Fourth Quarter 2012 Reports) |
| Tuesday, April 16, 2013 | 9:00 a.m. | (First Quarter 2013 Reports) |
| Tuesday, July 16, 2013 | 9:00 a.m. | (Second Quarter 2013 Reports) |
| Tuesday, October 15, 2013 | 9:00 a.m. | (Third Quarter 2013 Reports) |

Upon approval of the above meeting dates, additional information regarding materials due dates and mail-outs are as follows:

Materials Due to Clerk

Friday, January 4, 2013
Friday, April 5, 2013
Friday, July 5, 2013
Friday, October 4, 2013

Materials Mailed

Wednesday, January 9, 2013
Wednesday, April 10, 2013
Wednesday, July 10, 2013
Wednesday, October 9, 2013

Action Taken

Mr. Jablonski moved to approve the 2013 SD&AE Board of Directors meeting schedule. Mr. Jones seconded the motion, and it was unanimously approved.

8. Board Member Communications

None.

9. Public Comments

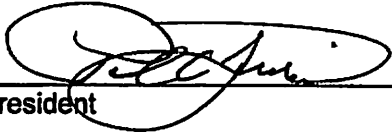
Chas McHaffie suggested that Board members look at the public speaker's (R. Mitchell Beauchamp under Agenda Item No. 5) record at the Sweetwater Authority.

10. Next Meeting Date

The next meeting of the SD&AE Railway Company Board of Directors is on January 15, 2013.

11. Adjournment

The meeting was adjourned at 9:36 a.m.



President



General Counsel

Attachment: Public Comments from Agenda Item No. 5 submitted by R. Mitchell Beauchamp

Date: 16 October 2012



REQUEST TO SPEAK

Agenda Item No. 5

Order Request Received 1

PLEASE SUBMIT THIS COMPLETED FORM (AND ANY WRITTEN STATEMENTS) TO THE CLERK OF THE COMMITTEE PRIOR TO DISCUSSION OF YOUR ITEM¹.

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 Committee (please attach any written statement to this form). Communications on hearings and agenda items are generally limited to three (3) minutes per person unless the Committee 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 (3) 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

| | |
|---|--|
| NAME | R. Mitchell Beauchamp |
| Address | 1434 East 24 th St N: Tual City CA |
| Telephone | 619 477 5333 |
| Organization represented (if any) | |
| Subject of your remarks | Prosecution for the record |
| Regarding Agenda Item No. | Five |
| Your comments are presenting a position of: | <input type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSITION |

2. TESTIMONY AT NOTICED PUBLIC HEARINGS

At public hearings of the Committee, persons wishing to speak shall be permitted to address the Committee 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 Committee 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 (5) speakers with three (3) minutes each under the Public Comment agenda item. Additional speakers will be heard at the end of the Committee's agenda.

Request to Speak Form.doc

¹ REMEMBER: Subjects of previous hearings or agenda items may not again be addressed under General Public Comments.

Members of the Board,

On July 10, 2012 I appeared in front of the MTS Board to provide information which shareholders and creditors of CZRY researched and believe important to be shared. A copy of the presentation I read to the MTS Board is incorporated here today for your review and consideration. This presentation and the information I am sharing with the SD&AE Board today is important not only to the SD&AE and MTS Boards, but to the public's interest.

On May 30, 2012, Karen Landers, General Counsel of MTS, submitted a declaration in opposition to an application for a preliminary injunction filed by CZRY shareholder Ken Kahan. In that declaration, Ms. Landers offered the following (and these are all paraphrased for brevity here but the complete content of her declaration is submitted today for your review and consideration):

- Following receipt of a court order dated January 3, 2012, MTS began working with PIH and Sheila Lemire.**
- MTS later understood CZRY transferred its operating and trackage rights to PII (owned and controlled by Sheila Lemire) January 5, 2012, two days after the court order. MTS came to understand PII transferred the operating and trackage rights to PIR on November 1, 2011, about one year ago. Though not in the declaration, MTS is known to have met and corresponded with Chas McAfee and Donald Stoecklein, amongst others, principals of and consultants to PIR.**
- MTS encouraged PIH, PII and PIR to develop a proposal to repair the Desert Line and re-open it for freight operations.**
- 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."**

In addition to the disclosures contained in the information provided to the MTS Board, the following is important for the public record:

- **Donald Stoecklein, Chas McAfee and Dwight Jory have been involved in various businesses together since at least 1995.**
- **In 1995, Stoecklein, McAfee and Jory were elected directors of C.E.C. Industries Corp. and Advantage Capital Development Corp.**
- **Donald Stoecklein disclosed, as part of his appointment, he entered into 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.**
- **Dwight Jory disclosed, as part of his appointment, a filing of bankruptcy liquidation in September 1994.**
- **Copies of these disclosures are being provided to the SD&AE Board as part of this presentation.**
- **On June 28, 2011, Lone Ranger Holdings Inc., a Nevada corporation of which Dwight Jory is sole shareholder and Board member, approved the filing of a bankruptcy petition designed to stall the foreclosure of a single family residential home it held title to in Ranch Santa Fe. Copies are being provided.**
- **Chas McAfee is the tenant in that home and has lived there for several years rent free from Mr. Jory. That home has a public records history of changing title every few years through various trusts and other vehicles while the tenants remain living there seemingly without the need to pay rent.**

The public deserves answers to the following:

- **To what extent has MTS, the sole shareholder of SD&AE, confirmed PIR is able to obtain the required financing? Shareholders of CZRY are informed and believe PIR is unable to obtain any such financing.**
- **It is in the public's interest to have PIR present at these meetings to disclose whether it truly is or can fulfill its obligations. If not, then as Ms.**

Landers declared under penalty of perjury, it is not in MTS or the public's interest to allow them to continue in an exclusive operating rights position.

- **The public deserves to know why SD&AE and MTS do not require PIR to file a quarterly report since it is the contractual "operator" of the Desert Line.**
- **Finally, the public deserves to know why SD&AE and MTS believe in:**
 - **Chas McAfee, who has consented to a six-figure fraud judgment against him and has consented to a mid-six-figure IRS judgment against him for non-payment of CZRY payroll taxes,**
 - **Donald Stoecklein, who has a history with Chas McAfee of at least 17 years and who consented to an order to Cease and Desist with the SEC,**
 - **and Dwight Jory, a former bankrupt and who owns a property Chas McAfee (and, formerly Sheila Lemire) lives in rent free**
 - **as opposed to the shareholders and investors of CZRY who want only their rightful opportunity to rebuild what MTS, SD&AE and SDIV never could quite figure out how to do and that is rebuild the Desert Line and restore freight operations. You are not going to find that talent or money at PIR. Guaranteed. What you will find instead is resultant litigation that will affect MTS, SD&AE and SDIV for years to come. Guaranteed.**

Good Morning Directors

I am Mitch Beauchamp, currently serving as the Treasurer of the City of National City, but I was once a member of this Board, representing the City of National City. During those 8 years on this Board I was focused on opening the Desert Line of the San Diego and Arizona Eastern Railroad. You have before you today yet another action that will not serve that purpose. The action proposed will further degrade the complex system require to make this dream of John D. Spreckels work, a system that requires Mexican and US cooperation.

I will point out some cogent issues for your consideration:

1. Pacific Imperial Railroad is owned, managed, directed by, controlled and otherwise comprised of many of the former key shareholders, officers and directors, and their advisors, of Carrizo Gorge Railway, the same people who lost the Mexican railroad contract last year.
2. Through an internal transfer of assets, currently the subject of pending litigation in San Diego Superior Court, Pacific Imperial Railway obtained an assignment of Carrizo Gorge Railway's operating rights.
3. It is a matter of public record from files contained in Federal District Court, San Diego, that Charles McHaffie, former president and director of Carrizo Gorge Railway, and now intimately involved with the management and control of Pacific Imperial Railway, consented to a significant six-figure fraud judgment against himself within the past 12 months.
4. It is a matter of public record, and all public records one would assume have been thoroughly vetted by MTS prior to entering into any negotiations with Pacific Imperial Railroad and it's cronies, that the same Charles McHaffie has consented to a mid six-figure personal tax liability and judgment arising out of his failure to pay payroll taxes on behalf of Carrizo Gorge Railway while it was under his management and control as president of that company.
5. It is a matter of opinion whether persons who consent to fraud judgments and who otherwise have failed to pay tax liabilities are trustworthy, honest or have integrity. I offer no such opinion here-only the actual facts that are a matter of public record for MTS to investigate thoroughly on its own on behalf of the public it represents.
6. It is also a matter of public record that Charles McHaffie has been sued in the last several years, following his run as president of Carrizo Gorge Railway, by investors who invested money in Carrizo Gorge Railway and later claimed fraud or breach. Gina Seau, for example, the former wife of the recently deceased Junior Seau, sued Mr. McHaffie for fraud after investing over \$2 million in Carrizo Gorge Railway.
7. If any one of the MTS board members currently paying attention to my words would take a moment to go to the register of actions for the San Diego Superior Court website you would find confirmation of any of the state court actions I just mentioned against Mr. McHaffie personally for fraud and other causes of action. MTS and it's investigators could also go to the Federal District Court website and find the same information for that court system and it could also inquire with the IRS for the consent judgment IRS currently possesses against Mr. McHaffie.
8. The point of my presentation here to the MTS board today, and I do thank you for your time and for listening, is to suggest caution. Caution with whom you're dealing. Caution with respect to what you are being told. There is a history behind Pacific Imperial Railroad and behind Mr. McHaffie. They are deeply and genetically inseparable. We are all familiar with the admonition regarding history repeating itself. We are also, each of us, very familiar with human behavior and how it often repeats itself. As recited above and as each of you can individually research on your own, there is a vivid history of repetitive, recidivist behavior in the form of fraud and misrepresentation of fact supported by public record. I would not like to see MTS be the victim of a new fraud. As result, I urge you respectfully and as an experienced politician myself, use an abundance of caution before considering entering into any significant transaction involving Pacific Imperial Railroad and it's lead, Charles McHaffie.

I thank you for your time and can provide you this written statement.

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

CHARLES MCHAFFIE, individually, and Does 1 through 100,
inclusive.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

GINA SEAU, individually.

SUM-100

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2010 OCT -4 PM 1:54

SAN DIEGO COUNTY, CA

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desahogar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Superior Court, County of San Diego

330 West Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

37-2010-00101621-CU-FR-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Devin T. Shoecraft, Esq., 1230 Columbia St., Ste. 1140, San Diego, CA 92101; (619) 794-2280

DATE:
(Fecha)

04/2010

Clerk, by
(Secretario)

C. L. L. L.

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☒ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

| | | |
|---|--|---|
| (TORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Devin T. Shoecraft, Esq. (SBN - 233489) SHOECRAFT BURTON, LLP 1230 Columbia Street, Suite 1140 San Diego, CA 92101 TELEPHONE NO.: (619) 794-2280 FAX NO.: (619) 794-2278 ATTORNEY FOR (Name): Gina Seau | | FOR COURT USE ONLY 2010 OCT -4 PM 1:50 SAN DIEGO COUNTY, CA |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego 92101 BRANCH NAME: Central | | |
| CASE NAME: Seau v. McHaffie | | |
| CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) | | CASE NUMBER: 37-2010-00101621-CU-FR-CTL |
| Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) | | JUDGE: DEPT: |

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

| | | |
|---|--|---|
| Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) Other PUPDWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PUPDWD (23) Non-PUPDWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input checked="" type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (26) <input type="checkbox"/> Other non-PUPDWD tort (35) Employment <input type="checkbox"/> Wrongful termination (38) <input type="checkbox"/> Other employment (15) | Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) |
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
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| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Five
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related cases. (You may use form CM-015.)

Date: October 4, 2010
 Devin T. Shoecraft, Esq.

(TYPE OR PRINT NAME)

SIGNATURE OF PARTY OR ATTORNEY FOR PARTY

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.50, 3.220, 3.400-3.403, 3.740;
 Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

American LegalNet, Inc.
www.FormsWorld.com

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| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO | |
| STREET ADDRESS: 330 West Broadway | |
| MAILING ADDRESS: 330 West Broadway | |
| CITY AND ZIP CODE: San Diego, CA 92101 | |
| BRANCH NAME: Central | |
| TELEPHONE NUMBER: (619) 450-7075 | |
| PLAINTIFF(S) / PETITIONER(S): Gina Seau | |
| DEFENDANT(S) / RESPONDENT(S): Charles McHaffie | |
| SEAU VS. MCHAFFIE | |
| NOTICE OF CASE ASSIGNMENT | CASE NUMBER: 37-2010-00101621-CU-FR-CTL |

Judge: Richard E. L. Strauss

Department: C-75

COMPLAINT/PETITION FILED: 10/04/2010

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

1 Robert D. Shoecraft, Esq. (SBN-96217)
2 Michelle L. Burton, Esq. (SBN-187152)
3 Devin T. Shoecraft, Esq. (SBN-225489)
4 Shoecraft & Burton, LLP
5 1230 Columbia Street, Suite 1140
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7 Tel: (619) 794-2280
8 Fax: (619) 794-2278

9 Attorneys for Plaintiff Gina Seau

2010 OCT -4 PM 1:54

SAN DIEGO COUNTY, CA

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12 GINA SEAU, individually

13 Plaintiff,

14 vs.

15 CHARLES MCHAFFIE, individually, and
16 DOES 1 through 100, inclusive

17 Defendants.

Case No.: 37-2010-00101621-CU-FR-CTL

PLAINTIFFS' COMPLAINT FOR:

1. BREACH OF CONTRACT
2. INTENTIONAL MISREPRESENTATION
3. FALSE PROMISE
4. CIVIL RACKETEERING ("RICO")
5. VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, et seq. (UNLAWFUL BUSINESS PRACTICES)

18 COMES NOW Plaintiff GINA SEAU, individually, (hereinafter "SEAU") complaining
19 of defendant CHARLES MCHAFFIE (hereinafter "MCHAFFIE") and DOES 1 through 100,
20 inclusive, and alleges as follows:

PARTIES

21 1. Plaintiff SEAU is an individual over the age of 18 at all times relevant residing in
22 the State of California, County of San Diego.

23 2. Defendant MCHAFFIE is an individual over the age of 18. SEAU is informed
24 and believes that at all relevant times herein MCHAFFIE has been a resident of the State of
25 California. SEAU is informed and believes that MCHAFFIE has at all relevant times performed
26 substantial, continuous, and systematic business in the State of California, as described more
27 fully in this complaint, such that MCHAFFIE is subject to general personal jurisdiction of the
28 Courts of this State. SEAU further is informed and believes and thereon alleges that in

Complaint For Damages

1 performing the acts and omissions and engaging in the transactions and occurrences alleged
2 herein within the State of California out of which SEAU's Complaint arises, McHAFFIE
3 purposefully directed his activities at residents of this State and purposefully availed himself of
4 the privilege of conducting such activities in this State, such that McHAFFIE is subject to
5 specific personal jurisdiction of the Courts of this State.

6 3. SEAU is ignorant of the true names and/or capacities of the defendants sued
7 herein as DOES 1 through 100, inclusive, and therefore sues said defendants by such fictitious
8 names. SEAU is informed and believes and thereupon alleges that each of the defendants
9 designated herein as a DOE is legally responsible in some manner for the events and happenings
10 referred to in this complaint and caused damages to SEAU as alleged more fully herein. SEAU
11 is informed and believes that each of the defendants herein designated as DOES 1 through 100,
12 inclusive, have an interest in the litigation which is the subject of this Complaint. When the true
13 names have been ascertained of said DOE defendants, leave of court will be requested so as to
14 include said names in lieu of said fictitious names.

15 4. SEAU is informed and believes and thereon alleges that at all times herein
16 mentioned each of the defendants identified in the paragraphs above, were agents and/or
17 employees of each of the remaining defendants and were acting within the course and scope of
18 said agency and/or employment at all times mentioned herein.

19 **GENERAL ALLEGATIONS**

20 5. SEAU alleges that after securing a position of trust and confidence, McHAFFIE
21 solicited SEAU's investment in a certain business investment opportunity hereinafter designated
22 as the "Corrizo Gorge Railway transaction." In connection with his solicitation of SEAU's
23 investment in the Corrizo Gorge Railway transaction, McHAFFIE knowingly and intentionally
24 misrepresented to SEAU material facts regarding the nature of the risk involved in the
25 investment, with the purpose and intent of inducing SEAU to provide investment capital to
26 McHAFFIE. McHAFFIE held himself out to SEAU as an experienced, professional, and reliable
27 business investor as well as a friend and confidant and induced SEAU to rely upon his false
28 representations as to the nature of the Corrizo Gorge Railway transaction. McHAFFIE had

1 actual knowledge that SEAU was highly unsophisticated in matters of business, investments and
2 lending transactions

3 6. In connection with his solicitation of SEAU's investment, McHAFFIE requested
4 SEAU loan him the sum of two million-five hundred thousand dollars (\$2,500,000.00)
5 (hereinafter the "Funds") which loan was allegedly for purposes of facilitating the consummation
6 of the Corrizo Gorge Railway transaction. After first receiving five-hundred thousand dollars
7 (\$500,000.00), McHAFFIE induced SEAU to take a loan in the amount of two million dollars
8 (\$2,000,000.00) against her residential real property located in the County of San Diego
9 knowingly and falsely represented to SEAU that McHAFFIE would repay this sum in full at 5%
10 interest per anum, and McHAFFIE knowingly and falsely represented to SEAU that he would
11 also pay all transactional costs and fees associated with SEAU's obtaining this loan as charged
12 by the financial institution that made the residential, interest only loan to SEAU, and further
13 knowingly and falsely represented that he would pay all of the monthly interest on principal
14 charged by the financial institution arising out of the two million dollar (\$2,000,000.00) loan.

15 7. In reliance upon McHAFFIE's materially false representations, SEAU took out
16 the referenced loan and encumbered her residential real property as collateral. At McHAFFIE's
17 direction, SEAU caused the electronic transfer of the two million dollars (\$2,000,000.00) to be
18 made to the attorney client trust account of James J. Warner, Esq., an attorney licensed to
19 practice law in the State of California. McHAFFIE knowingly represented to SEAU that
20 attorney Warner would act as SEAU's attorney and fiduciary in connection with the Corrizo
21 Gorge Railway transaction and the associated loan and protect her interest in connection with the
22 matter until the loan was repaid. At all time relevant hereto, SEAU reasonably relied on such
23 representations and believed and understood attorney James J. Warner was acting as her legal
24 counsel charged with the responsibility to protect her interest.

25 8. After SEAU transferred the Funds to Warner, SEAU is informed and believes
26 McHAFFIE and DOES 1 through 100, inclusive, misappropriated the Funds for purposes
27 unrelated to the Corrizo Gorge Railway transaction. McHAFFIE did make payments to SEAU
28 for the loan payments due by SEAU, however within the past months McHAFFIE has failed to

1 pay the costs or interest on the loan as promised to SEAU despite SEAU's demands and
2 demands made by attorney James J. Warner on SEAU's behalf in January and February of 2010.
3 McHAFFIE and DOES 1 through 100, inclusive, have defaulted on the terms of his loan
4 agreement with SEAU and failed to repay the loan with interest on the terms promised to SEAU.

5 9. SEAU has been actually and substantially harmed by the actions and omissions of
6 McHAFFIE and DOES 1 through 100, inclusive, as described herein. SEAU is unable to pay the
7 monthly interest on the loan secured by her residential property and is danger of losing the
8 property to the lender. McHAFFIE and DOES 1 through 100, inclusive, have converted the
9 Funds to their own use. McHAFFIE's actions as described herein are malicious, oppressive, and
10 fraudulent, and SEAU asserts the following causes of action against McHAFFIE.

11 **FIRST CAUSE OF ACTION**

12 **(Breach of Contract)**

13 **(As Against All Defendants)**

14 10. SEAU incorporates all of the preceding paragraphs as though set forth fully
15 herein.

16 11. SEAU alleges that by the transactions, occurrences, and series of transactions and
17 occurrences by and between SEAU and McHAFFIE and DOES 1 through 100, inclusive, as
18 alleged herein, a contract was formed between these parties.

19 12. SEAU alleges that she performed everything required of her under the terms of
20 the contract. SEAU alleges that McHAFFIE's and DOES 1 through 100, inclusive, performance
21 under the contract was not excused, and that all conditions requiring McHAFFIE's and DOES 1
22 through 100, inclusive, performance thereunder have occurred.

23 13. SEAU alleges that by McHAFFIE's and DOES 1 through 100, inclusive, acts and
24 omissions complained of herein, McHAFFIE and DOES 1 through 100, inclusive, breached their
25 contract with SEAU, and SEAU was harmed by that breach, and is entitled to an award of
26 damages based thereon.

27 **SECOND CAUSE OF ACTION**

28 **(Fraud - Intentional Misrepresentation)**

Complaint For Damages

1 (As Against All Defendants)

2 14. SEAU incorporates all of the preceding paragraphs as though set forth fully
3 herein.

4 15. SEAU alleges that by McHAFFIE's and DOES 1 through 100, inclusive, acts and
5 omissions complained of herein, McHAFFIE and DOES 1 through 100, inclusive, made false
6 representations of important facts to SEAU, which McHAFFIE and DOES 1 through 100,
7 inclusive, knew were false when made, and upon which McHAFFIE and DOES 1 through 100,
8 inclusive, intended SEAU to rely. SEAU reasonably relied upon McHAFFIE's and DOES 1
9 through 100, inclusive, false representations, and this reliance was a substantial factor in causing
10 harm to SEAU.

11 16. McHAFFIE's and DOES 1 through 100, inclusive, acts and omissions complained
12 of herein were malicious, fraudulent and oppressive, entitling SEAU to an award of exemplary
13 damages.

14 THIRD CAUSE OF ACTION

15 (Fraud - False Promise)

16 (As Against All Defendants)

17 17. SEAU incorporates all of the preceding paragraphs as though set forth fully
18 herein.

19 18. SEAU alleges that McHAFFIE and DOES 1 through 100, inclusive, made false
20 promises of important facts to SEAU in order to induce her to enter the transaction and provide
21 McHAFFIE and DOES 1 through 100, inclusive, the Funds, which promises McHAFFIE and
22 DOES 1 through 100, inclusive, knew were false and which he did not intend to perform when
23 made. McHAFFIE and DOES 1 through 100, inclusive, intended SEAU to rely upon their false
24 promises, and SEAU did so reasonably rely. McHAFFIE and DOES 1 through 100, inclusive,
25 failed to perform as promised, and this failure was a substantial factor in causing harm to SEAU.

26 19. McHAFFIE's and DOES 1 through 100, inclusive, acts and omissions complained
27 of herein were malicious, fraudulent and oppressive, entitling SEAU to an award of exemplary
28 damages.

1 **FOURTH CAUSE OF ACTION**

2 **(Civil Violation of the Racketeer Influenced and Corrupt Organizations Act;**

3 **18 U.S.C. § 1961 et seq.)**

4 **(As Against All Defendants)**

5 20. SEAU incorporates all of the preceding paragraphs as though set forth fully
6 herein.

7 21. SEAU is informed and believes that in doing the things herein alleged,
8 McHAFFIE and DOES 1 through 100, inclusive, have engaged in a pattern of racketeering
9 activity in connection with an enterprise that affects interstate commerce, including without
10 limitation mail fraud, wire fraud, and fraud in the sale of securities. SEAU has suffered damages
11 as a direct and proximate result of the racketeering activities of McHAFFIE and DOES 1 through
12 100, inclusive, such that SEAU is entitled to an award of actual damages, statutory treble
13 damages, and attorneys' fees and costs.

14 **FIFTH CAUSE OF ACTION**

15 **(Violation of Business & Professions Code § 17200)**

16 **(As Against All Defendants)**

17 22. SEAU incorporates all of the preceding paragraphs as though set forth fully
18 herein.

19 23. SEAU alleges that the wrongful acts of McHAFFIE and DOES 1 through 100,
20 inclusive, as herein alleged were performed pursuant to McHAFFIE's and DOES 1 through 100,
21 inclusive, unlawful business practice of defrauding potential investors with false promises of
22 illusory investment opportunities. SEAU is informed and believed and based thereon allege that
23 McHAFFIE and DOES 1 through 100, inclusive, have a pattern and practice of illegally
24 misappropriating the personal funds of unknowledgeable investors such as SEAU herein.

25 24. SEAU alleges she has suffered injury in fact as a result of McHAFFIE's and
26 DOES 1 through 100, inclusive, unlawful business practice alleged herein. SEAU further alleges
27 that pursuant to the laws of this State, SEAU is entitled to restitution of all amounts illegally
28 misappropriated by McHAFFIE and DOES 1 through 100, inclusive, pursuant to the unlawful

Complaint For Damages

1 business practice alleged herein, in an amount to be proven. SEAU further seeks injunctive
2 relief against McHAFFIE and DOES 1 through 100, inclusive, to prohibit the unlawful business
3 practices complained of herein.

4 **WHEREFORE, SEAU prays for judgment as follows:**

- 5 1. For a judicial determination of the respective rights of SEAU and the duties of
6 McHAFFIE and DOES 1 through 100, inclusive, pursuant to applicable law;
- 7 2. That judgment be entered in favor of SEAU and against McHAFFIE and DOES 1
8 through 100, inclusive, with respect to all amounts due and owing SEAU, plus interest, including
9 pre-judgment interest, and other economic and consequential damages, in an amount to be
10 determined at the time of trial;
- 11 3. Attorney's fees pursuant to contract and law, witness fees, and costs of litigation
12 incurred by SEAU to obtain relief sought herein, in an amount to be determined at the time of
13 trial;
- 14 4. Treble damages pursuant to RICO;
- 15 5. Punitive and exemplary damages in an amount to be determined at the time of
16 trial;
- 17 6. Restitution;
- 18 7. Injunctive relief;
- 19 8. Such other relief as the Court may deem just and proper.

20 Respectfully submitted,

21
22 Dated: October 4, 2010

By: 

Robert D. Shoecraft, Esq.
Shoecraft ♦ Burton, LLP,
Attorneys for PLAINTIFF
Gina Seau

Superior Court of California, County of San Diego

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Last Name requested: MCHAFFIE First Name requested: CHARLES Search Result Page: 1

| Case Number | Party Name Matches | Opposing Party | Case Location | Case Type | Date Filed |
|----------------------------|--------------------------|--------------------------------------|---------------|-----------|------------|
| UN017036 | MCHAFFIE, CHARLES | PACIFIC HORIZON FINANCIAL INC | North County | Civil | 04/08/2005 |
| UN015786 | MCHAFFIE, CHARLES | PACIFIC HORIZON FINANCIAL INC | North County | Civil | 10/22/2004 |
| N77140 | MCHAFFIE, CHARLES | FORT WORTH CREDIT PARTNERS, LTD. | North County | Civil | 01/23/1988 |
| N78402 | MCHAFFIE, CHARLES | FORT WORTH CREDIT PARTNERS, LTD. | North County | Civil | 10/30/1997 |
| N44469 | MCHAFFIE, CHARLES | TREMBLAY, ZAO | North County | Civil | 07/19/1989 |
| N37181 | MCHAFFIE, CHARLES | VIDAL, M.D., JOSE | North County | Civil | 08/02/1987 |
| IC872602 | MCHAFFIE, CHARLES | GERSON LAW FIRM APC | San Diego | Civil | 08/18/2008 |
| GIN046101 | MCHAFFIE, CHARLES | BEDELL, RON | North County | Civil | 05/19/2005 |
| GIN020132 | MCHAFFIE, CHARLES | A & A HOLDINGS LIMITED PARTNERSHIP | North County | Civil | 03/08/2003 |
| GIC847709 | MCHAFFIE, CHARLES | BEDELL, RON | San Diego | Civil | 05/19/2005 |
| GIC834016 | MCHAFFIE, CHARLES | AMERICAN MOTORISTS INSURANCE COMPANY | San Diego | Civil | 08/10/2004 |
| GIC833202 | MCHAFFIE, CHARLES | RORABAUGH GROUP | San Diego | Civil | 07/28/2004 |
| GIC809034 | MCHAFFIE, CHARLES | KATZMAN, RICHARD | San Diego | Civil | 11/14/2002 |
| GIC724421 | MCHAFFIE, CHARLES | JORY, DWIGHT | San Diego | Civil | 08/30/1999 |
| 841A00 | MCHAFFIE, CHARLES | U. S. SECURITIES CLEARING CORP. | San Diego | Civil | 08/28/1991 |
| 37-2010-00101621-CL-ER-CTL | MCHAFFIE, CHARLES | SEAU, GINA | San Diego | Civil | 10/04/2010 |
| 37-2010-00007473-CL-EC | MCHAFFIE, CHARLES | STRAUSS LIMITED PARTNERSHIP | East County | Civil | 04/08/2010 |
| 37-2008-00092295-CL-ER-CTL | MCHAFFIE, CHARLES | EAST COUNTY DIRT WORKS INC | San Diego | Civil | 09/22/2008 |
| 37-2007-00083786-CL-ER-CTL | MCHAFFIE, CHARLES | WHILLOCK, MARK | San Diego | Civil | 12/14/2007 |
| GIN040258 | MCHAFFIE, CHARLES R | FORSEST BEND LTD | North County | Civil | 10/22/2004 |
| GIC833202 | MCHAFFIE, CHARLES R | HALIFAX INVESTMENTS LLC | San Diego | Civil | 08/25/2004 |
| N36632 | MCHAFFIE, CHARLES ROBERT | MILLER, DAVID GREGORY | North County | Civil | 06/01/1987 |

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Last Name requested: CARRIZO GORGE First Name requested: Search Result Page: 1

| Case Number | Party Name Matches | Opposing Party | Case Location | Case Type | Date Filed |
|---|---------------------------------|--|---------------|-----------|------------|
| IE031642 | CARRIZO GORGE RAILWAY INC | CANADIAN PACIFIC RAILWAY | East County | Civil | 04/04/2008 |
| GIE036664 | CARRIZO GORGE RAILWAY INC | HELM FINANCIAL CORPORATION | East County | Civil | 03/05/2007 |
| GIE034316 | CARRIZO GORGE RAILWAY INC | GE RAIL CAR NEW LIFE | East County | Civil | 09/19/2008 |
| GIE032058 | CARRIZO GORGE RAILWAY INC | WHILLOCK CONTRACTING INC | East County | Civil | 05/01/2008 |
| 37-2010-00071686-CU-BC-EC | CARRIZO GORGE RAILWAY INC | BNSF RAILWAY COMPANY | East County | Civil | 08/15/2010 |
| 37-2010-00070009-CU-BC-EC | CARRIZO GORGE RAILWAY INC | SAN DIEGO & IMPERIAL VALLEY RAILROAD INC | East County | Civil | 08/31/2010 |
| 37-2010-00087473-CU-CL-EC | CARRIZO GORGE RAILWAY INC | STRAUSS LIMITED PARTNERSHIP | East County | Civil | 04/09/2010 |
| 37-2010-00066915-CU-CO-EC | CARRIZO GORGE RAILWAY INC | UNION PACIFIC RAILROAD COMPANY | East County | Civil | 04/09/2010 |
| 37-2009-00085325-CU-EN-EC | CARRIZO GORGE RAILWAY INC | FIRST UNION RAIL CORPORATION | East County | Civil | 04/08/2009 |
| 37-2008-00102537-CL-R3-EC | CARRIZO GORGE RAILWAY INC | SCHEUERMAN, RENE LAMAR | East County | Civil | 12/30/2008 |
| 37-2008-00100389-CL-R3-EC | CARRIZO GORGE RAILWAY INC | RYAN CREDIT SERVICE | East County | Civil | 12/02/2008 |
| 37-2008-00068073-CL-R3-EC | CARRIZO GORGE RAILWAY INC | NORTHWESTERN RAILROAD CONSTRUCTION INC | East County | Civil | 07/28/2008 |
| 37-2008-00063165-CL-R3-EC | CARRIZO GORGE RAILWAY INC | SAN DIEGO WHOLESALE CREDIT ASSOCIATION | East County | Civil | 04/01/2008 |
| 37-2008-00083133-CL-R3-EC | CARRIZO GORGE RAILWAY INC | CANADIAN PACIFIC RAILWAY | East County | Civil | 04/07/2008 |
| 37-2008-00034721-CL-JD-EC | CARRIZO GORGE RAILWAY INC | HARMONY GROVE PARTNERS LP | East County | Civil | 07/16/2008 |
| 37-2007-00080931-CU-BC-EC | CARRIZO GORGE RAILWAY INC | UNION PACIFIC RAILROAD COMPANY | East County | Civil | 08/28/2007 |
| 37-2008-00088073-CL-R3-EC | CARRIZO GORGE RAILWAY TOURS INC | NORTHWESTERN RAILROAD CONSTRUCTION INC | East County | Civil | 07/28/2008 |
| GJE030423 | CARRIZO GORGE RAILWAY, INC | PHOENIX CONSTRUCTION SERVICES, INC | East County | Civil | 01/03/2008 |

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Last Name requested: CARRIZO GORGE First Name requested: Search Result Page: 1

| Case Number | Party Name Matches | Opposing Party | Case Location | Case Type | Date Filed |
|--|--|-------------------------------------|---------------|-----------|------------|
| 37-2008-00085174-CU-PA-CTL | CARRIZO GORGE INTERNATIONAL AGGREGATES INC | GARCIA, RUBEN | San Diego | Civil | 06/05/2008 |
| GIC867865 | CARRIZO GORGE RAILWAY INC | PHOENIX CONSTRUCTION SERVICES INC | San Diego | Civil | 01/03/2006 |
| 37-2010-00106551-CU-CO-CTL | CARRIZO GORGE RAILWAY INC | LIT INDUSTRIAL LIMITED PARTNERSHIP | San Diego | Civil | 12/23/2010 |
| 37-2010-00102989-CU-BC-CTL | CARRIZO GORGE RAILWAY INC | HULCHER SERVICES INC | San Diego | Civil | 10/22/2010 |
| 37-2010-00101083-CU-NP-CTL | CARRIZO GORGE RAILWAY INC | SWEETWOOD, GARY | San Diego | Civil | 09/24/2010 |
| 37-2010-00082601-CU-BC-CTL | CARRIZO GORGE RAILWAY INC | GATX RAIL LOCOMOTIVE GROUP LLC | San Diego | Civil | 05/20/2010 |
| 37-2009-00097887-CU-CL-CTL | CARRIZO GORGE RAILWAY INC | LUCE FORWARD HAMILTON & SCRIPPS LLP | San Diego | Civil | 08/04/2009 |
| 37-2008-00086937-CU-BT-CTL | CARRIZO GORGE RAILWAY INC | SWEETWOOD, GARY | San Diego | Civil | 11/26/2008 |
| 37-2008-00095237-CU-BT-CTL | CARRIZO GORGE RAILWAY INC | BEAUCHAMP, R MITCHEL | San Diego | Civil | 11/03/2008 |
| 37-2008-00093319-CU-BC-CTL | CARRIZO GORGE RAILWAY INC | EAST COUNTY DIRT WORKS INC | San Diego | Civil | 10/06/2008 |
| 37-2008-00092285-CU-WM-CTL | CARRIZO GORGE RAILWAY INC | CARRIZO GORGE RAILWAY INC | San Diego | Civil | 09/22/2008 |
| 37-2008-00092295-CU-WM-CTL | CARRIZO GORGE RAILWAY INC | CARRIZO GORGE RAILWAY INC | San Diego | Civil | 09/22/2008 |
| 37-2008-00092295-CU-WM-CTL | CARRIZO GORGE RAILWAY INC | EAST COUNTY DIRT WORKS INC | San Diego | Civil | 09/22/2008 |
| 37-2008-00092295-CU-WM-CTL | CARRIZO GORGE RAILWAY INC | EAST COUNTY DIRT WORKS INC | San Diego | Civil | 09/22/2008 |
| 37-2008-00085174-CU-PA-CTL | CARRIZO GORGE RAILWAY INC | GARCIA, RUBEN | San Diego | Civil | 06/05/2008 |
| 37-2008-00083791-CU-BT-CTL | CARRIZO GORGE RAILWAY INC | BAJA CALIFORNIA RAIL ROAD INC | San Diego | Civil | 05/13/2008 |



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DWIGHT JORY and CHARLES MCHAFFIE

Dwight Jory has been a business associate of John Madsen since at least 1991, documented by this filing *Nelson v Jory and Madsen, et al.* (This case is listed in the Cases 1991-2000) While looking into Mr. Jory's business activities, it was discovered that Dwight Jory and Charles McHaffie are business associates.

It can be established that Jory and McHaffie have known each other since at least 1989. This is the case history of the Robert Bartoli vs Kent Greene, et al, filed in 1989. Charles McHaffie and Dwight Jory are named as third-party defendants. The company DSM Golf Enterprises, Inc., was also named. Since the case is old, the court filings cannot be found. Even though the case was filed in 1989, Kent Green was issuing orders in 1994 and 1996 for the appearance of "judgment debtor" Charles McHaffie. There is a judgment in the amount of \$167,251.92 against both Dwight Jory and Charles McHaffie given in 1994 to Mr. Greene, per the case history. The reason for the case is unknown.

Dwight Jory was on the board of a company called Advantage Capital Management and also DSM Golf Enterprises (scroll to page 17) Advantage Capital Management had previously been C.E.C. Industries Corp. When reading all the information, it is hard to determine what the actual business is, there were several different types of businesses. Charles McHaffie was also involved with the company.

Another person on the board of Advantage Capital Management was *Donald J Stoecklein*, an attorney. Dwight Jory filed his Written Consent (June 28, 2011) for the Lone Ranger Holdings, Inc. bankruptcy from the office of *Stoecklein Law Group*.

When reviewing the case history of Bartoli v Green, most of the people named as defendants in the case were also involved with Advantage Capital Management(ACM). Also when reviewing the ACM I/k/a C.E.C Industries Information, a company named Mission Valley Mini Storage was a part of C.E.C. Industries (on page 3 and page 7). While not noted in the information, Dwight Jory was the manager. Mission Valley Mini Storage and C.E.C. Industries had the same address 23 Cactus Garden Drive, F-60.

Jory and McHaffie have both been Trustees for Shamee Family Trust Partnership. They have both been involved with Carrizo Gorge Railway, which is a company that Jory mentions in his filings with BDCM. They have also been involved with a non-profit group called Keepers of The Wild. Dwight Jory was the treasurer for the group.

SIDE NOTE: Carrizo Gorge Railway was started years ago (the actual line was started in 1919), how they became involved and their involvement in it is unclear at this time.

SHARNEE FAMILY TRUST PARTNERSHIP

Researching Shamee Family Trust Partnership (SFTP), it has been discovered through an involuntary bankruptcy filing in 2001 in Nevada that SFTP is a Real Estate Business Trust. (def: Involuntary Bankruptcy) The filing was done by individuals trying to get debts repaid, the bankruptcy was dismissed because the filers failed to pay a fee. Most of the other involuntary filings for the Shamee Family Trust have been filed by either Charles McHaffie or Dwight Jory. The Shamee Family Trust was mentioned in a Relief of Stay for the recent (June 2011) *Lone Ranger Holdings bankruptcy*. It appears that the property in the bankruptcy could belong to McHaffie/Shamee Family Trust. Please go to the Dwight Jory page to read more about the bankruptcy.

Here is a list of the Shamee Family Trust bankruptcies. All were dismissed except for the most recent filing in October 2008, which appears to still be active. Prior to the October 2008 filing there was another involuntary bankruptcy filed April 2008.

In April 2000, Shamee Family Trust Partnership's Trustee, Dwight Jory, filed a voluntary bankruptcy. In this bankruptcy, Washington Mutual filed this Ex-Parte Application. It states that it is a frivolous filing as well as another frivolous filing in 1999. Washington Mutual was owed \$1,200,000.

In 2001 bankruptcy Case No 01-13141-PB7 was filed in Southern California. This bankruptcy had a Motion for Relief from Stay filed by the Acceptance Corporation in February 2002. The first paragraph states it is a "complex multi-party consolidated proceedings in Clark County Nevada Superior Court". What can also be said is there is a great deal of money talked about in this filing. This Motion cites several actions done by Jory, McHaffie, and Richard Katzman, an attorney. On page 7 of the filing, it is stated "Katzman, McHaffie and Jory are scheming for some improper purpose, likely to once again prevent the foreclosure of Calle Privada property". The Relief states that the involuntary bankruptcy was "not filed in good faith or for proper purpose" and, on Page 4 of 8, that this bankruptcy is a replica of a bankruptcy filed previously Case 99-08450-PB7, Southern California Bankruptcy Court.

NOTE: In the Motion filed for Tri-Acceptance f/w/a Tri-Capital, Victory Village III is mentioned, it is also in the Advantage Capital Management SEC filing. Tri-Capital is also in the SEC filing. (SEC = Securities Exchange Commission)

UC LOFTS on 4th, LLC UC LOFTS on 5th, LLC and URBAN COAST, LLC

McHaffie is also involved with, and the registered agent for, U C Lofts on 4th LLC, U C Lofts on 5th, LLC and Urban Coast, LLC. This is the link for the California business search. Type in UC Lofts or Urban Coast. Be sure to "click" on Limited Liability Company.

In October 2005 an involuntary bankruptcy was filed for UC Lofts on 4th LLC and UC Lofts on 5th, LLC, Case No. 05-15409-JM. In October 2008, Adversary Proceeding No. 08-90439-JM was filed. The Shamee Family Trust Partnership is named as a defendant in this adversary hearing. This document outlines another bankruptcy and adversary hearing in 2007. The document outlines different parties and provides background to the case. Fraudulent transfer of property is outlined in the filing. There was a hearing set for May 7 2009.

A common denominator in these bankruptcies - Lone Ranger Holdings LLC, Shamee Family Partnership Trust and UC Lofts bankruptcies is a piece of property - 14999 Calle Privada, Del Mar, CA. This property has been in filings since at least 1999, as outlined in the Relief of Stay in bankruptcy Case No 01-13141 (link for Relief is above)

CARRIZO GORGE RAILWAY

A lawsuit was filed against McHaffie by Gina Seau in 2010. The lawsuit claims breach of contract, intentional misrepresentation, RICO and Violation of Business & Professional Code. Gina Seau vs Charles McHaffie. This lawsuit is about McHaffie seeking a \$2.5 Million investment into the Carrizo Gorge Railway via a loan from Seau to "consummate the Carrizo Gorge Railway transaction". James Warner, McHaffie's attorney, is mentioned in this lawsuit, on Page 3, Paragraph 7, where it is stated that Warner would also act as Seau's attorney in the loan transaction. The status of this lawsuit is not known at this time.

Information about Carrizo Gorge Railway and other lawsuits will be added.

VARIOUS LAWSUITS for CHARLES MCHAFFIE

Mr. McHaffie has been involved in several lawsuits - Charles McHaffie lawsuits (some could have been filed by Mr. McHaffie) The list contains old and current lawsuits. The list can be accessed by going to the San Diego County site, follow the instructions. For Case Location and Party Type - Choose "unknown-all".

Mr. McHaffie was involved in a lawsuit with Mr. and Mrs. Whillock. The Whillock's alleged fraud. There was a jury trial, resulting in a judgment against McHaffie in the amount of \$1,663,814.43. The information is found on Whillock's attorney site, Scott Waddie.

MISCELLEANEOUS

This is a link to an article in the Valley News, dated October 24 2008, about the unfinished Warm Springs Townhome project, in Murrieta, CA. It is stated that McHaffie was originally given the project. The project was not finished and Ron Bedell, who originally funded the project, took it over. The article states that there was a 16 unit townhome project started in 2003. The residents were very unhappy about the uncompleted project and wanted something done. There were several meetings of the Murrieta Planning Commission about this project. The minutes of the meeting can be found by searching Ron Bedell and Murrieta Planning Commission. One meeting was on 9-24-08, just before Valley News article. This article, dated April 7 2009, states that the townhouses were to be torn down - the last paragraph in this article says "The project was first approved by the Riverside County Planning Commission in 2001, and Bedell took over its construction in 2006 when the original developer defaulted on his loan."

One interesting note is that someone took information from this site and posted it as a comment on Dec. 9 2011, three (3) years after the original article.



Aerial Photo of the vacant townhome pads in Murrieta

Information will be added when found.

If you have any information about the above cases or others, please write mycokernadsensory@gmail.com



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Remember to go to the Known Associates page under Associates & Other Information Section

DWIGHT JORY

NOTE: This page was started because of the Locatl Global Holdings/Broadcast Marketing Group, Inc.(BDCM) merger and the great similarity with GlobeTrack Wireless in the GPS business. There is a lot of information on this page about this merger, some of it is not critical but all information has been left, as it was discovered. In September 2011, a few months after the merger, there was an "unwind agreement" for Locatl Global Holdings and BDCM. The information is below. **NEW:** The OTC Market site (OTC site) was updated on Dec. 15 2011 with the new information for BDCM. The Florida Business Link was also updated. (The OTC Market site -Pinks section-has information on very small companies which is supplied by the people involved with the company.)

Nov. 2011 - After the unwind agreement with BDCM, Locatl Global Holdings was going to merge with another company. The company was called 3D Eye Solutions (TDEY) out of Florida. The merger was not completed, apparently due to non-payment of funds. This is the letter posted to the OTC site - Letter removing CEO and Chairman. John Madsen's name is included along with Frank Hariton (the security attorney for Locatl/BDCM). The last paragraph of the letter states "Furthermore, you are directed to immediately surrender to the Transfer Agent the stolen shares issued directly to John Madsen or I will have no choice but to contact the authorities". In reading all the documents submitted to the OTC site, Dwight Jory's name is never mentioned. Madsen, Hariton and Simon Vernon Rodriguez, who had been made the new Chairman/CEO of the company, are the only names. There are other reports listed, in November, which are informative, please visit the OTC site to read them.

Read below about Lone Ranger Holdings (started June 22 2011) and the bankruptcy filed(June 29) just 7 days after starting the business.

One of Dwight Jory's business associates is Charles McHaffie, read more on Dwight Jory and Charles McHaffie .

Lawsuits naming Dwight Jory as a defendant are in the Known Associates section, as well in the "More Dwight Jory Companies" section below.

The Patent page outlines the patent that is mentioned in the press release for BDCM, as well as more information for BDCM. Go to True Patent Story to read the actual background of the patent and how it can't work.

Locatl Global Holdings, LLC/Broadcast Marketing Group, Inc

February 3, 2011, Dwight Jory started Locatl Global Holdings, LLC, which is marketing GPS products very similar to *GlobeTrack Wireless, Inc.* A recent document filed (July 2011) stated Locatl "completes acquisition of GTW". Why wasn't this information made public in a press release as was done with Broadcast Marketing Group, Inc.?

Locatl Global Holdings, LLC has acquired a public company, Broadcast Marketing Group, Inc (BDCM). This action appears to be a reverse merger. In the June 3 2011 article, it stated that the company would be filing a Form 15. A Form 15 means the company will "cease filing various required forms". In fact, on June 16, 2011 Dwight Jory did file the Form 15 with the SEC. On the SEC site it states BDCM was previously Imagica Entertainment and Ranger International, SIC Code 2390, Misc Fabricated Textile Products - which remains the SIC code for BDCM. (SEC = Securities Exchange Commission)

July 31 2011 - the SIC Code has not changed on the SEC site however the OTC Pink site has been changed. OTC Pink is changed by the individuals with the company. Other sites still list BDCM as a "textile manufacturer".

On June 5 2011, the OTC site listed Dwight Jory as President/CEO of BDCM. Using the Florida Business link a person named R.H Alvarez is the only person listed for Broadcast Marketing Group, Inc. R.H Alvarez is also the person associated with Imagica and Ranger International, Inc.

On June 23 2011 R.H Alvarez filed an annual report for BDCM. On June 30 2011 paperwork was filed with Florida, Jory is listed as CEO of BDCM. In paperwork submitted to the OTC site for BDCM it states Alvarez resigned as President of BDCM in December 2010. Why was Alvarez filing papers in Florida on June 23 2011?

Mr. Jory has not registered BDCM in Arizona or Nevada but, as noted previously, he has started another company in Nevada. Here is a link to the Arizona Corporation Commission database, type in Broadcast and click on search. Here is the link for the Nevada SOS site enter Dwight Jory as an officer, Broadcast Marketing Group does not appear. There are several companies for Dwight Jory, they are listed below.

June 2011 Update: A recent change to the OTC link - the notice has been changed from STOP to Caveat Emptor.

July 1 2011 Update - The OTC site has changed back to STOP. An Initial Disclosure Statement for June 2011 was filed. When reading the paper, notice that it refers to a new product being released November 2010 - 4th page. 2010 not 2011. (A correction has been made, it now reads 2011). The document also states: "May 5 2011 Dwight Jory, representing Locatl, completes acquisition agreement with GTW" GTW = *GlobeTrack Wireless*. You can see all documents submitted to the OTC.

July 5 2011 Update - the OTC site has changed the status to a Yield Sign which means limited information for the company and that it could be in financial distress.

July 28 2011 Update: The OTC site now shows that BDCM has met all filing requirements for the OTC site and is OTC Pink. As stated on the site, "it is not a designation of quality or investment risk". One of the requirements is that an attorney letter is filed. This was done July 25, 2011. If you read the letter, the attorney, Frank Hariton, states he met with Dwight Jory in San Diego and looked at pictures of the inventory. WHY look at pictures? WHY did they meet in San Diego? Why not Henderson NV? He filed the letter on July 25 but then filed a revised letter on July 27. Revised financial statements were submitted on July 27, as well. Also, in the letter, note the wrong dates for the different reports which he references and the phrase "over the next few weeks I have performed" (future and past tense in one sentence). Please read August 30 update.

A discovery on the SEC site: the ticker symbol for Broadcast Marketing Group is *IMEA* not BDCM. Go to the site, type in IMEA, notice that Broadcast Marketing Group Inc is listed.

August 30 2011 Frank Hariton, securities attorney for BDCM, has a withdrawal letter on the OTC site. He states "due to events that have come to his attention". What events would those be? Could it be fear that the crime-fraud exception would happen again? It would be interesting to know what happened. This is the link for the OTC site which shows he filed it on August 24. The rating on the OTC site for BDCM has gone back to the yield sign same rating for July 5.

UNWIND AGREEMENT - BDCM and Locatl Global Holdings, filed an "unwind agreement" on Sept. 20 2011. Go to the OTC site and read the BDCM and Locatl Global Holdings Unwind Agreement. (It is a large document) In reading the Unwind Agreement on the 3rd page under the NOW THEREFORE area, paragraph 3 - UNRESOLVED MATTERS - FINRA INQUIRY. "BMG has received an inquiry regarding the SEA and other matters from FINRA. BMG has provided certain information to FINRA and may be required to provide additional information to FINRA. DJ agrees to cooperate with BMG with respect to any further information requests from FINRA" DJ = Dwight Jory. FINRA = Financial Industry Regulatory Authority. The entire document should be read. Exhibit B, under "Paid" shows that \$6,200 to Pink OTC Markets and under "Accrued" it shows Frank Hariton \$5,000. Keith Webb was part of the unwind agreement. His name cannot be found in documents for BDCM on the Florida Business Link but he was paid \$6,000 for the company, per Exhibit B. There was a consulting contract, with Keith Webb, attached in the unwind agreement, it is the last document. According to the contract it was signed in March 2011, it was not outlined in the Initial Disclosure Statement of June 30 2011.

Questions about the INTERIM FINANCIAL REPORT in the Reports Released for BDCM:

The unaudited financial statements (as of June 30 2011) and the Information Note 3 (page 7) and Note 5 presents questions.

(1) What is the "property, plant and equipment" and "inventory" valued over \$1 Million that BDCM is getting from GTW? Certain things are known (1) before GTW "moved" out of Texas, the company had been locked out of the rented office space due to lack of payment (2) office equipment, furniture, files were seized by writs and (3) the GPS inventory was seized. All of the seized items sit in a warehouse. What property and inventory is being referenced in Note 3? Is it the furniture & inventory shown on the Photos Submitted page?

(2) How is a \$750,000 value assigned to the intellectual property? Note 5 says the \$750,000 was from "expenses, recorded time by inventors and other cost". Madsen and Coker did the patent filing on their own, an attorney was not used. The dollars spent, per the patent paperwork, was \$1500-\$2000. Is there paperwork to prove the time that Madsen and Coker spent "inventing"? What is the "other cost"? To date, the patent submitted by John Madsen and Michael Coker has not been reviewed by the US Patent Office.

(3) What is the prepaid advertising expense of \$5 Million? Does it mean that GTW paid \$5 Million for advertising? If GTW could afford \$5 Million in advertising, why wasn't Coker being paid his salary at GTW? He stated in his 341 Bankruptcy hearing (and in his filings) that GTW owed him over \$735,000 in wages. Go to the More Information section and listen to the "Funding" clip, at the end of the short clip the \$735K is discussed.

(4) Who are the "4 arm length" people that have been employed. When will they be announced?

(5) The Notes Payable in the amount of \$1,904,841.03, does match the amount in the GTW Financials (link below). Why has nothing been paid on the note? Is it one note or multiple notes? With individuals? Another Company? A bank?

Billie J. Allred (**Fed Tax Lien** over \$74K for tax year 2006 filed in 2010) produced this Financial Report for GlobeTrack Wireless (GTW) ending June 30 2010. Comparing the figures in this document with what is stated in Interim Financial Report for the GTW numbers is interesting. There isn't any mention of the "Intellectual Property" in the GTW financials. There are attorney fees but are not allocated to the patent. The asset numbers don't seem to match. In the letter from Allred prior to the financials, he states "management elected to not submit disclosures normally submitted". Why?

Locatl Global Holdings/BDCM, Lone Ranger Holdings, Carrizo Gorge Railway business office shown below:



Suite 200 - Jory has Locatl Global Holdings/BDCM and Lone Ranger Holdings. It is an Executive Suite used by several companies.

Century Executive Suites, take a tour of the building on their site. Why wouldn't he want his own building since he has several businesses? He is in the real estate business.

LONE RANGER HOLDINGS, INC.

June 22 2011 -Dwight Jory started Lone Ranger Holdings, Inc. (LRH). The address is the same address of Locatl Global Holdings, LLC. It is also the address for another company Jory is involved with, Carrizo Gorge Railway. As shown above, it is an Executive Suite, there are many other companies located at 10120 S. Eastern Ave., Suite 200. The above photo plus an outside shot is on the Photos page, bottom two photos.

Mr. Jory created Lone Ranger Holdings, Inc. on June 22 2011, transferred property to LRH and then filed Chapter 11 Bankruptcy for Lone Ranger Holdings, Inc., on June 29 2011 in Las Vegas, Case 11-20243. Another document. This is the Written Consent for the bankruptcy filed by Jory. This is the original filing of the bankruptcy. In this Motion for Relief of Stay filed by a creditor, it is stated that Jory transferred property from the Shamee Family Trust to Lone Ranger Holdings, just prior to the sale of the property. The person was owed money by the Shamee Family Trust. Jory was Trustee at the time of the loan. Apparently, Jory put up the place of property (in CA) for collateral. Payments were not made, as outlined in the contract. The person decided to sell the property, Shamee Trust filed bankruptcy, so the sale was stopped. Recently the person tried to sell the property again, this is when the LRH bankruptcy was filed. Over \$800,00 was owed. The attorney for Lone Ranger Holdings, Inc. filed for a dismissal on August 26 2011 (2 months after the filing), Motion for Order Dismissing Case the dismissal was granted.

MORE DWIGHT JORY COMPANIES

Dwight Jory has started or been involved with many companies in Nevada, Arizona and California.

Looking in the Nevada business search, you will discover that many have been revoked or permanently revoked. If you look under "registered agent" in the Nevada site, for Dwight Jory, you will find additional companies. Dwight Jory also has companies listed with Arizona. The link should be for an Agent list - type in Dwight Jory. The list of companies is provided below, for your convenience.

Dwight Jory was on the board of a company of Advantage Capital Management and DSM Golf Enterprises (scroll to page 17). These companies were involved with a company called C.E.C. Industries Corp. McHaffie was also involved with these companies. (More on the Jory-McHaffie page.)

Dwight Jory also has a business called Las Vegas Business Promotions it is not listed with Nevada. There is also a company called DWJORY Consulting. Have a look at his website, watch the first video in the video gallery. Dec. 2011 - It has been discovered this link is no longer active - reason unknown.

IG LLC a Jory company has had at least one lawsuit. DSM Golf Enterprises has had at least one lawsuit.

Klugman (lawsuit is listed in Legal Cases) filed a Foreign Judgment in 2007 against Jory, Madsen and IGP.

Here is the list of lawsuits in Clark County NV (some were filed by Jory) if you would like to get more information about the cases, here is the link to the Clark County site, remember to change "Case" to "Party", then enter his name in the appropriate boxes. One of the lawsuits was Jory suing his ex-wife, she won.

Please notice in the list that a lawsuit was filed 9/22/2011 by Barclay Bank against Dwight Jory.

More lawsuits have been found in San Diego. Here is the link to the San Diego Court Cases follow the directions. For Case Location and Party Type - Choose "unknown-all".

Go to the Jory-McHaffie Page to learn more about other companies.

For your convenience, a list of the Jory companies from the Nevada site is below.

| Company Name | Yr Started | Position in Company | Status of Company |
|--|------------|--------------------------|---------------------|
| Las Vegas Sunset Ridge Apartments, LTD | 1987 | Registered Agent | Expired |
| I G LLC | 1995 | Manager | Permanently Revoked |
| Mission Valley Mini-Stoarge LLC | 1995 | Managing Member | Permanently Revoked |
| Embassy Investments LLC | 1998 | Managing Member | Permanently Revoked |
| TxStar Entertainment, Inc | 1998 | Registered Agent | Permanently Revoked |
| Golden Resort and Movie | 1999 | Manager | Dissolved |
| Help Rescue The Earth Foundation, Inc. | 1999 | Secretary | Permanently Revoked |
| Land by the Sea 21, LLC | 2004 | Manager | Revoked |
| Gold Mountain North LLC | 2004 | Manager | Active |
| The Way of Humanity 2 LLC | 2006 | Manager/Registered Agent | Revoked |
| South of the Border F, LLC | 2006 | Registered Agent | Revoked |
| Jory Family Limited Partnership | 2006 | General Partner | Revoked |
| Consolidated Capital Investments LLC | 2007 | Managing Member | Revoked |
| KMFJ Water LLC | 2008 | Managing Member | Active |
| JRED | 2008 | Managing Member | Active |
| The Way of Humanity Inc | 2010 | President/Director | Active |
| Locati Global Holdings LLC | 2/2/2011 | Managing Member | Active |
| Lone Ranger Holdings | 6/22/2011 | Pres,Sec, Treas,Dir | Active |

For your convenience, a list of the Jory companies from the Arizona site is below.

| Company Name | Year Started | Position in Company | Status of Company |
|--|--------------|---------------------|-----------------------------|
| Gold Mountain Development Corp. | 1999 | Secretary | Dissolution |
| Consolidated Properties Financial, LLC | 2002 | Manager | Terminated |
| Gold Mountain North, LLC | 2004 | Manager | Good Standing (Foreign LLC) |
| Chief White Hills, LLC | 2004 | Manager/member | Good Standing |

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5 *Attorneys for Lone Ranger Holdings, Inc.*

6 **UNITED STATES BANKRUPTCY COURT**
7 **DISTRICT OF NEVADA**

8 In re:

9 LONE RANGER HOLDINGS, INC.,

10 Debtor.

Chapter 11

Case No: 11-20243-bam

Hearing Date: 9/27/2011

Hearing Time: 10:00 am

Location: Foley Federal Building
Courtroom No. 3

11
12
13
14 **MOTION FOR AN ORDER DISMISSING CASE:**
15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 Debtor-in-Possession, Lone Ranger Holdings, Inc., a Nevada corporation ("Debtor"),
17 hereby moves for an Order voluntarily dismissing the instant bankruptcy case. The Motion
18 shall be based upon the Memorandum of Points and Authorities below, and Notice of Hearing
19 on Motion to Dismiss of Debtor submitted concurrently herewith.

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **1. BACKGROUND**

22 The Debtor filed a voluntary Chapter 11 bankruptcy petition on June 29, 2011. At the
23 time, the Debtor owned and was in possession of real property located at 14995 Calle Privada,
24 Rancho Santa Fe, CA 92067 (the "Real Property"), secured by a first deed of trust ("Primary
25 Lender") and a second deed of trust ("Secondary Lender"), as well as a non-operational
26 Conoco gas station located in Branson, MO. The total debt outstanding associated with the
27
28

1 Real Property is approximately \$1,800,000.00. Aside the Real Property debt, the Debtor
2 possesses manageable outstanding pre-petition unsecured debts. The justification for filing of
3 bankruptcy was in an effort to maintain the Real Property.

4 2. DISCUSSION

5 11 U.S.C Section 305(a)(1) of the Bankruptcy Code provides in relevant part that, (a)
6 The court, after notice and a hearing, may dismiss a case under this title, or may suspend all
7 proceedings in a case under this title, at any time if: the interest of creditors and the debtor
8 would be better served by such dismissal or suspension;...

9
10 In the present case, the interests of creditors and the debtor would be better served by
11 dismissal of the case. Given the current circumstances whereby Debtor and Secondary Lender
12 can resolve the outstanding debt owed through alternative financing, or otherwise foreclose on
13 the property, "reorganization" is not necessary or practical. The Debtor is current with the
14 Primary Lender, and thus can maintain the Real Property through the current Secondary
15 Lender negotiations. The cost of requiring Debtor to remain in bankruptcy for the sole purpose
16 of resolving the contemplated obligation would outweigh any benefit to be gained.
17

18 Among the factors that Bankruptcy Courts consider in deciding whether to dismiss or
19 suspend a bankruptcy case, in the exercise of their discretionary authority, are: (a)
20 consideration of who filed the bankruptcy petition; (b) the availability of another alternate
21 forum; (c) the necessity of federal proceedings to achieve a just and equitable solution; (d) the
22 expense of federal proceedings in comparison with proceedings in another forum; (e) the
23 purpose of the party seeking to remain in Bankruptcy Court; (f) the economy and efficiency of
24 having the Bankruptcy Court resolve the matter; and (g) possible prejudice to parties. In re
25 Mazzocone, 200 B.R. 568, 575 (E.D. Pa. 1996); In re Fortran Printing, Inc., 297 B.R. 89, 94
26 (Bankr. N.D. Ohio 2003); *see also* In re Fax Station, Inc.; 118 B.R. 176, 177 (Bankr. D.R.I.
27 1990).
28

1 In the instant case, the party filing the bankruptcy petition, the Debtor, is the same
2 party seeking to dismiss the case, due to changed circumstances. This is not a situation where a
3 third-party creditor is attempting to dismiss the Debtor's case in order to extract payment. On
4 the contrary, it will be more efficient for the Debtor to negotiate the outstanding balance owed
5 outside of bankruptcy then if compelled to negotiate and arrange satisfaction of the debt
6 through an unnecessary and expensive plan of reorganization.

7
8 Furthermore, federal proceedings are unnecessary in order to achieve a just and
9 equitable solution, and the expense of continuing the bankruptcy proceedings will far outweigh
10 any benefit to creditors or the Debtor. A key consideration for determining whether dismissal
11 is appropriate is whether economy and efficiency of administration will be served. In re
12 Business Information Co., Inc., 81 B.R. 382, 387 (Bankr. W.D. Pa. 1988); In re Deacon
13 Plastics Machine, Inc., 49 B.R. 982 (Bankr. D. Mass. 1985). Here, economy and efficiency
14 will best be served by dismissal of the case, since the attorney's fees and other expenses that
15 will be incurred during the course of ongoing administration of this bankruptcy case will
16 simply diminish the estate more than is necessary, making it more costly to arrange
17 satisfaction of the debt.
18

19 Therefore, the Debtor's bankruptcy case should be dismissed.

20 3. CONCLUSION

21 Based on the foregoing, the Debtor respectfully requests that the Courts dismiss the
22 instant Chapter 11 bankruptcy case.
23
24
25
26
27
28

1 Dated: August 24, 2011

2 /s/ Dwight Jory
3 President
4 Lone Ranger Holdings, Inc.

5 Respectfully,

6 

7 RYAN STIBOR
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1 RYAN STIBOR
Nevada Bar No. 8897
2 900 S. 4th St. #219
Las Vegas, NV 89101
Telephone: (702) 386-0600
3 Facsimile: (702) 446-8117
4 ryan@stiborgroup.com

5 *Attorneys for Lone Ranger Holdings, LLC*

6 **UNITED STATES BANKRUPTCY COURT**
7 **DISTRICT OF NEVADA**

8 In re:

9 LONE RANGER HOLDINGS, INC.,

10 Debtor.

Chapter 11

Case No: 11-20243-bam

Hearing Date: 9/27/2011

Hearing Time: 10:00 am

Location: Foley Federal Building
Courtroom No. 3

13 **CERTIFICATE OF MAILING**

14
15 I HEREBY CERTIFY that on the August 24, 2011, I served a true and correct copy of
16 the foregoing MOTION TO DISMISS CHAPTER 11 BANKRUPTCY, by depositing a copy
17 in the United States Mail at Las Vegas, Nevada, standard mail, addressed to:

18 American Savings Bank/ EMC
19 PO Box 7589
Springfield, Ohio 45501

20 Brian C. Whitaker
21 Jason M. Wiley
1349 W. Galleria Dr. #200
22 Henderson, NV 89014

23 Stoecklein Law Group
402 West Broadway, Suite 690
24 San Diego, CA 92101

25 The following persons were served by electronic transmission:

26 US TRUSTEE OFFICE
300 Las Vegas Blvd., South Suite 4300
27 Las Vegas, Nevada 89101
28 USTPREGION17.LV.ECF@usdoj.gov

LONE RANGER HOLDINGS, INC.**WRITTEN CONSENT TO ACTION WITHOUT MEETING OF THE
BOARD OF DIRECTORS****OF****LONE RANGER HOLDINGS, INC.****A Nevada Corporation****Dated: June 28, 2011**

The undersigned, being all of the duly appointed and acting members of the Board of Directors of Lone Ranger Holdings, Inc., a Nevada corporation ("Corporation"), do hereby consent to the adoption of, and do hereby adopt, the following resolutions with the same force and effect as if adopted at a meeting of the Board of Directors duly called and held, pursuant to §NRS 78.315 and §78.325 of the General Corporation Law of the State of Nevada, and pursuant to the bylaws of the Corporation.

Authorization to file for Chapter 11 Bankruptcy

RESOLVED, that the Board of Directors has determined that the Corporation will file for bankruptcy protection status in accordance with Chapter 11, Title 11 of the United States Bankruptcy Code.

FURTHER RESOLVED, that the filing for such status shall take place in the State of Nevada.

AUTHORIZATION OF CORPORATE ACTION.

RESOLVED THAT each officer of the Corporation is hereby authorized and directed to do and perform, or cause to be done and performed, all such acts, deeds and things and to make, execute and deliver, or cause to be made, executed and delivered, all such agreements, undertakings, documents, instruments or certificates in the name and on behalf of the Corporation or otherwise as each such officer may deem necessary or appropriate to effectuate or carry out fully the purpose and intent of the foregoing resolutions and any of the transactions contemplated thereby.

All actions heretofore taken by any director or officer of the Corporation in connection with any matter referred to in the foregoing resolutions are hereby approved, ratified and confirmed in all respects.

LONE RANGER HOLDINGS, INC.

The secretary and any assistant secretary of the Corporation or any other officer of the Corporation, is hereby authorized to certify and deliver, to any person to whom such certification and delivery may be deemed necessary or appropriate in the opinion of such officer, a true copy of the foregoing resolutions.

APPROVAL

Dated: June 28, 2011

The undersigned, being all the directors of Lone Ranger Holdings, Inc., waive the required notice of meeting and consent to all actions taken hereby.


Dwight Jory, Director

IN WITNESS WHEREOF


Dwight Jory, Secretary

| | | | | | | | |
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington D.C., 20549

~~Form 8-K/A~~

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) September 15, 1995

Commission file number 0-16734

C.E.C. INDUSTRIES CORP.
(Exact name of registrant as specified in charter)

Nevada
(State of other jurisdiction of
incorporation or organization)

87-0217252
(I.R.S. Employer
Identification Number)

23 Cactus Garden Drive, F-60
Green Valley (Henderson), Nevada
(Address of Principal Executive Office)
(702) 893-4747

89014
(Zip Code)

(Registrant's Telephone Number, Including Area Code)

Copies To:
Gerald Levine
President
23 Cactus Garden Drive, F-23
Henderson, Nevada 89014
(702) 893-4747

| | | | | | | | |
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C.E.C. Industries Corp. Page 2

Item No 1 Changes in Control of Registrant.

On September 15, 1995, the Company elected new Directors and Officers for fiscal 1996. The following persons were elected as Directors: Ronald J. Robinson, George A. Matthews, Donald J. Stocklein, Ronald G. Stocklein, ~~Charles R. Hoffman~~, ~~Charles R. Hoffman~~ and Ralph Mann.

Ronald J. Robinson was elected President, Donald J. Stocklein as Secretary and George A. Matthews as Treasurer.

In accepting the election, Ronald G. Stocklein disclosed a recent case filed in the United States District Court, Southern District of New York, Securities Exchange Commission vs. Softpoint, Inc., et al., where in Mr. Stocklein is named as a co-defendant. Donald J. Stocklein disclosed an Administrative Offer and Settlement with the Securities and Exchange Commission, although neither admitting nor denying allegations, agreed to the Order Instituting Cease and Desist proceedings pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities and Exchange Act of 1934. Dwight Jory disclosed the filing of a Bankruptcy Liquidation in September, 1994.

Item No. 2. Acquisition or Disposition of Assets.

The Board of Directors unanimously approved a plan to spin-off CEX, a wholly owned subsidiary of C.E.C. Industries Corp.

The Board of Directors further approved an agreement whereby CEC would joint venture a 20.30 acre multi-family and commercial project with TRI Financial, Inc., of San Francisco, California. Final documents for the transaction are currently being prepared.

Item No. 3. Bankruptcy or Receivership.

No events to report.

Item No. 4. Changes in Registrant's Certifying Accountant.

No events to report.

Item No. 5. Other Events.

No events to report.

Item No. 6. Resignation of Registrant's Directors.

No events to report.

Item No. 7. Financial Statements, Proforma Financial Information and Exhibits.

Exhibit -Agreement for the Exchange of Common Stock of CEC Industries Corp. For 24.5% Limited Partnership Interest Victory Village Ltd.
III

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Advantage Capital Development Corp - 8-K/A - For 9/15/95

Filed On 11/29/96 · SEC File 0-16734 · Accession Number 54175-96-29

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| 2 | <u>Item No. 1, Changes in Control of Registrant</u> | • <u>Acquisition or Disposition of Assets</u> | |
| " | <u>Item No. 2, Acquisition or Disposition of Assets</u> | • <u>Bankruptcy or Receivership</u> | |
| " | <u>Item No. 3, Bankruptcy or Receivership</u> | • <u>C.E.C</u> | |
| | | • <u>Changes in Control of Registrant</u> | |

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Advantage Capital Development Corp - '8-K/A'

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 1: 8-K/A..... Amendment to Current Report -- 17 pages

| | |
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| for fiscal 1996. The following persons were elected as Directors: Ronald J. Robinson, George A. Matthews, Donald J. Houghton, Ronald G. Stocklein, Robert Mahou, George A. Matthews, Donald J. Houghton, Ronald G. Stocklein, and Ralph Hann. | |
| Order Instituting Cease and Desist proceedings pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities and Exchange Act of 1934. Dwight Jory disclosed the filing of a bankruptcy liquidation in September, 1994. | |
| 8-K/A - 21st Page of 17 | Just 11th (New) |
| Robert Mahou | Director |
| George Matthews | Director |
| Dwight Jory | Director |

| |
|--|
| Find Words in Filing - Advantage Capital Development Corp - '8-K/A' |
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1 Karen F. Landers, Bar No. 204975
2 SAN DIEGO METROPOLITAN TRANSIT SYSTEM
3 1255 Imperial Avenue, Suite 1000
San Diego, California 92101

4 Attorney for
5 SAN DIEGO METROPOLITAN TRANSIT SYSTEM (Specially Appearing)

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 FOR THE COUNTY OF SAN DIEGO

8
9 KEN KAHAN,

10 Plaintiff,

11 vs.

12 CARRIZO GORGE RAILWAY, INC.,

13 Defendant
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Case No.: 37-2012-00095975-CU-BT-CTL

DECLARATION OF KAREN LANDERS (GENERAL
COUNSEL FOR SAN DIEGO METROPOLITAN
TRANSIT SYSTEM) IN OPPOSITION TO
PRELIMINARY INJUNCTION

Hearing Date: June 8, 2012

Hearing Time: 10:30 a.m.

Dept: 68

Judge: Hon. Judith F. Hayes

DECLARATION OF KAREN LANDERS (MTS) IN OPPOSITION TO PRELIMINARY INJUNCTION

Declaration of Karen Landers in Opposition to Preliminary Injunction

1
2 1. I am employed as General Counsel for San Diego Metropolitan Transit System
3 (MTS) and its related entities (San Diego Transit Corp, San Diego Trolley, Inc., and San Diego &
4 Arizona Eastern Railway Co.) (collectively referred to as "MTS"). I also supervise the MTS Land
5 Management Department, which oversees real estate assets owned by MTS. The statements
6 set forth herein are based on my personal knowledge, or information available to me in my
7 position as General Counsel.
8

9
10 2. MTS is a public transit development board created by statute. (Pub. Util. Code, §
11 120050 et seq.) MTS is the sole member of the San Diego & Arizona Eastern Railway Co., a
12 Nevada non-profit corporation (SD&AE). MTS purchased SD&AE and its real estate assets from
13 Southern Pacific Transportation Company in 1979. The purchase was prompted, in part, by
14 MTS's opposition to Southern Pacific's petition to abandon the "Desert Line", which consists of
15 approximately 70 miles of railroad tracks extending from the US-Mexico border at Division,
16 California, to Plaster City, California. Operations on the Desert Line were suspended because of
17 severe storm damage suffered in 1976. MTS opposed the abandonment of the Desert Line on
18 the basis that "restoration of SD&AE's storm-damaged lines, and resumption of full railroad
19 freight services by SD&AE, are necessary and desirable for the use and benefit of San Diego
20 County, California, its economy, its business, and its residents."
21

22
23 3. Between 1979 and 1984, operations on the Desert Line stopped and started as a
24 result of various natural disasters, including fires and floods. Notwithstanding these difficulties,
25 the Interstate Commerce Commission denied an application by SD&AE's freight operator (Kyle
26
27
28

DECLARATION OF KAREN LANDERS (MTS) IN OPPOSITION TO PRELIMINARY INJUNCTION

1 Railways) to abandon or discontinue service on the Desert Line. (ICC Decision No. AB-16 (Sub-
2 No. 1) dated April 25, 1984.)

3 4. In 1984, MTS entered into an operating agreement for SD&AE's freight railroad
4 assets with San Diego & Imperial Valley Railway Company (SD&IV) ("1984 Operating
5 Agreement"). The 1984 Operating Agreement gives SD&IV the exclusive right to operate freight
6 on the SD&AE right-of-way, including the Desert Line. The 1984 Operating Agreement includes
7 5 ten-year terms through March 8, 2034. SD&IV has the right to unilaterally exercise each
8 option period.
9

10 5. Between 1985 and 1992, fire damaged two additional tunnels and two bridges.
11 Because of the high cost of repairs, not all repairs were completed. In 1994, costs to repair the
12 Desert Line were estimated at approximately \$17 million (including service upgrades after
13 operations restored). In 1996, a San Diego Association of Governments study estimated the
14 project cost at \$24 million to \$105 million, depending on the project scope.
15

16 6. In 2002, MTS consented to an assignment by SD&IV to Carrizo Gorge Railway Inc.
17 (CZRY) of its rights to operate the Desert Line ("CZRY Operating Agreement"). The term of the
18 CZRY Operating Agreement coincides with the 1984 Operating Agreement but is subject to
19 SD&IV's reasonable discretion, and SD&AE/MTS consent, to extend the CZRY Operating
20 Agreement for each new ten-year term. The current term for each agreement ends on March
21 8, 2014.
22

23 7. The 2002 CZRY Operating Agreement was entered into based on CZRY's intent to
24 "reopen the Desert Line by reconstructing the line to accommodate freight service." (CZRY
25 Operating Agreement, page 2.) MTS agreed to SD&IV's assignment of the Desert Line operating
26
27
28

DECLARATION OF KAREN LANDERS (MTS) IN OPPOSITION TO PRELIMINARY INJUNCTION

1 rights to CZRY to allow "CZRY the ability to reinstate the line and provided common carrier
2 service over the line." (CZRY Operating Agreement, page 2.)

3 8. Since CZRY took over the Desert Line in 2002, very little freight activity has taken
4 place. In 2007, a study was prepared concerning the state of repair for the Desert Line bridges.
5 The study concluded that the condition of the Infrastructure was significantly more
6 deteriorated than previously known. Costs to bring the Desert Line into a state of good repair
7 were informally estimated at more than \$100 million. The tunnels along the Desert Line have
8 not been inspected or repair costs estimated.
9

10
11 9. As a result of the bridge study, and a lack of funds to commence the full set of
12 repairs needed, CZRY agreed to an embargo and no freight activity has occurred on the line
13 since early 2009.
14

15 10. It is MTS's understanding that CZRY has been engaged in various shareholder
16 and creditor disputes since approximately 2005. These disputes have impacted performance
17 under the CZRY Operating Agreement and created uncertainty for MTS as to who was in control
18 at CZRY.
19

20 11. In early 2011, MTS was provided with a copy of a January 3, 2011 court order in
21 *Sweetwood v. CZRY* (SDSC Case No. 37-2008-00092295-CU-WM-CTL), which established the
22 shares and votes held by each CZRY shareholder and a statement that "The Court believes that
23 its ruling resolves issues of control, such that further interference of the type complained of in
24 the motion is not likely to occur, obviating the need for injunctive relief." On the basis of this
25 court order, which appeared to resolve the ongoing shareholder disputes and questions of
26
27
28

DECLARATION OF KAREN LANDERS (MTS) IN OPPOSITION TO PRELIMINARY INJUNCTION

1 control, MTS began working with Sheila LeMire and Pacific Imperial Holdings, LLC (PIH) as the
2 representative in control of CZRY.

3 12. In February or March 2012, MTS was made aware that CZRY had formally
4 assigned its rights under the CZRY Operating Agreement to Pacific Imperial Railroad (PIR)
5 through a series of loans, assignments, and other agreements between CZRY, its shareholders,
6 and creditors:
7

8 a. January 5, 2011, Assignment, Assumption, and Settlement Agreement
9 between CZRY, Pacific Imperial Holdings, LLC (PIH), Pacific Imperial Industries, LLC (PII),
10 and Sheila Lemire. (Transfer of operating and trackage rights to PII).
11

12 b. November 1, 2011, Assignment Agreement between PII and PIR.
13 (Transfer of operating and trackage rights to PIR.)
14

15 c. January 7, 2012, Amendment to CZRY Operating Agreement (formally
16 assigning CZRY Operating Agreement to PIR) – SD&IV, SD&AE, and MTS consent
17 required.
18

19 13. MTS was generally aware that these transactions were occurring. During the
20 course of 2011, MTS was informed that PIH and some associated entities, PII and PIR, were
21 developing a proposal to repair the Desert Line and resume freight operations as originally
22 contemplated by the CZRY Operating Agreement. MTS encouraged PII to develop its proposal,
23 since this action was the first substantive progress towards re-opening the Desert Line for
24 freight service that had occurred since CZRY took over the Desert Line.
25

26 14. Since the costs to bring the Desert Line bridges into a state of good repair has
27 been informally estimated by MTS staff to be approximately \$100 million, MTS recognizes that
28

DECLARATION OF KAREN LANDERS (MTS) IN OPPOSITION TO PRELIMINARY INJUNCTION

1 very few entities have the ability to finance the repairs necessary. Based on MTS's limited
2 knowledge of the shareholder and creditor disputes that have been filed against CZRY, it does
3 not appear that CZRY has the assets or collateral available to finance a project of this size and
4 scope.
5

6 15. In contrast to CZRY's lack of financing, the entity proposed to succeed CZRY in
7 the CZRY Operating Agreement, PIR, appears to have the ability to finance a project of this
8 nature. MTS has met with PIR and its bankers and confirmed that the project is moving forward
9 and that PIR appears able to obtain the financing needed. This financing will be secured by
10 assets controlled by PIR and not associated with CZRY.
11

12 16. In or about March 2012, MTS was informed that additional progress on PIR
13 obtaining funds to finance the repairs could not proceed to the next step until SD&AE and MTS
14 formally acknowledged the transfer of the operating rights to PIR.
15

16 17. On April 10, 2012, the SD&AE Board met and authorized staff to consent to the
17 assignment of the CZRY Operating Agreement to PIR. This authorization was conditioned upon
18 staff confirming that PIR was authorized to do business in the State of California. Staff
19 subsequently obtained confirmation from the Secretary of State to this effect.
20

21 18. On or about April 30, 2012, I was informed that the *Kahan* action was filed and a
22 temporary restraining order granted related to the CZRY Operating Agreement. On May 1,
23 2012, I spoke with the Department 68 court clerk to confirm if a restraining order had been
24 granted. At that time, I was informed that no order had been entered and that the next
25 hearing was scheduled for June 15, 2012. I was informed that during the April 25, 2012 ex
26 parte hearing, the Court had ordered the parties to meet and confer concerning the scope of
27
28

DECLARATION OF KAREN LANDERS (MTS) IN OPPOSITION TO PRELIMINARY INJUNCTION

1 the temporary restraining order the Court agreed to grant at the hearing. On May 2, 2012, I
2 obtained a copy of the April 25, 2012 hearing transcript from the court reporter.

3 19. Upon reviewing the transcript and moving papers from the April 25, 2012 ex
4 parte hearing, I noted that MTS was not a named party and the moving papers requested an
5 order restraining CZRY from taking any action. The action being proposed for MTS, consent to
6 the assignment of the CZRY Operating Agreement, was the last step that needed to be taken to
7 finalize this transaction. CZRY had already taken all action required when it signed the
8 documents listed in Paragraph 12.
9

10
11 20. On May 17, 2012, at 9:00 am, the MTS Board met to authorize the assignment of
12 the CZRY Operating Agreement to PIR. At approximately 8:41 am on May 17, 2012, I was
13 provided via email with a May 3, 2012 court order that allegedly prevented MTS from taking
14 any action on the assignment. Upon reviewing the court order, I concluded that it did not, and
15 could not, assert any jurisdiction over MTS. However, given the required elements for granting
16 a temporary restraining order, the court order appears to raise questions regarding the validity
17 of the assignment document that MTS was consenting to. On this basis, the MTS Board
18 authorized staff to consent to the assignment of the CZRY Operating Agreement, contingent
19 upon the outcome of the June 8, 2012 preliminary injunction hearing scheduled before this
20 Court.
21
22

23
24 21. MTS is concerned that granting the preliminary injunction proposed will
25 unreasonably delay and/or terminate the proposed development and associated financing for
26 this project. MTS has been incredibly patient in allowing CZRY and its shareholders to resolve
27 their differences and return their attention to performing under the CZRY Operating
28

DECLARATION OF KAREN LANDERS (MTS) IN OPPOSITION TO PRELIMINARY INJUNCTION

1 Agreement. However, during this time, the Desert Line has fallen into greater disrepair and no
2 freight activity has taken place. MTS does not have any confidence that the CZRY shareholders,
3 on their own, have the capacity to repair the Desert Line and resume freight operations.
4

5 22. MTS has informed PIR and CZRY that unless a new agreement to invest in all
6 necessary repairs and restart freight operations on the Desert Line is in place by March 8, 2014,
7 then MTS will not agree to extend the CZRY Operating Agreement beyond its expiration date.
8

9 23. Since 2007, MTS has received less than \$10,000 in revenue as a result of giving
10 CZRY the exclusive operating rights to the Desert Line. This is an insignificant amount
11 compared to a railroad under normal freight operations. Therefore, for every year that CZRY
12 has been unable or incapable of repairing the Desert Line and resuming freight operations, MTS
13 has lost out on significant revenue.
14

15 24. In addition, based on the continued disfunction between CZRY and its
16 shareholders, if this current shareholder dispute substantially delays or terminates the current
17 proposed development, then MTS is prepared to review its options to immediately terminate
18 the CZRY Operating Agreement for default (failure to diligently pursue and obtain funding to
19 reopen the Desert Line). If CZRY or its successor-in-interest is unable to fulfill its obligations
20 under the CZRY Operating Agreement, then it is not in MTS or the public's interest to allow
21 them to continue in an exclusive operating rights position. Instead, MTS will take steps to
22 publicly bid operation of the line, with a requirement that any proposer provide evidence of the
23 ability to finance and a plan to develop the Desert Line within the next two to five years.
24

25 25. Based on the foregoing, MTS opposes the Kahan request for a preliminary
26 injunction. The TRO language that prohibits CZRY "from implementing the provisions of the"
27
28

DECLARATION OF KAREN LANDERS (MTS) IN OPPOSITION TO PRELIMINARY INJUNCTION

1 assignment agreement has been described to MTS as preventing assignment of the CZRY
2 Operating Agreement to PIR, at least until some further action is taken by CZRY at an
3 undetermined time. Any significant delay in formally recognizing the assignment to PIR will
4 harm MTS by delaying and compromising performance of the CZRY Operating Agreement.
5

6 26. Because they do not have the capacity to finance the necessary repairs, the CZRY
7 Operating Agreement does not have any value if it remains in the hands of the current CZRY
8 shareholders. The CZRY Operating Agreement only has value in the hands of an entity that can
9 finance the repairs.
10

11 27. To the extent there is a "bonus value" associated with CZRY's limited right to
12 assign the agreement to an entity that can perform, it appears that this value can be calculated
13 and compensated for with a money damages judgment between the minority and majority
14 shareholders, if warranted on the merits. Upon my review of the assignment request, it
15 appeared that this value and exchange of compensation was already calculated in the
16 cancellation of debts and other actions that were set forth in the January 5, 2011 Assignment,
17 Assumption & Settlement Agreement.
18

19 28. Granting a preliminary injunction in this case will only further drive CZRY into
20 default under the CZRY Operating Agreement, while at the same time prejudicing MTS by
21 delaying its ability to see the Desert Line restored for freight operations. MTS will be forced to
22 either declare CZRY in default and take on the litigation risks associated with such a step, or
23 delay all progress on this project until the agreement naturally expires on March 8, 2014. Such
24 an outcome is not in the public interest and places too much burden on MTS, who is not a party
25 to this shareholder dispute.
26
27
28

DECLARATION OF KAREN LANDERS (MTS) IN OPPOSITION TO PRELIMINARY INJUNCTION

Agenda Item No. 2

**San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting**

January 15, 2013

SUBJECT:

STATEMENT OF RAILWAY FINANCES

RECOMMENDATION:

That the SD&AE Board of Directors receive a financial report for two quarters ended December 31, 2012.

Budget Impact

None.

DISCUSSION:

The financial results (attached) for the first two quarters of fiscal year 2013 include the periods ended December 31, 2012, and 2011. Final audited results for FY 2012 are reflected in the Reserve Balance.

The current year-to-date income is \$9,100 favorable to budget due to an increase in expected right of entry permit revenue offset by lower-than-planned lease income and budgeted revenue for San Diego and Imperial Valley Railroad freight fee that will not be received until the 3rd or 4th quarter (but is budgeted ratably throughout the year). Income has increased by \$33,500 compared to the same period last year due to a significant increase in fees for right of entry permits. Expenses are \$5,300 unfavorable to budget due to increased personnel costs directly related to the increase in permit activity offset by budgeted expenses for outside services that have not been incurred. Expenses have increased by \$18,100 over the same period last year due to the increase in personnel costs. The net income for the first two quarters of FY 13 was \$11,523 compared to a net loss of \$3,904 for the same period in FY 12.

Attachment: SD&AE Operating Statement 2nd Quarter FY 13

SD&AE operating statement FY2013-12

| | FY2013 | | | | | FY2012 | |
|--------------------------|-----------------|------------------|------------------|-----------------|----------------|-------------------|-----------------|
| | Q1 2013 | Q2 2013 | YTD | Budget | Variance | Q1 - Q2 | Variance |
| Revenue | | | | | | | |
| Right of entry permits | \$ 13,400 | \$ 29,689 | \$ 43,089 | \$ 10,002 | 33,087 | 5,621 | 37,468 |
| Lease income | 19,563 | 16,497 | 36,060 | 42,498 | (6,438) | 39,991 | (3,931) |
| SD&IV 1% freight fee | - | - | - | 17,502 | (17,502) | - | - |
| Total revenue | 32,963 | 46,186 | 79,149 | 70,002 | 9,147 | 45,612 | 33,537 |
| Expense | | | | | | | |
| Personnel costs** | 25,179 | 30,410 | 55,589 | 40,820 | (14,769) | 37,435 | (18,154) |
| Outside services | - | - | - | 10,054 | 10,054 | - | - |
| Energy costs | - | - | - | - | - | - | - |
| Risk management | 5,752 | 5,752 | 11,503 | 11,154 | (349) | 11,772 | 269 |
| Misc operating expenses | 534 | - | 534 | 252 | (282) | 309 | (225) |
| Depreciation | - | - | - | - | - | - | - |
| Total expense | 31,465 | 36,162 | 67,626 | 62,280 | (5,346) | 49,516 | (18,110) |
| Net income/(loss) | \$ 1,498 | \$ 10,025 | \$ 11,523 | \$ 7,722 | 3,801 | \$ (3,904) | 15,427 |

| | |
|-----------------------------|------------------|
| Reserve balance 2012 | \$916,413 |
|-----------------------------|------------------|

| | |
|-----------------------------|-------|
| Allocated interest earnings | 1,101 |
|-----------------------------|-------|

| | |
|-------------------------|--------|
| Operating profit/(loss) | 11,523 |
|-------------------------|--------|

| | |
|--------------------------|---|
| Improvement expense 2012 | - |
|--------------------------|---|

| | |
|---------------------------------|------------------|
| Reserve balance 2013-est | \$929,036 |
|---------------------------------|------------------|

Agenda Item No. 3

**San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting**

January 15, 2013

SUBJECT:

REPORT ON SAN DIEGO AND IMPERIAL VALLEY RAILROAD (SD&IV) OPERATIONS

RECOMMENDATION:

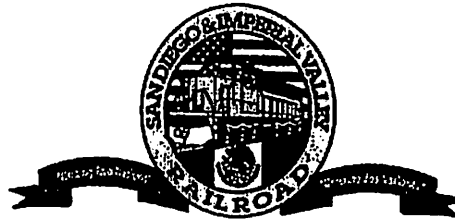
That the SD&AE Board of Directors receive a report for information.

Budget Impact

None.

DISCUSSION:

An oral report will be given during the meeting.



SD&AE Board
C/O MTS
1255 Imperial Avenue, Suite 1000
San Diego, California 92101

January 2, 2013

Periodic Report

In accordance with Section 20 of the Agreement for Operational Freight Service and Control through Management of the San Diego and Arizona Eastern Railway Company; activities of interest for the 4th Quarter of 2012 are listed as follows:

1. Labor

At the end of December 31, 2012 the San Diego & Imperial Railroad had 10 employees:

- 1 General Manager
- 1 Asst. General Manager
- 1 Asst. Trainmaster
- 1 Manager - Marketing & Sales
- 1 Office Manager
- 1 Mechanical Manager
- 1 Roadmaster
- 1 Maintenance of Way Employee
- 2 Train Service Employees

2. Marketing

Volume in the 4th Quarter rose 23% as compared to 2011. Bridge traffic had a 32% increase, primarily driven by a rise in LPG traffic. Traffic terminating or originating on the SDIV had a decrease of 17% as compared to this time last year. Slight decrease from each customer contributed to the overall shortfall.

3. Reportable Injuries/Environmental

Days through year to date, December 31, 2012, there were no FRA Reportable injuries or environmental incidents on the SDIV Railroad.

Days FRA Reportable Injury Free: 4843

4. Summary of Freight

| | 2012 | 2011 | 2010 |
|--|------|------|------|
| Total rail carloads that moved by SDIY Rail Service in the quarter. | 1397 | 1140 | 1371 |
| Total railroad carloads Terminating/Originating Mexico in the quarter. | 1215 | 804 | 1121 |
| Total railroad carloads Terminating/Originating El Cajon, San Diego, National City, San Ysidro, California in the quarter. | 182 | 181 | 250 |
| Total customers directly served by SDIY in the quarter | 9 | 11 | 13 |
| Regional Truck trips that SDIY Railroad Service replaced in the quarter | 4191 | 3420 | 4113 |

Respectfully,

Randy Perry
General Manager

Agenda Item No. 4

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

January 15, 2013

SUBJECT:

REPORT ON PACIFIC SOUTHWEST RAILWAY MUSEUM

RECOMMENDATION:

That the SD&AE Board of Directors receive a report for information.

Budget Impact

None.

DISCUSSION:

A report will be presented during the meeting.

Attachment: Fourth Quarter Report for 2012



Pacific Southwest Railway Museum

La Mesa Depot 4895 Nebo Drive La Mesa, CA 91941 619-485-7776

January 4, 2013

SD&AE Board
c/o Metropolitan Transit System
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101

Re: Fourth Quarter 2012

Dear SD&AE Board:

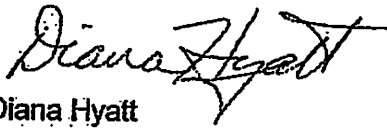
During the fourth quarter of 2012, the Pacific Southwest Railway Museum carried 6,889 passengers with no FRA reportable accidents or injuries. Total income from SD&AE property for fourth quarter 2012 was \$185,410.29, a check for \$3,708.21 will follow under separate cover. By comparison, PSRM carried 1,012 passengers and earned \$13,707.54 during the third quarter of this year. During the fourth quarter of 2011, PSRM carried 6,109 passengers with an income of \$130,460.78. There were eight weeks of special event trains during this quarter.

Maintenance of Way work continues along the right of way including the monthly signal inspections. In early 2012, PSRM assumed full responsibility for the liability, maintenance and inspections of the two rail-highway grade crossing active warning systems at State Highway 94 in the Campo Valley. In November, 2012 the power was turned off to the east Highway 94 crossing by San Diego Gas & Electric due to non-payment of several months billing and there was an impending shut off of the west crossing gates for the same reason. This deficiency wasn't discovered until the batteries had drained down sufficiently to drop the gates and local agencies notified us. Therefore, I would like to make a formal request to Pacific Imperial Rail and/or Carrizo Gorge Railway to transfer the two electric bills for these two meters serving the two grade crossing signal systems along Highway 94 in Campo into the name of Pacific Southwest Railway Museum at our business address below.

A separate response will be forthcoming as it pertains to the museum's passenger contract renewal with the Metropolitan Transit System and the implications of a new freight operator contract with Pacific Imperial Rail which is a separate agenda item.

January 4, 2013

Very Truly Yours,

A handwritten signature in cursive script, appearing to read "Diana Hyatt".

Diana Hyatt
President

Agenda Item No. 5

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

January 15, 2013

SUBJECT:

REPORT ON THE DESERT LINE

RECOMMENDATION:

That the SD&AE Board of Directors receive a report for information.

Budget Impact

None.

DISCUSSION:

A report will be presented during the meeting.

Attachment: Quarterly Report



Jan.
2013

PERIODIC REPORT

The periodic report to the SD&AE Railway Company is produced quarterly by the Pacific Imperial Railroad for the SD&AE Board, in fulfillment of contractual requirements and to document activity in the restoration of the line to regional service along with its ongoing improvement for future generations.

Pacific Imperial Railroad

Fourth Quarter 2013

CONTENTS

- I. GOVERNMENTAL**
- II. DESERT LINE**
- III. REPORTABLE INJURIES / ACCIDENTS /
ENVIRONMENTAL INCIDENTS**
- IV. MARKETING**
- V. FREIGHT ACTIVITY**

Pacific Imperial Railroad

Fourth Quarter 2013

**Metropolitan Development Transit Board
San Diego & Arizona Eastern Railway Board
1255 Imperial Avenue 10th Floor
San Diego, California 92101**

I. Governmental

- A. As of December 20, 2012, Pacific Imperial Railroad acquired the rights and obligations of a ninety-nine year lease with MTS.**
- B. PIR is furthering negotiations with Carrizo Gorge Railway Inc. in regard to security on the Desert Line.**
- C. STB (Surface Transit Board) applications have been submitted and accepted.**
- D. PIR established the facts in the HAZMAT situation on the desert line in Jacumba. Although the original clean up was complete, there were further issues with equipment on the line leaking into buckets.**
- E. Pacific and Imperial Railroad is establishing it's presence with the appropriate governmental entities.**

II. Desert Line

- A. The bridges, tunnels, and rail infrastructure are being analyzed and prioritized for reconstruction.**
- B. The storage and unaccounted for items are being categorized for demolition and/or removal for a comprehensive clean up of the line.**
- C. Meetings with the PSRM to establish a close, mutually beneficial, future on the desert line were planned.**

D. The SDG&E and water bills for Jacumba, Campo, and the crossing arms were taken over from CZRY because the addresses and online accounts were diverted by certain unauthorized parties.

E. PIR is forming a steering committee for safety and security. The team will be comprised of representatives of PIR, CZRY Railroad Police, and PSRM.

F. A team was put into place to communicate with all interested parties and establish a plan to work with the Boarder Patrol teams that have requested access to the Desert Line.

G. Investigations continue on the disappearance of materials from the area including steel, lumber and other useful and valuable materials.

III. Reportable Injuries / Accidents / Environmental Incidents

A. There have not been any reportable accidents.

B. There have not been any reportable injuries.

C. There have not been any reportable environmental incidents.

IV. Marketing

A. A team was established to facilitate the cross border marketing plan.

B. The draft revision of the Pacific Imperial business plan is being Revised.

V. Income

A. There are 52 GE cars on the line. The revenue is being negotiated.

Agenda

Item No. 6a

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

SDAE 710.1 (PC 50771)

January 15, 2013

SUBJECT:

SUMMARY OF SD&AE DOCUMENTS ISSUED SINCE OCTOBER 16, 2012

RECOMMENDATION:

That the SD&AE Railway Company Board of Directors receive a report for information.

Budget Impact

None.

DISCUSSION:

Since the October 16, 2012, SD&AE Railway Company Board of Directors meeting, the documents described below have been processed by staff.

- S200-13-538: Right of Entry Permit to Land Forms Construction for construction of the Lemon Grove Promenade Project.
- S200-13-541: Right of Entry Permit to SECC Corporation to construct fiber facilities at 24th Street in National City.
- S200-13-549: Right of Entry Permit to SCS Timber Resources to perform vegetation abatement at MP 94 on the Desert Line near Jacumba.
- S200-13-550: Right of Entry Permit to R Dugan Construction Inc. to construct storm drainage facilities at 22nd Street, San Diego.
- S200-13-551: Right of Entry Permit to Orion Construction Corporation to construct sidewalk improvements from 65th Street to 68th Street in the Encanto neighborhood in the City of San Diego.
- S200-13-552: Right of Entry Permit to Aguirre Engineering Inc. to perform surveying for various SANDAG capital projects.
- S200-13-553: Right of Entry Permit to Schilling Paradise Corporation to construct various dry utilities at 22nd Street, San Diego.
- S200-13-554: Right of Entry Permit to Malcolm Drilling Company, Inc. to construct shoring at 22nd Street, San Diego.
- S200-13-555: Right of Entry Permit to Shimmick Construction Co., Inc. to construct traction power substations for the Trolley Rehabilitation Project.
- S200-13-557: Right of Entry Permit to AES Property Services to perform graffiti removal maintenance along the orange line in El Cajon.
- S200-13-559: Right of Entry Permit to San Diego Gas and Electric to remove a transformer at the Lemon Grove Trolley Station.
- S200-13-560: Operating Agreement with Pacific Imperial Railroad, Inc. to operate freight on the Desert Line.

Agenda

Item No. 6b

San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting

SDAE 710.1 (PC 50771)

January 15, 2013

SUBJECT:

RIGHT OF ENTRY PERMIT PROCESS FINANCES

RECOMMENDATION:

That the SD&AE Railway Company Board of Directors receive a report for information.

Budget Impact

None.

DISCUSSION:

The SD&AE Board directed staff to investigate and report on right-of-entry permit process finances. Staff will provide a report to the Board.

Agenda

Item No. 6C

**San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting**

SDAE 710.1 (PC 50771)

January 15, 2013

SUBJECT:

MOTOR TRANSPORT MUSEUM REQUEST FOR SPUR TRACK FEE WAIVER

RECOMMENDATION:

That the SD&AE Railway Company Board of Directors provide direction to staff on the request for a fee waiver connected with the plan review and agreement execution for a spur track previously approved by the SD&AE Board.

Budget Impact

Costs to be reimbursed depending upon direction from the SD&AE Board.

DISCUSSION:

On April 21, 2009, the SD&AE Board approved the request to add a spur track to the Motor Transport Museum at approximately MP 67 on the Desert Line in Campo (pertinent agenda item and minutes attached). The Board approved the item including the requirement that all costs for the plan review, agreement execution, and construction be borne by the Motor Transport Museum.

The Motor Transport Museum would like the SD&AE Board to revisit the issue of cost reimbursement and requests that the Board waive the fees for this effort.

Attachment: Agenda Item and Minutes Pertaining to Prior Spur Track Approval

Agenda

Item No. 6e

**San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting**

SDAE 710.1 (PC 50771)

April 21, 2009

SUBJECT:

MOTOR TRANSPORT MUSEUM REQUEST FOR SPUR TRACK

RECOMMENDATION:

That the SD&AE Railway Company Board of Directors provide direction to staff on the request by the Motor Transport Museum (MTM) for a spur track on the Desert Line.

Budget Impact

Costs to be reimbursed depending on direction from the Board.

DISCUSSION:

By letter dated January 16, 2009, the Motor Transport Museum requested a spur track connection from the Desert Line Main at approximately Mile Post 67 to serve the museum for passenger traffic served by the Pacific Southwest Railway Museum. The property historically served as a feldspar mill and today houses the Museum. MTM wants to reconnect an old spur alignment as per its attached letter.

If this request is granted, staff will require a deposit to cover costs to prepare the agreements, plan reviews, and processing.

APRIL21-09.6e.MOTOR TRANSPORT MUSEUM REQ.TALLISON.doc

**MINUTES OF THE
BOARD OF DIRECTORS MEETING OF THE
SAN DIEGO & ARIZONA EASTERN RAILWAY COMPANY**

April 21, 2009

A meeting of the Board of Directors of the San Diego & Arizona Eastern (SD&AE) Railway Company, a Nevada corporation, was held at 1255 Imperial Avenue, Suite 1000, San Diego, California 92101, on April 21, 2009, at 9:01 a.m.

The following persons, constituting the Board of Directors, were present: Bob Jones and Paul Jablonski. Also in attendance were:

| | |
|--|---|
| MTS staff: | Tiffany Lorenzen, Tim Allison, Linda Musengo, Wayne Terry |
| SANDAG staff: | Pete d'Ablaing, John Haggerty |
| Kimley-Horn (consultant): | Anthony Podegracz |
| SD&IV staff: | Matt Domen, Jose Ramos |
| Pacific Southwest Railway Museum: | Diana Hyatt, Dick Pennick |
| Carrizo Gorge Railway, Inc. (Carrizo): | Armando Freire |
| CFNR: | Don Seil |
| International Border Rail Institute: | Richard Borstadt |
| Motor Transport Museum: | Carl Calvert, Ed Dilginis |
| EB Property: | Brian Martins |

Bob Jones introduced Don Seil and stated that RailAmerica is proposing that Mr. Seil replace Pete Jespersen as Chairman on the SD&AE Board of Directors. He explained that Mr. Seil has 30 years of experience in railroad—exclusively in California. Mr. Jones feels that Mr. Seil's business and operating background would be an asset to the Board. Paul Jablonski responded that staff will review the terms of the contract and make a decision at the next meeting in regard to the reelection or addition of officers.

1. Approval of Minutes

Mr. Jablonski moved to approve the Minutes of the February 3, 2009, SD&AE Railway Board of Directors meeting. Mr. Jones seconded the motion, and it was unanimously approved.

2. Statement of Railway Finances

Linda Musengo reviewed the fiscal years 2008 & 2009 operating statement (attached to the agenda item).

Action Taken

Mr. Jablonski moved to receive the report for information. Mr. Jones seconded the motion, and it was unanimously approved.

3. Report on SD&IV Operations

Jose Ramos reviewed the Periodic Report of the SD&AE Railway Company for activities for the first quarter of calendar year 2009 (attached to the agenda item). Mr. Jones clarified that the

decline in carloads is in part due to the warm winter and the economy. He added that gas customers make up more than half of of RailAmerica's income.

Mr. Ramos stated that in the future, more trucks will replace rail freight. Mr. Jablonski expressed concern regarding how many truck trips will be added. He stated that the goal is to promote freight, and we should be cognizant any time we could lose freight traffic to trucks. Mr. Ramos agreed to include the number of trucks trips replacing rail in future reports to the Board.

Action Taken

Mr. Jablonski moved to receive the report for information. Mr. Jones seconded the motion, and it was unanimously approved.

4. Report on Pacific Southwest Railway Museum Operations

Diana Hyatt reviewed the Museum's first quarter report for 2009 (attached to the agenda item). Ms. Hyatt added that the Museum contracted with Allied Weed for weed removal. She clarified that gas prices have negatively affected the Museum's passenger business (other than North Pole trains).

Action Taken

Mr. Jablonski moved to receive the report for information. Mr. Jones seconded the motion, and it was unanimously approved.

5. Report on the Desert Line

Armando Freire reviewed Carrizo's first quarter report for 2009 (attached to the agenda item). Mr. Freire stated that Carrizo is following Osmose's report with regard to repairs. Mr. Freire agreed that once repairs are completed, Carrizo will get in contact with Tim Allison, SD&IV, and the Board to determine when the repairs would be inspected. Mr. Freire will send all completed reports to the Board. He added that Carrizo has started a surveillance system using cameras with Internet access.

Mr. Freire reported that there was a wildfire on the tracks and 80 ties were replaced. In regard to the fire on the bridge at mile post 118.6, Carrizo police are investigating it as arson. Carrizo is waiting on the police report before continuing with the repairs. Mr. Allison reported that there is extensive damage to helper bent 4a. The Board agreed that this bridge will need to be reinspected.

Action Taken

Mr. Jablonski moved to receive the report for information. Mr. Jones seconded the motion, and it was unanimously approved.

6. Real Property Matters

a. Summary of SD&AE Documents Issued Since February 3, 2009

Tim Allison reported that since the February 3, 2009, SD&AE Railway Company Board of Directors meeting, the documents as outlined in the agenda item have been processed by staff.

Action Taken

Mr. Jablonski moved to receive the report for information. Mr. Jones seconded the motion, and it was unanimously approved.

b. Sewer Easement at 54th Street

Tim Allison reviewed the request for an easement to the City of San Diego for an underground sewer pipeline crossing SD&AE right-of-way at 54th Street south of Market Street.

Action Taken

Mr. Jablonski moved to approve an easement to the City of San Diego for an underground sewer pipeline crossing SD&AE right-of-way at 54th Street south of Market Street. Mr. Jones seconded the motion, and it was unanimously approved.

c. License Agreement with SDG&E for Private Crossings and Underground Utility Crossings

Mr. Allison reviewed a request from San Diego Gas and Electric (SDG&E) for a license for private crossings over SD&AE tracks located south of L Street in Chula Vista on the Coronado Branch.

Tiffany Lorenzen clarified that SD&AE would be indemnified. The Board had concerns with terminating the old crossing and adding a new one. Mr. Allison responded that the Board has the option to close the old crossing and only allow the new crossing. He added that there would be a license fee, and the license would be terminable. Mr. Jablonski stated that he would be supportive if the compensation is acceptable.

Action Taken

Mr. Jablonski moved to approve issuing a license to San Diego Gas and Electric, (SDG&E) for private crossings over SD&AE tracks located south of L Street in Chula Vista on the Coronado Branch. Mr. Jones seconded the motion, and it was unanimously approved.

d. License to the United State Fish and Wildlife Service for the Bayside Birding and Walking Trail Project

Mr. Allison reviewed a request for a license to US Fish & Wildlife for construction of the Bayside Birding and Walking Trail within SD&AE right-of-way in Imperial Beach. He stated that this license would be similar to the Bayshore Bikeway license and would be

terminable. Mr. Allison stated that the right-of-way is approximately 45 feet wide, and the bikeway is about 12 feet wide. The new walking trail would be about five feet inside of the right-of-way. Mr. Allison confirmed that the revenue has not been negotiated yet. He added that SD&AE does not get any revenue from the Cities of San Diego and Imperial Beach.

Action Taken

Mr. Jablonski moved to approve issuing a license to the United States Fish and Wildlife Service, San Diego National Wildlife Refuge Complex (USFW) for the construction of the Bayside Birding and Walking Trail within SD&AE right-of-way in the City of Imperial Beach. Mr. Jones seconded the motion, and it was unanimously approved.

e. Motor Transport Museum Request for Spur Track

Mr. Allison reviewed a request by the Motor Transport Museum to install a spur track on the Desert Line east of the Campo Depot. He stated that it used to be a Feldspar mill, which is currently occupied as a museum for buses, delivery vehicles, etc. The Motor Transport Museum is asking to reinstall a spur to the back of its facility to accommodate passenger rail from the Museum's trains, and passengers could get off and go to the Museum facilities. Mr. Allison stated that a full deposit to cover expenses for engineering, etc. would be required.

Public Speakers

1. *Carl Calvert – Mr. Calvert explained that this spur was originally installed in 1926 and was taken out in the 1950s. He added that Wally Barber is a contractor who would reinstall the spur, which would enable the Motor Transport Museum to work with the Pacific Southwest Railway Museum and recreate historic rail cars. Mr. Calvert felt that since the rail line is not currently in operation, it is an ideal time to consider installing the spur.*

Mr. Calvert responded to a question from Mr. Jablonski regarding the Motor Transport Museum's intention to run cars occasionally for tours. He added that the Motor Transport Museum is currently open Wednesdays, Fridays, and Saturdays.

2. *Richard Borstadt – Mr. Borstadt stated that in the mid-90s, this request was approved by this Board. He also stated that adding the spur would alleviate traffic flow and simplify activities on the main line.*

Ms. Hyatt clarified that the Pacific Southwest Railway Museum would collaborate with the Motor Transport Museum in transporting passengers to the Stone Store and the Motor Transport Museum. She asked to be included in the Motor Transport Museum's plans. The bridge at mile post 66.7 was discussed, and Mr. Allison informed the Board that the Simon Wong bridge inspection report commissioned by the Pacific Southwest Railway Museum has not been submitted to MTS. He added that there are bent caps and stringers that haven't been replaced yet.

Mr. Jablonski stated that he is supportive of adding the spur, but all repairs to the bridge must be completed and inspected before transporting passengers. Mr. Jones added

that Carrizo, the Museum, and the Motor Transport Museum need to work together to formulate a plan and list of responsibilities.

Mr. Allison clarified that the costs to add the spur would be covered by the industry (in this case, the Motor Transport Museum). Mr. Freire stated concern regarding additional costs to Carrizo on an installation that has no bearing to its operations. Mr. Allison responded that no approvals would be considered without letters of support from the Pacific Southwest Railway Museum and Carrizo.

Action Taken

Mr. Jones moved to direct staff to begin the process for the spur installation contingent upon the following:

1. The Motor Transport Museum, Carrizo, and the Pacific Southwest Railway Museum will meet to determine whether they have any issues with the installation. If there are any issues, the operators will contact Tim Allison within the next two weeks, and a report will be brought to the Board at the next meeting; and
2. If the three operators are in agreement regarding the spur installation, they will collaboratively send the Board a letter of support within the next two weeks. Upon receipt of the letter of support, the SD&AE Board will notify the operators whether the spur installation is approved, and, if so, the Motor Transport Museum will bear all costs for the installation.
3. No trains will operate on the line until the bridge has been inspected to FRA standards and the inspection has been provided to the SD&AE Board.

Mr. Jablonski seconded the motion, and it was unanimously approved.

7. a. Status of SD&AE Main Line Track and San Ysidro Freight Yard Improvement Projects

Pete d'Ablaing, Senior Engineer with the San Diego Association of Governments (SANDAG) and Project Manager, introduced Anthony Podegracz of Kimley-Horn. Mr. d'Ablaing reviewed the SD&AE Main Line Track and San Ysidro Freight Yard Improvement Projects (see attached PowerPoint).

In response to Mr. Jones' question regarding the lengthy time period to complete the project, Mr. d'Ablaing explained that the project requires environmental and FRA clearances and purchasing 12 parcels of right-of-way. John Haggerty, Design Principal with SANDAG, added that he doesn't feel that project will take as long as projected. He stated that the State of California is broke, and the Prop 1b money has not yet been distributed. The lengthy time lines for the project were conservative so as not to jeopardize the funding under the "use it or lose it" deadlines.

Mr. Haggerty explained to the Board that although the funds for the San Ysidro Yard have been sitting for about 12 years, there was never enough money to get the project going. He stated that the Yard Project is in the preliminary engineering stage and will be completed by July. The Yard Project has significant drainage, silt, water quality, and right-of-way acquisition issues.

SANDAG staff agreed to include Don Seil in all of the project meetings and keep him updated on all information.

Action Taken

Mr. Jones moved to receive the report for information. Mr. Jablonski seconded the motion, and it was unanimously approved.

b. F Street Diamond, Track, and Signal Elements

John Haggerty reviewed the F Street Diamond Project (see the attached PowerPoint). Mr. Haggerty reported that project team is working to implement improvements to the South Line to bring low-floor vehicles from Imperial Avenue to San Ysidro as one corridor. He stated that due to funding, the project team must be careful implementing projects. The preliminary design work has begun. Interlock crossovers would be added on the line. Mr. Haggerty stated that SANDAG is requesting SD&AE Board approval of the removal of the F Street diamonds. He added that the F Street diamonds increase the costs and complexity of the corridor project. Further engineering would be conducted, and the project team would report back with a recommendation on costs and implications.

Wayne Terry stated that MTS maintains the diamonds, and the diamonds are tough on the trolleys. He added that no freight has been going over the tracks for years, and he would like to see the diamonds removed as there is no use for them.

In response to public concern expressed by Dick Pennick and Richard Borstardt regarding eliminating the final connection to the Coronado Branch line, Mr. Jones stated that the cost to maintain a diamond and the circuitry is excessive, and he understands the preservation concerns but stated that the Board has to do what is reasonable and prudent. Diana Hyatt requested to be on record as opposing SANDAG's request as she is in support of preserving the historic corridor.

Action Taken

Mr. Jones moved to approve the removal of the F Street diamond. Mr. Jablonski seconded the motion, and it was unanimously approved.

8. Old Business

None.

9. New Business

None.

10. Public Comments

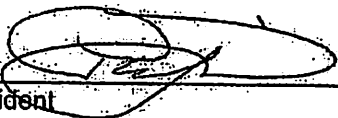
None.

11. Next Meeting Date

The next meeting was changed from July 21 to July 28, 2009, at 9:00 a.m.

12. Adjournment

The meeting was adjourned at 10:25 a.m.



President



Of Counsel

JGardello
MINUTES-SDAE 4-21-09.doc

Attachments: South Line Freight Rail Projects PowerPoint (7a)
F Street Diamond PowerPoint (7b)

Agenda Item No. 7

**San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting**

January 15, 2013

SUBJECT:

DONATION OF UNUSED RAIL CARS TO THE PACIFIC SOUTHWEST RAILWAY MUSEUM AND THE BAJA CALIFORNIA RAILWAY FOUNDATION OR AFFILIATED NONPROFIT ORGANIZATIONS (KAREN LANDERS)

RECOMMENDATION:

That the SD&AE Board of Directors authorize the SD&AE President to take any action necessary to donate the unused rail cars with historical value to the Pacific Southwest Railway Museum (Box Cars "SDAE 1084" and "SP 116033") and the Baja California Railway Foundation (Tank Car 1025) or affiliated nonprofit organizations.

Budget Impact

None. The rail cars in question are not maintained in the SD&AE inventory and are not actively used for SD&AE business. Costs to move the rail cars exceed their value on the market or for scrap purposes.

DISCUSSION:

Historic Box Cars

In or about 1979, MTS obtained two box cars (see photos in Attachment A) as part of the purchase of the SD&AE from the Southern Pacific by MTS in 1979. These cars (estimated circa 1930s) were already obsolete for freight service at the time of the purchase. The cars were assigned to the Maintenance-of-Way Department. In approximately 1988, the cars were given to San Diego Trolley Inc. (SDTI) for the storage of track materials. At that time, the box cars were delivered to a spur within the SDTI yard where they remain parked today. Due to their deteriorated condition, the cars are not safe to be moved over the MTS rail system without extensive work on the wheel bearings and air brakes. The approximate weight of each car—including trucks and wheels—is 45,000 pounds. The estimated scrap value for each car is \$7,300.00.

MTS and SD&AE have received inquiries requesting a donation of the box cars to the Pacific Southwest Railway Museum (Museum) in Campo. The Museum has agreed to pay all costs to transport the box cars from the MTS yard to the Museum.

MTS, SDTI, and SD&AE have no use for the box cars. SDTI needs the spur track that the box cars sit on and has requested that the box cars be donated to the Museum. Given the historic nature of the box cars and the Museum's agreement to cover the costs of removing the cars, it is staff's opinion that the public interest supports donating the box cars to the Museum where they will be restored and available for public viewing (rather than selling the cars for scrap). Scrapping would destroy historic rail cars and provide only a minimal financial return to MTS and SD&AE.

1916 Tank Car #1025

MTS and SD&AE have also received inquiries from the Baja California Railway Foundation (BCRF) in Tijuana requesting the donation of a tank car that has been abandoned on the railway in Baja California for at least 20 years (see BCRF presentation - Attachment B). Research performed by BCRF shows that this maintenance-of-way tank car belongs to SD&AE and is located at Valle Redondo on the Tijuana-Tecate short line. Built in 1916, the tank car was used to carry water for fire protection and for railroad workers on the line from San Diego to El Centro. The tank car was retired by Southern Pacific sometime in the 1950s and left in a RIP track at Redondo Station where the old water tank was located. The tank car has been a target for vandalism and represents a liability for accidents in the area. Over the years, it has received damage, such as a stolen brake, missing air-brake system, old trucks, couplers, and graffiti. The car contains SD&AE ownership marks. Presumably, it was acquired by MTS when it purchased SD&AE from Southern Pacific in 1979.

MTS and SD&AE do not have a current inventory that lists this car. It appears that the car may have been abandoned for the entire time that MTS has owned SD&AE. The logistical issues with removing this car from its location in Mexico, and the fact that it has no use or value to MTS or SD&AE's current operations, support a recommendation that this tank car be donated to the BCRF museum in Baja California. The BCRF museum will cover all costs to relocate the car and will restore the car for public viewing at museum facilities.

MTS staff will need to conduct additional research on the proper method for transferring ownership of the box cars and tank car to the two museums. By this action, the SD&AE Board is requested to authorize the SD&AE President to take any action necessary to donate the unused rail cars with historical value to the Pacific Southwest Railway Museum and the Baja California Railway Foundation or affiliated nonprofit organizations.

- Attachments: A. Historic Box Cars
B. Rail Car Request from BCRF

Historic Box Cars

for donation to
Pacific Southwest Railway Museum



Box Car Markings



Box Cars



BAJA CALIFORNIA RAILWAY FOUNDATION, I.A.P.

*Fundacion Ferrocarriles de
Baja California, I.A.P.*

Hector M. Gonzalez



OUR GOALS

- ▶ To preserve the history and legacy of Baja California and northwest Mexico Railway heritage
- ▶ To promote cultural activities such as model railroading and related subjects for it's development
- ▶ To obtain a few key pieces of historic locomotives and railroad cars and restore some of them to operation so the public can see it as it was back in it's time.
- ▶ To keep all this rich history alive in a same place, our goal is to build the Baja California Railway Museum in the City of Tijuana by building a replica of the original Tijuana Depot lost in a fire a mile east of it's original location next to the Tijuana-Tecate short line.

RESTORATION PROJECTS

SD&AE MW 1025

- ▶ Maintenance of way tank car that belongs to the San Diego & Arizona Eastern Railway located at Valle Redondo on the Tijuana-Tecate short line.
- ▶ Built in 1916, this tank car was used to carry water for fire protection and for railroad workers on the line from San Diego to El Centro.
- ▶ It was retired sometime in the 1950's and left in a RIP track at Redondo station where the old water tank was. It was always kept with water from a local pipe until about twenty years ago when the State of Baja California built water pipes to ranches where urban sprawl reached the area.

- ▶ It received a small pipe and caboose ladders to a deck of wood for water access.
- ▶ Tank car has been a target to vandalism and is a liability for accidents.
- ▶ It has received damage such as stolen brake, air brake system missing, old trucks, couplers and graffiti.
- ▶ The Baja California State Institute of Culture has been notified and ADMICARGA has stated that the owner has to make a decision.

REASONS TO ASK FOR DONATION...

TO THE BAJA CALIFORNIA RAILWAY FOUNDATION:

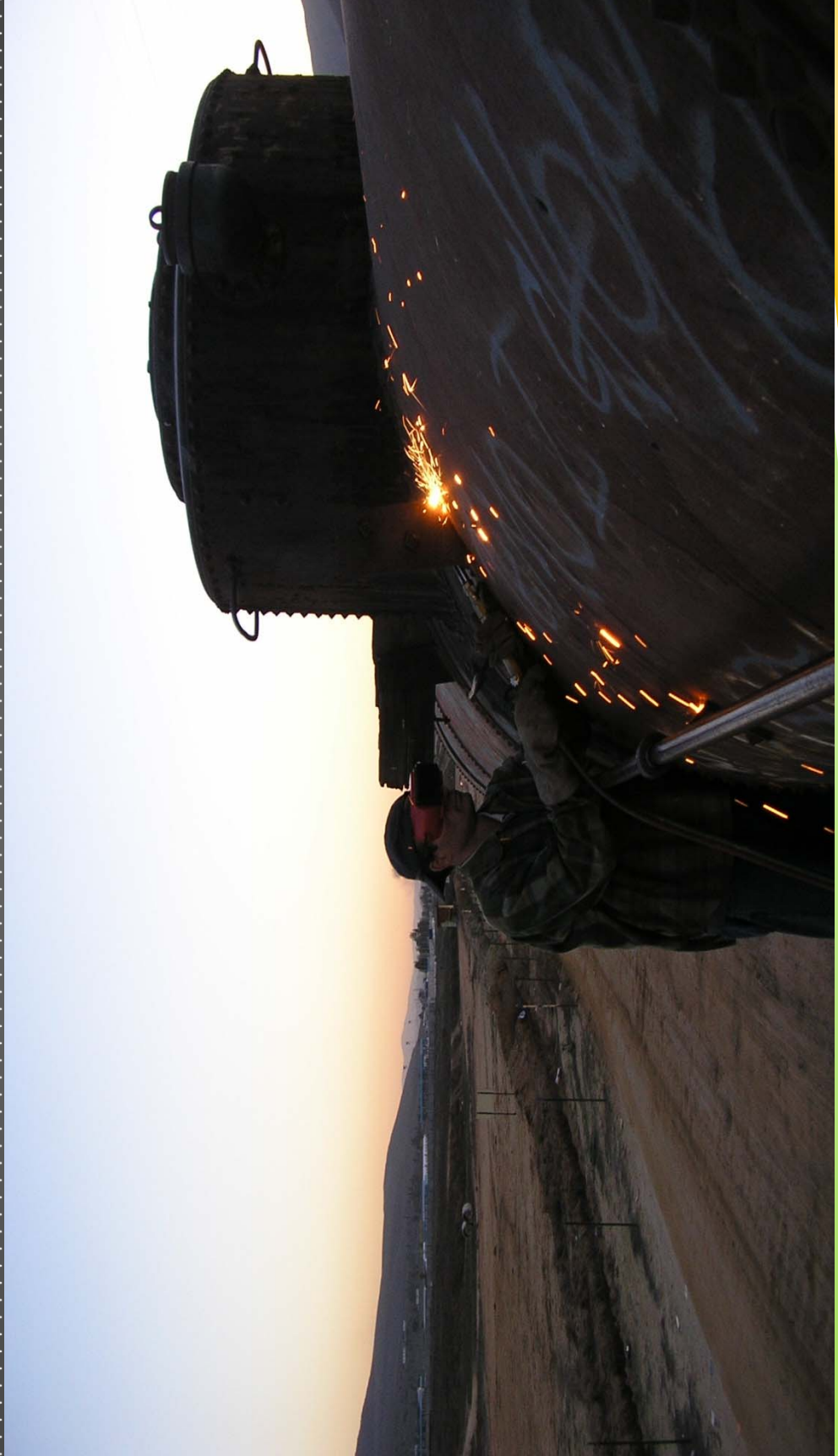
- ▲ It represents a liability to the San Diego & Arizona Eastern Railway Company and the Metropolitan Transit System since FFBC is not aware of any Liability or Deaccession of the specific car.
- ▲ The car has SD&AE Reporting marks, therefore if it has not been deaccessed before, FFBC to the Board it should.
- ▲ The Pacific Southwest Railway Museum in Campo, CA where I'm also a volunteer, has performed an excellent job in preserving equipment and the owns sister cars SD&AE MW 1027 and SD&AE MW 1028.

DISCOVERING REPORTING MARKS

- ▶ Antonio Lara, Treasurer of FFBC.



REMOVAL OF CABOOSE LADDERS WITH CUTTING TORCH



THANK YOU!

Agenda Item No. 8

**San Diego and Arizona Eastern (SD&AE)
Railway Company
Board of Directors Meeting**

January 15, 2013

SUBJECT:

**EXTENSION OF PACIFIC SOUTHWEST RAILWAY MUSEUM OPERATING
AGREEMENT (KAREN LANDERS)**

RECOMMENDATION:

Authorize the SD&AE President to: (1) negotiate with the Pacific Southwest Railway Museum (PSRM) to extend its operating agreement for passenger excursion services on a portion of the Desert Line and operation of a museum on the Campo Depot property; and (2) execute such agreement consistent with the terms (stated below).

Budget Impact

The proposed agreement will continue the 2% of PSRM operating-revenue fee that is currently in place. In FY 2012, PSRM-related revenues to SD&AE were \$4,420 (rounded).

DISCUSSION:

In 1985, SD&AE entered into an "Agreement for Operation of Passenger Excursion Services and for Custody and Control of a Portion of SD&AE Right-of-Way." This agreement allowed PSRM to operate passenger-excursion trains on a portion of the Desert Line right-of-way and also to construct the Campo Depot museum area. The agreement has been amended, extended, and restated over the years. The most recent agreement is dated December 13, 2007, and expired on December 12, 2012. Therefore, the PSRM agreement is currently in holdover status on a month-to-month basis.

On December 20, 2012, MTS and SD&AE entered into an agreement with Pacific Imperial Railroad, Inc. (PIR) to be the new, exclusive freight operator on the Desert Line for a 50-year period (plus options). PIR plans to refurbish and repair the Desert Line and resume active freight operations on the full length of the right-of-way.

PIR's plans to operate freight services may require some revisions to the PSRM agreement responsibilities. Therefore, MTS staff is working with PIR and PSRM to revise and extend the PSRM agreement. The new agreement will continue PSRM's rights to operate passenger excursion trains along the designated mileposts (MP 59.94 to MP 74) and to occupy the Campo Depot property for the museum facilities. Currently,

PSRM provides all necessary maintenance for the designated right-of-way. MTS staff has requested that PSRM and PIR negotiate and agree to a plan for maintenance that takes into account the new PIR agreement and PIR's development plans. This agreement will be incorporated into a new agreement between MTS, SD&AE, PIR, and PSRM. The new term will be a minimum of 5 years with potential option periods. For the first 5 years, fees will stay at 2% of operating revenues to be paid on a quarterly basis.

Staff is requesting that the SD&AE Board authorize the SD&AE President to continue these negotiations and to execute a new agreement with PSRM. If the final terms differ materially from any of those described in this Agenda Item, it will be brought back to this Board for approval before execution.



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Agenda Item No. 7

MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

February 21, 2013

SUBJECT:

INVESTMENT REPORT – NOVEMBER 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 November 2012. The combined total of all investments has decreased from \$237.6 million to \$220.6 million in the current month. This \$17 million decrease is attributable to a scheduled \$7.6 million principal payment on the Pension Obligation Bonds and payments totaling \$9 million for capital acquisition. 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 \$214,000 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. MTS also transferred \$1.1 million in Proposition 1B funding restricted for security improvements to the San Diego County Investment Pool. The second column (unrestricted investment) reports the working capital for MTS operations payments for employee payroll and vendors' goods and services.

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

Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, Sharon.Cooney@sdmts.com

Attachment: A. Investment Report for November 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
November 30, 2012**

| | <u>Restricted</u> | <u>Unrestricted</u> | <u>Total</u> | Average rate of return |
|--|-----------------------|----------------------|-----------------------|---------------------------------------|
| Cash and Cash Equivalents | | | | |
| Bank of America - concentration account | | | \$ - | |
| JP Morgan Chase - concentration account | 1,322,629 | 19,592,882 | 20,915,511 | 0.00% |
| Total Cash and Cash Equivalents | <u>1,322,629</u> | <u>19,592,882</u> | <u>20,915,511</u> | |
| Cash - Restricted for Capital Support | | | | |
| US Bank - retention trust account | 8,331,725 | - | 8,331,725 | N/A * |
| San Diego County Investment Pool | | | | |
| Proposition 1B grant funds | 15,685,981 | 7,869,917 | 23,555,898 | |
| Proposition 1B TSGP grant funds | 4,403,444 | 1,816,145 | 6,219,590 | |
| Total Cash - Restricted for Capital Support | <u>28,421,151</u> | <u>9,686,062</u> | <u>38,107,213</u> | |
| Investments - Working Capital | | | | |
| Local Agency Investment Fund (LAIF) | - | 42,038,082 | 42,038,082 | 0.324% |
| 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) | 39,148,015 | - | 39,148,015 | |
| Rabobank - | | | | |
| Payment Undertaking Agreement | 80,435,481 | - | 80,435,481 | 7.69% |
| Total Investments Restricted for Debt Service | <u>119,583,497</u> | <u>-</u> | <u>119,583,497</u> | |
| Total cash and investments | <u>\$ 149,327,276</u> | <u>\$ 71,317,026</u> | <u>\$ 220,644,303</u> | |

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



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Agenda Item No. 8

MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

February 21, 2013

SUBJECT:

PAY PHONE SERVICES - CONTRACT AWARD

RECOMMENDATION:

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

1. execute MTS Doc. No. L1086.0-12 (in substantially the same format as Attachment A) with Western Communication Systems, Inc. (WESCOMM) as a revenue contract for pay phone services for a five-year base term with 2 one-year option terms; and
2. exercise each option year at the CEO's discretion.

Budget Impact

This would be a revenue-generating contract. MTS's revenue would be based on a percentage split of the gross amount of revenue collected from each pay phone. Based on the proposed split, this contract has the potential to generate approximately \$630,000 over the term of the contract.

DISCUSSION:

MTS Policy No. 52 governing procurement of services requires a formal competitive-bidding process for procurements exceeding \$100,000. In the event that the circumstances dictate other than the competitive bid process, a written statement by staff is required setting forth the reasons for not pursuing all or part of any of the processes.



On August 24, 2012, MTS issued a Request for Proposals (RFP) to interested parties for pay phone services for a 5-year base term with 2 one-year option terms. A preproposal meeting was subsequently held along with a written question-and-answer period.

The pay phone service program would continue to provide security (free 9-1-1 calls), convenience to MTS customers, and generate revenue for MTS. As part of this service agreement, the installation and maintenance of all pay phones at designated trolley stations, transit centers, and park-and-ride lots would be at no additional cost to MTS. The proposers were required to provide a minimum of one pay phone for each station with free 9-1-1 calls and meet Americans with Disabilities Act (ADA) requirements.

Process

A total of three firms submitted proposals by the October 16, 2012, due date. A selection committee consisting of representatives from various MTS departments met and rated the proposals. The ratings were based on the following criteria:

- | | |
|--|-------------------|
| 1. Qualifications and Experience of Firm and Staff | 30 Points |
| 2. Proposed Methodology and Work Plan | 20 Points |
| 3. Revenue Payment/Financial Benefit | 50 Points |
| | Total: 100 Points |

Based on the combination of technical and cost components, the selection committee arrived at a comprehensive proposal score for each proposal. This process resulted in the following average scoring:

| Proposers with the Technically Competitive Range | Total Score (Total Possible Score: 100) |
|--|--|
| Western Communication Systems, Inc. (WESCOMM) Poway, California | 89 |
| Pacific Telemanagement System (PTS) San Ramon, California | 50 |
| Cen-Tex Pay Telephone Company San Antonio, Texas | 34 |

The evaluation committee is recommending award of MTS Doc. No. L1086.0-12 to WESCOMM to provide the pay phone services as outlined in the RFP Scope of Work. Based on the evaluations of each firm's technical and cost proposal, WESCOMM's proposal is deemed to be the most advantageous and overall is the best value to MTS. Services are recommended to commence on April 1, 2013.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, Sharon.Cooney@sdmts.com

Attachments: A. Draft MTS Doc. No. L1086.0-12
B. Revenue Payment Summary

DRAFT

Att. A, AI 8, 2/21/13

STANDARD SERVICES AGREEMENT

L1086.0-12
CONTRACT NUMBER
OPS 900
FILE 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: Western Communication Systems, Inc. (WESCOMM)

Address: 13200 Kirkham Way, Suite 114

Form of Business: Partnership
(Corporation, partnership, sole proprietor, etc.)

Poway, CA 92064

Telephone: 858.218.3500

Authorized person to sign contracts: Thomas Beuse President
Name Title

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

Provide pay phone services as set forth in the MTS Scope of Work, Western Communication Systems, Inc.'s (WESCOMM) Revised Proposal dated 11/29/12, in accordance with the Standard Services Agreement, including Standard Conditions Services, Federal Requirements

The contract term is for up to a 7-year period (5-year base with two 1-year options exercisable at MTS's sole discretion). Base period shall be effective April 1, 2013, through March 31, 2018, and Option Years I and II shall be effective April 1, 2018, through March 31, 2020. Monthly revenue payment shall be paid directly to MTS, which is due on or before the 45th day following each calendar month.

The total revenue for this contract is estimated at \$415,200 for the base period and \$214,800 for the option years for a total of \$630,000.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

CONTRACTOR AUTHORIZATION

By: _____
Chief Executive Officer

Firm: _____

Approved as to form:

By: _____

By: _____
Office of General Counsel

Signature

Title: _____

AMOUNT ENCUMBERED

BUDGET ITEM

FISCAL YEAR

\$415,200 – Base Period

\$214,800 – Option Years I & II

\$630,000 – Total Est.

901-42990

FYs 13-20

By: _____
Chief Financial Officer

_____ Date

(____ total pages, each bearing contract number)



Metropolitan Transit System

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PAY PHONE SERVICES RFP
MTS DOC. NO. L1086.0-12

REVENUE PAYMENT SUMMARY

| WESTERN COMMUNICATIONS, INC. (WESCOMM) * | |
|---|------------------------------|
| | MTS REVENUE SPLIT (%) |
| CONTRACT YEAR 1 | 40% |
| CONTRACT YEAR 2 | 40% |
| CONTRACT YEAR 3 | 40% |
| CONTRACT YEAR 4 | 45% |
| CONTRACT YEAR 5 | 47% |
| CONTRACT YEAR 6 – OPTION YR I | 53% |
| CONTRACT YEAR 6 – OPTION YR II | 57% |

*No additional cost to MTS.

| PACIFIC TELEMAGEMENT SERVICES (PTS) ** | |
|---|------------------------------|
| | MTS REVENUE SPLIT (%) |
| CONTRACT YEAR 1 | 50% |
| CONTRACT YEAR 2 | 50% |
| CONTRACT YEAR 3 | 50% |
| CONTRACT YEAR 4 | 50% |
| CONTRACT YEAR 5 | 50% |
| CONTRACT YEAR 6 – OPTION YR I | 50% |
| CONTRACT YEAR 6 – OPTION YR II | 50% |

**50% of all Revenue, all phones after \$65 revenue threshold is met. 50% Commission will be paid on all Revenues above \$65. Any phone that does not meet the \$65 threshold shall be subsidized from those phones whose revenue exceeds \$65. Example: if a phone does \$55 in monthly revenue, PTS will subsidize MTS the shortfall of \$10 out of those phones that exceed \$65 in gross revenue. All revenue above \$65 per phone will earn a 50% commission. Any commission earned will be applied to any shortfall. In the event that commission dollars do not subsidize the shortfall, MTS will be invoiced for that amount. The monthly amount will vary based on seasonally and monthly usage.

| CEN-TEX PAY TELEPHONE COMPANY *** | |
|--|------------------------------|
| | MTS REVENUE SPLIT (%) |
| CONTRACT YEAR 1 | 36.25% Above \$74.000 |
| CONTRACT YEAR 2 | 36.25% Above \$74.000 |
| CONTRACT YEAR 3 | 36.25% Above \$74.000 |
| CONTRACT YEAR 4 | 36.25% Above \$74.000 |
| CONTRACT YEAR 5 | 36.25% Above \$74.000 |
| CONTRACT YEAR 6 – OPTION YR I | 36.25% Above \$74.000 |
| CONTRACT YEAR 6 – OPTION YR II | 36.25% Above \$74.000 |

***The Minimum Monthly Revenue per phone that, if not generated, will result in MTS being charged a per-phone fee of \$74.00. The Charge per-Phone to MTS if that phone generates less than the Minimum Monthly Revenue will be: \$74.00 less that phone's local coin revenue generated for that month. (If the phone generates \$69.00 in local coin revenue, MTS will be charged \$5.00 for that month). Phone Disconnection Cost to MTS is: \$250.00. Commission payment to MTS will be: 36.25% of revenue above the Minimum Monthly Revenue threshold of \$74.00.



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Agenda Item No. 9

MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

February 21, 2013

SUBJECT:

EXCESS INSURANCE RENEWALS FOR LIABILITY AND WORKERS' COMPENSATION PROGRAM

RECOMMENDATION:

That the Board of Directors approve the purchase of excess liability insurance (at limits of \$75 million less a \$2 million self-insured retention) and excess workers' compensation insurance (at statutory limits less a \$1 million self-insured retention). The new policies would be in effect from March 1, 2013, through March 1, 2014.

Budget Impact

The combined proposed premium for both lines of coverage, including taxes and fees, would be \$1,565,904 for the one-year period. The total premium for the excess liability insurance and the excess workers' compensation insurance represents an approximate 3.46% (or \$54,305) decrease over the expiring policies. Terrorism coverage is included in both lines.

The specific allocation among MTS, San Diego Transit Corporation (SDTC), San Diego Trolley, Inc. (SDTI), and San Diego and Arizona Eastern (SD&AE) Railway Company is based on the underwriting exposure. Costs associated with the excess insurance policies are allocated across two fiscal years. For fiscal year 2013, staff estimates that all of the agencies will be within budget. No budget adjustment is proposed at this time. Fiscal year 2014 budgets are being developed, and funds will be designated and included within them.

The approximate annual breakdown between the agencies is noted within the table below.

| COMBINED TOTAL EXCESS INSURANCE PREMIUMS | | | | | |
|--|-----------|-----------|-----------|----------|-------------|
| AGENCY | MTS | SDTC | SDTI | SD&AE | TOTAL |
| Excess Liability | \$160,118 | \$593,772 | \$567,086 | \$13,343 | \$1,334,319 |
| Excess Workers' Comp. | \$27,790 | \$103,055 | \$98,424 | \$2,316 | \$231,585 |
| Total Excess Premium | \$187,908 | \$696,827 | \$665,510 | \$15,659 | \$1,565,904 |
| Combined Excess Split | 12.0% | 44.5% | 42.5% | 1.0% | |



DISCUSSION:

MTS, SDTC, SDTI, and SD&AE jointly purchase commercial general liability insurance to finance large catastrophic losses for bodily injury, property damage, and other damage claims in excess of a self-insured retention of \$2 million per occurrence. The agencies also jointly purchase an excess workers' compensation policy to supplement the self-insured program of \$1 million per occurrence. The existing policies will expire on March 1, 2013. MTS's new insurance broker, Alliant Insurance Services, Inc., has worked extensively with staff and several interested insurance companies to obtain the best coverage possible for the forthcoming year. Staff is exceptionally pleased with the results this year.

Current Program

MTS currently has excess liability coverage with four layers of insurance limits from various insurance companies. These layers provide for a total general liability limit of \$75 million. The policies each contain coverage for acts of terrorism. The current cost of these policies, including taxes and fees, is \$1,377,272. In addition, MTS purchases excess workers' compensation insurance at statutory limits (i.e., the maximum benefit the State would allow for a single accident/injury) for a cost of \$242,937. These premiums totaled \$1,620,209 under the current program structure.

Proposed Program

The proposed liability insurance program is also anticipated to include four policy layers and would carry a self-insured retention of \$2 million for general liability and public entity excess liability. All of this coverage (including MTS's self-insured retention) would provide full limits up to \$75 million at an annual cost of approximately \$1,334,319. This figure represents a decrease of about 3.21% (or \$42,953) over the expiring coverage.

An excess workers' compensation policy is also being recommended for purchase at statutory limits less a \$1 million insurance deductible. The premium cost for this policy is \$231,585, which represents about a 4.90% (or \$11,352) decrease over last year's premium.

The total premium for the combined excess liability and excess workers' compensation coverage represents an overall 3.46% (or \$54,305) decrease compared to the previous year.

| COVERAGE | INSURER | AM BEST RATING | LIMIT & ATTACHMENT | TOTAL PREMIUM |
|----------------------------|-----------------------------------|----------------------|--------------------------|--------------------|
| Excess Workers' Comp. | Arch Insurance Company | A+ XV | Statutory x \$1M SIR* | \$231,585 |
| 1st Layer Excess Liability | Starr Indemnity & Liability Co. | A X | \$10M x \$2M SIR | \$733,074 |
| 2nd Layer Excess Liability | Berkley National Insurance Co. | A XV | \$15M x \$10M x \$2M SIR | \$289,245 |
| 3rd Layer Excess Liability | Great American Assurance Co. | A XIII | \$25M x \$25M x \$2M SIR | \$217,000 |
| 4th Layer Excess Liability | Allied World Assurance Co. (AWAC) | A XV | \$23M x \$50M x \$2M SIR | \$95,000 |
| | | | | \$1,565,904 |

*Self-insured retention

Renewal Issues -- Underwriting Base

The premium rates for the general liability coverage are primarily based on revenue miles, service vehicle miles, construction costs, loss history, and current market conditions. For excess workers' compensation, the premiums are largely driven by payroll as well as loss history and current market conditions. The annual passenger counts for both SDTC and SDTI increased by a combined 3,243,193 passengers, and the total revenue miles are up 154,921 miles compared to counts submitted in the last policy period. The combined payroll has increased by \$3,325,940 over the prior reporting period. For the present renewal, the second- and fourth-layered carriers would be changing from Endurance to Berkley and from Axis to AWAC, respectively. The primary and third layers would remain the same. In light of the long relationship some of these carriers have had with MTS along with MTS's exceptional loss history, the liability carriers agreed to an overall reduction in the insurance premiums for the current renewal.

Insurance Market Conditions

A favorable competitive market still remains open for general liability lines of coverage—especially in the upper layers. The liability insurance carriers that submitted quotes this year continue to have the capacity and willingness to write public transit risks, such as MTS. Workers' compensation insurance continues to experience an upset in the marketplace as was the case last year. The poor economy of the past few years has seen an increase in the frequency, severity, and types of claims filed. Consequently, insurance carriers are incurring higher costs and are charging higher premiums to regain surplus and capacity. Despite this fact, MTS's insurance broker Alliant was successful in replacing the incumbent carrier (Ace) with another carrier (Arch) at a reduced premium with the same limits and retention.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, sharon.cooney@sdmts.com

Attachment: A. Excess Liability & Workers' Compensation Insurance Proposal

San Diego Metropolitan Transit System

MTS

Excess Liability & Excess Workers' Compensation Insurance Proposal March 1, 2013 – March 1, 2014



Presented on February 08, 2013 by:

Alliant Insurance Services, Inc.

100 Pine St, 11th Floor
San Francisco, CA 94111
(415) 403-1400 / Fax # (415) 874-4812
www.alliant.com

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ALLIANT HISTORY AND COMPANY PROFILE

Company Profile: With a history dating back to 1925, Alliant Insurance Services is one of the nation's leading distributors of diversified insurance products and services. Operating through a national network of offices, Alliant Insurance manages a comprehensive portfolio of services to clients, including:

- **Property and Casualty Insurance Brokerage**
 - Public Entity
 - Energy and Marine
 - Healthcare
 - Tribal Nations
 - Law Firms
 - Real Estate
 - Construction,
 - And many other industries
- **Employee Benefits Insurance Brokerage**
- **Risk Management Consulting**
- **Business Services**
 - Human Resources Consulting
 - Third-Party Claims Administration
 - Temporary Staffing Services

The knowledge that Alliant Insurance has gained in its more than eight decades of working with many of the top insurance companies in the world allows us to provide our clients with the guidance and high-quality performance they deserve. Our solution-focused commitment to meeting the needs of our clients assures the delivery of the most innovative insurance products and services.

Alliant Insurance is one of the largest insurance brokerage firms in the United States and is the nation's second largest privately held insurance brokerage firm. For more information, visit the Alliant web site at <http://www.alliant.com/>

YOUR SERVICE TEAM

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YOUR SERVICE TEAM, Continued

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2013 - 14 Public Entity Market – Recent Observations

Lead Liability Markets

- Carriers are looking at Self-Insured Retention levels more closely
- Newer markets are less aggressively pursuing new business opportunities
- Seasoned markets are more cautious now than they have been in the recent past
- Low single digit increases not uncommon

Excess Liability Markets

- Capacity less constrained than lead markets
- While rate increases are not uncommon, competition is limiting these opportunities

Workers' Compensation Markets

- Challenging market conditions; rate increases common
- Self-Insured Retention pressure for accounts showing propensity for excess loss activity
- However, opportunity for improvement exists on placements that have not been fully tested within the market in the recent past

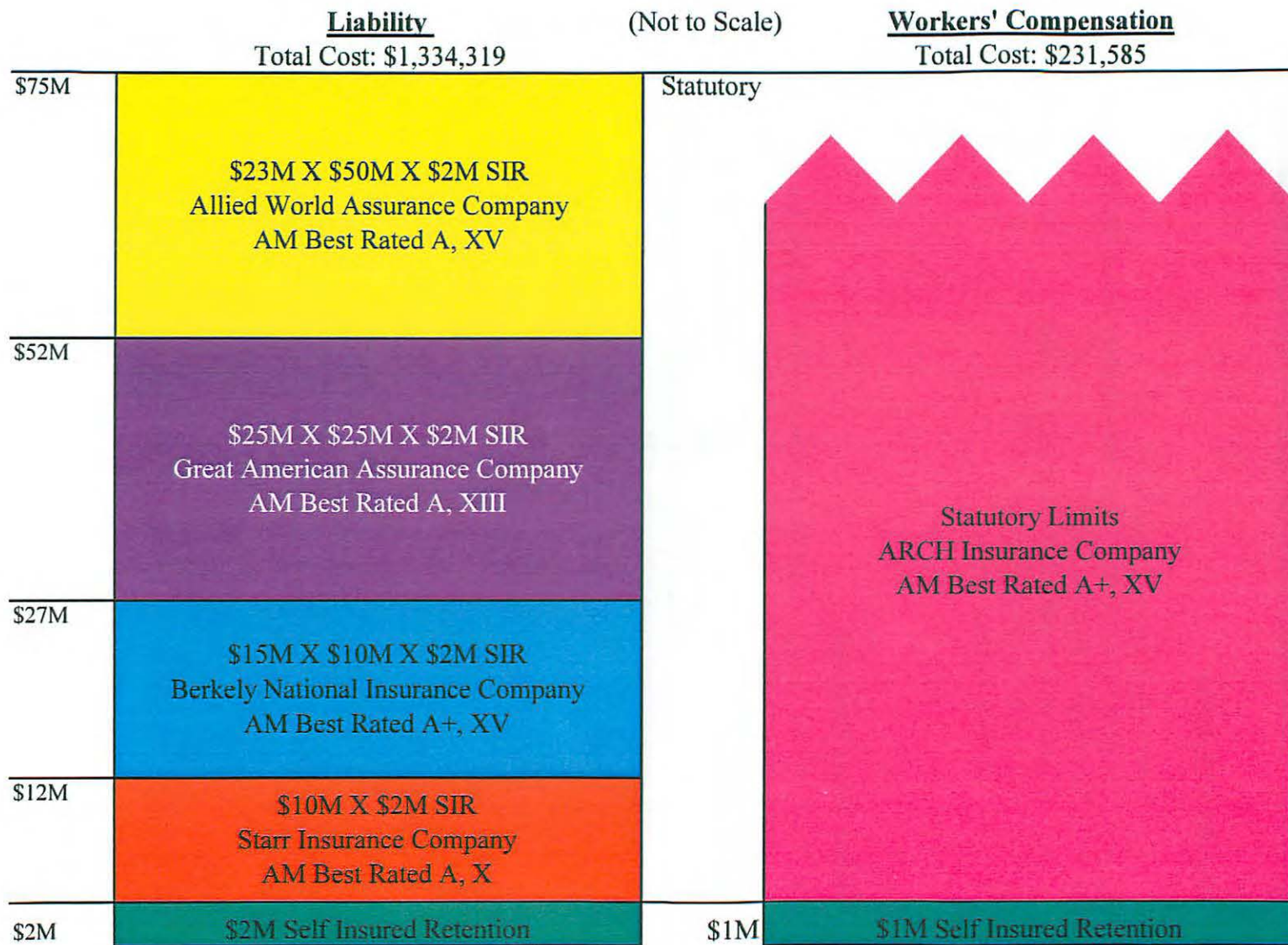
NAMED INSURED / ADDITIONAL NAMED INSUREDS

Named Insured(s):

- Metropolitan Transit System (MTS)
- San Diego Metropolitan Transit Development Board (MTDB)
- San Diego Trolley, Inc. (SDTI)
- San Diego & Arizona Eastern Railway (SD&AE)
- San Diego Transit Corporation (SDTC)
- San Diego Vintage Trolley

Named Insured Disclosure

- The first named insured is granted certain rights and responsibilities that do not apply to other policy named insureds and is designated to act on behalf of all insureds for making policy changes, receiving correspondence, distributing claim proceeds, and making premium payments.
- **Are ALL entities listed as named insureds?** Coverage is **NOT** automatically afforded to all entities unless specifically named. Confirm with Alliant that all entities to be protected are on the correct policy. Not all entities may be listed on all policies based on coverage line.



COST OF RISK – RENEWAL PREMIUM COMPARISON

Expiring Compared to Renewal

| Coverage | Expiring | Renewal |
|------------------------------------|--------------------|--------------------|
| Excess Liability – Layer 1 | \$715,401 | \$733,074 |
| Excess Liability – Layer 2** | \$323,949 | \$289,245 |
| Excess Liability – Layer 3 | \$225,000 | \$217,000 |
| Excess Liability – Layer 4*** | \$112,922 | \$95,000 |
| <i>Excess Liability Sub Total:</i> | <i>\$1,377,272</i> | <i>\$1,334,319</i> |
| Excess Workers' Compensation | \$242,937 | \$231,585 |
| Total Annual Premium | \$1,620,209 | \$1,565,904 |

*Costs include all applicable taxes and fees

**Berkley Renewal Premium

***AWAC Renewal Premium

| 2012/13 | | Expiring Placement - for Reference | | | | | | | |
|--------------|---|------------------------------------|------------------------------|---------------------|-------------------|----------------------|----------------------------------|---------------------------|-------------------------|
| Layer | | Limit & Attachment | Annual Premium w/o Terrorism | Terrorism Surcharge | Terrorism Elected | Premium w/ Terrorism | Surplus Lines Taxes & Fees 3.25% | Grand Total (w/ SL T&F's) | Price / Mil (incl TRIA) |
| 1 | Starr Indemnity & Liability Company (Admitted) | 10M x 2M SIR | \$ 701,400 | \$ 14,001 | Yes | \$ 715,401 | N/A | \$ 715,401 | \$ 71,540.10 |
| 2 | Endurance (Non-Admitted) | 15M x 10M x 2M SIR | \$ 312,289 | \$ 1,463 | Yes | \$ 313,752 | \$ 10,197 | \$ 323,949 | \$ 20,916.80 |
| 3 | Great American (Admitted) | 25M x 25M x 2M SIR | \$ 222,750 | \$ 2,250 | Yes | \$ 225,000 | N/A | \$ 225,000 | \$ 9,000.00 |
| 4 | AXIS Surplus (Non-Admitted) | 23M x 50M x 2M SIR | \$ 104,799 | \$ 4,569 | Yes | \$ 109,368 | \$ 3,554 | \$ 112,922 | \$ 4,755.13 |
| TOTAL | | | \$ 1,341,238 | | | \$ 1,363,521 | | \$ 1,377,272 | |

2013/14 Options

| 2013/14 | | Option 1 - "Renew As Expiring" | | | | | | | |
|--------------|---|--------------------------------|------------------------------|---------------------|-------------------|----------------------|----------------------------------|---------------------------|-------------------------|
| Layer | | Limit & Attachment | Annual Premium w/o Terrorism | Terrorism Surcharge | Terrorism Elected | Premium w/ Terrorism | Surplus Lines Taxes & Fees 3.20% | Grand Total (w/ SL T&F's) | Price / Mil (incl TRIA) |
| 1 | Starr Indemnity & Liability Company (Admitted) | 10M x 2M SIR | \$ 718,700 | \$ 14,374 | | \$ 733,074 | N/A | \$ 733,074 | \$ 73,307.40 |
| 2 | Endurance (Non-Admitted) | 15M x 10M x 2M SIR | \$ 297,000 | \$ 3,000 | | \$ 300,000 | \$ 9,600 | \$ 309,600 | \$ 20,000.00 |
| 3 | Great American (Admitted) | 25M x 25M x 2M SIR | \$ 214,850 | \$ 2,150 | | \$ 217,000 | N/A | \$ 217,000 | \$ 8,680.00 |
| 4 | AXIS Surplus (Non-Admitted) | 23M x 50M x 2M SIR | \$ 110,500 | \$ 5,525 | | \$ 116,025 | \$ 3,713 | \$ 119,738 | \$ 5,044.57 |
| TOTAL | | | \$ 1,341,050 | \$ 25,049 | | \$ 1,366,099 | \$ 13,313 | \$ 1,379,412 | |

| | |
|------------------------|----------|
| % Delta Over Expiring | 0.16% |
| \$ Delta Over Expiring | \$ 2,139 |

| 13/14 Layering | | Option 2 (Recommended) - "Renew as expiring, except with Berkley (on 15X10) & AWAC (on 23X50)" | | | | | | | |
|----------------|---|--|------------------------------|---------------------|-------------------|----------------------|----------------------------------|---------------------------|-------------------------|
| Layer | | Limit & Attachment | Annual Premium w/o Terrorism | Terrorism Surcharge | Terrorism Elected | Premium w/ Terrorism | Surplus Lines Taxes & Fees 3.20% | Grand Total (w/ SL T&F's) | Price / Mil (incl TRIA) |
| 1 | Starr Indemnity & Liability Company (Admitted) | 10M x 2M SIR | \$ 718,700 | \$ 14,374 | | \$ 733,074 | N/A | \$ 733,074 | \$ 73,307.40 |
| 2 | Berkley Custom (Admitted) | 15M x 10M x 2M SIR | \$ 286,382 | \$ 2,863 | | \$ 289,245 | N/A | \$ 289,245 | \$ 19,283.00 |
| 3 | Great American (Admitted) | 25M x 25M x 2M SIR | \$ 214,850 | \$ 2,150 | | \$ 217,000 | N/A | \$ 217,000 | \$ 8,680.00 |
| 4 | AWAC (Admitted) | 23M x 50M x 2M SIR | \$ 94,050 | \$ 950 | | \$ 95,000 | N/A | \$ 95,000 | \$ 4,130.43 |
| TOTAL | | | \$ 1,313,982 | \$ 20,337 | | \$ 1,334,319 | \$ - | \$ 1,334,319 | |

| | |
|------------------------|-------------|
| % Delta Over Expiring | -3% |
| \$ Delta Over Expiring | \$ (42,953) |

LINE OF COVERAGE

Excess Liability – First Layer - Starr

| | | |
|---|--|--|
| INSURANCE COMPANY: | <i>Starr Indemnity & Liability Company</i> | |
| A.M. BEST RATING: | A (Excellent) X (\$500 Million to \$750 Million) | |
| STANDARD & POOR'S RATING: | N/A | |
| CALIFORNIA STATUS: | Admitted | |
| POLICY / COVERAGE TERM: | 3/1/2013 to 3/1/2014 at 12:01 A.M. standard time at the address of the Named Insured | |
| Coverage Form: | PE 1001 (12-10) Special Excess Liability Policy for Public Entities | |
| Limits: | | |
| Aggregate Limits | \$10,000,000 | Products-Completed Operations Hazard |
| | N/A | Errors and Omissions Liability |
| | \$10,000,000 | Employment Liability Wrongful Acts |
| | \$10,000,000 | Employee Benefit Liability |
| Per "Occurrence" or "Wrongful Act" or "Employee Benefit Wrongful Act" Limit | \$10,000,000 | Any one "occurrence", "wrongful act", or "employee benefit wrongful act" or series of continuous, repeated, or related "occurrences", "wrongful acts" or "employee benefit wrongful acts" in excess of your "retained limit" |
| Per "Employment Practice Liability Wrongful Act Limit | \$10,000,000 | Any one "employment practice liability wrongful act" or series of continuous, repeated, or related "employment practice liability wrongful acts" in excess of your "retained limit" |
| Retained Limit: | \$2,000,000 | Any one "occurrence" or "wrongful act" or "employee benefit wrongful act" or series of continuous, repeated, or related "occurrences", "wrongful acts" or "employee benefit wrongful acts" |
| | \$2,000,000 | Any one "employment practice liability wrongful act" or series of continuous, repeated, or related "employment practice liability wrongful acts" |
| Defense Inside/Outside: | Inside the limits and Retention | |
| Who has the Duty to Defend: | 1. Starr has the right and duty to defend the insured against any claim or suit seeking damages for bodily injury, property damage, personal and advertising injury, wrongful acts, employment practice liability wrongful acts or employment benefit wrongful acts to which this insurance applies when the retained limit has been exhausted by payment to a third party of judgments, settlements or defense costs. | |

LINE OF COVERAGE

Excess Liability – First Layer – Starr, continued

Who has the Duty to Defend, cont:

2. When Starr has no duty to defend, they have the right to defend, or participate in the defense of, the insured against any other suit seeking damages for bodily injury, property damage, personal and advertising injury, wrongful acts, employment practice liability wrongful acts or employment benefit wrongful acts to which this insurance may apply. However, they will have no duty to defend the insured against any suit seeking damages to which this insurance does not apply.
3. At Starr's discretion, they may investigate any occurrence, wrongful act or employee benefit wrongful act that may involve this insurance and settle any resultant claim or suit for which they have the duty to defend. But:
 - a. The amount Starr will pay for damages is limited as described in the "Limits of Insurance"; and
 - b. Starr's right and duty to defend ends when we have used up the applicable Limit of Insurance in the payment of judgments, settlements or defense costs.

Endorsement & Exclusions: (including but not limited to)

- PE 1000 D 10 10 Special Excess Liability Policy for Public Entities
Declarations
- PE 1098 11 10 Policy Changes
- PE 1001 12 10 Special Excess Liability Policy for Public Entities
- PE 1008 10 10 Reimbursement of Defense Costs – Employment Practice
Liability Wrongful Act
- PE 1015 10 10 Additional Insured – Insured Contract
- PE 1026 10 10 Exclusion of Certified Acts of Terrorism
- PE 1029 CA 11 10 California Changes – Cancellation and Nonrenewal
- PE 1105 11 10 Violation of Statutes that Govern Emails, Fax, Phone Calls
or Other Methods of Sending Material or Information
Exclusion
- PE 1109 11 10 War Exclusion
- PE 1142 04 11 Amendment – Transit Agencies
- XS CLAIMS NOTICE CV Starr Excess Casualty Program Claim Reporting
Guidelines

LINE OF COVERAGE

Excess Liability – First Layer – Starr, continued

| | |
|--------------------------------|--|
| Premium: | \$718,700.00 |
| Minimum Earned Premium: | \$179,675.00 |
| TRIA Premium: | \$14,374.00 (Optional) Not included in the above premium) |
| Policy Auditable: | N/A |
| Binding Conditions: | <ul style="list-style-type: none"> • Written Request to Bind Coverage |
| Quote Valid Until: | 3/1/2013 |

CLAIMS REPORTING NOTICE

Your policy will come with specific claim reporting requirements. Please make sure you understand these obligations. Contact your Alliant Service Team with any questions.

Name Insureds are covered for all operations. Additional insureds are only covered with respect to their interest in your operations. See each individual policy for details.

LINE OF COVERAGE

Excess Liability – Second Layer Option - Berkley

| | | |
|--|--|---|
| INSURANCE COMPANY: | <i>Berkley National Insurance Company</i> | |
| A.M. BEST RATING: | A+ (Superior) XV (\$2 Billion or greater) | |
| STANDARD & POOR'S RATING: | A+ | |
| CALIFORNIA STATUS: | Admitted | |
| POLICY / COVERAGE TERM: | 3/1/2013 to 3/1/2014 at 12:01 A.M. Standard Time at the mailing address of the Named Insured | |
| Coverage Form: | Excess Liability Form – CX 00 01 09 08 | |
| Limits: | | |
| | \$15,000,000 | Each Occurrence |
| | \$15,000,000 | General Aggregate (where applicable) |
| | | Excess of scheduled underlying insurance and or Retained Limit |
| Underlying Coverages & Limits: | | |
| Starr Indemnity & Liability Company | | |
| Aggregate Limits | | |
| | \$10,000,000 | Products-Completed Operations Hazard Aggregate |
| | N/A | Errors and Omissions Liability Aggregate |
| | \$10,000,000 | Employment Practice Liability Wrongful Acts Aggregate |
| | \$10,000,000 | Employee Benefit Liability Aggregate |
| Per Occurrence or Wrongful Act or Employee Benefit Wrongful Act Limit | | |
| | \$10,000,000 | Any one occurrence, wrongful act or employee benefit wrongful act or series of continuous, repeated, or related occurrences, wrongful acts or employee benefit wrongful acts in excess of your retained limit |
| Per Employment Practice Liability Wrongful Act Limit | | |
| | \$10,000,000 | Any one employment practice liability wrongful act or series of continuous, repeated or related employment practice liability wrongful acts in excess of your retained limit |
| Excess of: | | |
| Retained Limit: | | |
| | \$2,000,000 | Any one occurrence, wrongful act or employee benefit wrongful act or series of continuous, repeated, or related occurrences, wrongful acts or employee benefit wrongful acts |
| | \$2,000,000 | Any one employment practice liability wrongful act or series of continuous, repeated or related employment practice liability wrongful acts |

LINE OF COVERAGE

Excess Liability – Second Layer Option – Berkley, continued

Employers Liability Underlying Insurance and or Retained Amount Excess of the Starr Indemnity & Liability Company Limits stated above or \$10,000,000 Retained Amount

| | |
|-------------|------------------|
| \$2,000,000 | each Employee |
| \$2,000,000 | per Disease |
| \$2,000,000 | Policy Aggregate |

The following Terms & Conditions listed below are found to be part of the Starr Indemnity & Liability Company Policy:

Exclusions: Per Policy Form PE 1001 (12-10) and:

- Certified Acts of Terrorism
- Violation of Statutes that Govern Emails, Fax, Phone Calls or Other Methods of Sending Material or Information
- War

Attachments:

- Special Excess Liability Policy for Public Entities Declarations
- Policy Changes
- Special Excess Liability Policy for Public Entities
- Reimbursement of Defense Costs – Employment Practice Liability Wrongful Act
- Additional Insured – Insured Contract
- California Changes – Cancellation and Nonrenewal
- Amendment – Transit Agencies
- CV Starr Excess Casualty Program Claim Reporting Guidelines

Berkley National Insurance Company's Excess Liability Policy shall follow the Starr Indemnity & Liability Company terms listed above but shall otherwise:

Exclude:

- Asbestos – Absolute
- Nuclear Energy Liability
- War Liability
- Financial Services
- Certified Acts of Terrorism & Other Acts of Terrorism

Other Attachments:

- State Amendatory Endorsement(s)
- TRIA Rejection/Acceptance
- Following Form Underlying Aggregates Endorsement
- Cap on Losses from Certified Acts of Terrorism – If TRIA is accepted
- OFAC Notification

LINE OF COVERAGE

Excess Liability – Second Layer Option – Berkley, continued

| | |
|----------------------------|--|
| | <ul style="list-style-type: none">• Claims Notice |
| Special Conditions: | <ul style="list-style-type: none">• Cancellation term is 90 days. Term is 10 days for non-payment of premium. |
| Subjectivities: | <ul style="list-style-type: none">• Subject to receipt of TRIA acceptance/rejection form.• Subject to pricing of layers above our participation |
| Premium: | \$286,382 |
| TRIA Premium: | \$2,863 (Optional) In addition to above premium |
| Quote Valid Until: | 3/1/2013 |

CLAIMS REPORTING NOTICE

Your policy will come with specific claim reporting requirements. Please make sure you understand these obligations. Contact your Alliant Service Team with any questions.

LINE OF COVERAGE

Excess Liability – Second Layer Option – Endurance

INSURANCE COMPANY: *Endurance American Specialty Insurance Company*
A.M. BEST RATING: A (Excellent), XV (\$2 Billion or greater)
STANDARD & POOR'S RATING: A
CALIFORNIA STATUS: Non-Admitted
POLICY / COVERAGE TERM: 3/1/2013 to 3/1/2014 at 12:01 A.M. Standard Time at the mailing address of the Named Insured

Coverage Form: Excess Liability

Limits:
 \$15,000,000 Each Occurrence
 \$15,000,000 Aggregate Limit (Where Applicable), which in turn, is excess of the **Scheduled Underlying Limits** of insurance below

Underlying Coverages & Limits:
 Starr Indemnity & Liability Company

Aggregate Limits
 \$10,000,000 Products-Completed Operations Hazard Aggregate
 N/A Errors and Omissions Liability Aggregate
 \$10,000,000 Employment Practice Liability Wrongful Acts Aggregate
 \$10,000,000 Employee Benefit Liability Aggregate

Per Occurrence or Wrongful Act or Employee Benefit Wrongful Act Limit
 \$10,000,000 Any one "occurrence" or "wrongful act" or "employee benefit wrongful act" or series of continuous, repeated, or related "occurrences", "wrongful acts" or "employee benefit wrongful acts". Each and Every.
 Any one occurrence, wrongful act or employee benefit wrongful act or series of continuous, repeated, or related occurrences, wrongful acts or employee benefit wrongful acts in excess of your retained limit

Per Employment Practice Liability Wrongful Act Limit
 \$10,000,000 •
 Any one employment practice liability wrongful act or series of continuous, repeated or related employment practice liability wrongful acts in excess of your retained limit

Required Underlying:
 Excess Employers Liability \$2,000,000/\$2,000,000 excess of \$1,000,000 SIR

LINE OF COVERAGE

Excess Liability – Second Layer Option – Endurance, continued

The following Terms & Conditions listed below are found to be part of the Starr Indemnity & Liability Company Policy:

Exclusions: Per Public Entity Excess Liability Form and:

- Certified Acts of Terrorism (unless coverage is purchased)
- Violation of Statutes that Govern Emails, Fax, Phone Calls or Other Methods of Sending Material or Information
- War

Attachments, Additional Terms and Comments

- California Changes – Cancellation and Non-Renewal
- Amendment – Transit Agencies
- Policy Changes Endorsement (as per expiring: Remove Exclusion V; Amend Definition Y; (subsidence); and Complete Description of Named Insured)
- Reimbursement of Defense Costs for Employment Related Practice Liability Wrongful Act
- Additional Insured – Insured Contract
- CV Starr Excess Casualty Program Claim Reporting Guidelines

Endurance American Specialty Insurance Company's Excess Liability Policy shall follow the Starr Indemnity & Liability Company Terms & Conditions, but shall otherwise:

Exclude:

- | | |
|---------------|---|
| Per Form | • Asbestos – Absolute |
| Per Form | • Nuclear Energy |
| EXL 0562 0606 | • War Liability |
| EXL 0503 0606 | • Silica Exclusion |
| EXL 1201 0108 | • Certified Acts of Terrorism & Other Acts of Terrorism |
| EXL 0538 0606 | • Following Form Pollution Exclusion |
| EXL 0585 0608 | • Sub-Limited Coverage Exclusion |

Additional Attachments:

- | | |
|---------------|---|
| EXL 1302 0512 | • Claim Notice with E-Claim Notice |
| | • CA Surplus Lines Notice |
| EXL 09020606 | • Amendatory Endorsement (Defense Expense Included in the Company's Limits) |
| EXL 1301 0512 | • Service of Suit |
| | • OFAC Notice |

Special Conditions:

- Cancellation term is 90 days. Term is 10 days for reasons of non-payment

LINE OF COVERAGE

Excess Liability – Second Layer Option – Endurance, continued

Subjectivities:

Prior to Binding

- Confirmation that any quota-share or higher layer does not attract a higher premium per million than Endurance's layer
- Confirmation of 10 years aggregate ground-up uncapped loss info, including BBO loss
- Details of para-transit exposures – including operations, risk transfer in place, etc.
- Confirmation of owned auto fleet
- Description of operations for San Diego Vintage Trolley
- Acceptable Underlying EL Carrier

Due 3/1/2013

- A signed terrorism acceptance / rejection notice

Minimum Earned Premium:

25%

Premium:

\$300,000 Premium
\$ 9,000 Surplus Lines Tax
\$ 600 Stamping Fee
\$309,600 Total Cost

TRIA Premium:

\$3,000 (Optional) In addition to above premium plus taxes and fees

NRRA Statement: (would only be applicable if insurance company is non-admitted)

The Non-Admitted and Reinsurance Reform Act (NRRA) went into effect on July 21, 2011. Accordingly, surplus lines tax rates and regulations are subject to change which could result in an increase or decrease of the total surplus lines taxes and/or fees owed on this placement. If a change is required, we will promptly notify you. Any additional taxes and/or fees must be promptly remitted to Alliant Insurance Services, Inc.

Quote Valid Until:

3/1/2013

CLAIMS REPORTING NOTICE

Your policy will come with specific claim reporting requirements. Please make sure you understand these obligations. Contact your Alliant Service Team with any questions.

LINE OF COVERAGE

Excess Liability – Third Layer – Great American

INSURANCE COMPANY: *Great American Assurance Company*
A.M. BEST RATING: A (Excellent), XIII (\$1.25 Billion to \$1.50 Billion)
STANDARD & POOR'S RATING: A+
CALIFORNIA STATUS: Admitted
POLICY / COVERAGE TERM: 3/1/2013 to 3/1/2014 at 12:01 A.M. Standard Time at the mailing address of the Named Insured

Coverage Form: Excess Liability Occurrence

Limits:
 \$25,000,000 Each Occurrence
 \$25,000,000 Aggregate (where applicable)

Excess of:
 Endurance American Specialty Insurance Company or Berkley National Insurance Company
 \$15,000,000 Each Occurrence
 \$15,000,000 Aggregate (where applicable)

First Underlying Insurance:
 Starr Indemnity & Liability Company

Aggregate Limits
 \$10,000,000 Products-Completed Operations Hazard Aggregate
 N/A Errors and Omissions Liability Aggregate
 \$10,000,000 Employment Practice Liability Wrongful Acts Aggregate
 \$10,000,000 Employee Benefit Liability Aggregate

Per Occurrence or Wrongful Act or Employee Benefit Wrongful Act Limit
 Any one "occurrence" or "wrongful act" or "employee benefit wrongful act" or series of continuous, repeated, or related "occurrences", "wrongful acts" or "employee benefit wrongful acts". Each and Every.
 \$10,000,000 Any one occurrence, wrongful act or employee benefit wrongful act or series of continuous, repeated, or related occurrences, wrongful acts or employee benefit wrongful acts in excess of your retained limit

Per Employment Practice Liability Wrongful Act Limit
 •
 \$10,000,000 Any one employment practice liability wrongful act or series of continuous, repeated or related employment practice liability wrongful acts in excess of your retained limit

Retained Limit:
 \$2,000,000 Any one occurrence, wrongful act or employee benefit wrongful act or series of continuous, repeated, or related occurrences, wrongful acts or employee benefit wrongful acts – each & every

LINE OF COVERAGE

Excess Liability – Third Layer – Great American, continued

Retained Limit, continued

\$2,000,000 Any one employment practice liability wrongful act or series of continuous, repeated or related employment practice liability wrongful acts– each & every

Terms and Conditions:

Policy Form:

Excess Liability Coverage Form – GAI6524 (06/97)

This referenced form and any attachments, and/or exclusions thereto become the contract of insurance once a binder is issued. Please review all the coverages, terms, restrictions and limitations of the form, exclusions and attachments for a complete description of the coverages being outlined within this proposal.

Lead Forms, Exclusions, and/or Limitations:

We will follow all of the exclusions and limitations of the Starr Indemnity & Liability Co Excess form and any additional exclusions/modifications/limitations as noted in their quote.

Attachments:

- Reimbursement of Defense Costs – Employment Practices
- Violation of Statutes that Govern Emails Exclusion
- War Exclusion
- Amendment - Transit Agencies – Exclusion “O” for Transit Agencies is deleted
- Policy Changes
- Additional Insured – Insured Contract

The Starr Indemnity & Liability Co Special Excess Liability Policy for Public Entities contains the following exclusions:

- Property damage to property owned by you
- Contractual liability
- Pollution with hostile fire exception
- Operation of any hospital or other healthcare facility
- Eminent domain
- Subsidence
- Nuclear
- Failure to supply electricity, fuel or water

Our Exclusions, Limitations and/or Attachments:
Exclusions:

- Email, Fax or Phone Exclusion
 - War Liability Exclusion
- GAI6827 (10/04)
- GAI6650 (03/03)

LINE OF COVERAGE

Excess Liability – Third Layer – Great American, continued

Attachments:

- GAI6966 (04/09) • Pollution Liability Coverage-Follow Form
- GAI6597 (06/97) • Loss Defense within Limits Amendment
- GAI6011 (06/97) • Cancellation Amendatory – 90 days
- GAI6965 (11/10) • Following Form Coverage Endorsement
- GAI6704 (08/12) • State Amendatory: CA Changes

If Terrorism Coverage Is Accepted will attach the following:

- GAI6452 (01/08) • Cap on Losses from Certified Acts
- GAI6472 (01/08) • Disclosure Pursuant to TRIA Act

Premium: \$217,000

TRIA Premium: \$2,150 (Optional) INCLUDED in above premium

Quote Valid Until: 3/1/2013

CLAIMS REPORTING NOTICE

Your policy will come with specific claim reporting requirements. Please make sure you understand these obligations. Contact your Alliant Service Team with any questions.

LINE OF COVERAGE

Excess Liability – Fourth Layer Option – AWAC

INSURANCE COMPANY: *Allied World Assurance Company (U.S.), Inc.*
A.M. BEST RATING: A (Excellent), XV (\$2 Billion or greater)
STANDARD & POOR'S RATING: A
CALIFORNIA STATUS: Admitted
POLICY / COVERAGE TERM: 3/1/2013 to 3/1/2014 at 12:01 A.M. Standard Time at the mailing address of the Named Insured

Coverage Form: Excess Liability GL 00126 00 (06/07)

Limits:
 \$23,000,000 Each Occurrence
 \$23,000,000 Other Aggregate (Where Applicable)
 \$23,000,000 Products/Completed Operations Aggregate

Limits of Underlying Excess Insurance:
 \$50,000,000 Each Occurrence
 \$50,000,000 Products/Completed Operations Aggregate
 \$50,000,000 Other Aggregate (Where Applicable)

This QUOTATION contemplates the following primary underlying insurance and/or self-insured retentions:

Excess Follow Form:

Carrier: Great American Assurance Company
 Policy Limits:
 \$25,000,000 Each Occurrence
 \$25,000,000 Aggregate

Which is in excess of:

Carrier: Berkley Insurance Company
 Policy Limits:
 \$15,000,000 Each Occurrence
 \$15,000,000 Aggregate

Which is in excess of:

Carrier: Starr Indemnity & Liability Company
 \$10,000,000 Per "Occurrence" or "Wrongful Act" or "Employee Benefit Wrongful Act" Limit
 \$10,000,000 Per "Employment Practice Liability Wrongful Act" Limit
 \$10,000,000 Products-Completed Operations Hazard Aggregate
 \$10,000,000 "Employment Practice Liability Wrongful Acts" Aggregate
 \$10,000,000 Employee Benefits Liability Aggregate

Which is further excess of:

\$2,000,000 Each Occurrence Self Insured Retention

Applicable AWAC Endorsements:

GL 00139 00 (12/11) AWAC – U.S. Follow-Form Occurrence – Claims Made – Declarations
 00135 00 (11/05) Schedule of Underlying Insurance

LINE OF COVERAGE

Excess Liability – Fourth Layer Option– AWAC, continued

Applicable AWAC Endorsements: , continued

| | |
|---------------------|--|
| 00135 (11/05) | U.S. Treasury Departments Office Of Foreign Assets Control ("OFAC") Advisory Notice To Policyholders |
| 00241 (11/05) | Asbestos Exclusion |
| GL 00117 00 (01/08) | Policyholder Disclosure Statement Under the Terrorism Risk Insurance Act |
| GL 00286 04 (02/07) | California Amendatory Endorsement |
| GL 00366 (09/11) | Other Aggregate Limit Amendatory |

Quotation Terms and Conditions:

- This QUOTATION is subject to review if there are any significant changes in operations, exposure or experience prior to Allied World's binding
- Any restrictive policy terms and conditions that apply to underlying policies that are in excess of the Followed Policy but underlying to Allied World Excess Policy will also apply to the Allied World Excess limit of liability. Any additional endorsements to the Allied World Policy will be determined upon review of the above-required documentation.
- Allied World cannot release Policy documentation without:
 1. A complete copy of the Followed Policy (including all endorsements and scheduled), inclusive of underlying layers or other documentation.

Subjectivities:

This QUOTATION is subject to receipt, review and acceptance of the following items at binding:

- Completed and signed TRIA Disclosure Statement
- Underlying Binders
- Please verify limits carried by freight carriers and contractual arrangements with SDMTS concerning operations

| | |
|--------------------------------|---|
| Minimum Earned Premium: | 25% |
| Premium: | \$94,050 Premium |
| TRIA Premium: | \$950 (Optional) In addition to above premium |
| Quote Valid Until: | 3/1/2013 |

CLAIMS REPORTING NOTICE

Your policy will come with specific claim reporting requirements. Please make sure you understand these obligations. Contact your Alliant Service Team with any questions.

LINE OF COVERAGE

Excess Liability – Fourth Layer Option– AXIS

INSURANCE COMPANY: *AXIS Surplus Insurance Company*
A.M. BEST RATING: A (Excellent), XV (\$2 Billion or greater)
STANDARD & POOR'S RATING: A+
CALIFORNIA STATUS: Non-Admitted
POLICY / COVERAGE TERM: 3/1/2013 to 3/1/2014 at 12:01 A.M. Standard Time at the mailing address of the Named Insured

Coverage Form: Excess Liability Policy (XLP-0001-01-03)

Limits:
 \$23,000,000 Each Occurrence
 \$23,000,000 General Aggregate
 \$23,000,000 Products/Completed Operations Aggregate Limit

Schedule of Underlying Insurance:

First Underlying Insurance:
 Coverage Type: 3rd Excess Liability
 Policy Form: Occurrence
 Policy Number: TBD
 Carrier: Great American Insurance Company
 Coverage Date: 3/1/2013 - 3/1/2014
 Defense Expense Inclusive of limits
 \$25,000,000 Aggregate where Applicable
 \$25,000,000 Each Occurrence Limit

Note: No other underlying coverages or underlying policies will be scheduled.

Exclusions within our policy form include but are not limited to:

- Asbestos
- Cyber Liability
- Fungi or Bacteria
- Pollution
- War or Terrorism

Additional Terms & Conditions:

Exclusions
 XLX-4006-01-03 Auto No-Fault & Similar Laws Excl.
 XLX-4044-01-04 Lead Exclusion
 XLX-4054-06-04 Silica Exclusion
 XLX-4059-01-05 Violation of Statutes that Govern E-Mails, Fax, or Phone Calls

Endorsements

XLE-5000-01-03 Contractors
 XLE-5006-01-03 Minimum Earned Premium
 XLE-5023-01-04 Deletion of Pollution Exclusion - Amendatory Endt.
 Service of Suit Endorsement

LINE OF COVERAGE

Excess Liability – Fourth Layer Option – AXIS, continued

Endorsements, continued

| | |
|----------------|--|
| CA (11-06) | SOS |
| XLE-5009-12-07 | Terrorism w/ Exception of Certified Acts |
| CA (09-11) | SLN |

Notes & Subjectivities:

- This quote is being offered in reliance upon the information submitted to us. By accepting this quote, and/or by binding this quote, the applicant warrants that the information is true and complete and that no material facts have been willfully misrepresented, omitted, or suppressed.
- Terms and conditions are subject to change (effective policy inception), contingent upon review of underlying policies and declarations.

Minimum Earned Premium:

25%

Premium:

\$110,500 Premium
 \$ 3,315 Surplus Lines Tax
\$ 221 Stamping Fee
\$114,036 Total Cost

TRIA Premium:

\$5,252 (Optional) In addition to above premium plus taxes and fees

NRRA Statement: (would only be applicable if insurance company is non-admitted)

The Non-Admitted and Reinsurance Reform Act (NRRA) went into effect on July 21, 2011. Accordingly, surplus lines tax rates and regulations are subject to change which could result in an increase or decrease of the total surplus lines taxes and/or fees owed on this placement. If a change is required, we will promptly notify you. Any additional taxes and/or fees must be promptly remitted to Alliant Insurance Services, Inc.

Quote Valid Until:

3/1/2013

CLAIMS REPORTING NOTICE

Your policy will come with specific claim reporting requirements. Please make sure you understand these obligations. Contact your Alliant Service Team with any questions.

LINE OF COVERAGE

Excess Workers Compensation - ACE

INSURANCE COMPANY: *ACE American Insurance Company*
A.M. BEST RATING: A+ (Superior), XV (\$2 Billion or greater)
STANDARD & POOR'S RATING: AA-
CALIFORNIA STATUS: Admitted
POLICY / COVERAGE TERM: 3/1/2013 to 3/1/2014

Coverage: Excess Workers Compensation and Employers Liability

Limits:
 Statutory Workers Compensation
 \$2,000,000 Employers Liability Each Accident
 \$2,000,000 Employers Liability Each Employee for Disease

Self Insured Retention:
 For Workers Compensation and Employers Liability Combined
 \$1,000,000 Each Accident / Each Employee for Disease

Estimated Payroll: \$75,336,576

Rate per \$100 of Payroll: .4293

Endorsement & Exclusions: (including but not limited to)

CKE-1167k 10/06 ACE Specific Excess Workers' Compensation and Employers' Liability Policy
 CK-12887b 04/05 Loss and Expense Adjustment Endorsement - ALAE Included
 WC 99 04 44 08/06 Notification of Premium Adjustment
 CKE-18768a 01/07 Voluntary Compensation Schedule
 WC 99 04 59a 01/08 Cap on Losses from Certified Acts of Terrorism
 CK 18364a 09/05 Name and Address Amendatory Endorsement

Disclosures and Notices:

WC 99 03 42 10/06 ACE Producer Compensation Practices & Policies
 TRIA 11b 01/08 Disclosure Notice of Terrorism Insurance Coverage
 WC 99 07 73 11/06 Trade and Economic Sanctions Endorsement
 ILP 001 01 04 US Treasury Department (OFAC) Notice
 TR 19606c Attachment: TRIA Disclosure

Conditions:

Payment Plan: The estimated premium is due in full at inception
Audit: The estimated premium is minimum and deposit with upward adjustment only
Aircraft: The insured must notify ACE of any new, additional or replacement aircraft (owned or leased) within 30 days of acquisition.

LINE OF COVERAGE

Excess Workers Compensation – ACE, continued

Claims Administration: TriStar

As a condition of binding coverage ACE will require agreement with the following stipulations:

ACE USA Claims or, at our discretion, a designated vendor of ACE, will audit the claims handling process within 60 days after binding coverage. ACE is not obligated to share the results of our claims audit as part of a condition for binding coverage

ACE USA will not be required to supply system generated loss information under our program. The insured must supply loss data in a form that meets the ACE Excess WC submission requirements as documented under our program

The insured must adhere to the notification requirements as documented under our program.

Deposit Premium: \$323,442

Minimum Premium:1 100%

Quote Valid Until: 2/28/2013

CLAIMS REPORTING NOTICE

Your policy will come with specific claim reporting requirements. Please make sure you understand these obligations. Contact your Alliant Service Team with any questions.

LINE OF COVERAGE

Excess Workers Compensation - Arch

| | | | | | | | | | |
|---|--|-----------|----------------------|-------------|-----------------------------------|-------------|---|-------------|-------------------------------|
| INSURANCE COMPANY: | <i>Arch Insurance Company</i> | | | | | | | | |
| A.M. BEST RATING: | A+ (Superior), XV (\$2 Billion or greater) | | | | | | | | |
| STANDARD & POOR'S RATING: | AA- | | | | | | | | |
| CALIFORNIA STATUS: | Admitted | | | | | | | | |
| POLICY / COVERAGE TERM: | 3/1/2013 to 3/1/2014 | | | | | | | | |
| Coverage: | Excess Workers Compensation and Employers Liability | | | | | | | | |
| Limits: | <table> <tr> <td>Statutory</td><td>Workers Compensation</td></tr> <tr> <td>\$2,000,000</td><td>Employers Liability Each Accident</td></tr> <tr> <td>\$2,000,000</td><td>Employers Liability Each Employee for Disease</td></tr> <tr> <td>\$2,000,000</td><td>Employers Liability Aggregate</td></tr> </table> | Statutory | Workers Compensation | \$2,000,000 | Employers Liability Each Accident | \$2,000,000 | Employers Liability Each Employee for Disease | \$2,000,000 | Employers Liability Aggregate |
| Statutory | Workers Compensation | | | | | | | | |
| \$2,000,000 | Employers Liability Each Accident | | | | | | | | |
| \$2,000,000 | Employers Liability Each Employee for Disease | | | | | | | | |
| \$2,000,000 | Employers Liability Aggregate | | | | | | | | |
| Self Insured Retention: | | | | | | | | | |
| For Workers Compensation and Employers Liability Combined | | | | | | | | | |
| \$1,000,000 | Each Accident / Each Employee for Disease | | | | | | | | |
| Estimated Payroll: | \$75,336,576 | | | | | | | | |
| Rate per \$100 of Payroll: | .3074 | | | | | | | | |
| Endorsement & Exclusions: (including but not limited to) | <ul style="list-style-type: none"> • Named Insured Addition Endorsement • Losses Redefined to Include Allocated Loss Adjustment Expenses Endorsement • California Foreign Voluntary Compensation and Employers Liability and Repatriation Coverage Endorsement • Terrorism Risk Insurance Program Reauthorization Act Endorsement • California Amendatory Endorsement | | | | | | | | |
| Deposit Premium: | \$231,585 | | | | | | | | |
| Minimum Premium: | 100% | | | | | | | | |
| Terrorism Premium: | \$6,948 this premium is INCLUDED in, not in addition, to the Policy Premium | | | | | | | | |
| Quote Valid Until: | 2/28/2013 | | | | | | | | |

CLAIMS REPORTING NOTICE

Your policy will come with specific claim reporting requirements. Please make sure you understand these obligations. Contact your Alliant Service Team with any questions.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
2013-14 Excess Workers' Compensation
Marketing Results - All Options

2013/14 Estimated Payroll: \$ 75,336,576

2012/13 Carrier
 2012/13 S.I.R.
 2012/13 Rate
 2012/13 Premium
 2012/13 Payroll

ACE American Insurance Company
 \$1,000,000
 0.3624
 \$242,937
 \$67,040,378

| Carrier | Rate Per \$100 of Payroll | Rate Delta over Expiring | TRIA (Optional) | Estimated Premium | Workers Compensation Limit | Employers Liability Limit | Self Insured Retention |
|---|---------------------------|--------------------------|-----------------|--|----------------------------|---------------------------|--|
| Excess Quotes | | | | | | | |
| ACE American Insurance Company | 0.4293 | 18% | Included | \$323,442 Minimum Premium | Statutory | \$2,000,000 | \$1,000,000 |
| Arch Insurance Company | 0.3074 | -15% | Included | \$231,585 Minimum & Deposit | Statutory | \$2,000,000 | \$1,000,000 |
| Midlands Insurance Company | 0.7300 | 101% | Included | \$550,000 Deposit Premium | \$50,000,000 | \$1,000,000 | \$1,000,000 |
| Midwest Employers Casualty Option 1 | 0.3584 | -1% | Included | \$270,006 Deposit Premium \$243,006 Minimum Premium | \$10,000,000 | \$1,000,000 | \$1,000,000 |
| Midwest Employer Casualty Option 2 | 0.3040 | -16% | Included | \$229,023 Deposit Premium \$206,121 Minimum Premium | \$10,000,000 | \$1,000,000 | \$1,250,000 |
| Midwest Employer Casualty Option 3 | 0.0264 | -93% | Included | \$198,964 Deposit Premium \$179,068 Minimum Premium | \$10,000,000 | \$1,000,000 | \$1,500,000 |
| Safety National Casualty Corp | 0.4077 | 13% | Included | \$307,147 Deposit Premium \$291,790 Minimum Premium | Statutory | \$2,000,000 | \$1,000,000 |
| Star Insurance Company Option 1 | 0.3673 | 1% | Included | \$276,711 Deposit Premium | Statutory | \$1,000,000 | \$1,000,000 |
| Star Insurance Company Option 2 | 0.3122 | -14% | Included | \$235,201 Deposit Premium | Statutory | \$1,000,000 | \$1,000,000 with a \$250,000 Corridor |
| Star Insurance Company Option 3 | 0.0235 | -94% | Included | \$177,192 Deposit Premium | Statutory | \$1,000,000 | \$2,000,000 |
| Star Insurance Company Option 4 | 0.2204 | -39% | Included | \$166,042 Deposit Premium | Statutory | \$1,000,000 | \$450K/300K/250K Cash Flow |
| Insurance Pool Indication Only** | | | | | | | |
| CSAC EIA Option 1 | 0.38 | 5% | Included | \$286,278 Deposit Premium | Statutory | \$5,000,000 | \$750,000 |
| CSAC EIA Option 2 | 0.30 | -17% | Included | \$226,009 Deposit Premium | Statutory | \$5,000,000 | \$1,000,000 |

MARKETING SUMMARY

Excess Liability

| Company | Results |
|--------------------------------------|---|
| Lead Markets | |
| Starr Indemnity & Liability Company* | Quoted |
| HCC | No response |
| AIG (Lexington/ICSOP) | Capacity constraint if they are to consider stand-alone approach |
| Civic Risk (Scottsdale) | Unable to compete with current pricing |
| Meadowbrook | Waiting for reply (*note issue with current AM Best ratings watch) Likely too far out their underwriting box |
| Following Form Excess Markets | |
| Great American* | Quoted |
| Endurance* | Quoted |
| AXIS* | Quoted |
| ACE Westchester | No response |
| American Safety | No response |
| Arch | No response |
| Berkley Custom | Quoted 15 x 10 x 2 |
| Declinations | |
| Ace | Class of Risk and Size |
| Alteris | Not targeting transit exposures of this size/scope at this time |
| Brit Syndicate | Brit cannot underwrite the light rail exposure |
| Catlin | Doesn't fit appetite |

MARKETING SUMMARY, continued

Excess Liability, continued

| Company | Results |
|--|---|
| Declinations, continued | |
| Genesis | Unable to give a definitive answer within the needed timeline which means they are not viable for this renewal cycle |
| Munich Re | Unable to Compete with pricing |
| One Beacon | Not targeting CA business and outside appetite |
| Travelers | Outside appetite |
| Markel | Outside appetite |
| Railroad Liability (stand-alone tower for SDTI – light rail only) | |
| Gemini | Response pending |
| Indian Harbor (XL) | Interested. Reviewing the submission and losses related to this exposure for further determination. |
| Ironshore | Not a market for primary railroad liability. Would be interested in discussing a possible excess placement |
| Liberty | Response pending |
| Steadfast | Definitely something they are willing to consider. Checking with home office to provide their best possible indication for the Insured to consider moving this exposure under its own separate cover. |

MARKETING SUMMARY, continued

Excess Workers' Compensation

| Company | Results |
|--------------------------------|---|
| Excess Markets | |
| ACE American Insurance Company | Quoted |
| Arch Insurance Co | Quoted |
| Safety National Casualty Corp | Quoted |
| Star Insurance Co. | Quoted: 4 options |
| Midwest Employer Casualty | Quoted: 3 options |
| Sentry Insurance Co | Declined: Does not write municipalities |
| Midlands Insurance Co | Quoted |
| Liberty Mutual Insurance Co | Declined: Cannot compete with current program |
| Insurance Pool | |
| CSAC EIA | Pricing indication provided, 2 options |

DISCLOSURES

This proposal of insurance is provided as a matter of convenience and information only. All information included in this proposal, including but not limited to personal and real property values, locations, operations, products, data, automobile schedules, financial data and loss experience, is based on facts and representations supplied to Alliant Insurance Services, Inc. by you. This proposal does not reflect any independent study or investigation by Alliant Insurance Services, Inc. or its agents and employees.

Please be advised that this proposal is also expressly conditioned on there being no material change in the risk between the date of this proposal and the inception date of the proposed policy (including the occurrence of any claim or notice of circumstances that may give rise to a claim under any policy which the policy being proposed is a renewal or replacement). In the event of such change of risk, the insurer may, at its sole discretion, modify, or withdraw this proposal whether or not this offer has already been accepted.

This proposal is not confirmation of insurance and does not add to, extend, amend, change, or alter any coverage in any actual policy of insurance you may have. All existing policy terms, conditions, exclusions, and limitations apply. For specific information regarding your insurance coverage, please refer to the policy itself. Alliant Insurance Services, Inc. will not be liable for any claims arising from or related to information included in or omitted from this proposal of insurance.

DISCLOSURES

Alliant embraces a policy of transparency with respect to its compensation from insurance transactions. Details on our compensation policy, including the types of income that Alliant may earn on a placement, are available on our website at www.alliantinsurance.com. For a copy of our policy or for any inquiries regarding compensation issues pertaining to your account you may also contact us at: Alliant Insurance Services, Inc., Attention: General Counsel, 701 B Street, 6th Floor, San Diego, CA 92101.

Analyzing insurers' over-all performance and financial strength is a task that requires specialized skills and in-depth technical understanding of all aspects of insurance company finances and operations. Insurance brokerages such as Alliant Insurance typically rely upon rating agencies for this type of market analysis. Both A.M. Best and Standard and Poor's have been industry leaders in this area for many decades, utilizing a combination of quantitative and qualitative analysis of the information available in formulating their ratings.

A.M. Best has an extensive database of nearly 6,000 Life/Health, Property Casualty and International companies. You can visit them at www.ambest.com. For additional information regarding insurer financial strength ratings visit Standard and Poor's website at www.standardandpoors.com.

Our goal is to procure insurance for you with underwriters possessing the financial strength to perform. Alliant does not, however, guarantee the solvency of any underwriters with which insurance or reinsurance is placed and maintains no responsibility for any loss or damage arising from the financial failure or insolvency of any insurer. We encourage you to review the publicly available information collected to enable you to make an informed decision to accept or reject a particular underwriter. To learn more about companies doing business in your state, visit the Department of Insurance website for that state.

CERTIFICATES / EVIDENCE OF INSURANCE

Certificates of insurance are issued as a matter of information only and confer no rights upon the certificate holder. The certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by a policy. Nor does it constitute a contract between the issuing insurer(s), authorized representative, producer or certificate holder.

You may have signed contracts, leases or other agreements requiring you to provide this evidence. In those agreements, you may assume obligations and/or liability for others (Indemnification, Hold Harmless) and some of the obligations that are not covered by insurance. We recommend that you and your legal counsel review these documents.

In addition to providing a certificate of insurance, you may be required to name your client or customer on your policy as an additional insured. This is only possible with permission of the insurance company, added by endorsement and, in some cases, an additional premium.

By naming the certificate holder as additional insured, there are consequences to your risks and insurance policy including:

- Your policy limits are now shared with other entities; their claims involvement may reduce or exhaust your aggregate limit.
- Your policy may provide higher limits than required by contract; your full limits can be exposed to the additional insured.
- There may be conflicts in defense when your insurer has to defend both you and the additional insured.

Glossary of Insurance Terms

Below are a couple of links to assist you in understanding the insurance terms you may find within your insurance coverages:

<http://insurancecommunityuniversity.com/UniversityResources/InsuranceGlossaryFREE.aspx>

<http://www.ambest.com/resource/glossary.html>

<http://www.irmi.com/online/insurance-glossary/default.aspx>

OTHER ALLIANT SERVICES

AlliantConnect

AlliantConnect is an online portal created especially for you to access and manage your insurance information in real time.

What is AlliantConnect?

This secure, easy-to-use portal enables you to easily access and manage your insurance information from any Internet connection at any time. Your customized portal provides you with the following:

- A transparent view into your insurance business
- Easy management of your documents, including certificate issuance
- Help with risk control through a comprehensive library of fact sheets, white papers, presentations, and training videos
- An easy place for clients to find a summary of their policy coverages
- A single source to track important dates and announcements
- Access to your Alliant service team

All client data is secured to the appropriate account teams, and the database itself and all backups are stored in a highly encrypted format. In addition, all document changes are archived for audit history.



OTHER ALLIANT SERVICES

Alliant Business Services: HR Membership Program

Strategic HR

Strategic HR's Membership Program is designed to help our clients protect their company or organization by averting potential problems before they develop, and quickly responding to employment-related issues after they occur. In addition, HR members have access to a wide array of tools and resources to help them navigate the complex world of human resources.

The HR Membership Program provides clients of Alliant Insurance Services with the following:

- **Consultation with Human Resources Experts:**

Assigned consultants respond quickly with advice and guidance on any HR or safety issue, such as:

- Problem employees
- Terminations
- Compliance
- Wage and hour issues
- Leaves of absence
- Harassment

- **Human Resources Seminars and Webinars:**

With employment laws and regulations constantly changing, it is imperative that employers stay current. Members receive a significant discount on admission to our webinar seminars on a variety of topics including HR, Employment Laws and Management Training.

- **Online Access to HR Forms, Guidelines, Policies and checklists:** By accessing the password-protected members-only section of the Strategic HR web site, members have a wide range of documents available at no charge. Topics include, but are not limited to:

- Hiring
- Payroll and Recordkeeping
- Performance Evaluations
- Leaves of Absences
- Discipline and Termination
- Harassment and Investigation
- Sample Policies and Required Forms
- Answers to frequently asked HR questions

- **Alerts and Notices:** Clients who are enrolled in a Strategic HR Program receive timely alerts on employment law legislation and regulations, as well as notices regarding employment trends, best practices and more.

- **Compensation Data:** Each program level provides a certain number of salary surveys. The surveys provide compensation information with data that is customized to a specific industry and geographic location.

- **Special Member Pricing on HR Projects and Services:** Members receive preferred rates on a wide array of projects and services, including:

- Employee handbooks
- HR audits
- Job description review and development
- Affirmative Action Plans
- Compensation systems
- Call Center Services
- HR Outsourcing
- Management & Supervisory Training

- **Preferred rates on HR partners, such as:**

- Compliance Posters: mandated federal and state employment posters
- HR Plus: accurate and timely background information
- Payroll Solutions: payroll services
- Strategic HR Staffing – temporary and fulltime placement

The Strategic HR Program has various levels that can be purchased by Alliant Brokers on behalf of their clients. Please contact SHR for details.

Contact Information:
(866)716-6294 Toll free
clientcare@strategichr.com

OTHER ALLIANT SERVICES

Alliant Loss Control Services

HAZARD IDENTIFICATION, EVALUATION, ELIMINATION AND CONTROL WILL PROTECT YOUR COMPANY, LOWER INSURANCE COSTS, AND IMPROVE SERVICE.

Accidents and avoidable incidents that result in financial loss can threaten the very existence and long-term viability of your company. They mean lost time, damaged property, diversion of resources, and possible legal and medical expenses that can place a huge burden on your organization and prevent you from reaching your business goals.

Alliant's Risk Control Consulting helps clients identify and reduce loss exposures. Our specialists can help prevent costly accidents and losses, which can lead to lower insurance costs. Whatever the size of your company or scope of your operations, we can help strengthen your safety and risk management programs with proven services that protect lives, safeguard assets, and control costs. Services are not limited to those listed below.

How to Choose the Right Risk Control Consultant

When seeking a qualified risk control consultant, you should ask:

- Does the consultant have specific commercial experience for your type(s) of operations and assets?
- Does the consultant have the resources and availability to do the job when you need it and for your intended use?
- Do they tell you whatever you need to know to control risk or only what you want to hear?
- Does the consultant have a support team of experts able to help you if there is an regulatory citation, a serious claims, or challenging litigation?

Each of the above questions can be answered YES by Alliant's Risk Control Consulting.

Alliant also offers:

- **Extensive Experience in Diverse Business Sectors**
- **Nationwide Coverage**
- **Local Expertise**
- **Peer Review**

Safety Services

- Program Development
- On-Site Hazard/Risk Assessments
- Ergonomics
- Industrial Hygiene
- Fleet Safety Analysis
- General Liability
- Training Services

Workers' Compensation Services

- Loss Prevention (Safety)
- Risk Control (Injury Management)
- Recordkeeping Management

Property Risk Control Services

- Fire System Evaluation
- Risk Assessment
- Loss Estimates
- Hazard Analysis
- Loss Prevention and Risk Control Program Analysis
- Property Marketing Reports
- Business Interruption Analysis and Continuity Planning
- Infrared and Ultrasonic Testing

To learn more about our risk control consulting and safety services:

(888) 737-4752 Toll Free

riskcontrol@alliantinsurance.com

BIND COVERAGE REQUEST

Binding of the renewal option may be requested by signing, dating below, and returning to Alliant Insurance prior to 3/1/2013.

This proposal does not constitute a binder of insurance. Binding is subject to final carrier approval. The Actual terms and conditions of the policy will prevail.

Signature of Authorized Insurance Representative
San Diego Metropolitan Transit District

Date



1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490
(619) 231-1466 • FAX (619) 234-3407

Agenda Item No. 10

MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

February 21, 2013

SUBJECT:

FIBER-OPTICS LINK PROJECT – FUNDS TRANSFER

RECOMMENDATION:

That the Board of Directors approve the transfer of funds from the Fiber-Optics Link Project (CIP 11340) to the Orange/Green Lines Fiber-Optics Cable Project (CIP 1144400) to complete the fiber loop from Old Town to Santa Fe Depot.

Budget Impact

Funds are available within MTS CIP 11340 (Fiber Optics Link) in the amount of \$400,000 (see the IFAS report for information – Attachment A).

DISCUSSION:

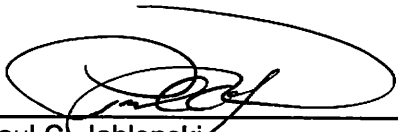
The San Diego Association of Governments (SANDAG) is overseeing a project to install fiber-optics cable on the Green and Orange Lines, which will carry fare information from ticket vending machines (TVMs), video images from MTS's closed-circuit television (CCTV) network, visual message sign (VMS) information, and Supervisor Control and Data Acquisition (SCADA) back to the Central Control office. The installation of the fiber-optics cable is currently under construction along the Green and Orange Lines using a job order contract with Select Electric. The contractor has completed the first two of three phases of the project. The only fiber gap that MTS needs to complete the fiber loop is from Old Town to Santa Fe Depot. The fiber-optics cable installation is scheduled to be completed by July 2013.



Funding for the project was approved by the MTS Board in January 2011 in the amount of \$5,960,245.40 and in April 2012 in the amount of \$900,870. Using updated estimates and the pricing for the segment currently in construction, the projected cost to complete the fiber loop from Old Town to Santa Fe Depot is estimated to be \$400,000. Since MTS CIP funds are being used to fund this project, SANDAG has requested that the project budget be supplemented to meet the new cost estimate.

| | Funding Source | Fiscal Year | \$ Amount | Date Approved |
|----------------|----------------|-------------|--------------------|---------------|
| Original Funds | Prop 1B | FY 08-09 | \$2,578,655 | Jan. 2011 |
| | TSGP | FY 10 | \$3,381,790 | Jan. 2011 |
| | Prop 1B | FY 09-10 | \$900,870 | April 2012 |
| Additional | Prop 1B | FY 10-11 | \$400,000 | TBD |
| TOTAL | | | \$7,261,315 | |

MTS has identified and received funding from California Transit Security Grant (Security Prop. 1B FY 10-11) for the Fiber-Optics Link Project, which would be transferred to the Fiber-Optics Cable Project. This is an appropriate use of the grant funds because the fiber would be utilized for viewing security cameras at the stations and on board light rail vehicles.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, Sharon.Cooney@sdmts.com

Attachment: A. MTS IFAS Report 11340 and SANDAG IFAS Report 1144400

PROJECT BUDGET TO ACTUAL - FROM INCEPTION (with Encumbrances)

Fiscal Year 2013

Report Date: 01/24/2013

PROJECT NO: 11340 Fiber Optics Link

Project Manager:

N/A

EXPENDITURES

| Project Number | Description | Total Project Budget | Expended To Date | Current Encumb | Total Exp & Enc | Contract Contingency | Total Project Budget Available |
|----------------|-------------|----------------------------|---------------------|-------------------|--------------------|-------------------------|---|
| 11340-0200 | Procurement | 400,000.00 | 0.00 | 0.00 | 0.00 | 0.00 | 400,000.00 |
| TOTAL: | | 400,000.00 | 0.00 | 0.00 | 0.00 | 0.00 | 400,000.00 |

REVENUES

| Project Number | Description | Total Budgeted Revenue | Fiscal Year | Priority | Percent | Total Earned Revenue |
|----------------|--------------------|------------------------------|----------------|----------|----------|----------------------------|
| 11340-46373 | PROP 1B TSGP 10/11 | 400,000.00 | 2012 | 1 | 100.00 % | 0.00 |
| TOTAL: | | 400,000.00 | | | | 0.00 |

Project Comments:

08/06/12 - Add FY10/11 Security Prop 1B funding of \$400,000.

San Diego Association of Governments
Project Budget To Actuals [Multi-year 7-Digit Projects]

As of 01/23/2013

Project Number 1144400

Orange/Green Fiber Optic Cable

Project Manager Andre Tayou

Expenditures

| Task | Description | Total Project Budget | Expended To Date | Current Encumb | Total Exp & Enc | Contract Contingency | Total Project Budget Available |
|----------|-----------------------------|----------------------|------------------|----------------|-----------------|----------------------|--------------------------------|
| 0100 | Administration | 745,057 | 14.00 | 0.00 | 14.00 | 0.00 | 745,043.00 |
| 0102 | Administration-Labor | 0 | 158,194.47 | 0.00 | 158,194.47 | 0.00 | -158,194.47 |
| 0102MT | Labor-MTS | 0 | 29,661.61 | 0.00 | 29,661.61 | 0.00 | -29,661.61 |
| 0116 | Vehicle Maintenance | 0 | 0.00 | 30.00 | 30.00 | 0.00 | -30.00 |
| 0600 | Engineering & Design | 515,251 | 330,821.35 | 167,861.03 | 498,682.38 | 0.00 | 16,568.62 |
| 0700 | Construction Management | 466,044 | 32,764.25 | 178,070.69 | 210,834.94 | 0.00 | 255,209.06 |
| 0800 | Professional Services | 149,011 | 227.71 | 31,118.20 | 31,345.91 | 0.00 | 117,665.09 |
| 1000 | Construction General | 5,425,637 | 3,632,617.14 | 1,027,678.35 | 4,660,295.49 | 346,310.72 | 419,030.79 |
| 10006040 | Construction Capital Outlay | 0 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 3800 | Project Contingency | 60,000 | 0.00 | 0.00 | 0.00 | 0.00 | 60,000.00 |
| | | 7,361,000.00 | 4,184,300.53 | 1,404,758.27 | 5,589,058.80 | 346,310.72 | 1,425,630.48 |

Revenues

| Project Number | Description | Total Budgeted Revenue | Fiscal Year | Priority | Percent | Total Revenue Recorded | Total Earned Revenue |
|------------------|-------------------------------|------------------------|-------------|----------|---------|------------------------|----------------------|
| 1144400-72360001 | Federal 5307 CA-90-Z008 | 400,000.00 | 2012 | 3 | 80 % | 0.00 | 0.00 |
| 1144400-85130001 | Prop 1B | 0.00 | 2012 | | 0 % | 574,693.05 | 0.00 |
| 1144400-91040000 | TDA (1) | 100,000.00 | 2012 | 3 | 20 % | 0.00 | 0.00 |
| 1144400-92060001 | Miscellaneous Project Revenue | 5,960,445.00✓ | 2011 | 1 | 100 % | 15,627.08 | 0.00 |
| 1144400-92060001 | Miscellaneous Project Revenue | 900,870.00✓ | 2012 | 2 | 100 % | 0.00 | 0.00 |
| 1144400 | Other Revenue Sources | | | | | 3,503,248.15 | |

Date 01/23/2013

Time 13:20:42

A-2

San Diego Association of Governments
Project Budget To Actuals [Multi-year 7-Digit Projects]

As of 01/23/2013

| | | | |
|--|--------------|--------------|------|
| | 7,361,315.00 | 4,093,568.28 | 0.00 |
|--|--------------|--------------|------|

Comments

Transfer \$500k (\$400k CA-03-Z008 and \$100k tda) from 1144000
2011 Miscellaneous Revenue = MTS
2012 Miscellaneous Revenue = MTS



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Agenda Item No. 11

MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

February 21, 2013

SUBJECT:

INVESTMENT REPORT – DECEMBER 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 December 2012. The combined total of all investments has decreased from \$220.6 million to \$213.4 million in the current month. This \$7 million decrease is attributable to a capital acquisition payment totaling \$2 million and a scheduled \$5.2 million principal payment on the pension obligation bonds.

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 \$9.7 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

Attachment: A. Investment Report for December 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
December 2012**

| | Restricted | Unrestricted | Total | Average rate of return |
|--|-----------------------|----------------------|-----------------------|---------------------------------------|
| Cash and Cash Equivalents | | | | |
| Bank of America - concentration account | | | \$ - | |
| JP Morgan Chase - concentration account | 1,322,629 | 21,952,804 | 23,275,433 | 0.00% |
| Total Cash and Cash Equivalents | 1,322,629 | 21,952,804 | 23,275,433 | |
| Cash - Restricted for Capital Support | | | | |
| US Bank - retention trust account | 8,373,424 | - | 8,373,424 | N/A * |
| San Diego County Investment Pool | | | | |
| Proposition 1B grant funds | 15,685,981 | - | 15,685,981 | |
| Proposition 1B TS GP grant funds | 4,403,444 | - | 4,403,444 | |
| Total Cash - Restricted for Capital Support | 28,462,849 | - | 28,462,849 | |
| Investments - Working Capital | | | | |
| Local Agency Investment Fund (LAIF) | - | 42,038,082 | 42,038,082 | 0.324% |
| Total Investments - Working Capital | - | 42,038,082 | 42,038,082 | |
| Investments - Restricted for Debt Service | | | | |
| US Bank - Treasury Strips - market value (Par value \$39,474,000) | 39,145,838 | - | 39,145,838 | |
| Rabobank - | | | | |
| Payment Undertaking Agreement | 80,435,481 | - | 80,435,481 | 7.69% |
| Total Investments Restricted for Debt Service | 119,581,319 | - | 119,581,319 | |
| Total cash and investments | \$ 149,366,797 | \$ 63,990,886 | \$ 213,357,683 | |

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



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Agenda Item No. 12

MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

February 21, 2013

SUBJECT:

KEARNY MESA DIVISION GARAGE FLOOR EPOXY COATING - JOB ORDER
CONTRACT WORK ORDER

RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to execute Job Order Contract (JOC) MTSJOC1431-04 (in substantially the same format as Attachment A) with ABC Construction for the Kearny Mesa Division (KMD) Garage Floor Epoxy Coating Project.

Budget Impact

As individual JOC work orders are written, they are encumbered from each project's funding source. The \$163,234.15 for this project would come from CIP 11213 (SDTC KMD Building Rehabilitation). Use of SANDAG job order contracts also requires a 6.75% payment (\$11,018.31 for this project) for administrative costs. The total amount for this JOC work order would not exceed \$174,252.46.

DISCUSSION:

This project would include the application of a new, high-strength epoxy floor covering in the KMD bus maintenance shop. The existing concrete sealer and epoxy would be removed and the concrete prepared to ensure proper adhesion of the new coating. The work would be completed in phases to allow for maintenance work to proceed during the project. The proposed new coating is a high-strength, 100 % solid epoxy floor-coating system applied in two coats over a primer. The total area to be covered is 16,800 square feet.



The current shop-floor coating is the original from when the facility was built in 1988. It is now cracked, chipped, and worn in numerous places and is no longer in a suitable condition for its intended purpose.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, Sharon.Cooney@sdmts.com

Attachments: A. MTSJOC1431-04 with ABC Construction
B. MTS Doc. No. PWL135.0-12

Detailed Scope of Work

Job Order Contract



Date: 07/30/2012

To: Wayne Czubemat
Project Manager
ABC Construction, Inc.
3120 National Ave
San Diego, Ca 92113
Phone: (619) 239-3428
Fax: (619) 239-6614

From: Frank Doucette
MTS Bus Facility Manager
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101
Phone: (619) 947-3337

Project: MTSJOC1431-04

MTS Work Order Number: 11213

Title: KMD Garage Floor Epoxy Coating

Location:

Railroad Protective: ☐ Yes ☒ No

Detailed Scope of Work

Summary Description of Task:

This project will install a new high strength epoxy floor covering in the KMD bus maintenance shop. The existing concrete sealer and epoxy floor covering shall be removed and the concrete prepared to ensure proper adhesion of the new coating. The new coating shall be a high strength, 100% solids epoxy floor coating system applied in two coats over the epoxy manufacturer's approved primer.

Task Phasing:

This task will be completed in three (3) phases. The contractor will secure four (4) maintenance bays and complete all resurfacing work (including any curing time) before moving on to the next four (4) bays. After the second phase curing time is complete and it is opened to traffic, the contractor will begin the third phase. On the third phase the contractor will secure six (6) bays and complete all work (including cure time) before opening the bays to traffic.

Concrete Preparation:

The existing concrete will be prepared for the new coating prior priming. The existing hardened concrete floor coating shall be shot blasted to prepare the surface for an epoxy overlay. Surface preparation including and shot blasting, hand blasting and/or hand grinding shall be accomplished to ensure proper adhesion.

Spalled or damaged concrete deeper than 1/8" shall be repaired using an epoxy modified repair mortar after shot blasting and prior to applying the floor coating system.

Existing control joints shall be cleaned out prior to application of Epoxy Floor Coating System. Control joints shall be packed and filled with self-leveling joint filler conforming to ASTM D 1751 after the epoxy floor coating system is walkable. Joint filler shall remain flexible and be resistant to oils and greases.

Existing concrete cracks, over cutting of previous trench work and minor surface imperfections (less than 1/8" deep) will not be repaired prior to applying the floor coating system.

Epoxy Coating System:

*Prior to applying the epoxy floor coating, a manufacturer's approved primer shall be used on the prepared concrete surface.

*The new floor coating system shall be a multi-component, multi-layer, 100% epoxy product.

*Floor coating color shall be light gray (submit color sample for approval prior to ordering).

*Finished floor coating shall have a minimum hardness rating of 70 (ASTM D-2240 Shore D).

*The epoxy floor coating shall be applied to a minimum build thickness of 65 mils. The contractor shall provide a means to verify build thickness on-site. (Maximum build shall be 3/16")

* Floor coating shall be applied in a method that allows the epoxy to fill voids and cracks up to 1/8" deep.

*Contractor shall apply the epoxy floor covering in two coats - on top of the primer coat - according to the coating manufacturer's instructions.

KMD Shop Dimensions:

The KMD shop is 140 feet wide and 120 feet deep. It consists of 14 bus maintenance bays. Each of the seven (7) pairs of bus bays is comprised of one 65 foot bay and one 45 foot bay with a 14 foot wide roll-up door at opposite ends of the two bays and a 10 foot walkway between them. The total square footage is 16,800 square feet.

The bus holts and hard mounted equipment will reduce the overall square footage of floor to be coated by about 5%.

Notes:

- * Contractor is not required to move equipment, tool boxes or storage cabinets. Owner will remove all non-fixed assets from bays prior to work.
- * Contractor will remove and dispose of the chain link fence fabric surrounding the suspension pit. The existing fence posts will remain. The fence fabric will be replaced under a separate contract.
- * Work can be scheduled for Monday thru Friday. KMD is closed on Saturday, however, at the contractor's request (and with advanced notice) work can be scheduled for Saturday.
- * Working hours are 7:00 am to 5:00 pm daily.

Underlined products or processes above require submittal and owner approval prior to the acceptance of bid pricing on his job.


Frank Doucette, Project Manager

7/30/12
Date


Wayne Czubernat, Project Manager

8.8.12
Date



Att. B, AI 12, 2/21/13

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ORIGINAL**STANDARD SERVICES AGREEMENT**

PWL135.0-12
CONTRACT NUMBER
OPS 970.4
FILE NUMBER(S)

THIS AGREEMENT is entered into this 12th day of SEPTEMBER 2011, in the State of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following contractor, hereinafter referred to as "Contractor":

Name: ABC Construction Company, Inc.Address: 3120 National AvenueForm of Business: CorporationSan Diego, CA 92113

(Corporation, partnership, sole proprietor, etc.)

Telephone: 619.239.3428Authorized person to sign contracts: Kenneth CzubernatPresident

Name

Title

The attached Standard Conditions are part of this Agreement. The Contractor agrees to furnish to MTS services and materials, as follows:

Provide Job Order Contract (JOC) services as described in SANDAG JOC No. 5001431, in accordance with the Standard Conditions Services, Federal Requirements, and MTS's Safety Program, (hereinafter "Contract Documents").

This contract shall be effective September 1, 2011, through August 31, 2014. The total cost of this contract shall not exceed \$2,000,000.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM**CONTRACTOR AUTHORIZATION**By: [Signature]
Chief Executive OfficerFirm: ABC Construction Co., Inc.

Approved as to form:

By: [Signature]
Office of General CounselBy: [Signature]
SignatureTitle: Kenneth Czubernat, President**AMOUNT ENCUMBERED****BUDGET ITEM****FISCAL YEAR**

\$to be encumbered on JOC

FY 12-14

By: Thomas Relynech
Chief Financial Officer8/25/11
Date(86 total pages, each bearing contract number)

CBROWN-SA

SA-PWL135.0-12.ABCCONSTRUCTIONCO.MYNIGUEZ

8/12/11

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Agenda Item No. 13

MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

February 21, 2013

SUBJECT:

ONBOARD CCTV SYSTEM INSTALLATION – CONTRACT AMENDMENT

RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. L0955.2-10 (in substantially the same format as Attachment A) with UTC Fire and Security for the provision of onboard video surveillance systems on 8 additional S70 light rail vehicles (LRVs).

Budget Impact

The total cost for this project would not exceed \$199,830.00 and would be inclusive of all hardware and installation. As a result of this request, the total Board approval would increase from \$3,716,914.43 to \$3,916,744.43, and the project would be funded by Capital Improvement Program (CIP) 11267 (LRV Procurement)

DISCUSSION:

In February 2011, following a Request for Proposals process, the Board authorized the CEO to award a contract for the provision of onboard closed-circuit television (CCTV) surveillance systems on the new S70 LRVs. The total Board approval was for \$3,685,888.93 for the initial award. In April 2012, the Board approved an increase of \$31,025.50 (for a total of \$3,716,914.43) to increase the video storage capacity of the onboard CCTV systems.

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On May 17, 2012, the Board exercised its option to purchase 8 additional Siemens S70 LRVs for a total of 65 new cars. The original contract with UTC Fire and Security was based on the fleet of 52 SD 100s, 11 90-foot S70s, and the 57 new, 80-foot S70s.

With the purchase of eight additional S70 LRVs, this contract amendment is requested to install eight onboard CCTV systems on the new LRVs. MTS currently has onboard CCTV systems installed on all SD 100 and S70 LRVs. Having an onboard CCTV system is necessary and beneficial for MTS passenger's safety and security. Furthermore, the CCTV system is also a crucial component for MTS's Risk and Claims Department in resolving passenger issues and in assisting local law enforcement.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, Sharon.Cooney@sdmts.com

Attachment: A. MTS Doc. No. L0955.2-10

DRAFT

February 21, 2013

MTS Doc. No. L0955.2-10

UTC Fire & Security
Mr. Craig Szmania
Distribution Business Leader
4001 SE Fairview Industrial Drive
Salem, OR 97302

Dear Mr. Szmania:

Subject: AMENDMENT NO. 2 TO MTS DOC. NO. L0955.0-10; TROLLEY ONBOARD VIDEO
SURVEILLANCE SYSTEM

This letter will serve as Amendment No. 2 to MTS Doc. No. L0955.0-10. MTS is processing this Amendment to include the installation of onboard closed-circuit televisions (CCTVs) on eight (8) additional 4000 Series LRV's.

SCOPE OF WORK

Provide MTS with the installation of the additional eight onboard CCTV systems as shown in the Scope of Work in MTS Doc. No. L0955.0-10.

PAYMENT

The total payment shall not exceed \$199,830.00 as reflected in the pricing detail. Total contract payment shall not exceed \$3,916,744.43. Original payment terms and conditions shall apply to this Amendment.

TERM

All previous conditions remain in effect. If you agree with the above, please sign below and return the document marked "original" to the Contracts Specialist at MTS. The other copy is for your records.

Sincerely,

Accepted:

Paul C. Jablonski
Chief Executive Officer

Craig Szmania
UTC Fire & Security



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Agenda Item No. 14

MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

February 21, 2013

SUBJECT:

PROPOSED REVISIONS TO MTS POLICY NO. 50 (ENGINEERING AND CONSTRUCTION EXPENSE COST RECOVERY FOR PLAN REVIEW, REAL ESTATE ACTIONS, AND RIGHT OF ENTRY PERMITS)

RECOMMENDATION:

That the Board of Directors approve revisions to MTS Policy No. 50 (Engineering and Construction Cost Recovery for Plan Review, Real Estate Actions, and Right of Entry Permits) (see track changes in Attachment A) to increase the current right of entry permit fee as recommended by the San Diego and Arizona Eastern Railway Company (SD&AE) Board of Directors at its quarterly meeting on January 15, 2013.

Budget Impact

Revenue from staff-processing fees for right of entry permits would increase with approval of this action.

DISCUSSION:

At its quarterly meeting in October 2012, the SD&AE Board of Directors requested a review of right of entry permit fees to determine the ratio of cost recovery for staff time involved. MTS Policy No. 50 (Engineering and Construction Cost Recovery) allows for a standard fee is \$500 to cover staff preparation time, approvals, and processing. Staff analyzed right of entry permit fees versus cost recovery and reported back to the SD&AE Board at its meeting on January 15, 2013. After discussion, the SD&AE Board unanimously agreed on forwarding a recommendation to the MTS Board to increase the standard right of entry permit fee from the current rate of \$500 to \$750 (as shown in track changes within Attachment A) to keep up with market rates and maintain cost recovery. This rate would apply to right of entry permits (with minimal to no impact) issued on MTS- or SD&AE-owned property.

Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Karen Landers, 619.557.4512, Karen.Landers@sdmts.com

Attachment: A. Proposed Revisions to MTS Policy No. 50

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Policies and Procedures

No. 50

SUBJECT:

Board Approval: 5/13/042/21/13

ENGINEERING AND CONSTRUCTION EXPENSE COST RECOVERY FOR PLAN
REVIEW, REAL ESTATE ACTIONS, AND RIGHT OF ENTRY PERMITS

PURPOSE:

It is the intention of MTS to recover engineering and construction expenses incurred in support of actions from public agencies and private parties that impact MTS facilities and property.

BACKGROUND:

Public agencies and private parties request access to MTS right-of-way for various reasons. Some requests are for temporary access with minimal impact on MTS facilities. Other requests can have a significant impact on MTS facilities and may include placement of permanent facilities within the right-of-way. The various requests tax MTS staff time, including consultant effort, for plan reviews, coordination, real estate entitlement processing, right of entry (ROE) permit reviews, approvals, construction inspection, documentation, and closeout. This policy will formalize procedures for MTS staff to process requests for entry and various real estate actions and to recover costs incurred by the agency in this effort.

POLICY:

MTS will recover expenses incurred for plan review, real estate actions, and ROE permit reviews and inspections according to the following criteria:

- 50.1 Minimum to No-Impact Requests – These requests for access to MTS facilities have minimal to no impacts and are typically for day-use ROE permits. The staff effort is light, and a fixed fee will be charged to the applicant. The standard fee is \$500-750 to cover staff preparation time, approvals, and processing. This fee will be evaluated on an annual basis and will be adjusted if warranted upon approval from the Chief Executive Officer. The applicant will be required to complete the ROE Permit/Plan Review Application (Attachment A) and to submit the application according to the MTS/San Diego and Arizona Eastern (SD&AE) Railway Company ROE Permit Instructions (Attachment B).



- 50.2 Minor Impact Requests – These requests for access to MTS facilities have minor impacts but require up to \$5,000 of staff time to process the encroachment. These impacts typically require engineering review and construction coordination for the ROE permit. Some real estate entitlement may be required, such as granting an easement. The staff time to analyze the request, coordinate reviews, conduct field inspections, and closeout the permit exceeds the minimum permit fee. Staff will estimate engineering and construction inspection expenses, including consultant fees. For fees estimated below \$5,000, staff will submit the estimate to the Right-of-Way Manager for approval. This approval will constitute the permit fee. Additional funds may be necessary if a scope change or additional work is identified. The applicant will follow the application process as described in No. 1 above. Plan review submittals with an expense below \$5,000 will follow the same process.
- 50.3 Major Impact Requests – For those access requests with a staff expense over \$5,000, a deposit of funds will be required to cover costs. MTS will account for the draw down of the funds and require additional funds as necessary. Any excess deposited funds will be reimbursed to the applicant after MTS is satisfied that all requirements are met.
- 50.4 Real Estate Actions – Any real estate transaction generated by a public agency or a private party will follow the above criteria.
- 50.5 Waiver of Fees – Fees may be waived at the discretion of the Chief Executive Officer. Examples of waivers would be for nonprofit agencies or for local agencies that have a reciprocal fee waiver agreement with MTS.

Attachments: A. Right of Entry Permit/Plan Review Application
B. MTS/SD&AE Right of Entry Permit Instructions

Original Policy approved on 10/16/03.

Policy revised on 5/13/04.

Policy revised on 2/21/13.



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MTS / SD&AE RIGHT OF ENTRY PERMIT INSTRUCTIONS

- A Right of Entry Permit (Permit) is necessary when entering MTS / SD&AE right-of-way, including airspace, for any purpose. A permit is also required when working in public right-of-way occupied by MTS / SD&AE facilities. Prior to issuance of Permit, project plans/specifications must be approved by MTS.
- To initiate project review, complete a "Plan Review / Right of Entry Permit Application" form located on the MTS website (<http://www.sdmts.com/Business/Permits.asp>). Return form to MTS along with the required number of plan sets, a \$750 application fee, and an 8.5"x11" size vicinity map or Thomas Guide page showing the location of project.
- A letter of findings will be issued, generally within two weeks, indicating provisional approval or if additional engineering review is required. Permit fees including plan review, Permit processing, and general Permit oversight costs are assessed at this time and an invoice is processed. If a comprehensive, engineering review is necessary, a deposit will be required for the probable reimbursable cost to cover reviews and other expenses.
- Permission to proceed with the Permit process will be granted only after the project has engineering review approval. If the encroachment requires an easement or a license to allow permanent facilities within the right-of-way, the license or easement will be processed concurrent with the Permit. A plat and legal description, signed by a land surveyor licensed in the State of California, and an appraisal to determine fair market value are required. Additional fees for processing the easement or license will be assessed. Board approval is required for Railroad rights.
- Permit processing and approval should be granted within two weeks once the plans have been approved, the proper insurance certificates have been received, and permit fees have been paid. Urgent permits will need authorization from the Chief Executive Officer or his designee.
- MTS Insurance Requirements can be downloaded from the MTS website. As a general note, most general liability insurance do not cover railroads. Any exclusions relating to performance of operations within the vicinity of any railroad, bridge, trestle, track, roadbed, tunnel, underpass, or crossing must be deleted from the policy. If the exclusions can't be removed, a separate Railroad Protective Liability Policy will be required.
- A construction schedule that includes the number of days anticipated to encroach on the right-of-way must be submitted to process the permit. Include times and lengths of shifts, along with anticipated construction methods. Also submit approved Traffic control Plans where applicable.



Contact San Diego Trolley Inc. (SDTI) for information on Trolley schedules. Contact Rail America for information on freight train schedules.

- Flagging will be required anytime work is within 15 feet of track including airspace or as deemed necessary by Trolley personnel. Permittee will complete and fax SDTI Flagperson / Right-of-Way Work Request form and to MTS and SDTI a minimum of two business days prior to anticipated work day. Normally, the cost for flagging is \$25.00 an hour for one man or \$50.00 for a two-man team. Billing will be directly from SDTI to the Permittee and is separate from the Permit fee.
- A pre-construction meeting will be required with MTS and SDTI prior to work commencing within the right-of-way. A written notice of planned start of work must be submitted to MTS a minimum of five business days prior to work starting in the right-of-way. All work will be stopped and Permittee will not be allowed in the right-of-way without proper notification.
- Permittee must adhere to construction and safety standards required by MTS of their contractors when working within the right-of-way.
- A written notice shall be submitted to MTS that work has been completed per the permit. Any additional work required to replace or repair the railroad facilities in good working order will be the responsibility of the Permittee prior to work acceptance. A notice to the Permittee will be issued upon acceptance of the work by MTS.
- Any excess deposited funds will be reimbursed to the Permittee after all requirements of the permit are met. This does not include Permit fees which are non-refundable.
- Permittee will provide MTS with a set of as-builts, hard copy and electronic file upon request, within thirty days of relief from maintenance. No excess deposited funds will be released until as-builts are submitted signed by a licensed engineer in the State of California.

PLAN REVIEW / RIGHT OF ENTRY APPLICATION

1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490
Telephone: 619.557.4501
Fax: 619.230.6878

Submittal Date: _____

FOR MTS USE ONLY

MTS Doc. No. _____

Application No. _____

Date MTS recd _____

Milepost Limits _____

APPLICANT INSTRUCTIONS

Complete all applicable boxes below (click in boxes to type & then print) and return with submittal requirements (as noted below).

Submittal Requirements:

- 1) 8½ X 11 vicinity map
- 2) 3 full- & 3 half-size sets of plans, drawings, exhibits
- 3) 3 sets of reports, specs, & calculations if applicable
- 4) Nonrefundable application fee of \$750

- * Make checks payable to *Metropolitan Transit System*
- * Additional permit fees, copies, and information may be required upon request to the Metropolitan Transit System

Applicant Name & Company
(Owner/Project Manager)

Permittee Name & Company
(Contractor/Engineer/Firm)

Applicant Mailing Address

Permittee Mailing Address

Contact person: _____

Contact person: _____

Telephone: _____

Telephone: _____

Fax: _____

Fax: _____

E-mail: _____

E-mail: _____

Project Location (street address and nearest cross street)

Project Description

Anticipated Dates - Begin work: _____

End work: _____

Authorizing Agencies / Jurisdictions (i.e. MTS, NCTD, local cities & counties, government agencies, etc.)



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Agenda Item No. 15

MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

February 21, 2013

SUBJECT:

CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) PROGRAM OF
PROJECTS FOR FEDERAL TRANSIT ADMINISTRATION (FTA) SECTION 5311
FUNDING - FISCAL YEAR 2013

RECOMMENDATION:

That the Board of Directors approve Resolution No. 13-3 (Attachment A) authorizing the application for and use of FTA Section 5311 funding for operating assistance and miscellaneous improvements in nonurbanized areas.

Budget Impact

The apportionment of FY 2013 5311 funds in the amount of \$351,639 is \$110,000 higher than the average apportionment of the last five cycles. This increase is due to changes in San Diego County population distributions determined by the 2010 census information. MTS will be required to provide nonfederal matching funds in the amount of \$234,472 (\$225,026 for operating at a 44.76% match rate and \$9,446 for miscellaneous capital improvements at a 11.47% match rate).

DISCUSSION:


FTA Section 5311 funding in the amount of \$278,726 would be used for operating assistance and \$72,913 for miscellaneous capital improvements in nonurbanized areas. Caltrans requires the submission of a resolution by agency Boards of Directors authorizing the submission of a grant application and project programming. Therefore, staff recommends that the Board approve, by resolution, submission of a grant application and project programming. Caltrans requires that San Diego Association of Governments (SANDAG) certify that it will amend the Regional Transportation Improvement Program in the event of a grant award.

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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.

The FTA provides funds for capital and operating assistance to agencies providing rural transportation through the Section 5311 Nonurbanized Area Formula Program. These funds do not come directly to the region but are apportioned to the states. In turn, Caltrans, on behalf of the State, reapportions the funds to the region based solely on the regional rural population as a share of the state total rural population. SANDAG allocates the region's funds to both North County Transit District and MTS based on the relative rural population in each service area. As shown within Attachment A, FTA 5311 funding would provide \$351,639 in operating assistance for MTS.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, Sharon.Cooney@sdmts.com

Attachment: A. Resolution No. 13-3

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

Resolution No. 13-3

Resolution Authorizing Federal Funding Under FTA Section 5311
with the California Department of Transportation

WHEREAS, the U.S. Department of Transportation is authorized to make grants to states through the Federal Transit Administration (FTA) to support capital and operating-assistance projects for nonurbanized public transit services under Section 5311 of the Federal Transit Act; and

WHEREAS, the California Department of Transportation has been designated by the Governor of the State of California to administer Section 5311 grants for public transportation projects; and

WHEREAS, MTS desires to apply for said financial assistance to operate rural transit service in San Diego County; and

WHEREAS, MTS has, to the maximum extent feasible, coordinated and consulted with other transportation providers and users in the region, including consultation with San Diego County Health and Human Services;

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED that MTS does hereby authorize the Chief Executive Officer, or designated representative, to file and execute any actions necessary on behalf of MTS with the California Department of Transportation to aid in the financing of operating or capital-assistance projects pursuant to Section 5311 of the Federal Transit Act of 1964, as amended; that the designated representatives are:

1. The Chief of Staff is authorized to file and execute any actions necessary on behalf of MTS with the California Department of Transportation to aid in the financing of operating or capital-assistance projects pursuant to Section 5311 of the Federal Transit Act of 1964, as amended.
2. The General Counsel is authorized to file and execute any actions necessary on behalf of MTS with the California Department of Transportation to aid in the financing of operating or capital-assistance projects pursuant to Section 5311 of the Federal Transit Act of 1964, as amended.
3. The Chief Financial Officer is authorized to provide additional information as the California Department of Transportation may require in connection with the application for Section 5311 projects.

PASSED AND ADOPTED, by the Board of Directors this _____ day of _____, by the following vote:

AYES:

NAYS:

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. 30

MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

February 21, 2013

SUBJECT:

2013 STATE AND FEDERAL LEGISLATIVE PROGRAMS (SHARON COONEY AND
PETER PEYSER AND BETH BOEHLERT OF PEYSER ASSOCIATES, LLC)

RECOMMENDATION:

That the Board of Directors: (1) receive a report on state and federal issues and advocacy; and (2) approve staff recommendations for 2013 state and federal legislative programs (see Attachments A and B).

Budget Impact

None.

DISCUSSION:

Federal Year in Review

Surface Transportation Act

On July 5, the President signed into law a two-year surface transportation authorization bill entitled, "Moving Ahead for Progress in the 21st Century (MAP-21)." MAP-21 includes a limited increase for federal transit programs providing a total of \$10.578 billion in authorized funding in FY 2013 and \$10.695 billion in FY 2014. Under MAP-21, Urbanized Area Grants (Sec. 5307, 5336) continue to be the largest public transportation programs. The Job Access and Reverse Commute (JARC) Program activities will now be funded under the Sec. 5307 formula program at the discretion of the designated recipient. The bill authorizes \$422 million in FY 2013 and \$427.8 million in FY 2014 for a bus and bus facilities formula program. The funding level is significantly below previous funding for the program (\$984 million in FY 2012), but the new program is a formula grant program as opposed to the discretionary grant program under the previous authorization act.



The Elderly and Disabled (Sec. 5310) and New Freedom (Sec. 5317) Programs are combined into a single program that will fund activities designed to enhance the mobility of seniors and individuals with disabilities (the new program remains under Sec. 5310). The consolidated program will increase the level of resources available for elderly and disabled transportation programs. MAP-21 also authorizes increased funding for Rural Area Grants (Sec. 5311) to fund public transportation activities in rural areas and repeals the Clean Fuels Formula and Transit in the Parks Program.

One significant change under MAP-21 is the replacement of the Fixed-Guideway Modernization Program with a new formula State of Good Repair Program. The new program would distribute \$2.1 billion in each of fiscal years 2013 and 2014 to fixed-guideway systems that use and occupy a separate right-of-way for exclusive public transportation use, rail systems, fixed-catenary systems, passenger ferries, and bus rapid transit systems. Funding could be used for a variety of activities, and recipients would be required to develop asset-management systems that include capital-asset inventories and condition assessments, decision-support tools, and investment priorities.

MAP-21 authorizes \$1.907 billion for each of fiscal years 2013 and 2014 for Fixed-Guideway Capital Investment Grants short of the \$1.955 billion authorized in FY 2012. MAP-21 includes provisions designed to reform and streamline the project-approval process and eliminate duplicative steps in project development and providing for quicker review by the Federal Transit Administration (FTA). The Fixed-Guideway Capital Investment Grants eligibility is expanded to include both New Starts and projects on existing infrastructure that increase capacity along the corridor by at least 10 percent.

Congressional leadership expressed a strong interest in having a federal safety provision and oversight capability included in the legislation. MAP-21 grants authority to the Secretary to create a national safety plan for all modes of public transportation, to set minimum safety performance standards for all rolling stock not otherwise regulated, and to establish a national safety certification training program for federal and state employees, or other designated personnel, who conduct safety audits and examinations of public transportation systems and employees of public transportation agencies directly responsible for safety oversight. Under this provision, all recipients of federal transit funding are required to establish, and have certified, a comprehensive safety plan based on set criteria. Those states with rail fixed-guideway systems are required to have an approved state-safety oversight program that establishes a state safety oversight agency that assumes oversight-related responsibilities. MAP-21 safety-oversight requirements mirror State of California requirements and practices and, therefore, should have few (if any) impacts on MTS's operations.

MAP-21 mandates that the governing structure of all Metropolitan Planning Organizations (e.g., SANDAG) must include officials of public agencies that administer or operate major modes of transportation in the metropolitan area. The FTA has clarified that this means that transit agencies must have a voting presence on the planning agency Board of Directors. It is unclear as to how this will impact MTS's participation at SANDAG.

Fiscal Year 2013 Appropriations

Congress could not agree on Fiscal Year 2013 appropriations bills and therefore enacted a six-month Continuing Resolution (CR) in September. The legislation (H. J. Res 117) continues funding at the fiscal year 2012 rate of operations for federal agencies, programs, and services. To meet the bipartisan agreement between the House, Senate, and White House that ensured a total rate of operations at \$1.047 trillion, a government-wide, across-the-board increase of 0.6 percent over the base rate was also included. In total, including all discretionary spending, the annual rate of the CR is \$26.6 billion below last year's level. Transit funding for the first 6 months of FY 2013 is below that authorized by MAP-21, and Congress could act to increase levels for the second half of the year to match MAP-21.

H.R. 8, The American Taxpayer Relief Act of 2012, the so-called "fiscal cliff" bill, includes some important transit provisions. The bill includes a one-year increase in the pretax transit benefit to \$240 per month. It also extended the alternative fuel tax credit through December 2013, which provides MTS with a 50-cent credit for every therm of Compressed Natural Gas (CNG) used. Finally, it continued a tax credit for partially reimbursing the cost of new CNG fueling facilities, which may help offset the cost of the East County CNG fueling station.

Federal Audits

In 2012, MTS was the subject of two significant audits by the FTA—the overall Triennial Review and the Title VI Triennial Compliance Review. These two reviews are mandatory for all designated recipients of federal transit funding. The results of these audits were positive since MTS received no adverse findings.

State of Good Repair Grant Awards

With the moratorium on Congressional earmarks, the FTA has been using competitive grant programs to dispense the discretionary funding at its disposal. This past year the grant program was categorized as "State of Good Repair," and funding for projects was prioritized based on the applicant's ability to demonstrate significant need for bringing facilities or vehicles into a state of good repair. MTS submitted three applications in 2012 and received awards for the East County Bus Maintenance Facility (ECBMF) (\$10 million) and a Transit Asset Management System (TAM) (\$3 million). The ECBMF was a priority project in the 2012 legislative program and, as a result of this successful grant application, is fully funded. Under MAP-21, transit systems are required to have a transit asset-management system. Therefore, the \$3 million grant award for TAM will offset the cost of this mandate for the agency.

Title VI and Environmental Justice Updates

The FTA issued two significant circulars in 2012, "Title VI Requirements and Guidelines" and "Environmental Justice Policy Guidance." These circulars include new provisions and requirements for all designated recipients of FTA funding. MTS staff is working on new policies and procedures required for compliance with these circulars and will return to the Board for its approval this year.

State Year in Review

State Funding

Despite projected deficits, the state fully funded its obligations under the State Transit Assistance Program. The result was \$22 million of revenue for FY 2013. In addition, the State appropriated funding to meet Proposition 1B obligations that resulted in MTS's receipt of \$85 million toward the purchase of light rail vehicles and \$5.6 million for security-related capital improvement projects in 2012. MTS also advocated successfully to gain \$57 million in Proposition 1A funding for the Trolley Renewal Project.

Bus Axle Weights

California state law limits single bus-axle weights to 20,500 pounds on roads other than interstate highways. California state law in regards to bus axle weight limits was set in 1975. Since the 1970s, the weight of transit buses has increased by several thousand pounds—primarily due to implementation of government regulations—which add weight to the bus, such as the extra equipment needed to meet the Americans with Disabilities Act (ADA) accessibility requirements and the use of alternative fuels like CNG. Therefore, most California transit buses exceed the state limit when carrying passengers.

The California Transit Association in conjunction with MTS sought a legislative remedy that would better reflect the weight of buses today. Assembly Bill 1706 provided an exemption from the state's axle weight limit for all existing transit fleets and all bus procurements completed before the end of 2012. MTS will continue to work with stakeholders to refine the state regulations.

LOSSAN (Los Angeles-San Diego-San Luis Obispo) Agency

LOSSAN is a Joint Powers Authority (JPA) comprised of rail owners, operators, and regional transportation agencies from San Diego to Los Angeles and San Luis Obispo. As a member of LOSSAN, MTS assisted in crafting legislation to permit the agency to exert greater control over Amtrak's Pacific Surfliner service. Senate Bill 1225 (SB 1225) authorized the LOSSAN Agency to reconstitute itself to manage the state-supported Pacific Surfliner service, which provides 11 daily round-trips on the corridor. MTS worked to ensure that the language in SB 1225 would be permissive and that MTS would retain the ability to exit the JPA at will.

Taxicab Surveillance Cameras


Although not included in the 2012 legislative program, at the request of the taxicab industry in San Diego, MTS staff closely monitored efforts to change the Vehicle Code to permit the use of continuous video recorders inside of taxicabs. Senate Bill 1534 was extensively debated in Committee but ultimately failed to gain approval. Staff has added taxicab video recorders to its recommended state legislative program.

Pension Reform Legislation

The Governor signed AB 340, the California Public Employees' Pension Reform Act of 2013 (PEPRA), in September. This measure took effect on January 1 and, for the most part, impacts public employee retirement plan benefits in effect from that date forward.

Calendar Year 2013 Legislative Program

The draft state and federal legislative programs (Attachments A and B) are attached for review. The federal legislative program includes recommended capital project appropriation requests. Upon approval by the MTS Board, these programs will be used to define MTS legislative advocacy efforts in calendar year 2013.


Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, sharon.cooney@sdmts.com

Attachments: A. Draft State Legislative Program
B. Draft Federal Legislative Program

San Diego Metropolitan Transit System (MTS) 2013 State Legislative Program

I. Transit Funding

1. Seek legislation to expedite the allocation of state infrastructure bond funding designated for transit operators/projects.
2. Oppose legislation that would reduce direct funding to transit agencies, or transportation funding in general; support legislation that would generate new revenue for transit projects and operating costs.
3. Oppose legislation that would expand the use of Transportation Development Act (TDA) funds to non-transit purposes not currently covered by statute.
4. Support legislation that would help offset the impact on transit budgets caused by increases in fuel costs.
5. In partnership with interested cities, seek funding dedicated to grade-separation projects.
6. Seek legislation to exempt transit agencies from state sales tax.

II. Transit-Oriented Development

1. Seek legislation to expedite the allocation of state infrastructure bond funding for transit-oriented development and support legislation that provides funding incentives for mixed-use projects and transit-oriented development.
2. Support legislation that aids transit operators' efforts to create transit-oriented development.

III. Public Safety

1. Seek actions that would expedite the allocation of the \$1 billion in Proposition 1B bond funding designated for transit security projects.
2. Oppose legislation or regulations that would have an adverse impact on transit agencies' ability to provide safe transportation to their customers.
3. Support efforts to enhance penalties for crimes against transit staff or related to transit property.
4. Seek legislation that would protect the records of transit code compliance officers to the same degree as sworn officers.
5. Seek legislation that would permit transit agencies to adjudicate code violations.
6. Seek legislation that would allow agencies to pass an ordinance to allow national criminal background checks for taxicab operators.
7. Seek legislation that would remove Vehicle Code restrictions on the placement of video and audio recorders inside taxicabs.

IV. Climate Change

1. Advocate for favorable implementation of AB 32.
2. Oppose efforts to require actions by the transit operators in support of state climate change initiatives that constitute unfunded mandates.

V. Regulatory Matters

1. Support legislation that would facilitate the delivery of transit capital projects—especially through the availability of alternative procurement practices, such as design build.
2. Oppose unfunded mandates that impact transit operators.
3. Support legislation that would require manufacturers of wheelchairs and scooters to notify customers prior to purchase of any vehicles that are larger than what the Americans with Disabilities Act requires transit agencies to accommodate for boarding.
4. Oppose legislation that adversely limits the use of eminent domain for public transportation projects.
5. Support legislation that would remedy Bonanno v. Central Contra Costa Transit Authority, which is a case that substantially broadened the liability exposure of transit agencies.
6. Seek relief from regulations which prevent MTS from providing service in the most cost efficient way possible.
7. Monitor and respond to efforts to regulate MTS operations.
8. Seek clarification of regulations governing the disposition of real property purchased with TDA funds to prevent using the property for nontransit purposes.
9. Oppose efforts to eliminate or restrict transit exemption provisions in the California Environmental Quality Act (CEQA); seek legislative clarification that service and fare adjustments are always exempt from CEQA.
10. Seek a long term exemption from weight restrictions for all transit buses.

VI. Labor Relations

1. Monitor and respond to legislation relating to personnel matters.
2. Support legislation that protects the integrity of collective bargaining agreements, and oppose efforts to mandate benefits or working conditions.
3. Monitor and respond to legislation designed to clarify provisions of the Public Employees Pension Reform Act of 2012.

VII. Support Legislative Programs of Other Agencies or Organizations

1. Support the legislative programs of other agencies, such as SANDAG and NCTD, where consistent with the MTS legislative program.
2. Support provisions in the legislative programs of organizations, such as the California Transit Association and American Public Transportation Association, where consistent with the MTS legislative program.

San Diego Metropolitan Transit System (MTS) 2013 Federal Legislative Program

I. Transit Funding

- Oppose legislation that would reduce direct funding to transit agencies or transportation funding in general.
- Seek a permanent compressed natural gas tax credit program for transit operators.
- Support legislation that would help offset the impact on transit budgets caused by increases in fuel costs.
- Support legislation that would generate new revenue for transit projects and operating costs.
- Support legislation to bring funding to railroad corridors.
- Seek funding for railroad bridge and infrastructure rehabilitation.
- Seek funding to offset the costs associated with implementation of hybrid and alternative technologies in the transit fleet.
- In partnership with interested cities, seek funding dedicated to grade-separation projects.
- Seek programs in the defense appropriation process that would help offset the cost to provide transit services for military facilities.
- Oppose attempts to discontinue federal funding for school paratransit services or for nonemergency medical transport.
- Oppose actions by the General Services Administration that might adversely impact transit functions at the San Ysidro Border and seek funding to mitigate any changes to transit facilities currently used or owned by MTS.

II. Public Safety

1. Oppose attempts to create duplicative state rail safety regulatory agencies.
2. Seek stiffer federal criminal penalties for vandalism or theft of transit property.
3. Support legislation that increases funding for transit security projects and personnel.
4. Support legislation that provides reimbursement to transit operators for lost employee work hours due to emergency preparedness and antiterrorism training.
5. Oppose legislation or regulations that would have an adverse impact on transit agencies' ability to provide safe transportation to their customers.
6. Support legislation that assists transit operators to carry out their responsibilities as first responders to emergency situations.
7. Support efforts to enhance the transit agency's ability to coordinate with other local emergency personnel for disaster response and evacuation preparedness.

III. Regulatory Matters

1. Support legislation that would facilitate the delivery of capital projects.
2. Oppose unfunded mandates that impact transit operators.
3. Support efforts to increase competition in the fuel market.
4. Support legislation that would require manufacturers of wheelchairs and scooters to notify customers prior to purchase of any vehicles that are larger than what the Americans with Disabilities Act requires transit agencies to accommodate for boarding.
5. Oppose proposals that limit the use of eminent domain for public transportation projects.
6. Monitor and respond to legislation in the areas of finance, employment, and safety that could affect agency governance or operations, including issues related to contractors.
7. Support efforts to ensure that climate change legislation recognizes that transit investment can help achieve emission reduction goals, and seek inclusion of transit funding in any climate change legislation.

8. Oppose efforts to enlarge the universe of paratransit service eligibility to classifications of individuals that could effectively be served through fixed-route services.
9. Monitor and respond to attempts to alter access guidelines in a way that would financially burden transit operators without providing funding.
10. Oppose regulatory interpretations of Title VI that are not in keeping with the policy's intent or which cause actions by transit agencies that constitute unfunded mandates.
11. Seek a national standard for weight limit exemptions for transit buses that is consistent with the weight of buses on the market today and that takes into account the weight of equipment required to address federal mandates.

IV. Support for Legislative Programs of Other Agencies or Organizations

1. Support the legislative programs of other agencies, such as SANDAG, NCTD or other jurisdictions, where consistent with the MTS legislative program.
2. Support provisions in the legislative programs of organizations, such as the California Transit Association and American Public Transportation Association, where consistent with the MTS legislative program.

V. Capital Projects

1. Seek funding for the following capital projects:
 - Mid Coast Trolley Extension
 - MTS Bus Replacement Vehicles
 - East County Bus Maintenance
 - Blue Line Station Improvements
 - Regional Transportation Management System



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Agenda Item No. 31

MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

February 21, 2013

SUBJECT:

TAXICAB ADMINISTRATION CONTRACT RENEWAL (SHARON COONEY)

RECOMMENDATION:

That the Board of Directors approve the draft "Eighth Amendment to Agreement for Administration of Taxicab and Other For-Hire Vehicle Regulations Between San Diego Metropolitan Transit System and City of San Diego" (in substantially the same format in Attachment A) and authorize the Chief Executive Officer to negotiate the final contract.

Budget Impact

None with this action.

Recommendation by the Executive Committee

At its meeting on January 10, 2013, the Executive Committee recommended forwarding this agenda item to the Board of Directors for approval.

DISCUSSION:

City Taxicab Administration

Prior to MTS agreeing to regulate private for-hire vehicle permits, the City of San Diego Financial Management Department performed the following:

- Processed new and transfer permit applications
- Referred background investigations of owners to the police department
- Approved fares, company names, and colors for taxis and jitneys
- Provided public information to those seeking permits
- Prepared quarterly reports regarding fare regulation (setting) for taxis



- Monitored and evaluated insurance
- Monitored administrative violations (ensured vehicle replacement forms were submitted when new vehicles were purchased, ensured required annual statements were filed by owners in person, ensured notices were filed with transfer of ownership, ensured vehicles were not out of service longer than permitted, etc.) and conducted analyses, including negotiations of penalties for administrative violations
- Presented policy issues to the City Council
- Communicated with the industry
- Developed the budget, which included establishing permit fee and fine levels

The City of San Diego Police Department (SDPD) monitored complaints and insurance policies and was responsible for all aspects of code enforcement. The SDPD performed vehicle inspections that included general safety and appearance checks only. Costs for enforcement activities were absorbed in the City of San Diego's budget.

In 1988, the City of San Diego administered a permit program for approximately 895 taxis and 95 jitneys. The permit program with an estimated annual operating cost of \$358,000 had a cost recovery between 35 to 44 percent and was administered by eight positions.

Each of the other cities in the MTS jurisdiction performed similar duties with varying costs and resources prior to contracting with MTS to administer taxicab regulation.

MTS Assumption of Taxicab Administration

The City of San Diego contracted with MTS to perform taxicab administration in 1988. The decision to contract out this responsibility was based on concerns with internal regulation. There was a perceived need for more rigorous vehicle safety enforcement and inspections, more reasonable code enforcement, regular communication between industry representatives and regulatory staff, and better enforcement of permit holder accountability for the equipment and services operated under the permit. Another benefit of MTS assumption of the duties would be taxicab regulation based on transportation patterns rather than municipal boundaries.

During contract negotiations, both parties agreed that the City of San Diego would remain as the policy-setting entity. The City of San Diego Council Policy 500-02 sets policy for taxicab permit regulation. During contract negotiations, there was some discussion regarding whether MTS would regulate drivers, but it was determined that MTS's responsibility would be limited to permit regulation only. MTS Ordinance No. 11 is the basis of MTS's regulatory authority.

When MTS assumed regulatory responsibility of private for-hire vehicles from the City of San Diego, seven full-time staff members were needed. The permit fees in place at that time did not cover the full cost of taxicab administration activities. The California Public Utilities Code requires that MTS recover its costs entirely and, therefore, MTS adjusted permit fees accordingly.

MTS contracted with the cities of El Cajon, Imperial Beach, Lemon Grove, and Santee in 1990, the City of Poway in 1991, and the City of La Mesa in 1999. The contracts were based on the contract with the City of San Diego and in accordance with Ordinance No. 11.

Taxicab Administration Activities

The Taxicab Administration Department reports to the MTS Chief of Staff and consists of 10 full-time staff members. Operations are carried out at an inspection facility and administrative offices owned by MTS. The fiscal year 2013 budget is \$941,589, and the reserve balance is \$401,025.

Taxicab Administration regulates a total of 1,258 for-hire vehicle permits:

- 992 City of San Diego Taxicab Permits (79% of permits)
- 59 Suburban Taxicabs Permits (El Cajon, Imperial Beach, La Mesa, Lemon Grove, Poway, and Santee) (4.7% of permits)
- 193 Nonemergency Medical Vehicle Permits (15.3% of permits)
- 10 Jitney Vehicle Permits
- 4 Charter Vehicle Permits

As of this writing, vehicles regulated by MTS are operated by 490 permit holders. A schedule of fees is approved by the Chief Executive Officer to achieve full-cost recovery.

Vehicle inspections are a critical component of regulation of permit holders. As referenced in the *Vehicle Inspection Notice*, there are 8 types of vehicle inspections with the potential of 56 individual items/functions inspected. Currently, staff is in the process of conducting the 20th round of scheduled inspections since late 1990. In the round of inspections completed most recently, staff conducted 1,296 scheduled vehicle inspections; 247 replacement vehicle inspections; 68 permit-issuance vehicle inspections; and an estimated 559 reinspections for a total of 2,170 inspections. These totals do not include inspections for the airport, rates of fare, or field-report referrals, which add several hundred inspections to the total.

Field enforcement is also essential for guaranteeing compliance with Ordinance No. 11 regulations. Activities in this area include vehicle-compliance inspections in the field; driver compliance with regulations; "Secret Shopper" details; identification of illegal operators; monitoring taxicab stand standards; addressing complaints; conducting police line-ups; attending hearings at MTS and other agencies; conducting community outreach; and planning, setting up, and staffing of taxicab stands for large events. Taxicab code enforcement officers frequently work with public safety officers from other agencies and with MTS security.

Administering permits and ensuring compliance with the requirements of Ordinance No. 11 for all permit holders is another function of Taxicab Administration. Some of the activities include processing permit applications; determining eligibility to transfer San Diego taxicab medallions; monitoring insurance compliance; handling operational requests (radio-service changes, company name) and collection of fees; data collection (all permit and permit holder information, insurance, vehicle, and operational changes); annual statement submission/review; processing corporate/LLC officer/member and shareholder changes; monitoring permit-holder compliance; addressing compliance and permit-holder inquiries; reviewing radio-service compliance; and reviewing equipment and vehicle markings and specifications.

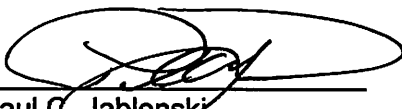
Taxicab Administration engages in a number of activities to maintain the health of the industry in the region. Periodic reviews of rates of fare are completed, and MTS sets fares to provide a balance between the public demand for reasonable fares and the need to provide drivers and permit holders with a return for their efforts. MTS is currently in the process of procuring a consultant to perform a comprehensive fare analysis as a first step toward the next fare adjustment. In 2009, Taxicab Administration conducted a passenger survey to better understand customer demographics, trip purpose, and overall satisfaction. A permit issuance study on behalf of the City of San Diego was conducted in 2011 to determine whether more permits should be issued. That study concluded that additional permit issuance is unwarranted at this time. Finally, MTS has sought to require event recorders inside of vehicles as a way to promote driver safety.

As part of its efforts to maintain an open communication with the industry, MTS maintains a Taxicab Advisory Committee. Taxicab Administration staff is responsible for conducting the Taxicab Advisory Committee meetings, as well as those of several subcommittees, such as the Workshop on Regulatory Matters Subcommittee, Finance Subcommittee, Taxicab Stand Subcommittee, and the San Diego Border Wildcat Task Force.

Taxicab Administration works with the San Diego County Sheriff's Department in its effort to ensure that drivers are properly licensed and operating in a safe manner. Since 1968, the Sheriff's Licensing Division has issued the driver's identification cards to for-hire vehicle drivers. In addition, the department handles driver-related issues, such as complaints and penalties. Currently, half of the 20 Licensing Division staff members are assigned to administer the for-hire driver's licenses.

Contract Renewal

All of the City Taxicab Administration contracts will expire in July 2013. At its December meeting, the Executive Committee gave direction to staff to return with a draft contract amendment that reflects the Executive Committee's discussion at that time. In particular, the Executive Committee requested that the amendment reflect that MTS would not become involved in the contracts between permit holders and their subcontractors and would not be required to regulate that relationship. At its January meeting, the Executive Committee recommended forwarding the attached draft amendment to the agreement with the City of San Diego. The item was withdrawn at the January 17 Board of Directors meeting (at the request of the City's representative) for consideration at the next Board meeting in February.


Paul G. Jablonski
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, Sharon.Cooney@sdmts.com

Attachment: A. Eighth Amendment to Agreement for Administration of Taxicab and Other For-Hire Vehicle Regulations Between San Diego Metropolitan Transit System and City of San Diego

**EIGHTEENTH AMENDMENT TO AGREEMENT FOR
ADMINISTRATION OF TAXICAB AND OTHER FOR-HIRE VEHICLE REGULATIONS
BETWEEN
SAN DIEGO METROPOLITAN TRANSIT SYSTEM
AND
CITY OF SAN DIEGO**

THIS AGREEMENT is entered into by and between the City of San Diego, a municipal corporation, 202 C Street, San Diego, CA (herein called "CITY"), and the San Diego Metropolitan Transit System, a public agency, 1255 Imperial Avenue, Suite 1000, San Diego, CA (herein called "MTS"), in view of the following recitals, which are a substantive part of this Agreement:

RECITALS

- A. MTS is authorized under Section 120266, Chapter 2, Division 11 of the California Public Utilities Code (PUC), to enter into contracts to regulate transportation services within a city in its area of jurisdiction;
- B. CITY is within MTS's jurisdiction created January 1, 1976, under Section 120050, et seq., Chapter 2, Division 11 of the PUC;
- C. CITY desires that MTS regulate taxicabs and other for-hire vehicles and services such as charter vehicles, sight-seeing vehicles, nonemergency medical vehicles, low speed vehicles (LSV), and jitney vehicles pursuant to PUC Section 120266 and in accordance with MTS Ordinance No. 11, "An Ordinance Providing for the Licensing and Regulating of Transportation Services Within the City";
- D. MTS Ordinance No. 11 is based on San Diego Municipal Code, Chapter 7, Article 5, Divisions 1 through 6, "Paratransit Code", which provided for CITY regulation prior to 1988, and was repealed in 1989;
- E. CITY continues to set the fundamental public policy pursuant to regulation of taxicabs and other for-hire vehicles and services through Council Policy 500-02, but any changes to Council Policy 500-02 that are in conflict with MTS Ordinance No. 11 will not be enforced by MTS without prior approval of an Ordinance No. 11 amendment by the MTS Board of Directors;
- F. MTS does not desire to expand its regulatory role to include oversight of the taxicab permit holder and subcontractor (ie. lease drivers) relationships;
- E.G. The City desires to retain the authority to create a City entity to regulate the business relationship between permit holders and their subcontractors (ie. lease drivers);
- F.H. CITY and MTS entered into an agreement, Document No. RR-271306, for the period of July 1, 1988 through December 31, 1988; a first amendment to that agreement, Document No.

RR-272517, for the period of January 1, 1989 through December 31, 1993; a second amendment to that agreement, Document No. RR-283074, for the period of January 1, 1994 through June 30, 1994; a third amendment to that agreement, Document No. RR-284038 for the period of July 1, 1994 through June 30, 1995; a fourth amendment to that agreement, Document No. RR-285794 for the period of July 1, 1995 through June 30, 1998; a fifth amendment to that agreement, Document No. OO-18526 for the period of July 1, 1998 though June 30, 2003; a sixth amendment to that agreement, Document No. OO-19195 for the period of July 1, 2003 through June 30, 2008; a seventh amendment to that agreement, Document No. OO-19761 for the period of July 1, 2008 through June 30, 2013;

G.I. CITY and MTS now desire to enter into an agreement to extend the period from July 1, 2013~~08~~ through June 30, 2018~~3~~; and

NOW THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, CITY and MTS agree as follows:

1. MTS will administer and enforce its taxicab and other for-hire vehicles Ordinance policies, and regulations as in effect on July 1, 2013~~08~~, and as thereafter from time to time amended by MTS, and thereby regulate such taxicab and other for-hire vehicles and transportation services rendered wholly within the CITY's corporate limits during the period of July 1, 2013~~08~~ through June 30, 2018~~3~~, pursuant to PUC Section 120266.

2. MTS will collect and administer all such regulatory fees, fines, and forfeitures as now or hereafter provided by the MTS Taxicab and Other For-Hire Vehicles Ordinance No. 11 policies, and regulations.

3. MTS will not alter a fundamental policy or regulation in accordance with the Taxicab and Other For-Hire Vehicles Ordinance No. 11 without prior approval of the CITY.

4. _____

MTS shall not be required to be a party to contracts between holders of taxicab permits in the CITY and their subcontractors (ie. lease drivers); nor shall MTS be required to regulate the business relationship between taxicab permit holders and their subcontractors (ie. lease drivers). MTS shall not be required to engage in the following activities: investigating and resolving contract disputes between permit holders and their subcontractors (ie. lease drivers); setting contract terms for agreements between permit holders and their subcontractors (ie. lease drivers); investigating and/or adjudicating allegations of retaliation between permit holders and their subcontractors (ie. lease drivers); regulating working hours and/or earnings for permit holders and their subcontractors (ie. lease drivers). Any attempt by the CITY or any of its officers to change these restrictions on MTS's responsibilities shall be considered an amendment to this agreement that would require the acquiescence of the MTS Board with all of the CITY members abstaining from the vote.

5. _____ The CITY retains the authority to create a CITY entity to regulate the business relationship between permit holders and their subcontractors (ie. lease drivers) and any of those items excluded from MTS's responsibilities in paragraph 4. If this occurs, the actions of the new CITY entity shall not change the terms of this agreement, and the provisions for amending this agreement contained in paragraph 4 shall prevail.

4.6 The CITY Mayor and MTS Chief Executive Officer may supplement this agreement by executing a Memorandum of Understanding relative to administrative and operating procedures of taxicab and other for-hire vehicles regulation, and to provide for reimbursable staff and legal support services.

IN WITNESS THEREOF, this ~~seventh~~ eighth amendment to the agreement is executed by the CITY acting by and through its City Mayor pursuant to Council Ordinance No. _____, and by MTS acting through its Chief Executive Officer.

Dated this _____ day of _____, 2013~~0~~8.

THE CITY OF SAN DIEGO

SAN DIEGO METROPOLITAN TRANSIT
SYSTEM

Paul C. Jablonski
Chief Executive Officer

WE HEREBY APPROVE the form of the foregoing Agreement.

City Attorney

Office of the General Counsel

Date: _____

Date: _____



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

February 21, 2013

SUBJECT:

GAS SERVICE PROVIDER AGREEMENT EXTENSION (MIKE THOMPSON)

RECOMMENDATION:

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

1. extend the gas service provider agreement with BP Energy Company (BP) for a five-year base term with 2 one-year option terms;
2. exercise each option year at the CEO's discretion; and
3. execute any documents necessary for MTS to participate in the BP direct market, federal Renewable Identification Number (RIN), and state low-carbon fuel standard (LCFS) programs.

Budget Impact

Exercising this agreement to extend BP as MTS's GSP would save approximately \$4,000 in the FY 14 operating budget. When a biogas supplier is found, this agreement would potentially save an additional \$800,000 annually in natural gas energy costs.

Recommendation by the Executive Committee

At its meeting on February 14, 2013, the Executive Committee recommended forwarding this agenda item to the Board of Directors for approval.



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.

DISCUSSION:

In February 2009, the MTS Board of Directors approved the Natural Gas Hedge Program and adopted the Natural Gas Hedge Policy to administer that program (MTS Board Policy No. 59). This program enabled MTS to purchase natural gas via a competitive-bidding process and allowed MTS to enter into a financial hedge to fix the natural gas rates. In addition to the goal of creating budget certainty for this volatile commodity, MTS staff estimates that this program also saves MTS over \$100,000 annually by allowing MTS to purchase the natural gas commodity directly from the market through a gas service provider (GSP) rather than through San Diego Gas and Electric (SDG&E). Gas is still delivered from the national natural gas pipeline by SDG&E, so there is no operational impact as a result of this change. The cost of the commodity is billed through the GSP, and the gas used by MTS is backfilled into the national natural gas pipeline by the GSP.

MTS conducted a competitive-bid process in 2009 and 2010 to select its GSP, and BP was the low bidder in each case. The 2010 agreement was for one year with 2 one-year options—the last of which is set to expire on June 30, 2013.

Since 2010, federal and state legislation has targeted the reduction of traditional fuels in an attempt to promote renewable fuels and also reduce greenhouse gas emissions. On the federal side, Congress enacted the Energy Policy Act of 2005, which required a mandated volume of biofuel use in the United States called the Renewable Fuel Standard (RFS). The Energy Independence and Security Act of 2007 increased the overall RFS and created submandates for advanced biofuels, biomass-based diesel, and certain cellulosic biofuels. These mandates require 36 billion gallons of renewable fuel annually by 2022. The only obligated parties are petroleum refiners and importers (i.e. BP, Shell, etc.) and not end users (i.e. not MTS). Renewable Identification Numbers (RINs) are the mechanism used to make sure each of the obligated parties meet its share of all of the mandates. These RINs generated as renewable fuels are sold and can be traded like any other commodity. This allows obligated parties to purchase RINs from outside sources in order to meet their obligation.

One such renewable fuel is biogas—gas that is produced naturally from landfills and from the processing of animal waste, sewage, crop waste, and cellulosic crops. If MTS purchases biogas instead of natural gas, it will generate Advanced Biofuel RINs for the seller.

On the state side, the California Air Resources Board (CARB) created the Low Carbon Fuel Standard (LCFS) aimed at reducing greenhouse gas emissions. Each type of fuel has been assessed a carbon intensity (CI) score. Fuel providers are required to ensure their overall CI score meets the annual CI target. The LCFS program has incentives in the form of credits that will be generated, tracked, and—like RINs—can be traded to other obligated entities. With the natural gas MTS is currently consuming, MTS generates LCFS credits. By purchasing biogas instead of natural gas, MTS would generate three times the number of credits.

In the summer of 2012, BP approached MTS with a proposal that would enable MTS to purchase biogas instead of natural gas with no impact to its current supply chain. BP would contract with a third party to supply MTS with biogas. MTS's natural gas usage (again delivered from the pipeline by SDG&E) will be backfilled with biogas enabling the

seller to generate RIN and LCFS energy credits. Under this program, the biogas purchased by MTS would be delivered to the national pipeline system and intermingled with the other gas in the pipeline. The same volume of gas would be consumed by MTS through delivery of gas through the local SDG&E pipelines to MTS's compressed natural gas (CNG) facilities. Biogas is pipeline-quality gas as determined by each respective pipeline. Therefore, this purchase of "biogas" by MTS will not impact the nature of the fuel that is delivered to MTS's CNG facilities/vehicles.

Under BP's proposal, BP will keep RIN credits to meet its obligation and will sell LCFS credits to other interested parties. BP will manage Environmental Protection Agency (EPA) and California Air Resources Board (CARB) requirements, including registration, compliance reporting, attestations, and other regulatory requirements. MTS will continue to pay the same natural gas indexed rate, but these costs would be partially offset with a share of the value of the RIN and LCFS energy credits. Accepting this proposal would require an extension of the current agreement with BP. In determining whether it would be in MTS's best interests to rebid its natural gas-commodity contract or to negotiate an extension with BP, MTS staff consulted with other known providers to confirm if similar RIN and LCFS energy-credit programs are being incorporated into pricing offers for natural gas supply contracts. No other provider offered a similar program. Because of the significant annual cost savings estimated as a part of the BP proposal, staff determined that a competitive proposal process is unlikely to result in similar cost savings.

Staff proposes that the current agreement with BP be extended by five years with 2 additional one-year options.

The extension pricing takes into account the RIN and LCFS energy credits and puts a value-sharing methodology in place. There will be a 12-18 month lead time for BP to secure an agreement with a third-party biogas supplier. Once the biogas supply is available, the cost of the natural gas consumed by MTS will be partially offset with energy credits estimated to be approximately \$800,000 annually. The extension is also structured so that if the RINs market price and/or LCFS credits increase, so does MTS's offset.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, Sharon.Cooney@sdmts.com

Attachments: A. Draft Transaction Confirmation
B. Sole-Source Justification Memo

**DRAFT TRANSACTION CONFIRMATION – NOT FOR EXECUTION
FOR IMMEDIATE DELIVERY**

Date: January 21, 2013 Transaction Confirmation

This Transaction Confirmation is subject to the Purchase and Gas Sales Agreement ("Base Contract") between Seller and Buyer dated 2013. The terms of this Transaction Confirmation are binding.

SELLER:

BP Energy Company
18101 Von Karman Ave, Suite 920
Irvine, CA 92612

Attn: Diane Holman
Phone: 949-251-8696 x105

Base Contract No. ____ TBD ____

Transporter: _____

Transporter Contract Number: _____

BUYER:

Metropolitan Transit System
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490

Attn: Paul Jablonski
Phone: 619-557-4583

Base Contract No. ____ TBD ____

Transporter: _____

Transporter Contract Number: _____

Contract Price (\$/MMBtu): NGI SoCal Border index + .02 per MMBtu + BTS + Fuel

For any volumes in excess of the contracted quantity, the price will be Gas Daily, SoCal Gas Citygate + \$0.02/MMBtu. For volumes less than the contracted quantity, the price will be Gas Daily, SoCal Gas Citygate Flat/MMBtu.

Delivery Period: Begin: July 1, 2013

End: June 30, 2018 with two one-year options

Performance Obligation: Seller will make Firm delivery of Biogas or Gas to the Delivery Point(s) throughout the Delivery Period and shall serve as Buyer's sole contracted marketer on SoCal Gas or SDG&E systems.

This Transaction is unit contingent upon the operation of the Biogas Supply Source and the MTS Vehicle Fuel facilities which create Vehicle Fuel from Biogas received at the Delivery Points consistent with Articles III and IV of the Addendum.

Contract Quantity:

Maximum Daily Quantity: 2,500 MMBtu's per Day

All incremental gas required by MTS will fall under this agreement

Delivery Point(s):

A) Buyer's meter at the SoCal Gas Citygate as set forth in Exhibit A

The Delivery Points at the SoCal Citygate shall be the Buyer's SoCal meter interconnect at the Buyer's California CNG stations listed in Exhibit A, at which point the title to the Gas will transfer from Seller to Buyer. Buyer shall utilize the local distribution company, SoCal Gas or SDG&E as the case may be, for standard distribution services from Seller's SoCal Citygate pool and Seller shall manage all logistics, scheduling, nominations and balancing of the Biogas to the Delivery Points. The Delivery Points may be modified from time to time by written agreement of Buyer and Seller.

Special Conditions:

1. **Monthly Nominations and Scheduling:**

Each month on the 20th of the month, SDG&E shall provide a schedule of monthly nominations for each Delivery Point based on Buyer's projected demand at the Delivery Points on a daily basis (the "Baseload Quantities"). Buyer shall have the right to revise the Baseload Quantity provided Buyer notifies Seller no later than 7:00 AM Central Prevailing Time on the Day prior to the Day for which such Biogas is to be delivered by Seller.

Seller understands and agrees that the Delivery Point Gas meters cannot be monitored remotely monitoring and that throughput will be calculated based on volume of dispensed fuel, which may vary from the metered gas sale volume.

2. **Balancing:**

Seller shall provide all Gas necessary to meet Buyer's demand at the Delivery Points to the extent that Biogas is not available in sufficient volume to meet the daily demand. All management and balancing of the Biogas and Gas supply to the Delivery Points will be managed by Seller without charge to Buyer. Seller shall be responsible for any Imbalance Charges imposed by SoCal Gas or SDG&E as the case may be.

3. **Biogas Supply Source**

Biogas delivered to the Delivery Points shall be sourced from the following Project(s).

| Biogas Supply Source | Location | Owner | Comment(s): |
|----------------------|----------|-------|-------------|
| TBD | TBD | TBD | TBD |

4. LCFS Value Sharing

As part of this transaction, any LCFS credits generated by this transaction will be shared with a split of 55% to Buyer and 45% to Seller.

Buyer is obligated to (i) generate any LCFS credits associated with its Biogas and Gas purchases each month that Buyer is able to generate and (ii) to sell as many of the LCFS credits generated in this transaction as possible under the previously outlined Buyer/Seller % split and (iii) to retain title to the credits through generation and sale process. No later than the fifth Business Day of each month following delivery, Buyer shall send Seller a statement detailing the number of LCFS credits generated during the prior month, the number of LCFS credits sold during the prior month and the price at which such LCFS credit were sold and the cumulative number of outstanding LCFS credits ("LCFS Statement"). Seller shall work to help facilitate and monetize LCFS credits as appropriate. Seller shall use this LCFS credits sale information within the LCFS Statement to calculate the monthly invoice. The LCFS Statement shall be subject to audit by Seller.

5. RIN Credits

MTS will retain 2% of all relevant RINs generated by use of Biogas. BP will use the monthly average spot price of D5 Advanced BioFuels RINs published by OPIS Full Refined Spot Price Report to calculate the RIN value. MTS must be able to demonstrate the capability to generate RINs from 2,500 MMBtu/day. In the event MTS is unable to demonstrate the ability to generate RINs from 2,500 MMBtu/day the RIN credits to MTS will be adjusted down on a prorated basis. Because RINs generated from the sale of Vehicle Fuel may qualify as D5 Advanced Biofuel RINs or D3 Cellulosic Biofuel RINs, the Contract Price will be calculated based on the OPIS D3 Cellulosic Biofuel RIN Index if the EPA determines that the vehicle fuel sold hereunder can generate D Code 3 RINS or the OPIS D5 Advanced Biofuel RIN Index if the EPA determines that the vehicle fuel sold hereunder can generate only D Code 5 RINS.

6. RIN Value Sharing

If the RIN Credit calculation is using the D5 Advanced Biofuel RIN index and in the event that D5 Advanced Biofuel RIN OPIS published price hits \$0.85 per RIN or higher, MTS will retain an additional 10% of renewable energy credits by the use of Biogas.

If the RIN Credit calculation is using the D3 Cellulosic Biofuel RIN index and in the event that D3 Cellulosic Biofuel RIN OPIS published price hits \$1.25 per RIN or higher, MTS will retain an additional 10% of renewable energy credits by the use of Biogas.

7. Representations.

(a) Buyer represents that it shall process all Biogas purchased from Seller hereunder into Vehicle Fuel which shall be distributed to Buyer's customers through Buyer's fueling stations.

(b) Seller represents that all Biogas sold hereunder shall be Biogas that has been produced by facilities properly registered under the EPA RFS for the generation of RINs and under CARB for the generation of LCFS credits.

(c) Buyer and Seller each represent that it has entered into a contract with Weaver LLP to ensure that it has created documentation necessary for Biogas and RIN creation and generation in a manner compliant with EPA requirements and with TIAX for the compliant generation of the LCFS Credits. Buyer and Seller will share in the EPA and CARB registration costs.

8. Records and Documentation Related to Biogas, RIN and LCFS Creation.

(a) Buyer shall maintain all records relevant to the purchase of Biogas from Seller, processing of such Biogas into a Vehicle Fuel, Vehicle Fuel sales, documentation of Vehicle Fuel production and sale to the Biogas Supply Source fuel in accordance with the requirements of the EPA RFS and records regarding the creation and sale of LCFS credits.

(b) Seller shall maintain all and accurate records relevant to the production and purchase and sale of Biogas, transportation, distribution and sale of the Biogas purchased hereunder as a Vehicle Fuel as it applies to the creation and sale of RINs in accordance with the requirements of the EPA RFS and LCFS credits in accordance with the requirements of CARB. In the event that the EPA amends its regulations for the creation and sale of RINs or CARB amends its regulations for the creation and sale of LCFS credits as related to the purchase and sale of Biogas for the production of Vehicle Fuel, the Parties agree to amend this Transaction Confirmation accordingly.

9. Conditions Precedent

(a) This Transaction is subject to approval by the MTS Board of Directors. If the Transaction is not approved by May 1, 2013, both parties have the option to terminate the agreement.

(b) This Transaction is subject to the condition precedents that Seller, no later than July 1, 2015, (i) successfully registers the Biogas Supply Source with the EPA and (ii) shall have filed an application for a LCFS pathway with CARB. Biogas deliveries shall not commence until the month following successful registration of the Biogas Supply Source with the EPA such that the Biogas is capable of generating RINS under the EPA RFS.

(c) This transaction will not become valid until Buyer executes Seller's long form NAESB/Special Provisions and Biogas Addendum.

10. Termination Provision

The Transaction Confirmation may be terminated by either Buyer or Seller in the event that the Seller has not commenced deliveries of Biogas by July 1, 2015.

11. Hierarchy: In the event of any inconsistency between the Base Contract and this Transaction Confirmation, the Transaction Confirmation shall govern.

Seller: BP Energy Company

Buyer: MTS

By: DRAFT ONLY NOT FOR EXECUTION _____

By: DRAFT ONLY NOT FOR EXECUTION _____

Name: Diane Holman

Name: Paul Jablonski

Title: Originator

Title: Chief Executive Officer

Date:

Date:



Metropolitan Transit System

Purchasing Department
1255 Imperial Ave., Suite 1000
San Diego, CA 92101
619.231.1466 FAX 619.696.7084

Att. B, AI 32, 2/21/13

Date: 2/14/13
To: Procurement File
From: Michael Thompson
Subject: Sole Source and Determination of Fair and Reasonable Pricing for Gas Service
Provider Contract MTS Doc. No. G1268.1-09

Background

In February 2009, the MTS Board of Directors approved the Natural Gas Hedge Program and adopted the Natural Gas Hedge Policy to administer that program (MTS Board Policy No. 59). This program enabled MTS to purchase natural gas via a competitive-bidding process and allowed MTS to enter into a financial hedge to fix the natural gas rates. In addition to the goal of creating budget certainty for this volatile commodity, MTS staff estimates that this program also saves MTS over \$100,000 annually by allowing MTS to purchase the natural gas commodity directly from the market through a gas service provider (GSP) rather than through San Diego Gas and Electric (SDG&E). Gas is still delivered from the national natural gas pipeline by SDG&E, so there is no operational impact as a result of this change. The cost of the commodity is billed through the GSP, and the gas used by MTS is backfilled into the national natural gas pipeline by the GSP.

MTS conducted a competitive-bid process in 2009 and 2010 to select its GSP, and BP was the low bidder in each case. The 2010 agreement was for one year with 2 one-year options—the last of which is set to expire on June 30, 2013.

In the summer of 2012, BP approached MTS with a proposal to extend the existing agreement. As part of this extension, BP would enable MTS to purchase biogas instead of natural gas, with no impact to its current supply chain. By MTS purchasing biogas, the seller is able to generate federal and state energy credits. MTS will continue to pay the same natural gas indexed rate, but these costs would be partially offset with a share of the value of the federal and state energy credits. Accepting this proposal would require an extension of the current agreement with BP. In determining whether it would be in MTS's best interests to rebid its natural gas-commodity contract or to negotiate an extension with BP, MTS staff consulted with other known providers to confirm if similar federal and state energy-credit programs are being incorporated into pricing offers for natural gas supply contracts. No other provider offered a similar program. Because of the significant annual cost savings estimated as a part of the BP proposal, staff



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 Trolley 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 Lamon Grove, City of National City, City of Poway, City of San Diego, City of San Marcos, and the County of San Diego.

determined that a competitive proposal process is unlikely to result in similar cost savings.

Cost Justification

Based on the initial evaluation back in 2009 and subsequent bidding in 2010, BP had the lowest priced proposal. In 2010, BP bid a rate \$0.025 per MMBTU, the next closest bidder was \$0.0425, 70% higher than BP. This extension includes a lower contract rate of \$0.02 per MMBTU, plus the ability to partially offset its cost of natural gas with a share of the value of the federal and state energy credits.

Conclusion

The staff determined pricing to be fair and reasonable and in the best interest of the agency. MTS has been satisfied with the past and current performance from BP and BP has shown the ability to perform successfully under the terms and conditions of this agreement. Staff also believes no other provider is currently able to offer a similar ability to partially offset the cost of natural gas with a share of the value of federal and state energy credits. Staff recommends extending the gas service provider agreement with BP for a five-year base term with 2 one-year option terms.



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Agenda Item No. 45

MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

February 21, 2013

SUBJECT:

LOS ANGELES-SAN DIEGO-SAN LUIS OBISPO RAIL CORRIDOR (LOSSAN) JOINT
POWERS AUTHORITY (SHARON COONEY)

RECOMMENDATION:

That the Board of Directors receive an update on efforts to amend the LOSSAN Joint Powers Authority (JPA).

Budget Impact

None.

DISCUSSION:

The LOSSAN Agency is a joint-powers authority (JPA) comprised of rail owners, operators, and regional transportation agencies from San Diego to Los Angeles and San Luis Obispo. The current joint-powers authority has limited decision-making power as major decisions regarding Amtrak's Pacific Surfliner intercity passenger rail service are made primarily by the California Department of Transportation (Caltrans).

Senate Bill 1225 (SB 1225) authorized the LOSSAN Agency to reconstitute itself to manage the state-supported Pacific Surfliner service, which provides 11 daily round-trips on the corridor. The Pacific Surfliner is one of three state-supported intercity corridors in the state and, together with the Capitol and San Joaquin Corridors, makes up 20 percent of Amtrak ridership nationwide. The LOSSAN Agency would also work with other operators on the corridor (long-distance Amtrak routes, COASTER and Metrolink commuter rail services, and freight rail) but would not manage those services. SB 1225 is permissive and does not require a local authority; however, two actions are required in order for this transfer to take place: (1) all current LOSSAN member agencies must approve an amended JPA; and (2) the LOSSAN Agency and the state must successfully



negotiate an Interagency Transfer Agreement (ITA). The Board of Directors approved the amended JPA on January 17, 2013, contingent upon acceptance of several amendments:

1. the ITA must be approved by a supermajority vote as defined in Section 17.1;
2. the LOSSAN ITA be required to include a provision that should the state cut funding for a mutually agreed-upon minimum level of service, service will revert back to state authority within 30 days; and
3. if an ITA cannot be agreed upon, the JPA would revert back to the 2011 version.

Staff will update the Board on negotiations regarding the JPA amendment.



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Agenda Item No. 46

MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

February 21, 2013

SUBJECT:

BUS RAPID TRANSIT (BRT) PROJECT UPDATES (DENIS DESMOND)

RECOMMENDATION:

That the Board of Directors receive a report for information.

Budget Impact

None at this time.

DISCUSSION:

The reauthorization of the TransNet sales tax in 2004 included capital and operating funding for a number of bus rapid transit (BRT) projects. Four of these are currently in operation by MTS or development at SANDAG:

1. SuperLoop (University City)
2. Mid-City Rapid (Downtown-San Diego State University via El Cajon Blvd.)
3. I-15 BRT (Downtown-Escondido via Interstate 15)
4. South Bay BRT (Otay Mesa-Downtown/Sorrento Valley)

Additionally, the San Diego Association of Governments (SANDAG) is developing two important transit projects for MTS in Downtown San Diego: (1) BRT stations along Broadway to serve the new routes, and (2) an off-street facility to lay over BRT and local buses in between trips. Staff will provide an update on each of these projects.



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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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Agenda Item No. 47

MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

February 21, 2013

SUBJECT:

BUS RAPID TRANSIT (BRT) BRANDING (ROB SCHUPP)

RECOMMENDATION:

That the Board of Directors receive a report on Bus Rapid Transit (BRT) branding for buses procured for Interstate 15 (I-15), Mid-City, and South Bay BRT services.

Budget Impact

None.

DISCUSSION:

In 2014, two of three new BRT services are scheduled to launch within the MTS service territory. All-day BRT service will operate on the I-15 corridor between Escondido and downtown San Diego, and the Mid-City BRT will operate between San Diego State University and downtown via El Cajon Boulevard, Park Boulevard, and Broadway. Both projects are funded by *TransNet*. BRT features include high-frequency service, signal prioritization, dedicated stations with next-arrival signage, security cameras at stations, new articulated buses, and specialized branding. MTS is responsible for developing marketing and branding programs for the transit services within its jurisdiction, and MTS collaborates with the San Diego Association of Governments (SANDAG) on branding frameworks for regionally significant projects (as per SANDAG Policy 18). BRT services, which represent a new level of service for the region, will receive distinct branding on the buses and at stations. The purpose of the report is to review the results of the BRT branding effort between MTS and SANDAG.

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

Paul C. Jablonski
Chief Executive Officer

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Agenda Item No. 48

MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

February 21, 2013

SUBJECT:

SERVICE PERFORMANCE MONITORING REPORT FOR JULY 2012 THROUGH
DECEMBER 2012 (SHARON COONEY)

RECOMMENDATION:

That the Board of Directors receive a report for information.

Budget Impact

None.

DISCUSSION:

MTS Board Policy No. 42 establishes a process for evaluating existing transit services to achieve the objective of developing a customer-focused, competitive, integrated, and sustainable system. The policy states that services will be evaluated annually; however, this information is provided for the first six months of FY 2013 in order to see more recent data. The analysis shows trends for the current fiscal year and helps to track performance throughout the year.



Objective: Develop a Customer-Focused and Competitive System

The following measures of productivity and service quality are used to ensure that services are focused on providing competitive and attractive transportation that meets our customers' needs.

• Total Passengers (July – December)

| Route Categories | YTD FY 2011 | YTD FY 2012 | YTD FY 2013 | Chg. 11-12 | Chg. 12-13 | % Chg. 11-12 | % Chg. 12-13 |
|-----------------------------|-------------------|-------------------|-------------------|------------------|--------------------|-----------------|-----------------|
| Premium Express | 141,633 | 151,996 | 155,987 | 10,363 | 3,991 | 6.8% | 2.6% |
| Express | 1,028,938 | 1,160,088 | 1,186,624 | 131,150 | 26,536 | 11.3% | 2.2% |
| Light Rail | 15,672,409 | 16,808,371 | 15,340,836 | 1,135,962 | (1,467,535) | 6.8% | -9.6% |
| Urban Frequent | 17,923,391 | 19,106,353 | 19,321,370 | 1,182,962 | 215,017 | 6.2% | 1.1% |
| Urban Standard | 6,265,598 | 6,750,316 | 6,815,692 | 484,718 | 65,376 | 7.2% | 1.0% |
| Circulator | 396,701 | 410,802 | 419,467 | 14,101 | 8,665 | 3.4% | 2.1% |
| Rural | 17,670 | 20,177 | 20,980 | 2,507 | 803 | 12.4% | 3.8% |
| Demand-Responsive | 178,315 | 175,067 | 186,962 | (3,248) | 11,895 | -1.9% | 6.4% |
| Total MTS Passengers | 41,624,655 | 44,583,170 | 43,447,918 | 2,958,515 | (1,135,252) | 6.6% | -2.6% |
| Bus Ridership | 25,773,931 | 27,599,732 | 27,920,120 | 1,825,801 | 320,388 | 6.6% | 1.1% |

Fixed-route bus ridership is up 1.1% for the first six months of FY 13 compared to the first six months of FY 12, which is in part due to service added in June and September 2012. Overall, MTS ridership has decreased 2.5% due to lower trolley ridership, which declined 9.6% over the period.

The year-over-year decline in trolley ridership is attributed to several factors, including: Trolley Renewal Project construction on weekends, wet weather through November and December, and a sharp drop in gasoline prices in late 2012. SANDAG is transitioning trolley ridership data from its current estimation program to Automatic Passenger Counters (APCs), which will increase accuracy and provide a clearer picture of trolley ridership trends.

• Average Weekday Passengers (July – December)

| Route Categories | YTD FY 2011 | YTD FY 2012 | YTD FY 2013 | Chg. 11-12 | Chg. 12-13 | % Chg. 11-12 | % Chg. 12-13 |
|-----------------------------------|----------------|----------------|----------------|---------------|-----------------|-----------------|-----------------|
| Premium Express | 1,114 | 1,196 | 1,205 | 83 | 8 | 6.9% | 0.7% |
| Express | 7,409 | 8,386 | 8,512 | 977 | 126 | 11.7% | 1.5% |
| Light Rail | 91,042 | 99,124 | 88,863 | 8,083 | (10,261) | 8.2% | -11.5% |
| Urban Frequent | 116,739 | 124,697 | 123,831 | 7,958 | (866) | 6.4% | -0.7% |
| Urban Standard | 42,312 | 45,827 | 45,202 | 3,516 | (625) | 7.7% | -1.4% |
| Circulator | 3,368 | 3,485 | 3,604 | 117 | 119 | 3.4% | 3.3% |
| Rural | 220 | 238 | 228 | 18 | (11) | 7.7% | -4.7% |
| Demand-Responsive | 1,298 | 1,264 | 1,327 | (34) | 64 | -2.7% | 4.8% |
| Average Weekday Passengers | 263,499 | 284,217 | 272,772 | 20,718 | (11,445) | 7.3% | -4.2% |
| Bus Passengers Only | 171,160 | 183,830 | 182,582 | 12,670 | (1,248) | 6.9% | -0.7% |

The total average weekday passenger statistics show how many passengers ride MTS on a typical weekday. For the first six months of FY 12, there is a 4.2% decrease in average weekday riders, which is a loss of 11,445 passengers per average weekday. Most of the decrease is a result of a decrease of 10,261 trolley passengers per average weekday (-11.5%). MTS bus services had a slight decline of 0.7% (1,248 passengers per average weekday).

- **Passengers per Revenue Hour (July – December)**

| Route Categories | YTD FY 2011 | YTD FY 2012 | YTD FY 2013 | Chg. 11-12 | Chg. 12-13 | % Chg. 11-12 | % Chg. 12-13 |
|------------------------------------|----------------|----------------|----------------|---------------|---------------|-----------------|-----------------|
| Premium Express | 22.6 | 20.5 | 22.3 | (2.1) | 1.8 | -10.5% | 8.1% |
| Express | 30.1 | 33.7 | 33.1 | 3.6 | (0.6) | 10.6% | -1.8% |
| Light Rail | 178.3 | 191.8 | 166.2 | 13.5 | (25.6) | 7.0% | -15.4% |
| Urban Frequent | 35.2 | 37.4 | 37.2 | 2.1 | (0.2) | 5.7% | -0.5% |
| Urban Standard | 27.4 | 29.3 | 29.2 | 1.9 | (0.1) | 6.4% | -0.2% |
| Circulator | 15.7 | 16.1 | 16.5 | 0.4 | 0.5 | 2.5% | 2.8% |
| Rural | 8.22 | 9.02 | 9.44 | 0.8 | 0.4 | 8.9% | 4.4% |
| Demand-Responsive | 2.05 | 2.09 | 2.05 | 0.04 | (0.04) | 1.5% | -1.7% |
| System Riders per Rev. Hour | 42.5 | 45.3 | 43.1 | 2.9 | (2.2) | 6.3% | -5.1% |
| Bus Riders per Rev. Hour | 32.0 | 34.0 | 33.9 | 2.0 | (0.1) | 5.9% | -0.3% |

MTS operated 2.4% more revenue hours in the first six months of FY 13 than the same period in FY 12. The Passengers per Revenue hour metric shows how the revenue hours (in-service hours and layover hours) that were added or removed relate to ridership increases or decreases. Increasing riders per revenue hour would indicate that the system is more efficient—carrying more passengers with the same number of buses, for example.

For the first six months of FY 13, all MTS services carried 43.1 passengers per revenue hour, which is a decrease of 5.1% (-2.2 riders per revenue hour). The change in riders per revenue hour figure on MTS's fixed-route bus services was nearly flat at 34.0 to 33.9, which is a slight decrease of -0.3%. For the first six months of FY 13, trolley passengers per revenue hour decreased from 15.4% to 166.2, which is a reduction of 25.6 riders per revenue hour. This can be attributed to a lower number of passengers on a similar amount of service as the previous year.

- **Passengers per In-Service Hour (July – December)**

| Route Categories | YTD FY 2011 | YTD FY 2012 | YTD FY 2013 | Chg. 11-12 | Chg. 12-13 | % Chg. 11-12 | % Chg. 12-13 |
|---------------------------------------|----------------|----------------|----------------|---------------|---------------|-----------------|-----------------|
| Premium Express | 23.9 | 23.2 | 24.8 | (0.7) | 1.5 | -2.8% | 6.2% |
| Express | 36.5 | 41.0 | 41.6 | 4.5 | 0.6 | 11.0% | 1.4% |
| Light Rail | 207.9 | 226.3 | 218.5 | 18.5 | (7.8) | 8.2% | -3.6% |
| Urban Frequent | 43.2 | 45.6 | 44.8 | 2.4 | (0.8) | 5.3% | -1.8% |
| Urban Standard | 36.2 | 39.1 | 38.5 | 2.9 | (0.6) | 7.4% | -1.6% |
| Circulator | 24.1 | 25.1 | 25.9 | 1.0 | 0.8 | 3.9% | 3.2% |
| Rural | 8.2 | 9.2 | 6.1 | 1.0 | (3.0) | 10.7% | -49.4% |
| Demand-Responsive | | | | | | | |
| System Riders per In-Svc. Hour | 55.9 | 59.5 | 57.0 | 3.7 | (2.5) | 6.1% | -4.4% |
| Bus Riders per In-Svc. Hour | 39.9 | 42.5 | 41.9 | 2.6 | (0.6) | 6.0% | -1.4% |

The Passengers per In-Service Hour measure is related to the above Passengers per Revenue Hour, but shows how many passengers are carried while the vehicle is in service picking up passengers, excluding layover time. Analyzing this figure helps MTS to understand how effective it is at providing the right level of service, instead of how effective MTS is at grouping trips and breaks together for a vehicle to operate (revenue hours). Compared to the same six months last year, MTS's system-wide figure decreased by 2.5 passengers per in-service hour to 57.0 (-4.4%).

- On-Time Performance

| Route Categories | Service Change | | | | |
|-------------------|----------------|---------|--------|---------|---------|
| | June 11 | Sept 11 | Jan 12 | June 12 | Sept 12 |
| Premium Express | 100.0% | 99.6% | 98.1% | 99.5% | 92.1% |
| Express | 87.7% | 87.5% | 80.7% | 75.1% | 86.1% |
| Light Rail | 91.9% | 90.9% | 89.1% | 86.4% | 88.3% |
| Urban Frequent | 82.4% | 82.1% | 83.6% | 84.5% | 83.4% |
| Urban Standard | 83.6% | 83.7% | 86.0% | 85.1% | 85.0% |
| Circulator | 90.0% | 90.2% | 86.5% | 86.3% | 94.9% |
| Rural | N/A | N/A | N/A | N/A | N/A |
| Demand-Responsive | N/A | N/A | N/A | N/A | N/A |
| MTS System | 85.2% | 85.2% | 85.6% | 85.2% | 86.0% |

On-time performance is calculated as departing within 5 minutes of the scheduled time.

On-time performance is measured by service-change period in order to show the results of scheduling changes. MTS's goal for on-time performance is 85% for Urban Frequent bus routes and 90% for trolley and all other bus-route categories.

Overall, on-time performance has remained around 85%. Two route categories met their specific goal while four did not. Each route is continually evaluated to determine if performance below the target is a result of issues that MTS controls, such as driver performance or scheduling, or situations outside of MTS's direct control, such as construction, traffic congestion, and passenger issues. MTS's expectation is that this performance will improve over the remainder of the year as the major trolley and bus service changes in September 2012 are assimilated.

- Preventable Accidents per 100,000 Miles

| Operator | FY 2011 | FY 2012 | YTD FY 2013 | % Chg. 11-12 | % Chg. 12-13 |
|-----------------------|---------|---------|-------------|--------------|--------------|
| MTS Bus | 1.58 | 1.47 | 1.28 | -7.5% | -12.6% |
| MTS Contract Services | 0.96 | 0.89 | 0.97 | -7.6% | 9.3% |
| MTS Trolley | 0.00 | 0.04 | 0.08 | N/A | 98.7% |

MTS Bus preventable accidents are slightly down for YTD FY 13 while MTS Contract Services preventable accidents had a slight increase.

MTS Trolley reported three preventable accidents in the first six months of FY 13 (none were violations of the California Vehicle Code). Continued operator retraining and improved driver safety-awareness programs and materials are used throughout the year, and staff will continue to strive to improve the operator average for this safety metric.

- Complaints per 100,000 Passengers

| Operator | FY 2011 | FY 2012 | YTD FY 13 | % Chg. 12-13 |
|-----------------------------------|---------|---------|-----------|--------------|
| MTS Bus | 7.8 | 5.7 | 6.2 | 9.3% |
| MTS Contract Services Fixed-Route | 7.4 | 8.3 | 9.0 | 9.1% |
| MTS Trolley | 1.78 | 1.42 | 4.03 | 183.1% |
| General System | -- | 0.7 | 1.07 | 42.0% |

Complaints for MTS Bus have increased slightly for MTS Bus and MTS Contract Services Fixed-Route buses. MTS Trolley saw an increase in the number of passenger complaints—mostly due to the realignment of the Blue, Orange, and Green Lines in September 2012.

Complaints related to the MTS System, rather than an individual operator, are now tracked separately. These complaints are in addition to any complaints that the operators receive and are related to planning issues, Web site problems, and general MTS policies and procedures. For the first six months of FY 13, the MTS General System received 1.07 complaints per 100,000 passengers.

Objective: Develop a Sustainable System

The following measures are used to ensure that transit resources are deployed as efficiently as possible and do not exceed budgetary constraints.

• **In-Service Hours (weekly)**

| Operator | September | | Difference | |
|----------------------------------|-----------|---------|------------|---------|
| | FY 2012 | FY 2013 | Number | Percent |
| MTS Bus | 11,828 | 12,439 | 612 | 5.2% |
| MTS Contract Service Fixed-Route | 12,949 | 13,305 | 356 | 2.7% |
| System | 24,777 | 25,744 | 967 | 3.9% |

Service levels have slightly increased from the last fiscal year. MTS is operating approximately 967 more hours per week on buses, which is a 3.9% increase. The increases have come from service adjustments to deal with high-load factors and the restoration of some previously reduced service levels (especially on weekends).

• **In-Service Miles (weekly)**

| Operator | September | | Difference | |
|----------------------------------|-----------|---------|------------|---------|
| | 2012 | 2013 | Number | Percent |
| MTS Bus | 158,802 | 167,757 | 8,955 | 5.6% |
| MTS Contract Service Fixed-Route | 180,984 | 187,658 | 6,673 | 3.7% |
| System | 339,786 | 355,415 | 15,628 | 4.6% |

Service levels have slightly increased from last fiscal year. MTS buses operate approximately 15,628 more in-service miles per week, which is a 4.6% increase. The increases have come from service adjustments to deal with high-load factors and the restoration of some previously reduced service levels (especially on weekends).

• **Weekday Peak-Vehicle Requirement**

| Operator | Sept 2011 | Sept 2012 | % Chg. 11-12 |
|-----------------------------------|-----------|-----------|--------------|
| MTS Bus | 193 | 209 | +16 |
| MTS Contract Services Fixed-Route | 245 | 257 | +12 |
| MTS Trolley | 93 | 96 | +3 |

The Weekday Peak-Vehicle Requirement shows the maximum number of vehicles that are on the road at any time in order to provide the levels of service that have been planned. Peak vehicles have seen a slight increase for MTS Bus and MTS Contract fixed-route services. These increases are mainly due to the increased service implemented in September 2012. Peak vehicles have seen a slight increase for MTS Trolley due to the implementation of the new Trolley Operating Plan in September 2012.

• In-Service Speeds (mph)

| Operator | Sept 2011 | Sept 2012 | % Chg. 11-12 |
|-----------------------------------|-----------|-----------|-----------------|
| MTS Bus | 13.4 | 13.5 | 0.44% |
| MTS Contract Services Fixed-Route | 14.0 | 14.1 | 0.9% |

In-service speeds have remained relatively flat year-over-year.

• In-Service/Total Miles

| Operator | Sept 2011 | Sept 2012 | % Chg. 11-12 |
|-----------------------------------|-----------|-----------|-----------------|
| MTS Bus | 0.875 | 0.859 | -1.8% |
| MTS Contract Services Fixed-Route | N/A | N/A | N/A |
| MTS Trolley | N/A | N/A | N/A |

The In-Service/Total Miles ratio is only calculated for MTS in-house bus operations as contractors are responsible for bus and driver assignments (run-cutting) for MTS Contract Services. Ratios have remained practically steady over the two service periods reported for MTS bus operations. MTS Trolley does not incur out-of-service mileage.

• In-Service/Total Hours

| Operator | Sept 2011 | Sept 2012 | % Chg. 11-12 |
|-----------------------------------|-----------|-----------|-----------------|
| MTS Bus | 0.806 | 0.759 | -6.2% |
| MTS Contract Services Fixed-Route | N/A | N/A | N/A |
| MTS Trolley | N/A | N/A | N/A |

As with the mileage statistic, In-Service/Total Hours can only be calculated for MTS in-house bus operations. Efficiency of scheduling has kept the ratio generally consistent over time with only a minor decrease from 2011 to 2012.



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Agenda Item No. 49

MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

February 21, 2013

SUBJECT:

OPERATIONS BUDGET STATUS REPORT FOR DECEMBER 2012 (MIKE THOMPSON)

RECOMMENDATION:

That the Board of Directors receive the MTS operations budget status report for December 2012.

Budget Impact

None at this time.

DISCUSSION:

This report summarizes MTS's operating results for December 2012 compared to the fiscal year 2013 budget. Attachment A-1 combines the operations, administration, and other activities results for December 2012. Attachment A-2 details the December 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 December 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, for the year-to-date period ending December 2012, the MTS net-operating income favorable variance totaled \$1,918,000 (2.8%). Operations produced a \$1,693,000 (2.5%) favorable variance, and the administrative/other activities areas were favorable by \$225,000.



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 December 2012 were \$50,404,000 compared to the year-to-date budget of \$49,208,000 representing a \$1,196,000 (2.4%) positive variance. This is primarily due to a favorable variance within passenger revenue.

Expenses

Year-to-date combined expenses through December 2012 were \$117,202,000 compared to the budget of \$117,924,000, resulting in a \$722,000 (0.6%) favorable variance.

Personnel Costs. Year-to-date personnel-related costs totaled \$60,470,000 compared to a budgetary figure of \$61,859,000, producing a favorable variance of \$1,389,000 (2.2%). This is primarily due to favorable variances within Transit Operations.

Outside Services and Purchased Transportation. Total outside services for the first six months of the fiscal year totaled \$36,675,000 compared to a budget of \$37,348,000, resulting in a favorable variance of \$673,000 (1.8%). 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 \$4,637,000 compared to a budgetary figure of \$4,211,000, resulting in an unfavorable expense variance of \$426,000 (-10.1%). This unfavorable variance is primarily due to revenue parts costs within Rail Operations.

Energy. Total year-to-date energy costs were \$11,976,000 compared to the budget of \$11,165,000 resulting in an unfavorable variance of \$810,000 (-7.3%). Energy rates for the fiscal year are as follows:

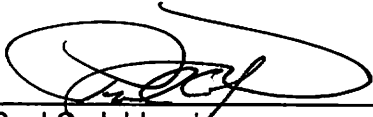
- Diesel: cost per gallon was \$3.43 versus a budgeted rate of \$3.85
- Gasoline: cost per gallon was \$3.50 versus a budgeted rate of \$3.83
- CNG: cost per therm was \$0.71 versus a budgeted rate of \$0.72
- Electricity: cost per kWh was \$0.153 versus a budgeted rate of \$0.149

Risk Management. Total year-to-date expenses for risk management were \$1,996,000, compared to the budget of \$2,018,000, resulting in a favorable variance totaling \$22,000 (1.1%).

General and Administrative. The year-to-date general and administrative costs, including vehicle and facilities leases, were \$225,000 (-9.4%) unfavorable to budget, totaling \$1,447,000 through December 2012, compared to a budget of \$1,332,000.

YEAR-TO-DATE SUMMARY

The December 2012 year-to-date net-operating income totaled a favorable variance of \$1,918,000 (2.8%). These factors include favorable variances in passenger revenue, other operating revenue, personnel costs, outside services and risk management costs, partially offset by unfavorable variances in energy costs, materials costs and general and administrative expenses.



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Attachment: A. Comparison to Budget

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
MTS
CONSOLIDATED
COMPARISON TO BUDGET - FISCAL YEAR 2013
DECEMBER 31, 2012
(in \$000's)

| | YEAR TO DATE | | | |
|---|---------------------|--------------------|-----------------|---------------|
| | ACTUAL | BUDGET | VARIANCE | VAR. % |
| Passenger Revenue | \$ 47,441 | \$ 46,753 | \$ 688 | 1.5% |
| Other Revenue | 2,963 | 2,455 | 508 | 20.7% |
| Total Operating Revenue | \$ 50,404 | \$ 49,208 | \$ 1,196 | 2.4% |
| Personnel costs | \$ 60,470 | \$ 61,859 | \$ 1,389 | 2.2% |
| Outside services | 36,675 | 37,348 | 673 | 1.8% |
| Transit operations funding | - | - | - | - |
| Materials and supplies | 4,637 | 4,211 | (426) | -10.1% |
| Energy | 11,976 | 11,165 | (810) | -7.3% |
| Risk management | 1,996 | 2,018 | 22 | 1.1% |
| General & administrative | 1,020 | 892 | (127) | -14.3% |
| Vehicle/facility leases | 427 | 429 | 3 | 0.6% |
| Amortization of net pension asset | - | - | - | - |
| Administrative Allocation | (0) | 0 | 0 | 0.0% |
| Depreciation | - | - | - | - |
| Total Operating Expenses | \$ 117,202 | \$ 117,924 | \$ 722 | 0.6% |
| Operating income (loss) | \$ (66,798) | \$ (68,716) | \$ 1,918 | 2.8% |
| Total public support and nonoperating revenues | 1,050 | 985 | 65 | 6.6% |
| Income (loss) before capital contributions | \$ (65,748) | \$ (67,731) | \$ 1,983 | -2.9% |

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
OPERATIONS
CONSOLIDATED OPERATIONS
COMPARISON TO BUDGET - FISCAL YEAR 2013
DECEMBER 31, 2012
(in \$000's)

| | YEAR TO DATE | | | |
|---|---------------------|--------------------|-----------------|---------------|
| | ACTUAL | BUDGET | VARIANCE | VAR. % |
| Passenger Revenue | \$ 47,441 | \$ 46,753 | \$ 688 | 1.5% |
| Other Revenue | 381 | 338 | 43 | 12.7% |
| Total Operating Revenue | \$ 47,823 | \$ 47,092 | \$ 731 | 1.6% |
| Personnel costs | \$ 52,225 | \$ 53,830 | \$ 1,605 | 3.0% |
| Outside services | 31,456 | 32,117 | 660 | 2.1% |
| Transit operations funding | - | - | - | - |
| Materials and supplies | 4,620 | 4,198 | (422) | -10.1% |
| Energy | 11,648 | 10,844 | (804) | -7.4% |
| Risk management | 1,836 | 1,817 | (19) | -1.0% |
| General & administrative | 197 | 127 | (71) | -55.7% |
| Vehicle/facility leases | 309 | 322 | 13 | 4.0% |
| Amortization of net pension asset | - | - | - | - |
| Administrative Allocation | 12,506 | 12,506 | 0 | 0.0% |
| Depreciation | - | - | - | - |
| Total Operating Expenses | \$ 114,799 | \$ 115,760 | \$ 962 | 0.8% |
| Operating income (loss) | \$ (66,976) | \$ (68,669) | \$ 1,693 | 2.5% |
| Total public support and nonoperating revenues | 1,004 | 985 | 19 | 1.9% |
| Income (loss) before capital contributions | \$ (65,972) | \$ (67,684) | \$ 1,711 | -2.5% |

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM
OPERATIONS
TRANSIT SERVICES (SAN DIEGO TRANSIT CORPORATION)
COMPARISON TO BUDGET - FISCAL YEAR 2013
DECEMBER 31, 2012
(in \$000's)**

| | YEAR TO DATE | | | |
|---|---------------------|--------------------|-----------------|---------------|
| | ACTUAL | BUDGET | VARIANCE | VAR. % |
| Passenger Revenue | \$ 14,347 | \$ 13,966 | \$ 381 | 2.7% |
| Other Revenue | 3 | 5 | (2) | -38.3% |
| Total Operating Revenue | \$ 14,350 | \$ 13,971 | \$ 380 | 2.7% |
| Personnel costs | \$ 35,892 | \$ 37,348 | \$ 1,456 | 3.9% |
| Outside services | 933 | 1,140 | 207 | 18.1% |
| Transit operations funding | - | - | - | - |
| Materials and supplies | 2,312 | 2,379 | 67 | 2.8% |
| Energy | 2,603 | 2,492 | (111) | -4.5% |
| Risk management | 875 | 899 | 24 | 2.7% |
| General & administrative | 72 | 73 | 1 | 1.6% |
| Vehicle/facility leases | 140 | 143 | 3 | 1.9% |
| Amortization of net pension asset | - | - | - | - |
| Administrative Allocation | 4,702 | 4,702 | - | 0.0% |
| Depreciation | - | - | - | - |
| Total Operating Expenses | \$ 47,529 | \$ 49,175 | \$ 1,646 | 3.3% |
| Operating income (loss) | \$ (33,179) | \$ (35,205) | \$ 2,026 | 5.8% |
| Total public support and nonoperating revenues | (846) | (857) | 11 | -1.3% |
| Income (loss) before capital contributions | \$ (34,025) | \$ (36,062) | \$ 2,037 | -5.6% |

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
OPERATIONS
RAIL OPERATIONS (SAN DIEGO TROLLEY, INCORPORATED)
COMPARISON TO BUDGET - FISCAL YEAR 2013
DECEMBER 31, 2012
(in \$000's)

| | YEAR TO DATE | | | |
|---|---------------------|--------------------|-----------------|---------------|
| | ACTUAL | BUDGET | VARIANCE | VAR. % |
| Passenger Revenue | \$ 18,568 | \$ 18,308 | \$ 260 | 1.4% |
| Other Revenue | 378 | 333 | 45 | 13.5% |
| Total Operating Revenue | \$ 18,946 | \$ 18,641 | \$ 305 | 1.6% |
| Personnel costs | \$ 15,747 | \$ 15,829 | \$ 82 | 0.5% |
| Outside services | 1,702 | 1,947 | 245 | 12.6% |
| Transit operations funding | - | - | - | - |
| Materials and supplies | 2,308 | 1,815 | (493) | -27.2% |
| Energy | 4,783 | 4,066 | (717) | -17.6% |
| Risk management | 953 | 910 | (43) | -4.7% |
| General & administrative | 120 | 44 | (76) | -172.3% |
| Vehicle/facility leases | 162 | 170 | 7 | 4.3% |
| Amortization of net pension asset | - | - | - | - |
| Administrative Allocation | 7,036 | 7,036 | - | 0.0% |
| Depreciation | - | - | - | - |
| Total Operating Expenses | \$ 32,812 | \$ 31,817 | \$ (995) | -3.1% |
| Operating income (loss) | \$ (13,866) | \$ (13,175) | \$ (690) | -5.2% |
| Total public support and nonoperating revenues | - | - | - | - |
| Income (loss) before capital contributions | \$ (13,866) | \$ (13,175) | \$ (690) | 5.2% |

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
OPERATIONS
MULTIMODAL OPERATIONS (FIXED ROUTE)
COMPARISON TO BUDGET - FISCAL YEAR 2013
DECEMBER 31, 2012
(in \$000's)

| | YEAR TO DATE | | | |
|---|---------------------|--------------------|-----------------|---------------|
| | ACTUAL | BUDGET | VARIANCE | VAR. % |
| Passenger Revenue | \$ 12,228 | \$ 12,017 | \$ 211 | 1.8% |
| Other Revenue | - | - | - | - |
| Total Operating Revenue | \$ 12,228 | \$ 12,017 | \$ 211 | 1.8% |
| Personnel costs | \$ 215 | \$ 220 | \$ 5 | 2.1% |
| Outside services | 20,284 | 20,557 | 272 | 1.3% |
| Transit operations funding | - | - | - | - |
| Materials and supplies | 0 | 2 | 2 | 90.0% |
| Energy | 2,862 | 2,900 | 38 | 1.3% |
| Risk management | - | - | - | - |
| General & administrative | 1 | 2 | 2 | 74.6% |
| Vehicle/facility leases | 6 | 9 | 3 | 31.0% |
| Amortization of net pension asset | - | - | - | - |
| Administrative Allocation | 530 | 530 | 0 | 0.0% |
| Depreciation | - | - | - | - |
| Total Operating Expenses | \$ 23,899 | \$ 24,220 | \$ 322 | 1.3% |
| Operating income (loss) | \$ (11,670) | \$ (12,203) | \$ 533 | 4.4% |
| Total public support and nonoperating revenues | - | - | - | - |
| Income (loss) before capital contributions | \$ (11,670) | \$ (12,203) | \$ 533 | -4.4% |

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
OPERATIONS
MULTIMODAL OPERATIONS (PARATRANSIT)
COMPARISON TO BUDGET - FISCAL YEAR 2013
DECEMBER 31, 2012
(in \$000's)

| | YEAR TO DATE | | | |
|---|---------------------|-------------------|-----------------|---------------|
| | ACTUAL | BUDGET | VARIANCE | VAR. % |
| Passenger Revenue | \$ 955 | \$ 972 | \$ (17) | -1.8% |
| Other Revenue | - | - | - | - |
| Total Operating Revenue | \$ 955 | \$ 972 | \$ (17) | -1.8% |
| Personnel costs | \$ 68 | \$ 75 | \$ 7 | 8.9% |
| Outside services | 5,615 | 5,502 | (113) | -2.1% |
| Transit operations funding | - | - | - | - |
| Materials and supplies | - | - | - | - |
| Energy | 1,217 | 1,130 | (87) | -7.7% |
| Risk management | 8 | 8 | - | 0.0% |
| General & administrative | 4 | 3 | (1) | -30.8% |
| Vehicle/facility leases | - | - | - | - |
| Amortization of net pension asset | - | - | - | - |
| Administrative Allocation | 177 | 177 | 0 | 0.0% |
| Depreciation | - | - | - | - |
| Total Operating Expenses | \$ 7,088 | \$ 6,894 | \$ (194) | -2.8% |
| Operating income (loss) | \$ (6,133) | \$ (5,922) | \$ (211) | -3.6% |
| Total public support and nonoperating revenues | - | - | - | - |
| Income (loss) before capital contributions | \$ (6,133) | \$ (5,922) | \$ (211) | 3.6% |

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
OPERATIONS
CONSOLIDATED CHULA VISTA TRANSIT OPERATIONS
COMPARISON TO BUDGET - FISCAL YEAR 2013
DECEMBER 31, 2012
(in \$000's)

| | YEAR TO DATE | | | |
|---|---------------------|-------------------|-----------------|---------------|
| | ACTUAL | BUDGET | VARIANCE | VAR. % |
| Passenger Revenue | \$ 1,343 | \$ 1,490 | \$ (147) | -9.9% |
| Other Revenue | - | - | - | - |
| Total Operating Revenue | \$ 1,343 | \$ 1,490 | \$ (147) | -9.9% |
| Personnel costs | \$ 115 | \$ 171 | \$ 56 | 32.6% |
| Outside services | 2,682 | 2,731 | 49 | 1.8% |
| Transit operations funding | - | - | - | - |
| Materials and supplies | 0 | 2 | 1 | 96.0% |
| Energy | 182 | 255 | 73 | 28.5% |
| Risk management | - | - | - | - |
| General & administrative | 1 | 5 | 3 | 69.5% |
| Vehicle/facility leases | - | - | - | - |
| Amortization of net pension asset | - | - | - | - |
| Administrative Allocation | 61 | 61 | (0) | 0.0% |
| Depreciation | - | - | - | - |
| Total Operating Expenses | \$ 3,043 | \$ 3,225 | \$ 183 | 5.7% |
| Operating income (loss) | \$ (1,700) | \$ (1,736) | \$ 36 | 2.0% |
| Total public support and nonoperating revenues | 1,758 | 1,758 | (0) | 0.0% |
| Income (loss) before capital contributions | \$ 58 | \$ 23 | \$ 36 | 157.2% |

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
OPERATIONS
CORONADO FERRY
COMPARISON TO BUDGET - FISCAL YEAR 2013
DECEMBER 31, 2012
(in \$000's)

| | YEAR TO DATE | | | |
|---|---------------------|----------------|-----------------|---------------|
| | ACTUAL | BUDGET | VARIANCE | VAR. % |
| Passenger Revenue | \$ - | \$ - | \$ - | - |
| Other Revenue | - | - | - | - |
| Total Operating Revenue | \$ - | \$ - | \$ - | - |
| Personnel costs | \$ - | \$ - | \$ - | - |
| Outside services | 84 | 84 | - | 0.0% |
| Transit operations funding | - | - | - | - |
| Materials and supplies | - | - | - | - |
| Energy | - | - | - | - |
| Risk management | - | - | - | - |
| General & administrative | - | - | - | - |
| Vehicle/facility leases | - | - | - | - |
| Amortization of net pension asset | - | - | - | - |
| Administrative Allocation | - | - | - | - |
| Depreciation | - | - | - | - |
| Total Operating Expenses | \$ 84 | \$ 84 | \$ - | 0.0% |
| Operating income (loss) | \$ (84) | \$ (84) | \$ - | 0.0% |
| Total public support and nonoperating revenues | 92 | 84 | 8 | 9.6% |
| Income (loss) before capital contributions | \$ 8 | \$ - | \$ 8 | - |

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
ADMINISTRATION
CONSOLIDATED
COMPARISON TO BUDGET - FISCAL YEAR 2013
DECEMBER 31, 2012
(in \$000's)

| | YEAR TO DATE | | | |
|---|---------------------|-----------------|-----------------|---------------|
| | ACTUAL | BUDGET | VARIANCE | VAR. % |
| Passenger Revenue | \$ - | \$ - | \$ - | - |
| Other Revenue | 2,396 | 1,924 | 472 | 24.5% |
| Total Operating Revenue | \$ 2,396 | \$ 1,924 | \$ 472 | 24.5% |
| Personnel costs | \$ 7,894 | \$ 7,682 | \$ (212) | -2.8% |
| Outside services | 5,139 | 5,168 | 28 | 0.5% |
| Transit operations funding | - | - | - | - |
| Materials and supplies | 8 | 11 | 3 | 28.8% |
| Energy | 322 | 316 | (7) | -2.2% |
| Risk management | 149 | 190 | 41 | 21.6% |
| General & administrative | 769 | 712 | (56) | -7.9% |
| Vehicle/facility leases | 118 | 108 | (10) | -9.6% |
| Amortization of net pension asset | - | - | - | - |
| Administrative Allocation | (12,557) | (12,557) | - | 0.0% |
| Depreciation | - | - | - | - |
| Total Operating Expenses | \$ 1,842 | \$ 1,629 | \$ (213) | -13.1% |
| Operating income (loss) | \$ 554 | \$ 295 | \$ 259 | -87.8% |
| Total public support and nonoperating revenues | 46 | - | 46 | - |
| Income (loss) before capital contributions | \$ 600 | \$ 295 | \$ 305 | 103.3% |

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
OTHER ACTIVITIES
CONSOLIDATED
COMPARISON TO BUDGET - FISCAL YEAR 2013
DECEMBER 31, 2012
(in \$000's)

| | YEAR TO DATE | | | |
|---|---------------------|-----------------|-----------------|---------------|
| | ACTUAL | BUDGET | VARIANCE | VAR. % |
| Passenger Revenue | \$ - | \$ - | \$ - | - |
| Other Revenue | 185 | 193 | (7) | -3.8% |
| Total Operating Revenue | \$ 185 | \$ 193 | \$ (7) | -3.8% |
| Personnel costs | \$ 351 | \$ 348 | \$ (4) | -1.1% |
| Outside services | 79 | 64 | (16) | -24.6% |
| Transit operations funding | - | - | - | - |
| Materials and supplies | 10 | 3 | (7) | -281.5% |
| Energy | 5 | 6 | 1 | 18.1% |
| Risk management | 12 | 11 | (0) | -3.1% |
| General & administrative | 54 | 53 | (1) | -1.2% |
| Vehicle/facility leases | - | - | - | - |
| Amortization of net pension asset | - | - | - | - |
| Administrative Allocation | 50 | 50 | - | 0.0% |
| Depreciation | - | - | - | - |
| Total Operating Expenses | \$ 561 | \$ 535 | \$ (26) | -4.9% |
| Operating income (loss) | \$ (376) | \$ (342) | \$ (34) | -9.9% |
| Total public support and nonoperating revenues | - | - | - | - |
| Income (loss) before capital contributions | \$ (376) | \$ (342) | \$ (34) | 9.9% |



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Agenda

Item No. 62

Chief Executive Officer's Report

ADM 121.7

February 21, 2013

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 January 12, 2013, through February 13, 2013.



EXPENSE CONTRACTS

| Doc # | Organization | Subject | Amount | Day |
|-------------|--------------------------------|--|-------------|-----------|
| G1418.2-12 | ASPARIAN, LLC | ADDITIONAL HOURS FOR DATABASE SUPPORT | \$18,850.00 | 1/17/2013 |
| B0546.1-11 | MOHAWK MANUFACTURING AND SUPPL | AMENDMENT TO BENDIX AIR BRAKES | \$4,987.06 | 1/22/2013 |
| G1326.2-10 | MIS SCIENCES, CORP. | EXERCISE OPTION YEAR | \$84,450.00 | 1/23/2013 |
| B0586.0-12 | CITY OF EL CAJON | EAST COUNTY BUS MAINT COOP AGMT PROJ INF | \$94,000.00 | 1/25/2013 |
| G1193.2-08 | COZEN & O'CONNOR | CONTRACT EXTENSION | \$10,000.00 | 1/29/2013 |
| G1512.0-13 | WARRINER CONSTRUCTION | TAXI CAB STANDS REPAIRS, INSTALL, & IMPR | \$49,602.00 | 1/29/2013 |
| PWG141.1-12 | APR CONSTRUCTION INC. | TRANSIT STORE IMPROVEMENTS | \$3,048.26 | 2/5/2013 |
| B0563.3-11 | TRAPEZE SOFTWARE GROUP, INC. | ADD TRAPEZE INFO-IVR-FX MAINT. AGMT | \$24,282.00 | 2/11/2013 |

REVENUE OR NO-VALUE CONTRACTS

| Doc # | Organization | Subject | Amount | Day |
|-------------|-------------------------------|--|---------------|-----------|
| L0901.1-10 | BRICEHOUSE STATION, LLC | ASSIGNMENT OF CONTRACT TO BRICEHOUSE STA | \$0.00 | 1/14/2013 |
| B0509.5-09 | KINGSBURY UNIFORMS, INC. | ADD ALTERNATIVE OPTIONS | \$0.00 | 1/16/2013 |
| L0993.1-11 | ETIC ENGINEERING, INC. | ROE PERMIT - TIME EXTENSION H ST TRANSIT | \$0.00 | 1/16/2013 |
| L1130.0-13 | VCC, LLC | ROE PERMIT - CONSTRUCT PARK & G 5 STORY | (\$5,000.00) | 1/16/2013 |
| G1515.0-13 | MEDIA ARTS CENTER SAN DIEGO | PARTNERSHIP AGREEMENT | | 1/18/2013 |
| S200-13-558 | LB CIVIL CONSTRUCTION, INC. | ROE PERMIT - ROUTE I-5 RAMP REALIGNMENT | (\$1,800.00) | 1/22/2013 |
| L1136.0-13 | TANI MEDIA FACTORY, INC. | ROE PERMIT - FILMING ON TROLLEY | \$0.00 | 1/25/2013 |
| G1520.0-13 | PM REALTY GROUP | PARTNERSHIP AGMT 2013 | (\$11,600.00) | 1/31/2013 |
| L1099.0-13 | WEST SIDE CREEK LLC | ACCESS EASEMENT - MARKET CREEK PLAZA | \$0.00 | 1/31/2013 |
| L5746.0-13 | UNITED STATES OF AMERICA | QUIT CLAIM DEED - WASHINGTON WYE NAVY | \$0.00 | 1/31/2013 |
| M6697.1-13 | MAHMOUD AKHAVEN - EURO SPORTS | LEASE AMENDMENT | \$0.00 | 1/31/2013 |
| L1135.0-13 | SAN DIEGO HALF MARATHON | ROE PERMIT FOR SD HALF MARATHON | (\$500.00) | 2/1/2013 |
| L1133.0-13 | NASLAND ENGINEERING, INC. | ROE PERMIT - DURABLE - LAND SURVEY | (\$1,000.00) | 2/7/2013 |
| L1137.0-13 | SCS ENGINEERS, INC. | ROE PERMIT - SOIL STUDY | \$0.00 | 2/7/2013 |
| L1138.0-13 | H&P MOBILE GEOCHEMISTRY | ROE PERMIT - SOIL BORINGS | \$0.00 | 2/7/2013 |

PURCHASE ORDERS (IFAS)

| DATE | Organization | Subject | AMOUNT |
|-----------|-------------------------------|------------------------------|------------|
| 1/14/2013 | ARAMARK REFRESHMENT SERV | COFFEE SERVICES 9-10TH FLOOR | \$4,859.26 |
| 1/14/2013 | REID AND CLARK SCREEN ARTS CO | MULTIPLE SIGNS | \$1,615.68 |

PURCHASE ORDERS (IFAS)

| DATE | Organization | Subject | AMOUNT |
|-----------|-----------------------------|-------------------------------------|-------------|
| 1/18/2013 | GENERAL INFORMATION SYSTEMS | HAND HELD UNITS 440 READERS | \$20,517.84 |
| 1/24/2013 | L & L PRINTERS | 2013 REGIONAL TRANSIT MAP | \$13,542.12 |
| 1/25/2013 | AT&T | ELECTRICAL WORK/APC UPS | \$36,470.47 |
| 1/28/2013 | REID & CLARK SCREEN ARTS | TROLLEY TIMETABLES KIOSK INSERTS | \$3,920.40 |
| 1/30/2013 | ACCESSIBLE SAN DIEGO | ACCESS GOLD MEMERSHIP RENEWAL | \$6,250.00 |
| 1/31/2013 | CDW GOVERNMENT, INC. | SONY LT05, LG 42" LCD | \$2,246.00 |
| 2/1/2013 | MONOPRICE INC. | PID 5', 14', 25', 30', 20', CABLE | \$1,948.93 |
| 2/1/2013 | DELL COMPUTER CORP | OPTIPLEX 9010, 24" MONITOR, WIDESCR | \$41,986.88 |
| 2/4/2013 | KELLY PAPER CO. | 96 BRIGHT PAPER - 180 CASES | \$7,010.48 |
| 2/4/2013 | HSQ TECHNOLOGY | SDSU ILON SYSTEM SUPPORT | \$16,989.00 |
| 2/5/2013 | CDW GOVERNMENT, INC. | APPLE IPAD, CASE, CS50 BUNDLE | \$2,309.74 |
| 2/6/2013 | AT&T | FIBER CABLES | \$1,021.85 |

WORK ORDERS

| Doc # | Organization | Subject | Amount | Day |
|------------------|---------------------------|----------------------------------|-------------|-----------|
| PWL132.0-11.18.1 | SOUTHLAND ELECTRIC, INC. | WRIGHT STREET YARD ENHANCEMENTS | \$19,801.60 | 1/22/2013 |
| PWL134.0-12.11 | HERZOG CONSTRUCTION, INC. | BROADWAY WYE SWITCH REPLACEMENT | \$9,313.09 | 1/22/2013 |
| PWL132.0-11.12.1 | SOUTHLAND ELECTRIC, INC. | BUILDING B ROOF REPAIR/SKYLIGHTS | \$30,817.70 | 2/4/2013 |
| PWL132.0-11.12.2 | SOUTHLAND ELECTRIC, INC. | BUILING B ROOF REPAIR TURBINES | \$20,589.30 | 2/4/2013 |
| PWL134.0-12.02.1 | HERZOG CONSTRUCTION, INC. | SAN MIGUEL CROSSING AMEND | \$11,445.24 | 2/7/2013 |