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## Agenda

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

September 18, 2014

9:00 a.m.

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

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#### ACTION RECOMMENDED

1. Roll Call
2. Approval of Minutes - July 17, 2014
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

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| 6.  | <u>San Diego and Arizona Eastern (SD&amp;AE) Railway Company Quarterly Reports and Ratification of Actions Taken by the SD&amp;AE Board of Directors at its Meeting on July 15, 2014</u>   | Information |
| 7.  | <u>Radio Communications Room Console Furniture - Procurement and Installation Services - Contract Award</u><br>Action would authorize the Chief Executive Officer (CEO) to: (1) execute MTS Doc. No. PWB156.0-14 with Watson Dispatch for Radio Communications Room Console Furniture for Procurement and Installation Services; and (2) approve a project contingency of 10 percent of the contract amount.   | Approve     |
| 8.  | <u>Transit Bus Tires - Sole Source Purchase Order</u><br>Action would authorize the CEO to issue a purchase order with The Goodyear Tire and Rubber Company (Goodyear) for the purchase of 228 transit bus tires.  | Approve     |
| 9.  | <u>Procurement and Installation of Dispatch Consoles and Radios - Contract Award</u><br>Action would authorize the CEO to: (1) execute MTS Doc. No. PWG148.0-14 with Mobile Relay Associates (MRA) for the procurement and installation of dispatch consoles and radios, and the provision of radio airtime services for a five-year base period with five one-year option periods (for a total of 10 years); and (2) exercise each option year at the CEO's discretion.   | Approve     |
| 10. | <u>San Diego Metropolitan Transit System (MTS) Bus Rapid Transit (BRT) Station Maintenance - Contract Amendment</u><br>Action would authorize the CEO to execute Amendment No. 1 to MTS Doc. No. G1658.0-14 with ISS Facility Services, Inc. (ISS) to accommodate unforeseen additional expenditures associated with maintenance services for nine additional BRT stations.  | Approve     |
| 11. | <u>Trolley On-Board Video Surveillance System - Contract Amendment</u><br>Action would: (1) ratify MTS Doc. No. L0955.3-10 with UTC Fire and Security for the purchase of wireless equipment for 57 SD8 Light Rail Vehicles (LRV), which was previously executed pursuant to the CEO's authority; and (2) authorize the CEO to execute Amendment No. 4 to allow for the reimbursement to UTC Fire and Security for three project performance bond extension periods covering April 20, 2012 - April 20, 2015.  | Approve     |
| 12. | <u>Federal Communications Commission (FCC) Mandated 800 MHz Band Reconfiguration - Implementation Phase Contract Awards</u><br>Action would authorize the CEO to: (1) execute MTS Doc. No. G1738.0-15 with Ross & Baruzzini (R&B) for project planning and technical support for the implementation phase of the project for the not-to-exceed amount of \$149,930.00; (2) execute MTS Doc. No. G1739.0-15 with Day Wireless Systems (DWS) for hardware reprogramming services for the implementation phase of the project for the not-to-exceed amount of \$180,180.00; and (3) execute MTS Doc. No. G1740.0-15 with Xerox Transport Solutions, Inc. (Xerox) for back-office and vehicle firmware reprogramming for the implementation phase of the project for the not-to-exceed amount of \$552,483.80. | Approve     |

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| 13. | <u>Fiscal Year 2015 State Transit Assistance Claim</u><br>Action would adopt Resolution No. 14-11, approving the fiscal year (FY) 2015 State Transit Assistance (STA) claim.  | Approve     |
| 14. | <u>San Diego State University (SDSU) Station Electrical Room Fire Suppression System - Contract Award</u><br>Action would authorize the CEO to execute MTS Doc. No. PWL154.0-14 with Schmidt Fire Protection, for the procurement and installation of the Sapphire fire suppression system at the SDSU station.   | Approve     |
| 15. | <u>Solar Powered Rail Lubricators - Contract Award</u><br>Action would authorize the CEO to execute MTS Doc. No. L1198.0-14 with Zemarc Corporation for the provision of up to sixteen solar powered rail lubricator kits.  | Approve     |
| 16. | <u>Investment Report - June 2014</u>  | Information |
| 17. | <u>Investment Report - July 2014</u>  | Information |
| 18. | <u>Unallocated Transportation Development Act (TDA) Funds for Transit-Related Projects</u><br>Action would approve the use of \$15,000 in unallocated TDA funds currently held by the County of San Diego. These TDA funds, along with the \$141,610 that the City of Santee already received to date, will allow for the installation of five bus shelters.                                  | Approve     |
| 19. | <u>Unallocated Transportation Development Act (TDA) Funds for Transit-Related Projects</u><br>Action would approve the use of \$177,800 in unallocated TDA funds currently held by the County of San Diego. These TDA funds will allow for the purchase/refurbish of CNG station equipment and rehabilitation of transit facilities for the City of Chula Vista.                              | Approve     |
| 20. | <u>Staff Attorney - Regulatory Compliance Position</u><br>Action would authorize the CEO to add one (1) Staff Attorney - Regulatory Compliance to the FY15 budget, increasing total Full Time Equivalent (FTE) positions from 0 to 1.   | Approve     |
| 21. | <u>Purchase of Head Lease Rights to 52 Light Rail Vehicles From Wells Fargo Bank and Utrecht-America Finance Co.</u><br>Action would authorize and direct staff to take all actions necessary to execute the purchase of the Head Lease Rights to 52 light rail vehicles as set forth in the Participation Agreement and other leverage lease documents executed by MTS on December 15, 1995. | Approve     |

#### CLOSED SESSION

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|-----|--|-----------------|
| 24. | a. CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL - Existing Litigation Pursuant to California Government Code Section 54956.9(d)(1): <u>Rodolfo Martinez v. SDTI (WCAB Case Numbers: ADJ8586853 and ADJ4054244)</u> | Possible Action |
|-----|--|-----------------|

b. CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL - Existing Litigation Pursuant to California Government Code Section 54956.9(d)(1): Jose Serrano v. SDTC (WCAB Case Number: ADJ2969216)

Possible  
Action

Oral Report of Final Actions Taken in Closed Session

NOTICED PUBLIC HEARINGS

25. None.

DISCUSSION ITEMS

- |     |  |         |
|-----|--|---------|
| 30. | <u>Amendments to Ordinance No. 4, Establishing a Metropolitan Transit System Fare-Pricing Schedule (Karen Landers)</u><br>Action would: (1) read the title of Ordinance No. 4, An Ordinance Establishing a Metropolitan Transit System Fare-Pricing Schedule; (2) waive further readings of the ordinance; (3) introduce the ordinance for further consideration at the next Board meeting on October 9, 2014; and (4) direct publication of an ordinance summary. | Approve |
| 31. | <u>Amended and Restated MTS-BNSF-NCTD San Diego Subdivision Shared-Use Agreement (Karen Landers)</u><br>Action would: (1) approve the Amended and Restated Shared-Use Agreement between MTS, Burlington Northern Santa Fe (BNSF), and North County Transit District (NCTD); and (2) authorize the Chief Executive Officer and/or the General Counsel to make minor, non-material changes to the document prior to execution by all parties.                        | Approve |
| 32. | <u>2014 Mills Building Board Room Improvement Project (Jeff Stumbo)</u><br>Action would authorize the renovation of the 10th Floor Board Room through Colliers International, the Mills Building on-site property management company.  | Approve |

REPORT ITEMS

- |     |   |             |
|-----|---|-------------|
| 45. | <u>2014 Comic-Con Service Recap (Tom Doogan &amp; Rob Schupp)</u>                     | Information |
| 46. | <u>Operations Preliminary Budget Status Report for Fiscal Year 2014 (Luke Kromer)</u> | Information |
| 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. Additional Public Comments Not on the Agenda  
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. Next Meeting Date: October 9, 2014
66. Adjournment

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM  
BOARD OF DIRECTORS  
1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101

DRAFT MINUTES

July 17, 2014

1. Roll Call

Chairman Mathis called the Board meeting to order at 9:04 a.m. A roll call sheet listing Board member attendance is attached.

2. Approval of Minutes

Mr. McClellan moved to approve the minutes of the June 19, 2014, MTS Board of Directors meeting. Mr. Minto seconded the motion, and the vote was 10 to 0 in favor with Messrs. Alvarez, Ovrom and Misses Emerald, Cole and Salas absent.

3. Public Comments

*John Wood* – Mr. Wood stated that the crossing gates on Broadway and Lemon Grove Avenue come down four blocks before the trolley arrives. He commented that the westbound San Miguel approach is out of alignment. He said there are still no arrival time boards located in Lemon Grove. Mr. Wood commented that the buses still have a lighting problem and the bus drivers need to walk around the bus before driving.

*Richard Thompson* – Mr. Thompson stated that he is concerned about the trolley officers. He commented on two separate situations where trolley officers were demanding people for proof of their trolley fares. He reviewed statistics from the MTS transit enforcement fact sheet regarding the Code Compliance Officers and Security Officers. Mr. Thompson asked for a review of the potential use of force by the officers.

*John Strain* – Mr. Strain discussed his concerns regarding the bus stop at 4<sup>th</sup> Avenue and University Avenue. He thanked MTS for the increase in security guards at the bus stop. Mr. Strain referred to and discussed the photographs he handed out to the Board members of the bus stop. Mr. Strain requested that the bus stop cleaning crews clean during the day time rather than the night time as to not disturb the tenants.

*Sheila Kazemaini* – Ms. Kazemaini commented that this is her third time coming to the MTS Board meetings asking for the 4<sup>th</sup> Avenue and University Avenue bus stop to be moved away from her apartment building. She said that buses come to that bus stop 195 times per day. She stated that even though the bus stop has been at that location for a long time, it should still be moved. Ms. Kazemaini stated that she believes moving the bus stop down the street will not affect ridership.

*Christina Meinecke* – Ms. Meinecke gave up her spot to speak so Sheila Kazemaini could have a longer speaking slot.

CONSENT ITEMS

6. Investment Report – May 2014  
Action would receive a report for information.
7. Increased Authorization for Legal Service Contracts to Pay Projected Expenses in Fiscal Year 2015  
Action would: (1) approve increasing the dollar amount of 13 legal services contracts to cover for fiscal year 2015 expenses; and (2) ratify two legal services contract amendments with approved firms.
8. Calnet Telecommunications Amendment  
Action would authorize the Chief Executive Officer to: (1) authorize funding of up to \$600,000.00 for MTS telecommunications services during the transition period between the State of California's CALNET II and CALNET III telecommunications contracts; and (2) authorize up to \$4,031,000.00 for MTS telecommunications services using the State of California's CALNET III telecommunications contract from July 1, 2015 through June 30, 2020.
9. MTS LRV Accident and Vandalism Body Repair Services – Contract Award  
Action would authorize the Chief Executive Officer to execute MTS Doc. No. L1193.0-14 with Carlos Guzman, Inc. (CGI) for the provision of LRV accident and vandalism body repair services for a five-year period.
10. Wireless Infrastructure Project – Purchase Order  
Action would authorize the Chief Executive Officer to issue a purchase order to AT&T DataComm, Inc. (AT&T), for the provision of equipment and professional installation services for MTS's Wireless Infrastructure Project.
11. Cisco Core and Intermediate Distribution Frame Network Equipment Five Year Maintenance Renewal  
Action would authorize the Chief Executive Officer to purchase Cisco SMARTNET maintenance through AT&T Datacomm, Inc. (AT&T), and Key Government Finance, Inc. (KEY), for renewal of the maintenance services agreement for MTS's Cisco network equipment. The services will be for five years beginning on July 25, 2014 and ending on July 24, 2019.
12. Leased Bus Tires and Services – Contract Amendment  
Action would authorize the Chief Executive Officer to execute Amendment No. 3 to MTS Doc. No. B0530.0-10 with The Goodyear Tire and Rubber Company (Goodyear) to accommodate additional staffing and unforeseen additional expenditures associated with the recently implemented service level increase and the contract run-out period anticipated at the end of the current agreement.
13. MTS Task Order Contract for Green Line Communication System Upgrades Design – Phase 2  
Action would authorize the Chief Executive Officer to execute Task Order Contract (TOC) MTS Doc. No. G1493.0-13, Work Order 13-05.1 with Kimley-Horn & Associates Inc. to perform Design Engineering for the Green Line Communications System Upgrades Project – Phase 2.

14. Parking Lot Sweeping Services – Contract Award

Action would authorize the Chief Executive Officer to: (1) execute MTS Doc. No. L1197.0-14 with San Diego Sweeping Services for the provision of parking lot sweeping services for a three (3) year base period and two (2) one-year optional terms exercisable at MTS's sole determination; and (2) exercise each option year at the CEO's discretion.

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

Action would receive a report for information.

Action on Recommended Consent Items

Mr. Roberts moved to approve Consent Agenda Item Nos. 6 – 15. Ms. Rios seconded the motion, and the vote was 12 to 0 in favor with Mr. Ovrom, Ms. Emerald and Ms. Cole absent.

CLOSED SESSION

24. Closed Session Items

The Board convened to Closed Session at 9:20 a.m.

- a. CLOSED SESSION – CONFERENCE WITH LABOR NEGOTIATORS PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 54957.6  
Agency: San Diego Transit Corp. & San Diego Trolley, Inc.  
Agency-Designated Representative: Jeff Stumbo  
Employee Organization: Amalgamated Transit Union, Local 1309 (Representing Bus Operators and Clerical Employees at SDTC)  
Employee Organization: International Brotherhood of Electrical Workers, Local 465 (Representing SDTI Flaggers)

The Board reconvened to Open Session at 9:36 a.m.

Oral Report of Final Actions Taken in Closed Session

Karen Landers, General Counsel, reported the following:

- a. The Board received a report from negotiators and gave authority.

NOTICED PUBLIC HEARINGS

25. None.

DISCUSSION ITEMS:

30. Enterprise Resource Planning / Transit Asset Management Software Contract Award (Larry Marinesi and Fred LaCroix)

Larry Marinesi, Chief Financial Officer, began the presentation by giving a brief overview of the Enterprise Resource Planning (ERP) / Transit Asset Management (TAM) Software Contract

Award and introduced Fred LaCroix, MTS ERP Project Manager. He discussed the FTA TAM requirements, project approach, project budget, project goals, project structure, and project scope. He stated that the entire project will be broken into three different phases to reduce costs and risk. Mr. Marinesi explained the competitive request for proposals process for the ERP/TAM Software. He stated that SAP America, Inc. (SAP) is the staff recommended solution. He commented that the Executive Committee received this presentation last Thursday, July 10, 2014, and forwarded the recommendation to the Board of Directors for approval. Mr. Marinesi reviewed the overall contract summary for the first phase of the project, stating that the grand total cost for the first phase of the project is estimated not-to-exceed \$2,305,000.

Mr. Ewin asked if there are any ongoing or annual licensing fees. Mr. LaCroix stated that there is a \$600,000 one-time fee and there is also a yearly fee of approximately \$132,000 for software maintenance. Mr. Ewin asked if there was a chance the estimated costs could rise in price. Mr. Marinesi stated that there is a possibility of slightly increased costs for the estimated ten year software support services due to inflation. He also stated that they are currently working with SAP to place a cap on the estimated amount as to not have any significant increase in costs.

Mr. Gloria commented that the Executive Committee had an extensive conversation on this matter and recalled that MTS confirmed the software modules have all been purchased and should not require any additional modules. He also asked for confirmation that the only possible increase in cost would be for the software support services. Mr. Marinesi stated that the base of software support services is approximately \$132,000 per year, and that cost may increase due to inflation. He also stated that they will bring back an update on this project to the Board every year to discuss progress and if there have been any significant changes to the costs. Lastly, Mr. Gloria stated that the transition the City of San Diego experienced with their new software system was difficult. He commented that MTS's research of other agencies' implementation will better prepare them in successfully transitioning to the new system. Mr. Jablonski stated that a lot was learned from MTS's previous ERP implementation with Ellipse and from observing and speaking with other agencies. He commented that the process of obtaining a new ERP system has been in the works for almost two years. He stated that every department within MTS is prepared and ready to implement the new ERP/TAM Software.

Mr. Minto commented that after speaking with employees at the City of San Diego, they are still having a difficult time with their system after their implementation. He inquired if we would receive any type of relief from SAP if the software system does not perform to our standards, instead of putting more money into the project. Mr. LaCroix stated that after speaking with managers at other organizations with the same software, their biggest issue was not managing the implementation process properly. Mr. LaCroix also stated that MTS is implementing the newest version of the software which is easier to use than the previous version. Mr. Jablonski commented on some of the lessons learned from the previous implementation with Ellipse and reviewed how we have prepared for this new software. He also stated the implementation process is the largest factor in the success of this system.

Mr. Alvarez inquired if MTS could provide some of the project information to the public via the website. Mr. Marinesi stated that once MTS selects an implementation partner, we can include that aspect into phase two of the implementation.

Action Taken

Mr. Minto moved to authorize the Chief Executive Officer to execute MTS Doc. No. G1680.0-14 with SAP America, Inc. for the provision of software, training services, and ten years of software support services for the Enterprise Resource Planning (ERP) / Transit Asset Management (TAM) Project. Mr. Mullin seconded the motion, and the vote was 13 to 0 in favor with Ms. Cole and Ms. Emerald absent.

31. An Ordinance Amending Ordinance No. 11, Providing for the Licensing and the Regulating of Transportation Services Within the City by the Adoption of a Uniform Paratransit Ordinance (Sharon Cooney and Bill Kellerman)

Sharon Cooney, Chief of Staff, provided a presentation regarding the proposed changes to Ordinance No. 11 and introduced Bill Kellerman, MTS Taxicab Administration Manager. She reviewed the genesis of the proposed changes, proposed revisions to Ordinance No. 11, screening criteria, and the Ninth Amendment to the City of San Diego contract. Ms. Cooney noted that Ordinance No. 11 also dictates the policy for the other jurisdictions and cities in San Diego for which MTS administers taxicabs. Ms. Cooney stated that one item in Council Policy 500-02 will not be recommended by MTS at this time. MTS will not be recommending a requirement for security cameras pending changes in state law.

Chairman Mathis commented on one of the screening criteria regarding the 25 percent of trips being originated from underserved communities. He inquired as to where the number of 25 percent originated and also asked how this requirement would be fulfilled due to this type of business being an on demand system or an as needed basis. Ms. Cooney stated that the City of San Diego has not yet provided a definition for underserved communities. Chairman Mathis also asked if there is documented history of complaints from people being refused service or not being able to get taxicabs when requested while in underserved communities. Mr. Kellerman stated that he spoke with his staff on that matter and they are not aware of any recent complaints of a person being refused service in a specific location. Chairman Mathis suggested obtaining clarification on this matter before including it in the changes to Ordinance No. 11.

Mr. Ewin asked how these changes would impact non-City of San Diego cities. Ms. Cooney stated that the changes would apply to all MTS permit holders, including all cities outside of the City of San Diego for which MTS administers taxicab.

Mr. Minto asked who determines the underserved areas of each city. Mr. Kellerman stated that suburban city taxicabs may drop off in any city of San Diego, however they cannot pick up in any city in San Diego besides their own city. He also stated that City of San Diego taxicabs may drop off or pick up in any city in San Diego. Ms. Cooney stated that the underserved areas of each city would need to be identified.

Ms. Denny inquired if the vehicles still need to comply with all federal and state laws. Ms. Cooney confirmed that all vehicles will need to comply with all federal and state laws. Ms. Denny also asked whether MTS was accepting any liability in adopting the language of the vehicle compliance requirements. Ms. Cooney stated that MTS does not have liability because MTS is indemnified by the City of San Diego.

Mr. McClellan also agreed that the screening criteria regarding that 25 percent of trips originating from underserved communities should be reviewed more extensively before being implemented into Ordinance No. 11. Mr. McClellan stated that the taxicab vehicles in the City of El Cajon are older vehicles. He said most of the vehicles are well maintained older vehicles and would most likely not comply with zero emissions or disability requirements.

Ms. Bragg stated that she is not comfortable with the 25 percent provision until there is a clear definition of underserved areas. She also commented on the long wait times residents were quoted from taxicabs during this past New Year's Eve.

Mr. Mullin asked for clarification on low emission and zero emission vehicles. Mr. Kellerman stated that there are many hybrid vehicles currently in service that comply with this requirement. Mr. Mullin asked if taxicab companies will have a phase-in time to purchase low emission or zero emission vehicles. Mr. Kellerman stated that all taxicabs will have to comply with this requirement by the year 2020.

Mr. Roberts commented that he believes there are other vehicles other than hybrid vehicles that would comply with this requirement.

#### Public Speakers

*Michel Anderson – San Diego Transportation Association.* Mr. Anderson commented on behalf of the San Diego Transportation Association. He said he is not sure where the 25 percent figure came from regarding underserved communities. Mr. Anderson stated that he believes that GPS should be spelled out as Global Positioning System in the Ordinance. He believes there should be a successor clause in the Ordinance stating that in the event that a permit holder passes away, the permit should be passed onto family or next of kin. Mr. Anderson said he does not see a demand for 50 percent of the vehicles to be ADA compliant. He commented that he hopes to see MTS address the unregulated taxicab companies known as the transportation network companies (TNCs). He stated that TNC drivers do not usually have background checks; however every taxicab driver is required to go through a background check.

Mr. Roberts asked Mr. Anderson if there will be an issue for the taxicab vehicles to meet requirements by 2020. Mr. Anderson stated that he does not foresee a problem fulfilling that requirement by 2020.

*Margo Tanguay – Ms. Tanguay* stated that she leases a USA taxicab. She said that taxicab drivers are required to have a Sheriff's permit. Ms. Tanguay said that all permit holders are required to have background checks. She stated that USA taxicab uses a program called FlyWheel which is used to determine the distance a taxicab is from a passenger. Ms. Tanguay commented on underserved areas in San Diego. She also stated that she wants to see more training for new taxicab permit holders.

Chairman Mathis proposed to not include the item regarding underserved communities in the changes to Ordinance No. 11 until further clarification.

Mr. Minto inquired whether or not time was a factor in making the changes to Ordinance No. 11. Ms. Cooney stated that this is not a time sensitive matter and that the changes were requested by the City of San Diego.

Action Taken

Mr. Minto made a motion to return Ordinance No. 11 to MTS staff for further review and to return Ordinance No. 11 to the Board at a later date with updated changes to the language. Mr. Alvarez seconded the motion, and the vote was 13 to 0 in favor with Ms. Cole and Ms. Emerald absent.

32. Board Policy 62 - First Amendment Activities on MTS Property (Karen Landers)

Karen Landers, General Counsel, provided a presentation on the proposed adoption of MTS Board Policy 62 for First Amendment Activities on MTS property. She discussed the purpose, development and elements of the MTS Board Policy on First Amendment activities.

Ms. Denny asked what percentage of MTS property is prohibited from First Amendment activities. Ms. Landers stated that she has not conducted a statistical catalog; however she did state that there are many stations where MTS only owns the trolley platforms and the areas around the platforms are owned by the city. Ms. Landers stated that the majority of MTS's permitted areas are located at larger transit stations.

Mr. Minto asked for clarification on whether or not this policy applies to posting letters and documents on MTS property. Ms. Landers stated that MTS does not allow posting of letters and documents on MTS property.

Ms. Bragg inquired if all stations had been reviewed for this policy. Ms. Landers stated that a system wide tour was conducted for the purposes of this policy. She also commented that the Blue Line is currently under construction and cannot accommodate First Amendment activities until the construction is completed.

Mr. Gloria asked if any stakeholders had been informed of this proposed policy. Ms. Landers stated that MTS has not informed any stakeholders, however in the past there have not been any issues with this matter. Ms. Landers also stated proposed changes will be brought back to the Board if MTS receives feedback from other organizations regarding the policy.

Mr. Alvarez inquired about the Blue Line stations that are prohibited from First Amendment activities. Ms. Landers stated that due to the current construction on the Blue Line, those stations are prohibited until the construction is completed. She also noted that stations that only have paid fare zones will not be permitted for First Amendment activities. Ms. Landers stated that an evaluation of the Blue Line will take place once the construction is complete.

Action Taken

Mr. Roberts moved to (1) adopt the proposed San Diego Metropolitan Transit System (MTS) Board Policy 62 governing First Amendment Activities on MTS Property; and (2) authorize the Chief Executive Officer to add, remove or modify MTS Board Policy 62 Exhibits B and C relating to the "Designated Areas" in which First Amendment Activities are permitted as necessary to maintain safe and efficient use of MTS property for transit purposes. Mr. McClellan seconded the motion, and the vote was 13 to 0 in favor with Ms. Cole and Ms. Emerald absent.



## REPORT ITEMS

### 45. Student Pass Pilot Program (Sharon Cooney, Marcus Smith and Janelle Carey)

Ms. Cooney began the presentation by introducing Janelle Carey, Associate Transportation Planner, and Marcus Smith, Compass Card Supervisor. Ms. Carey continued the presentation by stating that Becky Philpott, Program Manager for Drop Out Prevention at the San Diego Unified School District, was in the audience and could help answer questions. Ms. Carey reviewed the background of the pilot program. Mr. Smith reviewed charts detailing the statistics of the pilot program and the number of passes distributed and used by the students. Ms. Carey reviewed the average compass card taps per day per student for March 2014. She reviewed the days and times passes were used within the pilot program. Ms. Carey also provided the next steps that will take place with the program. Ms. Cooney added that the school district indicated they have \$180,000 to contribute to this program.

#### Public Speakers

*Maria Cortez – Mid-City CAN.* Ms. Cortez stated that they would like to train the students on how to properly ride public transit. She said they are going to look into corporate funding for this program in the future. She said that cap and trade passed and included ridership programs and they will try to apply if they see an increase in ridership with this program. Ms. Cortez said they would like to extend their program to the other cities in San Diego and eventually throughout the whole state.

*Barbara Navarez – Mid-City CAN.* Ms. Navarez stated they are working to help educate the students on how to ride public transportation. She said that she would like to see the program expand throughout the whole county of San Diego. Ms. Navarez said that riding public transportation helps the environment and increases youth attendance in school. She said the youth are feeling more secure and have more opportunities to participate in extracurricular activities.

*Richard Barrera – San Diego Unified School District.* Mr. Barrera stated that the basic idea of the pilot program came about several years ago when students' families were not able to afford transit passes which resulted in higher tardiness and lower attendance. He stated that they are going to go through a second year of this pilot program and have allocated their resources to do so and are requesting a 33 percent discount from MTS to help in continuing the program.

Mr. Roberts asked Mr. Barrera if the pilot program originally planned to target students who were missing school and to try and increase their average daily attendance to increase funding to the schools to sustain the program. Mr. Barrera stated that there were multiple premises at the beginning of the pilot program, including increasing attendance and decreasing tardiness. He stated that the school district is still currently trying to calculate the data of school attendance from the first year of the pilot program. Mr. Roberts inquired on the status of the cap and trade that was mentioned by the other speakers. Mr. Barrera replied that there is language currently in cap and trade that will not explicitly require some of the money to be used for youth transit passes. Mr. Roberts inquired if the average daily school attendance statistics were available. Mr. Barrera stated that they should have that data before the beginning of the upcoming school year.

*William Rodriguez* – Mr. Rodriguez stated that he strongly supports the youth pilot program. He uses the transit pass and is not tardy to school. He said that his family will be able to save money with the transit pass.

*Stephanie Vera* – Ms. Vera said that this program has helped her get to school on time, participate in extra-curricular activities, and has saved her family money.

*Diamond Andrews* – Ms. Andrews stated that she would like to see the youth pass program continue. She said that she is able to do extra-curricular activities and community service.

*Jasmine Andrews* – Ms. Andrews said that she and her sister use the bus pass almost every day. She said that for the next six months she will be volunteering at Sharp Memorial Hospital in Kearny Mesa and will use the bus pass.

*Cristian Vaquero* – Mr. Vaquero said that once he obtained the bus pass he was able to attend class more regularly. He said the pass has helped his family save money every month.

*Guadalupe Flores* – Ms. Flores stated that the youth transit pass has helped her in many different ways including looking for a job. She said that she used to have to walk home by herself and now she feels safe because she can ride the bus home.

*Margo Tanguay* – Ms. Tanguay commented on the youth pilot program and said the next generation using this pass will be using transit in the future. She said that she believes looking at other outside funding could help the program continue.

*Alondra Zepeda* – Ms. Zepeda stated that she would like MTS to continue to support the youth pass program. She said that students are able to participate in community service programs, attend school, and feel safer going home.

*Emanuel Felix* – Mr. Felix said that the pass has opened up new opportunities for him and other students. He said that the pass has also saved his family money. He would also like to see the program expand to other students.

*Elizabeth Segura* – Ms. Segura said that she depends a lot on the bus pass because her family does not have a car. She stated that this pass saves her family money every month.

*Miriam Zaragoza* – Ms. Zaragoza stated that this pass helps her family save money and she is now able to do community service. She said that she is very thankful to have her bus pass.

*Abdulrahim Mohamed* – Mr. Mohamed discussed the history of the youth pass pilot program. He discussed the results of the independent evaluation report that was conducted on a percentage of the passes in the pilot program. Mr. Mohamed reviewed statistics found from students using the youth transit pass. He also reviewed the key lessons learned from the program. He stated they are asking MTS to discuss the following proposals at the next Board meeting: a promotional discount of 33 percent for passes sold to the program and a feasibility study on a similar discount for all other school districts.

*Emily Serafy Cox* – Ms. Serafy Cox gave up her spot to speak so Mr. Mohamed could have a longer speaking slot.

*Adam Ward* – Mr. Ward gave up his spot to speak so Mr. Mohamed could have a longer speaking slot.

Board Member Comments

Mr. Gloria commented on the truancy issue with the students and asked when we should expect to receive the truancy data. Ms. Philpott stated that the truancy evaluation period is usually completed within the year. She said that the school district wanted to extend the program through the next year so they will have more time to evaluate the truancy data more thoroughly. Ms. Philpott stated that she expects the previous year's truancy data to be available by the fall. She also clarified that the school district will not receive any additional money for more students attending school. Mr. Gloria asked if the funding going forward would be sufficient enough for the program to continue throughout the next year. Ms. Philpott stated that the funding they have will be able to help continue the program throughout the next year for the students that have been using their passes regularly. Mr. Gloria asked if the youth school passes outside of the program are given a bulk discount. Ms. Cooney stated that MTS follows the regional fare ordinance and the youth passes are not given a bulk discount.

Mr. Roberts commented on the number of passes and the amount of money that would have to be made to sustain the program. He stated that the school district is providing about 500 passes for the next year. If the amount of passes for the next year were increased from 500 to 550, the cost would raise by about \$18,000. Mr. Roberts stated that due to budget restraints, MTS may not be able to fund that additional money; however he would try and find a way to raise that money outside of MTS for the next year. Mr. Roberts stated that after the next year's program is completed, a new solution will be needed to sustain the program in future years. He stated that he would like to meet, outside of MTS, with the school district and Mr. Gloria to find a reasonable solution for the next upcoming year.

Mr. McClellan inquired if there was any data from the schools on the monthly attendance of the students who participated in the youth pass program. He stated that the initial main purpose of the pilot program was to see an increase in student attendance.

Mr. Gastil commented on student participation in community service activities. He stated that Helix High School has a community service requirement for graduation and he believes the schools in the San Diego Unified School District may have a similar requirement. Mr. Gastil recommended looking at possibly having the community service organizations contributing to the youth transit pass program.

Mr. Alvarez commented that he is interested in receiving an analysis of the 33 percent discount to the youth transit passes. He also stated that he would like to have this item come back as an action item at a future Board meeting.

Mr. Jablonski stated that increasing the passes from 500 to 750 and decreasing the price of the passes from \$36 to \$24 would have a total overall cost of \$90,000.

46. Operations Budget Status Report for May 2014 (Luke Kromer)

The report was waived.

47. Pacific Imperial Railroad (PIR) Desert Line Agreement – Status Update (Karen Landers)

Mr. Jablonski provided an update regarding the Pacific Imperial Railroad (PIR) Desert Line agreement. He stated that the contract with PIR is currently in good standing. Mr. Jablonski said the milestone payment of \$500,000 was due on July 1, 2014. PIR did not submit payment on July 1, 2014, and a notice of default was sent to PIR's attention on July 2, 2014. He stated that the contract calls for a 10-day cure period, and on July 11, 2014, PIR paid the full amount which brought the contract back into good standing. Mr. Jablonski reported that the contract is not just a lease payment, but also has required milestones that must be met for the contract to be in good standing. He stated that there have been two items since inception of the contract, other than the lease payments. One of the items, the business plan, had multiple components that were required, including the executive summary, proposed make up of management team, financing plan, marketing plan, strategy and implementation plan. The business plan was submitted according to schedule. Mr. Jablonski stated that the second item was the reconstruction plan. He said following acceptance of the business plan, PIR would expand efforts to survey the Desert Line and the numerous bridges and tunnels to create a reconstruction plan so the line could safely operate freight. Mr. Jablonski noted that many of the bridges are currently not in safe condition, which is why the line has been embargoed. He stated that PIR contracted with J.L. Patterson, a local firm that MTS uses on many construction projects, to survey the Desert Line. PIR has submitted a draft reconstruction plan and a supplemental reconstruction plan.

Mr. Jablonski stated that a total of \$1,500,000 in payments have been made to MTS since July 2013. He said the payments have been made in \$500,000 increments every six months. Mr. Jablonski stated that MTS has used two of those payments for capital improvement projects on the MTS light rail system. He confirmed that MTS has received the reconstruction plan and supplemental plan and our technical and real estate engineering staff are reviewing the plans and action will be taken soon to approve that plan. MTS will then decide if any supplemental required conditions need to be added to the plan. Mr. Jablonski stated that after the reconstruction plan is approved, a twelve month timeline will begin for the initial repairs milestone. The initial repairs milestone will consist of PIR repairing the Desert Line so a test train can be run on the line by September 2015. By December 2015, PIR will have a limited operations deadline, which includes requirements for the track to be at Class II standards and three trains must be operating on the line per week. Mr. Jablonski stated that once limited operations begin, payments will be provided on a quarterly basis in the amount of \$250,000, rather than \$500,000 every six months. He stated that by January 2017, the quarterly payments will increase by about 5 percent. Once full freight operations are in place, the payments will either be \$1,000,000 per year or 15 percent of gross revenues, whichever amount is higher.

Mr. Jablonski stated that PIR has been very active in this project over the last year and has spent real money assessing the Desert Line to prepare for the reconstruction plan. PIR is currently negotiating the freight agreement on the Mexican side of the border. He stated they have been pursuing two different options for negotiations, including a joint venture activity with Baja Rail or an option at the Lindero property, approximately 800 meters south of the border, where they could potentially develop a trans load facility. If PIR does not obtain a cooperative agreement with Baja Rail, they could develop the Lindero property. PIR would need to obtain a concession from the government to be able to operate south of the border and then goods could be shipped to the trans load facility and put on the rail for transportation across the border and eastward. Mr. Jablonski stated that negotiations have been slow and that both he and Karen

Landers, General Counsel, have met with representatives of the Mexican government urging them to try and obtain a bi-national freight agreement in order to generate the kind of revenue that will be needed to reconstruct the Desert Line. The Desert Line will ultimately cost about \$50,000,000-\$100,000,000 in repairs to generate the full freight activity that is expected.

Mr. Jablonski noted that MTS received a letter from Congressman Denham and Congressman Hunter on June 27, 2014 and a response letter was sent on July 9, 2014. He stated that MTS received a second letter from Congressman Hunter on July 16, 2014, and a response letter will be prepared. Mr. Jablonski stated that even though there is an annual lease payment for the Desert Line, it is important to understand that there are multiple milestones associated with the line and if those milestones are not completed in a reasonable time period, the contract will be in default resulting in PIR losing the Desert Line. Mr. Jablonski said the Desert Line was originally subleased to Carrizo Gorge Railway (CZRY) and MTS did not earn any revenue on the lease. He stated that the lease was originally given to Rail America to develop the line and the lease was issued until 2034. He stated that under the original contract, Rail America had an option to buy the Desert Line for approximately \$5,000,000, and that amount would have been financed over the entire length of the contract until 2034, resulting in modest payments. Rail America sold their lease rights to PIR for approximately \$100,000. Mr. Jablonski stated that at the time this contract was signed, there were no other interested parties in the Desert Line. Mr. Jablonski lastly stated again that the contract is currently in good standing and the performance milestones have been very well laid out. If the performance milestones are not met, the line will come back to MTS and be pursued in a different manner.

#### Board Member Comments

Mr. Mullin inquired about the financing portion of the business plan milestone and asked if PIR's plan was reasonable enough to acquire the financing they need. Mr. Jablonski said that originally the financing plan was fairly open and that PIR would have been able to obtain financing. He stated that this situation is similar to the way MTS does joint development work on our transit oriented development projects. MTS does not really focus on where the developer is getting the money, but they do have to ultimately show that they have the money for MTS to pursue the project. Mr. Jablonski said that instead of spending a lot of time getting into financials and how they were going to secure the money with terms and conditions, MTS decided to set performance milestones and let PIR be entrepreneurial and if they do not perform in a reasonable amount of time, the contract will default.

Mr. McClellan stated that he believes MTS made a great deal with this contract now that we are making \$1,000,000 per year, when there was previously no revenue resulting from the line. Mr. Jablonski added that there are no MTS dollars being put into this agreement.

#### Public Speakers

*Mitchel Beauchamp* – Mr. Beauchamp stated that there are economic interests in this rail line from the City of Tijuana, Tecate and the Mexican government. He stated that even though MTS received a lot of money, it does not mean that the line will open. He asked Mr. Jablonski several questions, including whether MTS has asked for extra legal service for this matter and if so, how much would that cost; has MTS responded to Congressman Hunter's various inquiries to his satisfaction; are any other investigations going on related to MTS or its contractors particularly

with regard to freight operations; and whether or not Mr. Jablonski plans to retain his position at MTS after the bad remarks regarding his career by the media.

Chairman Mathis asked Mr. Jablonski if he wished to respond to the questions presented.

Mr. Jablonski stated that MTS has not hired any special outside counsel for this matter. He stated that MTS has responded to Congressman Hunter's claim from the first letter and will respond to the second inquiry. He replied that MTS is not aware of any other investigations going on and the MTS Board has been well informed and the briefings have been very thorough and transparent. He also stated that he does not see the damage to his career and that he serves at the pleasure of the Board.

*Hector Gonzalez – City of Tecate.* Mr. Gonzalez stated that he represents the City of Tecate on its railway development project. He stated that their projects include promoting rail service to freight and rail passenger customers and supporting the State of Baja California. Mr. Gonzalez said other goals include securing rail service through the city with automatic grade crossings, warning devices with audible and visible protection which will be helped by federal funding. Mr. Gonzalez said they would like MTS to utilize the funding paid by PIR to specifically invest on the Desert Line reconstruction project so construction can be stimulated as soon as possible. He suggested for MTS to coordinate with SANDAG to allocate TransNet funds to the Desert Line and to coordinate with PIR to apply for tiger grants, which are authorized to freight railroads that have similar existing projects. He stated that this will allow more shippers to the railroad and avoid truck congestion through tax payer maintained freeways.

#### Board Member Comments (continued)

Mr. Alvarez stated that he had a list of questions he wanted to discuss. He inquired if a business plan had been submitted to MTS. Ms. Landers confirmed it was submitted. He asked if the business plan was a public document. Ms. Landers stated that it was not a public document. He asked if there was a financing plan as part of the business plan. Ms. Landers replied that there is a financing plan element to the business plan and it is anticipated that as the project further develops, PIR will need to supplement an amended business plan. Mr. Alvarez commented that he read that PIR presented, to MTS, that they had \$100,000,000 available to repair the line. He asked if that was true. Ms. Landers stated that was not true. Mr. Alvarez asked if the business plan was approved. Ms. Landers stated that the plan has been accepted but not yet approved and changes to the plan are expected. Mr. Alvarez commented on the language in the contract regarding the business plan. He said the contract states that the submittal of the business plan will be reviewed and approved no later than 30 days of the effective date of the lease. Ms. Landers stated that MTS reviewed the business plan and accepted it, but we have the right to go back to PIR after their project has developed and request an amended and supplemental business plan to reflect the financing obtained, the rights received to operate in Mexico, and other various features that would impact the business plan. Mr. Alvarez asked if MTS is participating in discussions with Baja Rail to figure out a joint venture. Mr. Jablonski stated that MTS is not a part of those ongoing discussions. Mr. Alvarez asked if MTS is participating in discussion with Mexican government officials. Mr. Jablonski stated that MTS has not had ongoing discussions, but has met with the Secretary of Economic Development for the State of Baja California. Mr. Jablonski also stated that as time goes on, he believes that MTS may begin ongoing discussions with Baja Rail. Mr. Alvarez commented on Congressman Hunter's allegations that the SEC is conducting an investigation of this transaction and inquired if MTS

had been contacted by the SEC. Mr. Jablonski stated that MTS has not been contacted by the SEC or any other federal agency. Mr. Alvarez inquired about the timeline of the reconstruction plan milestone. Ms. Landers stated that the reconstruction plan was due within 90 days of the contract to keep an aggressive timeline, but the repairs milestones were set to occur 12 months after approval of the Desert Line reconstruction plan, because there was no reasonable expectation that all repairs would be identified within the first 90 days of the contract. She stated that their process has been that they submitted an initial reconstruction plan, which is not a public document, and then spent time negotiating with J.L. Patterson to do field work and inspections to update the reconstruction plan report. Due to PIR's actions, MTS believes with reasonable diligence, they were pursuing that milestone. She said that MTS also wanted to wait until J.L. Patterson finalized their work to be able to approve the reconstruction plan. Mr. Alvarez commented on his concern of the payments being utilized for MTS capital improvement projects. He noted that he previously suggested that MTS should set aside funding for anything related to helping open the Desert Line. He would like to have a future discussion on setting aside money from the last lease payment to help repair the line.

Mr. Roberts commented on the fact that MTS has received virtually no money for this line in the past years and has had no progress on the line. He stated that the first substantial thing that has happened for this line is MTS receiving \$1,500,000, which has gone to a lot of MTS services that directly helps the budget. He commended Mr. Jablonski and Ms. Landers on the great job of pursuing the best interests for MTS and said that hopefully an agreement can be reached with the Mexican officials that will facilitate the operation of the line.

Ms. Salas stated that she appreciated the report and receiving the updated information regarding the Desert Line. She commented that we cannot lose sight of the broader goal, which is to have the line open and operational to bring increased economic development.

Mr. Gastil commented that he is very hopeful for the Desert Line. He stated that the potential for economic development is very large and future generations will appreciate the work that has been done. Mr. Gastil asked for clarification as to what context we are talking about the Mexican Government versus the State of Baja California. Ms. Landers stated that in general, the railroad rights in Mexico are owned by the federal government which is controlled by the Secretary of Communications and Transportation. They have granted those railroad rights to the State of Baja California and the Baja Governor's office has an agency they created called Admicarga. Admicarga has granted a concession to Baja Railroad, the current contractor for the Mexican government that has the rights over this segment of line. She reviewed the various alternatives that have been explored as to how to obtain those rights to operate on that segment of the line.

Chairman Mathis expressed his opinion on the great job that has been done on this challenging situation and appreciates the support from the Board on this issue.

60. Chairman's Report

There was no Chairman's Report.

61. Audit Oversight Committee Chairman's Report

Mr. Ewin reported that the audit process is underway.

62. Chief Executive Officer's Report

Mr. Jablonski reported on his previous travel, including his attendance at the APTA Rail Conference in Montreal; attending a conference in Honolulu, paid for by the Hawaiian Chamber of Commerce; and attending the Transportation Research Board (TRB) TOPS committee meeting in Washington D.C., paid for by the TRB and the National Academy of Sciences.

63. Board Member Communications

Chairman Mathis stated that it is intended for the August Board of Directors meeting to be cancelled.

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 September 18, 2014.

66. Adjournment

Chairman Mathis adjourned the meeting at 12:45 p.m.

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Chairperson  
San Diego Metropolitan Transit System

Filed by:

Approved as to form:

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Clerk of the Board  
San Diego Metropolitan Transit System

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General Counsel  
San Diego Metropolitan Transit System

Attachment: Roll Call Sheet



SAN DIEGO METROPOLITAN TRANSIT SYSTEM  
BOARD OF DIRECTORS  
ROLL CALL

MEETING OF (DATE): July 17, 2014

CALL TO ORDER (TIME): 9:04 a.m.

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

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

CLOSED SESSION: 9:20 a.m.

RECONVENE: 9:36 a.m.

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

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

ORDINANCES ADOPTED: \_\_\_\_\_

ADJOURN: 12:45 p.m.

BOARD MEMBER	(Alternate)	PRESENT (TIME ARRIVED)	ABSENT (TIME LEFT)
ALVAREZ	<input checked="" type="checkbox"/> (Zapf) <input type="checkbox"/>	9:06 a.m.	12:45 p.m.
BRAGG	<input checked="" type="checkbox"/> (Bilbray) <input type="checkbox"/>	9:04 a.m.	12:45 p.m.
COLE	<input type="checkbox"/> (Zapf) <input type="checkbox"/>		
CUNNINGHAM	<input type="checkbox"/> (Mullin) <input checked="" type="checkbox"/>	9:04 a.m.	12:45 p.m.
EMERALD	<input type="checkbox"/> (Zapf) <input type="checkbox"/>		
EWIN	<input checked="" type="checkbox"/> (Arapostathis) <input type="checkbox"/>	9:04 a.m.	12:45 p.m.
GASTIL	<input checked="" type="checkbox"/> (Jones) <input type="checkbox"/>	9:04 a.m.	12:45 p.m.
GLORIA	<input checked="" type="checkbox"/> (Zapf) <input type="checkbox"/>	9:04 a.m.	12:45 p.m.
MATHIS	<input checked="" type="checkbox"/>	9:04 a.m.	12:45 p.m.
MCCLELLAN	<input checked="" type="checkbox"/> (Ambrose) <input type="checkbox"/>	9:04 a.m.	12:45 p.m.
MINTO	<input checked="" type="checkbox"/> (McNelis) <input type="checkbox"/>	9:04 a.m.	12:45 p.m.
OVROM	<input type="checkbox"/> (Denny) <input checked="" type="checkbox"/>	9:21 a.m.	12:45 p.m.
RIOS	<input checked="" type="checkbox"/> (Sotelo-Solis) <input type="checkbox"/>	9:04 a.m.	11:00 a.m.
ROBERTS	<input checked="" type="checkbox"/> (Cox) <input type="checkbox"/>	9:04 a.m.	12:45 p.m.
SALAS	<input checked="" type="checkbox"/> (Ramirez) <input type="checkbox"/>	9:10 a.m.	12:45 p.m.

SIGNED BY THE CLERK OF THE BOARD: \_\_\_\_\_

CONFIRMED BY THE GENERAL COUNSEL: \_\_\_\_\_

*Julia Ferguson*  
*Paula*



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

## Agenda Item No. 6

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

September 18, 2014

#### 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 JULY 15, 2014

#### INFORMATIONAL ONLY

##### 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 second quarter of 2014 (Attachment A).

  
Paul C. Jablonski  
Chief Executive Officer

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

Attachment: A. SD&AE Meeting Agenda & Materials





**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  
PAUL JABLONSKI, CHAIRPERSON  
MATT DOMEN  
BLAKE JONES**

**OFFICERS  
PAUL JABLONSKI, PRESIDENT  
MATT DOMEN, SECRETARY  
ERIN DUNN, TREASURER**

**LEGAL COUNSEL  
KAREN LANDERS**

# AGENDA

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

July 15, 2014

9:00 a.m.

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

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 April 15, 2014  
Action would approve the SD&AE Railway Company Minutes of April 15, 2014 Approve
2. Statement of Railway Finances (Erin Dunn)  
Action would receive a report for information. Receive
3. Report on San Diego and Imperial Valley (SD&IV) Railroad Operations (Matt Domen)  
Action would receive a report for information. Receive
4. Report on Pacific Southwest Railway Museum (Diana Hyatt)  
Action would receive a report for information. Receive
5. Report on the Desert Line (Chas McHaffie)  
Action would receive a report for information. Receive
6. Real Property Matters (Tim Allison)  
Summary of SD&AE Documents Issued Since April 15, 2014  
Action would receive a report for information. Receive
7. Board Member Communications
8. Public Comments
9. Next Meeting Date: October 15, 2014
10. Adjournment

# MINUTES

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

April 15, 2014

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 15, 2014, at 9:00 a.m.

The following persons, constituting the Board of Directors, were present: Brad Ovitt, Matt Domen, and Paul Jablonski. Also in attendance were members from:

San Diego Metropolitan Transit System:	Tim Allison, Karen Landers, Wayne Terry, Erin Dunn, Traci Wutke
Pacific Imperial Railroad, Inc.:	Chas McHaffie, Don Stoecklein
Tierra Madre Railroad:	R. Mitchel Beauchamp
Private Citizen:	Geoffrey Scheuerman
Coronado Belt Line:	Tim Duttie
San Diego & Midwestern Railway Partners LLC:	Ed Kravitz
Trains Magazine:	Don Jones
Genesee & Wyoming:	Blake Jones
Pacific Southwest Railway Museum:	Michael Edwards, Diana Hyatt

### 1. Approval of Minutes

Mr. Jablonski moved to approve the Minutes of the January 14, 2014, SD&AE Railway Board of Directors meeting. Mr. Domen seconded the motion, and it was unanimously approved.

### 2. Statement of Railway Finances

Erin Dunn reviewed the financial statement for the first quarter of 2014 (attached to the agenda item). Tim Allison clarified for Mr. Jablonski that the return on personnel costs versus income generated from right of entry permits is about 60/40. Mr. Allison added that not all personnel costs are related to right of entry permits or applications and therefore do not generate revenue. He will examine cost-recovery further in regard to staff time.

#### Action Taken

Mr. Jablonski moved to receive the report for information. Mr. Domen 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 first quarter of 2014 (attached to the agenda item). Board members congratulated SD&IV staff on over 26 years of injury-free operations.

#### Action Taken

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

4. Report on Pacific Southwest Railway Museum Operations

Diana Hyatt reviewed the first quarter of 2014 report (attached to the agenda item). Mr. Jablonski referenced paragraph 2 on page 4-3 of the report and voiced concern regarding weight loads on bridges from the motorcar carrying passengers from Jacumba to Plaster City. Mr. Allison confirmed that there have not been any issues.

Action Taken

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

5. Report on the Desert Line

Chas McHaffie reviewed the first quarter of 2014 report (attached to the agenda item). PIR CEO Don Stoecklein noted a correction to a public comment in the previous Minutes of January 14, 2014 (on page 3 under 5.2). Mr. Stoecklein noted that the public comments referred to two groups vying to be the owners of PIR, and he wanted to clarify that is incorrect—there is only one group, which includes Darren Barone. Mr. Stoecklein added that his job was to assist PIR's management due to significant turmoil within the prior management. He stated that the turmoil is mostly behind PIR now, and the focus is on JL Patterson inspections. Mr. Stoecklein reviewed the inspections and outstanding issues, including bridge, tunnel, and tie repairs. He discussed phasing, the reconstruction plan, and the deadline to run test trains once the bridges are repaired.

Mr. Stoecklein noted that if funds become available, PIR will go further with replacing tracks and ties. He reported that PIR has signed an agreement with Diamond Capital Advisors of Los Angeles, which is an investment banking firm. He added that there are also other individuals and groups discussing potential agreements with PIR. Mr. Stoecklein noted that a critical component of raising money is getting the plan from JL Patterson and also PIR's interconnect with Mexico.

Mr. Stoecklein clarified that the SD&AE Board should receive JL Patterson's plan no later than April 30, and it will include phasing, critical items, operating test runs, and plans beyond that to provide some service as delineated in the contract (with a completion date of December 2015).

Action Taken

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

6. Real Property Matters

a. Since the January 14, 2014, SD&AE Railway Company Board of Directors meeting, the documents described below have been processed by staff.

- S200-13-573: Easement to San Diego Gas and Electric for electric service to a new traction power substation near Beyer Blvd.
- S200-13-574: Easement to San Diego Gas and Electric for electric service to a new traction power substation near High Street in Lemon Grove.

- S200-14-582: Right of Entry Permit to the San Diego Community College District to construct an adjacent project at Cesar Chavez in the City of San Diego.
- S200-14-584: Right of Entry Permit to Beta Engineering to construct utility crossings on the Desert Line at various locations from Jewel Valley Road to east of Jacumba.
- S200-14-589: Right of Entry Permit to San Diego Gas and Electric for maintenance and inspection of various facilities along the entire Desert Line.
- S200-14-592: Right of Entry Permit to HDR Engineering, Inc. for maintenance and inspection of various City of San Diego wastewater facilities.
- S200-14-593: Right of Entry Permit to Ramona Paving and Construction Corp. to construct street improvement along Cesar Chavez Parkway in the City of San Diego.
- S200-14-594: Right of Entry Permit to West Coast General Corp. to construct the San Ysidro Yard Expansion Project.
- S200-14-596: Right of Entry Permit to Flatiron / H&H (A Joint Venture) to construct the South Line Freight Improvement Project.
- S200-14-597: Right of Entry Permit to the City of La Mesa for its Flag Day Parade Celebration.

Mr. Allison referred to the Right of Entry Permit to Beta Engineering to construct utility crossings on the Desert Line at various locations from Jewel Valley Road to east of Jacumba. He stated that staff utilized JL Patterson to do the inspection, and the contractor from SDG&E will reimburse JL Patterson. Mr. Allison added that he feels that utilizing JL Patterson's services is a good way to handle construction and impacts to the Desert Line during the reconstruction phase.

#### Action Taken

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

b. Easement Agreement with Unified Port of San Diego

Mr. Allison showed an overhead aerial view of the two crossings on the Coronado Branch line in relation to the easement agreement requested by the Port of San Diego. Mr. Allison clarified that the terms of the easement would be similar to the construction and maintenance agreement for H Street. He added that the Port would be required to upgrade the crossings, signals, etc. to MTS's standards to accommodate rail service if and when MTS decided to implement rail service. Discussion ensued regarding land ownership and maintenance.

b. Easement Agreement with Unified Port of San Diego - CONTINUED*Public Speakers:*

1. Tim Duttie – Mr. Duttie outlined his proposal for running a short line railroad over the Coronado base line from Bay Marina Blvd. to the Salt Works. He discussed potential assets and profits. Mr. Jablonski requested that a formal business plan proposal be submitted to MTS in writing for evaluation.
2. Ed Kravitz – read statement (see attachment).

Mr. Allison confirmed that if the Port had any issue with future requests for upgrades, MTS would have the right to revoke the easement, and there could be liquidated costs as well.

Action Taken

Mr. Jablonski moved to approve: (1) two public at-grade crossing easements to Unified Port of San Diego (Port) across the Coronado Branch south of J Street in the City of Chula Vista; and (2) two temporary license agreements to use the existing crossings in the same location. Mr. Domen seconded the motion, and it was unanimously approved.

7. Election to Fill Vacant Position of SD&AE Chairperson

Karen Landers, MTS General Counsel, reported that Mr. Ovitt is resigning as Chair of the SD&AE Board of Directors. She stated that the 1984 Operating Agreement that is currently with Genesee and Wyoming (G&W) establishes that there are two people appointed by SD&IV and one person appointed by MTS to the SD&AE Board of Directors. Ms. Landers added that there has been a lot of changes and turnover in overseeing the Desert Line. She stated that MTS is proposing to work with G&W in amending the 1984 Operating Agreement to include two MTS and one SD&IV designee to the SD&AE Board of Directors. Ms. Landers added that the amendment could not be approved today but an interim action could be taken. She noted that there was a proposal to nominate Blake Jones as Chairperson. Discussion ensued regarding membership. Mr. Ovitt stated that he was in agreement with the proposed amendment as long as it was done in conjunction with G&W's Legal Department.

Ms. Landers also proposed nominating Paul Jablonski for the Chairperson position so there would not be so many turnovers. Mr. Ovitt was in agreement.

Mr. Jablonski stated that it isn't easy logistically for SD&IV personnel to come to San Diego quarterly. He added that since Matt Domen is here all of the time, it makes sense to keep him as a Board member. Mr. Jablonski suggested having an alternate for the SD&IV Board position, and also proposed adding Wayne Terry, MTS Chief Operating Officer-Rail, as the second MTS Board member.

Mr. Ovitt stated that in the interim, he feels that Blake Jones would be a good replacement as Board member.

Action Taken

1. Mr. Jablonski moved to elect Blake Jones as Board member of the SD&AE Railway Company Board of Directors to replace Brad Ovitt. Mr. Domen seconded the motion, and it was unanimously approved.
2. Mr. Domen moved to elect Paul Jablonski as Chairperson of the SD&AE Railway Company. Mr. Ovitt seconded the motion, and it was unanimously approved.

8. Board Member Communications

Mr. Jablonski gave a brief overview of the current state of affairs in regard to operations on the Desert Line. He stated that Carrizo Gorge Railway (CZRy) operated on the line under a sublease (through 2014) with RailAmerica. Pacific Imperial Railway (PIR) was established out of CZRy and negotiated with RailAmerica to take over the lease in 2012. PIR asked MTS to renegotiate the operating lease beyond 2014 mainly to provide the capability to raise funds to rehabilitate the Desert Line. MTS renegotiated the lease, which is a public document, and currently the performance of the lease is in good standing.

Mr. Jablonski explained that there two basic elements to the lease: (1) annual payments due every 6 months; and (2) performance milestones that are definitive to show that real progress is being made to reconstruct the Desert Line. Mr. Jablonski reported that MTS has received the business and marketing plans. He stated that the reconstruction plan is a major milestone, and he is confident that we will get it. He stated that PIR spent a significant amount of money with JL Patterson in relation to the reconstruction plan. Mr. Jablonski added that unfortunately, management shakeups within PIR have delayed progress; however, the reconstruction plan is expected to be available soon as the next milestone. He stated that another payment is due in June. Mr. Jablonski said that the next 6 months will be challenging because there is a lot of construction needed in order for the line to be viable for train operations by December 2015. He reiterated that the current contract is in good standing.

Ms. Landers introduced Traci Wutke, who is Wayne Terry's new assistant. Ms. Wutke will be taking over the Clerk of the Board duties for Jan Gardetto beginning at the next meeting in July.

9. Public Comments

There were no public comments.

10. Next Meeting Date

The next meeting of the SD&AE Railway Company Board of Directors is on July 15, 2014.

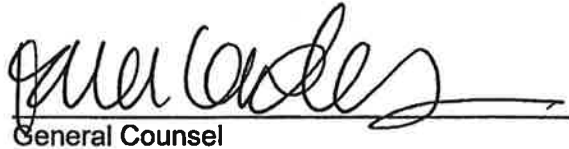


11. Adjournment

The meeting was adjourned at 9:47 p.m.

A stylized, cursive signature in black ink, written over a horizontal line.

President

A cursive signature in black ink, written over a horizontal line.

General Counsel

SDAE Minutes Draft 4-15-14

Attachment: Handout from Ed Kravitz (Public Speaker comments under Agenda Item No. 6b)

**To: The Board of Directors ; SDAE Railway**

**From: Ed Kravitz / San Diego & Midwestern Railway Partners LLC**

**RE: Update on Coronado Belt Line Issues**

**Date: 4-15-2014**

**Dear Board Members and Interested Parties:**

**It has been some time since I addressed this board regarding the Coronado Belt Line. As most of you know I have been advocating preservation of the line and in fact ; to use it for multiple purposes including a rapid transit component. A lot of things have changed since 1999 when I first started speaking publicly about this subject.**

**We've had 911. We've been to war in Iraq and Afghanistan. Chula Vista has built out Eastlake into one of the largest cities in California. Most of those people consider Imperial Beach as "Their Beach"!**

**As the wars are winding down, the Navy's role in San Diego is changing. The military population is going to increase significantly as troops return and San Diego becomes the main base on the west coast According to a recent presentation made by the Navy in Imperial Beach; Special warfare training is going to increase and Ft. Emory also known as the Radio Station or Dinosaur Cage is going to be used for P.T. with as many as 3000-4000 people per day entering and leaving the base. Currently they travel on SR-75, The congested Palm Avenue Corridor and surface streets through residential neighborhoods. The Navy is looking at alternatives and the proposed 1999 route that we proposed to Imperial Beach goes directly to the current front gate of Ft. Emory. The Navy is also giving consideration to a future rail link between Ft. Emory and the Amphibious Base up the Silver Strand. A third Carrier and support ships will be coming here soon as well.**

**When we proposed revitalization of the line and extending it from 7<sup>th</sup> Street in Imperial Beach to Seacoast and Carnation we were only thinking primarily about a tourist train that would bring people to the beach without cars, parking and traffic. Now it appears that we could take hundreds, if not thousands of autos and motorcycles off of I-5 and SR-75 while connecting multiple bases with a Park and Ride component around the entire bay.**

**Communities and Agencies along the route stand to gain from refurbishing the rail line with some modifications. The Port has multiple venues. National City has the Naval Ship Yards, Marina and Historic Depot. Chula Vista has the Nature Center, new Bayfront Development Areas, J Street Marinas and Parks. USFWS has a Wildlife Refuge with abundant bird watching. Imperial Beach is a desirable destination because it is a Beach. Now there is a new fancy hotel, pier and many shops along Seacoast and Palm Avenues. Palm Avenue SR-75 is already at gridlock twice a day and proposed changes to lane**

configurations could make that even more congested . Recent "traffic calming" efforts have reduced a portion of Palm Avenue that was once 4 lanes to 2 lanes and that is the current entrance and exit route from Ft. Emory. Something needs to be done before traffic chokes everything.

Over the years the public has complained about efforts to sever a linear resource. I recently looked at the line with new City Manager Andy Hall of Imperial Beach. Andy was involved in recovering an abandoned railroad right-of-way in Salt Lake City prior to the Olympics. That line is now part of the transit system in Salt Lake City. Like Professor Joe Schweilerman of De Paul University's Transportation Studies Department illustrates in his two volume book; "When The Railroad Leaves Town"; city after city has regretted destroying these easements and right-of-way and were faced with huge costs in trying to recover them after they were chopped up and destroyed.

I would like to address the current request for crossings in Chula Vista. In the late 1990's Chula Vista removed signals and gates from the beltline without permission of the SDAE, MTS OR RAILTEX. Without freight moving to the last 3 shippers on the line, Chula Vista took it upon themselves to remove those signals and gates thinking they would never be needed again. I am concerned that because of the cost of repairing or replacing signals, gates and crossings; Chula Vista might object to revitalization of the railroad because it might cost them significant dollars if they had to replace what they destroyed. That is why I am asking that before any easements or crossings are granted to Chula Vista or other cities, that as part of the M.O.U. they be required to place in Escrow funds to replace those signals, gates and crossings when the railroad does come back. The precedent was set back around 2003 when National City Paved over the tracks on Harbor Blvd. Do not allow any of the cities to continue to build structures on the right-of-way. Let's work together to allow both the Bike Trail and the Railroad to share the right-of-way and our proposed easement to the beach. I also ask that you would support or help fund NEPA and CEQA studies to cross Federal Property to bring the railroad to the beach.

The Navy is not ready to go on record or take a public position in support of the railroad however, I can assure you that they certainly don't oppose it! As Naval Operations expand in San Diego the Navy is under greater pressure to mitigate the impact of additional vehicles and pollution.

If the South Bay Communities, The Port and SDAE were willing to take another look at these proposals, the Navy has a number of funded programs that could contribute to offsetting the cost of revitalization and upgrades. If the communities wanted this rail line or were willing to explore it further, I believe the Navy would be supportive. We will be submitting proposals for the E.I.S. for the Coastal Campus. Many of us would like to see support for funding a CEQA and NEPA studies for the proposed extension to the beach and a pledge to allow no further damage to the linear integrity of the resource.

While many in the public would prefer that Chula Vista stay off the tracks entirely; if these crossings are

to be approved Chula Vista should be required to sign an M.O.U. and place funds in escrow for future rehabilitation. Any M.O.U. should also contain a 30 day exit clause like the bike trail.

The beltline is a existing resource and with some improvements and modifications could take thousands of cars and motorcycles off I-5 , SR-75 and residential surface streets in Imperial Beach. It has potential for not just tourism and transit but, perhaps military logistics as well. All of these things are possible If we don't sever the resource into little pieces. The railroad around the bay is going to come back sooner or later out of necessity. For those who would say;" It's a train to nowhere" or dead I say; " It may be covered with weeds and asphalt but, it's just laying there waiting to run again! Let's protect it for the future and fund the studies required to get maximum utilization of the resource, so that when it's needed in the future, it will be there to serve again.

Thank you for your consideration,

Ed Kravitz

San Diego & Midwestern Railway Partners LLC

## Agenda

Item No. 2

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

July 15, 2014

SUBJECT: STATEMENT OF RAILWAY FINANCES

### RECOMMENDATION:

That the SD&AE Railway Company Board of Directors receive a financial report for the fiscal year ending June 30, 2014.

#### Budget Impact

None

### DISCUSSION:

Attached are the estimated, unaudited financial results for fiscal year 2014 which includes the periods ended June 30, 2014 and 2013. These statements are preliminary amounts, and are subject to adjustments that are deemed necessary during the financial audit. The final results will be available at the conclusion of the audit, no later than December 2014.

The current year-to-date income is \$1,098,000 favorable to budget primarily due to the Desert Line Lease revenue not being in the budget, as well as an increase in Right of Entry Permit revenue and the estimated San Diego & Imperial Valley 1% Freight fee. Income has increased by \$431,000 compared to the same period last year, again primarily due to the Desert Line Lease revenue offset by a gain on sale of property in FY 2013.

Expenses are \$21,000 unfavorable to budget primarily due to an unfavorable variance in Personnel costs and Outside Services. Expenses have decreased by \$32,000 compared to last year, primarily due to a decrease in Outside Services partially offset by an increase in Personnel costs. The Net Income for FY 2014 was \$1,048,449 compared to net income of \$585,121 in FY13.

The \$1,000,000 in Desert Line lease revenue funds have been programmed for two capital projects on the Orange Line, which is right of way owned by San Diego & Arizona Eastern Railway Company (SD&AE). Because SD&AE has not previously generated



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

June 30, 2014

## 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 2nd Quarter of 2014 are listed as follows:

### 1. Labor

At the end of June 30, 2014 the San Diego & Imperial Railroad had 10 employees:

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

## **2. Marketing**

Volume in the 2nd Quarter declined 40% as compared to 2013. Bridge traffic had a 41% decrease, primarily driven by a decrease in LPG and ag products going into Mexico. Traffic terminating or originating on the SDIY was down 39% versus last year.

## **3. Reportable Injuries/Environmental**

Days through year to date, June 30, 2014, there were no FRA Reportable injuries or Environmental incidents on the SDIV Railroad.

Days FRA Reportable Injury Free: 6297

## **4. Summary of Freight**

	<b>2014</b>	<b>2013</b>	<b>2012</b>
<b>Total rail carloads that moved by SDIY Rail Service in the quarter.</b>	<b>922</b>	<b>1554</b>	<b>1401</b>
<b>Total railroad carloads Terminating/Oriinating Mexico in the quarter.</b>	<b>777</b>	<b>1316</b>	<b>1173</b>
<b>Total railroad carloads Terminating/Oriinating El Cajon, San Diego, National City, San Ysidro, California in the quarter.</b>	<b>145</b>	<b>238</b>	<b>228</b>
<b>Total customers directly served by SDIY in the quarter</b>	<b>9</b>	<b>11</b>	<b>10</b>
<b>Regional Truck trips that SDIY Railroad Service replaced in the quarter</b>	<b>2766</b>	<b>4662</b>	<b>4203</b>

Respectfully,

Matt Domen

General Manager

## **Agenda Item No. 4**

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

July 15, 2014

**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: Not Provided





## Pacific Southwest Railway Museum

La Mesa Depot 4695 Nebo Drive La Mesa, CA 91941 619-465-7776

July 10, 2014

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

Re: Second Quarter 2014

Dear SD&AE Board:

During the second quarter of 2014, utilizing all volunteer crews, the Pacific Southwest Railway Museum ran 50 passenger trains carrying 2,794 passengers with no FRA reportable accidents or injuries. Total income from SD&AE property for first quarter, 2014 was \$44,533.00. Our check for \$891 will follow under separate cover. By comparison, PSRM carried 1,901 passengers during the second quarter of 2013 and total income from SD&AE property was \$18,781.96.

Passenger ridership by comparison to the same quarter in previous years:

2,882 passengers during the second quarter of 2012  
2,434 passengers during the second quarter of 2011  
1,977 passengers during the second quarter of 2010  
1,606 passengers during the second quarter of 2009  
2,541 passengers during the second quarter of 2008

Passenger ridership figures have significantly improved over last year's and are on par with those of 2012. This is attributed partially to one special event during this quarter, the museum's annual Bunny Trains which attracts a large number of families with young children. The spring weather this year was also very agreeable and attracted a number of visitors. The other special event held during this time period was the Chefs Fire Up the Iron Horse event however, since this event does not include a train ride in the base ticket price it was only a minor contributor to train ridership.

PSRM continues to maintain both signalized railroad crossings within our right of way limits performing the monthly and quarterly inspections. PSRM also performs twice-weekly track

inspections between MP 59.9 and 66.77. Likewise, our volunteer track crew continues to perform track maintenance tasks, particularly tie replacement on the mainline.

On Friday, May 30, 2014 with the permission of PIR and notification provided to MTS, a contingent of visitors, primarily political representatives from the City of Tecate, State of Baja and the U.S. Consulate in Tijuana were escorted by PSRM via motorcar from Jacumba to Dos Cabezas and return. Our Mexican contemporaries were favorably impressed and continue to work towards the objective of obtaining funding to re-open tunnel 3 in Mexico.

At the meeting of this board in April of this year I referenced that PSRM's operating agreement with SD&AE expired in December, 2012 and currently self-renews on a monthly basis. From that meeting Karen Landers encouraged PIR and I to meet and discuss our plans for mutual cooperation pertinent to the use of the railroad. PSRM's Director of Operations Mike Edwards, Don Stocklein and I met in May. At that meeting it was determined that PSRM was ready and capable of establishing 24 hour dispatching that would serve the museum in the interim and that was fully capable of serving the needs of PIR in the future if they so desired. From the agreements reached at that meeting, PSRM began issuing its own track warrants through its dispatching department. PSRM has also installed proper signage at both Highway 94 grade crossings with a toll free number that forwards directly to the dispatcher on call. The previously posted phone number had been maintained and answered by CZRY Police Department personnel.

Sincerely,



Diana Hyatt  
President

## **Agenda Item No. 5**

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

July 15, 2014

**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



## PERIODIC REPORT

July 7, 2014

The periodic report to the SD&AE Railway Company is produced quarterly by the Pacific Imperial Railroad, Inc. 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, Inc.**

## **Second Quarter 2014**

### **CONTENTS**

- I. CHANGES IN MANAGEMENT**
- II. GOVERNMENTAL RELATIONS**
- III. DESERT LINE**
- IV. REPORTABLE INJURIES / ACCIDENTS /  
ENVIRONMENTAL INCIDENTS MARKETING**
- V. FREIGHT ACTIVITY**
- VI. MTS OPERATING AGREEMENT REQUIREMENTS**

## **I. CHANGES IN MANAGEMENT**

- a. Mr. Jory, acting as President and Mr. Stoecklein acting as CEO are continuing their positions in the company.

## **II. GOVERNMENTAL RELATIONS**

- a. PIR still maintains that Mexican side of the rail is a crucial piece to this operation. As such, PIR has been working with attorneys with Baja Rail and Victor Celis on the Lindero Property to effectuate a relationship with Mexico.

## **III. DESERT LINE**

### **a. Reconstruction Plan**

- i. **Inspections-** PIR submitted its Desert Line Reconstruction Plan Supplement (DLRPS) during this quarter and is seeking MTS approval to commence rehabilitation of the Desert Line.

### **b. Financing Plans**

- i. PIR is evaluating its options for its fundraising efforts going forward. PIR currently has a \$150 Million Investment Banking Agreement with Diamond Capital Advisors, LLC and PIR is currently meeting with other possible sources of funding.

#### **IV. REPORTABLE INJURIES/ ACCIDENTS/ ENVIRONMENTAL INCIDENTS**

- i. There have not been any reportable accidents
- ii. There have not been any reportable injuries.
- iii. There have not been any reportable environmental incidents.

#### **V. MARKETING**

- a. PIR is continuing its efforts to obtain the freight logistics needs of the approximately 658 companies in the Maquiladoras region that are potential rail customers for PIR.

#### **VI. FREIGHT ACTIVITY**

- a. Currently, PIR has not commenced revenue generation pending completion of the Inspections and Construction above.

#### **VII. MTS OPERATING AGREEMENT REQUIREMENTS**

- a. Pursuant to the Amended and Restated Desert Line Lease and Operating Agreement between PIR, San Diego and Arizona Eastern Railways Company and the San Diego Metropolitan Transit System, no Performance Milestone Requirements fell within Second Quarter 2014, with the exception of PIR providing the DLRP-S.
- b. **Initial Repairs.** Initial Repairs shall be completed

within 12 months after approval, by SD&AE of the Desert Line Reconstruction Plan ("DLRP"). As a result of PIR providing The DLRP-S during the 2<sup>nd</sup> Quarter, PIR anticipated receipt of the DLRP-S, which will commence a 12 month window in which to complete the Initial Repairs.

**c. Rent/Lease Payment:** PIR shall pay SD&AE semi- annually, a lump sum payment of \$500,000.

1. The January 1, 2014 \$500,000 payment was made to SD&AE.
2. There were no payments due during the 2<sup>nd</sup> Quarter of 2014; however the \$500,000 payment, due on the first day of the 3<sup>rd</sup> Quarter, has been delayed pending a review of the "sole-Sourced Procurement" issues raised by Congressman Duncan Hunter. (See Exhibit A).





PACIFIC IMPERIAL RAILROAD, INC.

July 2, 2013

Ms. Karen Landers  
General Counsel  
Metropolitan Transit System  
1255 Imperial Avenue, Suite 1000  
San Diego, California 92101-7490

RE: Pacific Imperial Railroad (PIR), MTS Lease Payment

Dear Ms. Landers:

This correspondence is in follow up to our conversation earlier today wherein we discussed the Lease Payment of \$500,000 which was due yesterday, July 1, 2014.

As indicated in our conversation, as a result of the letter to MTS from the United States Congress, (Congressman Duncan Hunter), dated June 27, 2014, which letter raised an issue over the validity of the Lease between MTS and PIR, the Board of Directors of PIR has unanimously instructed me to hold further payments to MTS until such time as PIR has had independent counsel review the accusations.

Although our initial internal review of the "sole-sourced procurement" issue raised in the Congressman's letter does not appear to violate California law, our Board of Directors has requested that I obtain an independent opinion on the issue.

I understand that MTS is in process of responding to the Congressman's letter, which in addition to our own analysis, should provide us the anticipated comfort our Board of Directors requires to provide the payment. We would anticipate this to occur sometime next week.

Yours Very Truly,

Donald J. Stoecklein  
Chief Executive Officer  
Pacific Imperial Railroad

# Agenda

Item No. **6**

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

July 15, 2014

## SUBJECT:

SUMMARY OF SD&AE DOCUMENTS ISSUED SINCE APRIL 15, 2014

## RECOMMENDATION:

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

### Budget Impact

None.

## DISCUSSION:

Since the April 15, 2014, SD&AE Railway Company Board of Directors meeting, the documents described below have been processed by staff.

- S200-14-590: Right of Entry Permit to Helix Water District to perform various inspection and maintenance activities on SD&AE right of way.
- S200-14-596: Right of Entry Permit to Flatiron / H & H (a joint venture) to construct the South Line Freight Improvement Project.
- S200-14-597: Right of Entry Permit to the City of La Mesa for its Flag Day Parade.
- S200-14-598: Right of Entry Permit to Navy Region Southwest Morale, Welfare and Recreation Department for its 28<sup>th</sup> Annual Bay Bridge Run / Walk event.
- S200-14-599: Right of Entry Permit to BriceHouse, Inc. to construct a temporary shuttle drop-off location at the south end of the San Ysidro Yard.



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

## Agenda Item No. 7

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

September 18, 2014

#### SUBJECT:

RADIO COMMUNICATIONS ROOM CONSOLE FURNITURE - PROCUREMENT AND  
INSTALLATION SERVICES - CONTRACT AWARD

#### RECOMMENDATION:

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

- 1) Execute MTS Doc. No. PWB156.0-14 (in substantially the same format as Attachment A) with Watson Dispatch for Radio Communications Room Console Furniture for Procurement and Installation Services; and
- 2) Approve a project contingency of 10 percent of the contract amount.

#### Budget Impact

The total cost of this agreement would not exceed \$121,193.70 (\$110,193.70 for the procurement and installation services, and a 10 percent project contingency of \$11,000). Funding will be provided under the MTS Capital Improvement Project (CIP) 11290-0200.

#### DISCUSSION:

MTS and North County Transit District are currently upgrading and expanding the Regional Transit Management System (RTMS) hardware and software. Approximately 274 contracted vehicles will be added to the RTMS system for radio communications, vehicle tracking and bus incident management. As part of the upgrade, the Bus Operations Control Center, which was built for three radio supervisors and one backup radio supervisor, must be expanded for an additional four radio positions which will dispatch from this location.

On June 26, 2014, MTS issued a Request for Proposals (RFP) for Radio Communications Room Console Furniture - Procurement and Installation Services. The



scope of work included the expansion of the Bus Operations Control Center to provide the necessary workspace for eight radio positions.

On August 4, 2014, MTS received a total of three proposals from the following:

1. Watson Dispatch, Poulsbo, WA 98370
2. Evans, Vienna, VA 22182
3. Xybix, Littleton, CO 80120


All were deemed responsive and responsible and were evaluated on the following criteria:

1.	Qualifications of the Firm or Individual	10%
2.	Staffing, Firm Organization and Management Plan	5%
3.	Work Plan	35%
4.	Cost/Price	50%
Total		100%

Two of the three firms were considered to be within the competitive range and they were invited for interviews and negotiations. During discussions with Evans, one of the two finalists, the resulting BAFO was considered non-responsive due to the non-compliance of Buy America certification.

After conducting a price analysis, staff determined that the pricing presented by Watson Dispatch was fair and reasonable. The table below depicts the difference between the MTS Independent Cost Estimate (ICE) and the cost proposed by Watson Dispatch. Watson Dispatch's bid is 21 percent lower than the ICE calculated by MTS staff.

Radio Communications Room Console Furniture	MTS	Watson Dispatch
Independent Cost Estimate (ICE)	\$ 140,000	
Cost Proposal		\$110,193.70

  
Paul C. Jablonski  
Chief Executive Officer

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

Attachments: A. Draft Standard Services Agreement; Contract PWB156.0-14

**ATTACHMENT A  
(DRAFT)**

<b>PWB156.0-14</b> <b>CONTRACT NUMBER</b>  <b>CIP 11290-0200</b> <b>FILE/PO NUMBER(S)</b>
---

**STANDARD PROCUREMENT AGREEMENT  
FOR  
RADIO COMMUNICATIONS ROOM CONSOLE FURNITURE  
PROCUREMENT & INSTALLATION SERVICES**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2014, 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: Watson Dispatch Address: 26246 Twelve Trees Lane, NW

Form of Business: Corporation Poulsbo, WA 98370  
(Corporation, partnership, sole proprietor, etc.)

Telephone: (800) 426-1202 Ext 261

Authorized person to sign contracts: Lisa Dotterweich Operations Sales Lead  
Name Title

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

Radio Communications Room Console Furniture - Procurement & Installation Services, as specified in the Scope of Work (attached as Exhibit A), Watson Consult's cost proposal dated August 21, 2014 (attached as Exhibit B), and in accordance with the Standard Conditions Procurement, including the Standard Procurement Agreement (attached as Exhibit C), and the Federal Requirements (attached as Exhibits D). This contract will be effective from August 29, 2014 through February 28, 2015 for procurement and installation services. (The warranty period shall be for 10 years after acceptance of the project).

Total contract will be in the amount of **\$ 110,193.70.**

SAN DIEGO METROPOLITAN TRANSIT SYSTEM		CONTRACTOR AUTHORIZATION
By: _____ Chief Executive Officer		Firm: _____
Approved as to form:		By: _____ Signature
By: _____ Office of General Counsel		Title: _____
AMOUNT ENCUMBERED	BUDGET ITEM	FISCAL YEAR
\$ 110,193.70	CIP 11290-0200	FY 15

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

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

SA-PROCUREMENT  
DATE



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

## Agenda Item No. 8

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

September 18, 2014

#### SUBJECT:

TRANSIT BUS TIRES – SOLE SOURCE PURCHASE ORDER

#### RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to issue a purchase order with The Goodyear Tire and Rubber Company (Goodyear) for the purchase of 228 transit bus tires.

#### Budget Impact

The total value of this purchase would not exceed \$111,590.00. Funding will be from the MTS Capital Improvement Project (CIP) 11310 (MTS Bus Replacement).

#### DISCUSSION:

In December 2012, the MTS Board of Directors authorized the purchase of 40-foot revenue vehicles from Gillig, LLC that support both MTS directly operated bus services as well as MTS contracted service operations (currently operated by Transdev – formerly known as Veolia). MTS currently contracts tire leasing with Goodyear for directly operated services and elected not to include tires in the purchase price of the revenue vehicles.

Under the existing bus operating agreement with Transdev, MTS must furnish each revenue vehicle with an initial complete set of tires (6 tires per 40-foot revenue vehicle) and the contractor is responsible for the maintenance and replacement of the revenue vehicle tires. MTS will assign a total of 38 revenue vehicles to contracted service operations, which requires MTS to purchase 228 tires.

Because of the bus design and the maximum speed limitations during operations, the only tire approved by both Gillig and MTS is the Goodyear Intercity Cruiser B315/80R x 22.5 tire.



The tire cost breakdown is as follows:

Tire Cost Breakdown	
Base Price (228 tires @ \$475.00)	\$108,300.00
Mileage Rate Equalization (MRE)	\$2,890.34
CA Waste Tax (228 tires @ \$1.75)	\$399.00
Total Tax	\$3,289.34
<b>GRAND TOTAL</b>	<b>\$111,589.34</b>

As this is a sole source procurement, staff performed a cost analysis comparing previous purchases of such tires to the current pricing, and determined Goodyear's price to be fair and reasonable.



Paul C. Jablonski  
Chief Executive Officer

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



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## Agenda Item No. 9

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

September 18, 2014

#### SUBJECT:

PROCUREMENT AND INSTALLATION OF DISPATCH CONSOLES AND RADIOS -  
CONTRACT AWARD

#### RECOMMENDATION:

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

1. Execute MTS Doc. No. PWG148.0-14 (in substantially the same format as Attachment A), with Mobile Relay Associates (MRA) for the procurement and installation of dispatch consoles and radios, and the provision of radio airtime services for a five-year base period with five one-year option periods (for a total of 10 years); and
2. Exercise each option year at the CEO's discretion.

#### Budget Impact

The total cost of this agreement would not exceed \$866,745.00. Funding in the amount of \$165,749.00 for the purchase and installation of consoles and radios will be provided by MTS Capital Improvement Project (CIP) 11333-0200 (ADA Rural RCS Radio Replacement). Funding for optional equipment, system maintenance and radio airtime will be included in the ADA Access Operations annual budget under account code 850-53910 totaling \$700,996.00.

#### DISCUSSION:

On May 6, 2014, staff issued a Request for Proposals (RFP) for the procurement and installation of dispatch consoles and radios for the ADA Paratransit (MTS Access) and Fixed Route Minibus operations. Both are being operated under contract with First Transit at the MTS Copley Park facility.

The scope of work included the purchase of all related equipment, installation, warranty, licenses, training and software maintenance. Also included is the requirement for the Contractor to provide radio airtime services through the base and option year periods.





On June 25, 2014, MTS received four proposals from the following:

1. Fisher Wireless, San Diego, CA
2. BearCom, San Diego, CA
3. Commline, Inc., Culver City, CA
4. MRA, Paramount, CA

All were deemed responsive and responsible and were evaluated on the following:

- |    |                                |      |
|----|--------------------------------|------|
| 1. | Qualifications of the Proposer | 10%  |
| 2. | Technical Compliance           | 30%  |
| 3. | Work Plan                      | 20%  |
| 4. | Cost/Price                     | 40%  |
|    | Total                          | 100% |

As all were considered to be within the competitive range, they were invited for interviews and negotiations. Fisher Wireless, however, withdrew its proposal prior to its scheduled interview.


Final evaluation committee scores were as follows:

	<u>Qualifications</u>	<u>Tech. Compliance</u>	<u>Work Plan</u>	<u>Cost / Price</u>	<u>TOTAL</u>
BearCom	4.0	3.7	6.7	8.0	<b>22.3</b>
Commline	6.0	18.0	8.0	8.0	<b>40.0</b>
MRA	10.0	28.0	18.0	32.0	<b>88.0</b>

Based on the committee's evaluation of the technical proposal, the results of discussions, product testing, and analysis of the price offered, it was determined that MRA's proposal is fair and reasonable and represents the best overall value for MTS. The technical proposal submitted by MRA scored higher than its competitors and also provided the lowest unit price for MTS.

MRA's total capital procurement and operating costs for MTS are as follows:

	<u>Capital</u>	<u>Operations</u>	<u>Total</u>
Equipment/Warranty	\$ 165,749		\$ 165,749
Optional Equipment		\$ 71,716	71,716
System Maintenance		46,080	46,080
Radio Airtime Services			
Base Period		264,000	264,000
Option Period		319,200	319,200
	\$ 165,749	\$ 700,996	\$ 866,745

  
Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, [Sharon.Cooney@sdmts.com](mailto:Sharon.Cooney@sdmts.com)  
Attachments: A. Draft Standard Services Agreement; Contract PWG148.0-14

## STANDARD PROCUREMENT AGREEMENT

PWG148.0-14  
 CONTRACT NUMBER  
 CIP11310  
 FILE NUMBER(S)

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2014, 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: Mobile Relay Associates Address: 15530 Vermont Ave.

Form of Business: Partnership Paramount, CA 90723  
 (Corporation, partnership, sole proprietor, etc.)

Telephone: 323-636-5202

Authorized person to sign contracts: Mark J. Abrams Partner  
 Name Title

**The attached Standard Conditions are part of this agreement. The Contractor agrees to furnish to MTS the following:**

Procurement and installation of Dispatch Consoles and Radios; provide associated warranty and maintenance; and the provision of radio airtime services, as specified in the Scope of Work (attached as Exhibit A), the Mobile Relay Best and Final Offer (BAFO) (attached as Exhibit B), and in accordance with the Standard Procurement Agreement, including the Standard Conditions Procurement (attached as Exhibit C), Federal Requirements (attached as Exhibit D), and the MTS Safety SOP, SAF-016-03 (attached as Exhibit E).

The total contract amount for the base period shall not exceed \$475,829.00, and the total amount for the optional equipment, including the five one-year periods of airtime services, shall not exceed \$390,916.00. The total project cost shall not exceed of \$866,745.00 without the express written approval by MTS. The base period of performance for the related airtime services shall be effective from the actual start date of the airtime services, and the option periods shall be effective at the end of the 5<sup>th</sup> base year. MTS reserves the right to exercise options individually, in multiple periods, all at once, or not at all.

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
\$165,749.00	11333-0200	FY15
\$310,080.00	850-53910	FY15-FY20
TOTAL: \$475,829.00 (Base period)		

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

Chief Financial Officer

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



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## Agenda Item No. 10

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

September 18, 2014

#### SUBJECT:

SAN DIEGO METROPOLITAN TRANSIT SYSTEM (MTS) BUS RAPID TRANSIT (BRT)  
STATION MAINTENANCE - CONTRACT AMENDMENT

#### RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to execute Amendment No. 1 to MTS Doc. No. G1658.0-14 (in substantially the same format as Attachment A) with ISS Facility Services, Inc. (ISS) to accommodate unforeseen additional expenditures associated with maintenance services for nine additional BRT stations.

#### Budget Impact

Approval of this contract amendment would increase the full contract value with ISS by \$504,199.00, from the original \$4,358,169.00 to a revised \$4,862,368.00 (\$339,876.00 for the base period, and \$164,323.00 for the option years). Fiscal year (FY) 2015 through FY 2019 expenses are funded under MTS's operating budget accounts 845-53114 (SuperLoop) and 847-53114 (Mid-City BRT) and reimbursed with SANDAG TransNet II proceeds.

#### DISCUSSION:

The BRT station network currently consists of 22 stations within the University Town Center (UTC) and downtown areas as well as the Interstate 15 (I-15) corridor. Twenty additional stations within the Mid-City and UTC regions are scheduled to open in September 2014. Approximately 26 more stations are expected to open in the downtown, Kearny Mesa and South Bay regions over the next two years, resulting in 68 total BRT stations.

Of the nine additional stations, two will be SuperLoop stations located on UCSD property with revenue operations beginning in September 2014. The remaining seven stations will



be added to the eleven originally planned Mid-City Rapid stations. The 18 total Mid-City Rapid stations are scheduled to begin revenue operations October 2014.

The BRT stations are maintained by MTS under an MOU with SANDAG. All maintenance costs are reimbursed by SANDAG with TransNet II funding.

In March 2014, the MTS Board approved the contract award of BRT station maintenance services to ISS of the current and future planned BRT stations which was projected at 59 total stations totaling \$4,358,169.00. The approval of this Board item totaling \$504,199.00 will authorize the CEO to amend the contract to include maintenance for the additional two SuperLoop and seven Mid-City stations (Attachment B).

As these nine additional stations are not covered in the current station maintenance agreement, staff initiated an analysis of the benefits of either conducting a separate procurement or adding these new stations to the existing service agreement with ISS. In order to mitigate conflicts of multiple contractors and agreements, staff determined that a sole source procurement was appropriate and will provide MTS with an efficient operation.

  
Paul C. Jablonski  
Chief Executive Officer

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

Attachment: A. DRAFT MTS Doc. No. G1658.1-14  
B. Service Costs

September 18, 2014

MTS Doc. No. G1658.1-14

ISS Facility Services, Inc.  
Eduardo Carrillo, General Manager  
7250 Engineer Rd, Ste. D  
San Diego, CA 92111

Subject: AMENDMENT NO. 1 TO MTS DOC. NO. G1658.0-14; MTS BUS RAPID TRANSIT (BRT)  
STATION MAINTENANCE

Mr. Carrillo:

This shall serve as Amendment No. 1 to our agreement for the BRT station maintenance services and the following revisions below shall be made to the contract scope.

SCOPE OF WORK

1. Section: "SUPERLOOP BRT STATIONS"; ADD two (2) stations "Gilman Drive & Meyers Drive Westbound" and "Gilman Drive & Meyers Drive Eastbound".
2. Section: "OPTIONS, MID-CITY"; ADD seven (7) stations to the original eleven (11) stations. The exact locations of all eighteen (18) stations are now identified as follows:

Park & University Northbound  
Park / Howard Northbound  
El Cajon Blvd. / Texas Eastbound  
El Cajon Blvd. / 30<sup>th</sup> Eastbound  
El Cajon Blvd. / 35<sup>th</sup> Eastbound  
El Cajon Blvd. / 43<sup>th</sup> Eastbound  
El Cajon Blvd. / Winona Eastbound  
El Cajon Blvd. / 54th Eastbound  
El Cajon Blvd. / College Eastbound

Park & University Southbound  
Park / Howard Southbound  
El Cajon Blvd. / Texas Westbound  
El Cajon Blvd. / 30<sup>th</sup> Westbound  
El Cajon Blvd. / 35<sup>th</sup> Westbound  
El Cajon Blvd. / 43<sup>th</sup> Westbound  
El Cajon Blvd. / Winona Westbound  
El Cajon Blvd. / 54th Westbound  
El Cajon Blvd. / College Westbound

3. Section: "OPTIONS / STATION CLEANING" Apply the following clarifications:
  - a. Common Area Platform Sweeping: Services shall be performed daily Monday through Sunday between 8:00 a.m. and 3:00 p.m.
  - b. Trash Removal: First pick-up between 8:00 a.m. and 11:00 a.m., Second pick-up between 6:45 p.m. and 9:45 p.m.
4. Section: "OPTIONS, MID-CITY"; ADD tasks (see Exhibit A-1) which are specific to Park & University Northbound and Southbound, and Park / Howard Northbound and Southbound:

SCHEDULE

There is no change to the term of this agreement.

PAYMENT

This contract amendment shall authorize additional costs of \$504,199.00 (\$399,876.00 for the remaining base period and \$164,323.00 for the option period if exercised at MTS's discretion) as per the Price Breakdown (attached as Attachment B). The total value of this contract, including this amendment shall be in the amount of \$4,862,368.00. This amount shall not be exceeded without prior written approval from MTS.

All other conditions remain unchanged. If you agree with the above, please sign below, and return the document marked "Original" to the Contracts Administrator at MTS. The other copy is for your records.

Sincerely,

Agreed:

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

\_\_\_\_\_  
Eduardo Carrillo  
General Manager / ISS Facility Services Inc.

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

Attachment: Exhibit A-1 Mid-City Station Maintenance

The following tasks are specific to the following MIDCITY BRT stations listed below and shall be performed between the hours of 8:00 a.m. and 3:00 p.m. with frequencies described for each task:

*Park & University (Northbound and Southbound)*

*Park / Howard (Northbound and Southbound)*

- 1) Landscaping: The contractor shall keep all landscaping in an attractive, healthy, colorful and lush appearance.

**A. SHRUB, HEDGES AND VINE MAINTENANCE**

The contractor shall be responsible for maintaining all shrubs, hedges and vines that are located within each BRT station boundary. Contractor shall, at a minimum, clean out old leaves at least once per month and prune dead, diseased and wayward growth as needed. Contractor shall fertilize all shrub areas four (4) times per year (October, January, April and July) or as needed to ensure the health of the landscaping. Fertilizer type will be based on seasonal conditions and plant type. The goal of the shrub, hedge and vine maintenance is to develop a lush, natural appearance and promote flowering. At a minimum, the contractor shall perform the following:

- i. Pruning shall be done on an as needed basis. The intent of this style of pruning is to maintain the natural plant appearance. Shrubs are intended to fill planting spaces as much as possible. Shrubs and vines on slopes should be pruned or shaped to allow them to spread naturally.
- ii. Shearing back of shrub stems and branches is not encouraged unless the plant poses a safety hazard, or unless directed by MTS.
- iii. Shrub fertilization shall be performed using complete, organic-based, slow release products in October, January, April and July. Spot fertilization may be applied to color plants to encourage flowering.

**B. GROUNDCOVER MAINTENANCE**

Contractor shall perform a complete weeding, trimming and edging of all groundcovers to ensure a clear path around all water basins or drip line areas of individual trees. All groundcover areas must be fertilized four (4) times per year (October, January, April and July) or as needed to ensure the health of the landscaping. The site groundcovers are intended to fill large areas, provide significant color and present a lush appearance. At a minimum, the contractor shall perform the following:

- i. All groundcover areas shall be uniformly irrigated to ensure consistent growth and plant coverage.
- ii. Groundcover areas shall be kept free of weeds and grasses. Weed control on the passenger platforms, sidewalks, walkways, parking lots and gutters shall be controlled and eliminated in order to present a neat and well maintained appearance at all times.

- iii. Sparse groundcover areas will be checked for irrigation coverage. Bare areas may require hand tilling of soil and replanting to create plant uniformity.
- iv. Fertilization shall be done with a complete, organic-based, slow release product.

**C. TREE MAINTENANCE**

Tree trimming will be performed in accordance to the standards set forth in the International Society of Arboriculture to guide all tree pruning activities. Trees growing next to walkways, paths, driveways and parking areas will maintain a crown height of no less than seven feet from the ground. This will allow for unobstructed movement by pedestrians and vehicles. All dead/dying intersecting branches, which include Palm frawns, shall be removed and cleared regularly to maintain the overall health of the tree and safety of the station. Tree ties shall be inspected regularly and replaced as needed. All fallen branches or palm frawns or fruit shall be removed within a 24-hour period of time. The overall goal of the tree maintenance is to maximize the growth and health of tree species, while minimizing damage typically caused by trees or by the lack of proper tree care, at a minimum. The contractor shall perform the following:

- i. Trees shall be fertilized in accordance with shrub fertilizer schedule.
- ii. Trees shall be pruned back only for safety or structural clearance, otherwise, pruning shall be performed as a "thinning" or "opening" to promote tree spread and shading potential. No more than 1/4 to 1/3 of leaf area shall be removed at any pruning.
- iii. Potential damage caused by tree roots will be identified on site walks. Where appropriate, root pruning shall be performed to avoid damage.
- iv. Trees causing consistent physical damage or nuisance can be recommended for removal. Contractor shall report such hazards to the MTS.

**D. SPRINKLER AND IRRIGATION MAINTENANCE**

Sprinkler heads shall be inspected, cleaned or replaced as required to provide maximum coverage. Contractor shall list and report all irrigation system damage to MTS with the cost estimate of repair/replacement. Once approved by MTS, replacement parts shall be billed to MTS as a pass through invoice for the actual costs of the parts that are replaced. Contractor is responsible to ensure timers are programmed correctly to provide efficient watering to all plants, trees, and turf areas based on seasonal conditions and vegetation requirements. At a minimum, the contractor shall perform the following:

- i. Contractor shall consistently maintain all components of the irrigation system at each BRT Station to ensure proper working order as per manufacturer's specifications by inspecting the entire system on an ongoing basis.



- ii. Spray heads shall be randomly checked on an ongoing basis and the entire systems shall be checked once each month.
  - a. Malfunctioning systems will be corrected immediately. Methods of detection include visual sightings of water on hardscape and property soil probing meter monitoring system observations.
- iii. As needed reprogramming of the irrigation systems. Individual irrigation valve run times should be determined and set each week dependent on the weather forecast for the upcoming week.
- iv. All run times should take into account valve precipitation rates, soil conditions, microclimate conditions and consideration of slope. Before scheduling run times, the site should be "walked" and planted areas inspected to observe plant stress and health. Soil moisture levels should be visually inspected throughout planted areas, and appropriate adjustments made to the irrigation schedule. Irrigation scheduling will be performed to encourage deep roots, including deep watering through use of multiple repeat cycles. Soil probing shall be used to determine soil moisture depth, overall moisture levels and the need to adjust irrigation schedules. Soils shall be allowed to dry between irrigations in order to avoid root-rot and allow adequate air to be present in the soil.
- v. Monthly activation of all irrigation valves. Each valve shall be operated individually to inspect for and correct the following conditions: misaligned irrigation heads, clogged or obstructed heads, missing or vandalized heads, low-drainage conditions, overspray into hardscape areas, poor coverage, uniformity stuck valves, broken risers, laterals or mains.
  - a. All sprinkler heads shall be adjusted as required as to height, coverage, pattern, or sprinkler head orientation so as not to allow restriction of spray pattern by plant material that may in turn cause plant decline or demise.
- vi. Irrigation system pressure shall be checked and adjusted at least monthly to ensure efficient operation of irrigation systems.
- vii. All irrigation replacement parts shall be original installation or approved equals.
- viii. Monthly irrigation meter reads need to be included in the monthly report submitted to MTS.
- ix. Irrigation scheduling will be coordinated with all other maintenance activities.

Period	Fiscal Year	Original Contract	Contract Amendment		Amended Contract
			845-53114 SuperLoop	847-53114 Mid City	
3/1/2014 - 6/30/2014	FY 2014	118,824			118,824
7/1/2014 - 2/28/2015	FY 2015	418,570	22,795	32,001	473,366
7/1/2015 - 2/28/2016	FY 2016	586,905	27,094	46,204	660,203
7/1/2016 - 2/28/2017	FY 2017	675,242	27,559	50,686	753,486
7/1/2017 - 2/28/2018	FY 2018	685,068	27,994	51,484	764,546
7/1/2018 - 2/28/2019	FY 2019	463,191	19,041	35,018	517,251
<b>Subtotal:</b>			124,484	215,393	
<b>Base Years</b>			2,947,799	339,876	3,287,676
3/1/2019 - 6/30/2019	FY 2019	231,596	9,376	17,252	258,224
7/1/2019 - 2/28/2020	FY 2020	704,687	28,847	53,068	786,602
7/1/2020 - 2/28/2021	FY 2021	474,086	19,648	36,132	529,866
<b>Subtotal:</b>			57,871	106,451	
<b>Option Years</b>			1,410,369	164,323	1,574,692
<b>Grand Total</b>					
<b>(Base + Options)</b>		4,358,169		504,199	4,862,368



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## Agenda Item No. 11

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

September 18, 2014

#### SUBJECT:

TROLLEY ON-BOARD VIDEO SURVEILLANCE SYSTEM - CONTRACT AMENDMENT

#### RECOMMENDATION:

That the Board of Directors:

- 1) Ratify MTS Doc. No. L0955.3-10 (Attachment A) with UTC Fire and Security for the purchase of wireless equipment for 57 SD8 Light Rail Vehicles (LRV), which was previously executed pursuant to the Chief Executive Officer's (CEO) authority; and
- 2) Authorize the CEO to execute Amendment No. 4 (Attachment B) to allow for the reimbursement to UTC Fire and Security for three project performance bond extension periods covering April 20, 2012 - April 20, 2015.

#### Budget Impact

The cost for this project would increase by \$119,505.41, of which \$83,505.41 (Amendment No. 3) was previously executed pursuant the CEO's authority. As a result of this request, the total Board approval would increase from \$3,916,744.43 to \$4,036,249.84 incorporating both Amendment No. 3 and Amendment No. 4. The additional funds will be from the MTS Capital Improvement Program (CIP) 11271 (LRV Cameras).

#### DISCUSSION:

In February 2011, following a Request for Proposals process, the Board authorized the award of a contract for a trolley on-board closed-circuit television (CCTV) surveillance system. The original contract with UTC Fire and Security for \$3,685,888.93 was based on the fleet of 52 SD100's, 11 S70's and 57 SD8 LRV's.



Amendment No. 1

In April 2012, an amendment for an increase of \$31,025.50 to expand the video storage capacity was executed pursuant the CEO's authority.

Amendment No. 2

In February 2013, the Board approved an amendment for an increase of \$199,830.00 for CCTV installation on eight additional SD8 LRV's.

Amendment No. 3

In February 2014, an amendment for an increase of \$83,505.41 for the purchase of wireless equipment for 57 SD8 LRV's was executed pursuant to the CEO's authority.

Amendment No. 4

Staff is requesting Board approval for the execution of contract Amendment No. 4 with UTC Fire and Security for reimbursement of three project performance bond extension periods. Per the contract terms, MTS is required to reimburse UTC Fire and Security for the cost of the project performance bond extension periods. MTS has the right to reduce or waive the bond at its sole discretion at any time. As directed by MTS, the performance bond has not been reduced, has been renewed each year, and is currently active.

UTC Fire and Security has paid for the performance bond extensions and is requesting reimbursement for the following performance bond extension periods:

April 20, 2012 - April 20, 2013	-	\$12,000
April 20, 2013 - April 20, 2014	-	\$12,000
April 20, 2014 - April 20, 2015	-	\$12,000
<b>Total:</b>		<b>\$36,000</b>

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

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

Attachment: A. MTS Doc. No. L0955.3-10  
B. Draft MTS Doc. No. L0955.4-10



Metropolitan Transit System

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San Diego, CA 92101-7490  
(619) 231-1466 • FAX (619) 234-3407

ORIGINAL

February 19, 2014

MTS Doc. No. L0955.3-10

Mr. Al Cavagnero  
G.M. MobileView/Interlogix  
A UTC Fire & Security Company  
2955 Red Hill Avenue  
Costa Mesa, CA 92626

Dear Mr. Cavagnero:

Subject: AMENDMENT NO. 3 TO MTS DOC. NO. L0955.0-10; TROLLEY ON BOARD VIDEO SURVEILLANCE SYSTEM

This letter will serve as Amendment No. 3 to the above-referenced contract. MTS is issuing this Amendment for the additional wireless equipment for fifty-seven (57) SD8 LRV's.

**SCOPE OF WORK**

Provide MTS with additional wireless equipment for the CCTV systems for fifty-seven (57) SD8 LRV's as listed below:

<u>Part #</u>	<u>Description</u>
MSS-5113-20-01	Mobile Wireless Router (one per vehicle)
MSS-5113-21-00	Mobile Antenna (one per mobile router)
MSS-5113-23-00	Mobile Mounting Kit


**PAYMENT**

The increase shall cost \$1,465.01 for each of the fifty-seven (57) LRV's for a value not to exceed \$83,505.41. Total contract payment shall not exceed \$4,000,249.84. Original payment terms and conditions shall apply to this Amendment.

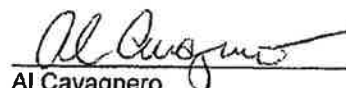
**TERM**

All previous terms and 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,

  
Paul C. Jablonski  
Chief Executive Officer

Accepted:

  
Al Cavagnero  
G.M. MobileView/Interlogix

LMARQUIS-CL  
CL-L0955.3-10.GMMBLEVV\_INTERLOGIX.ACONRIQUEZ.021914

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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.



September 18, 2014

MTS Doc. No. L0955.4-10

Mr. Al Cavagnero  
G.M. MobileView/Interlogix  
A UTC Fire & Security Company  
2955 Red Hill Avenue  
Costa Mesa, CA 92626

Subject: AMENDMENT NO. 4 TO MTS DOC. NO. L0955.0-10; TROLLEY ON-BOARD VIDEO  
SURVEILLANCE SYSTEM

Dear Mr. Cavagnero:

This letter will serve as Amendment No. 4 to the above-referenced contract. MTS is issuing this Amendment for the project performance bond extension periods.

#### **SCOPE OF WORK**

Provide MTS with an extension of the original performance bond for the following dates:

April 20, 2012 - April 20, 2013  
April 20, 2013 - April 20, 2014  
April 20, 2014 - April 20, 2015

#### **PAYMENT**

Each one year extension period shall be \$12,000.00 for a total cost not to exceed \$36,000.00. Total contract payment shall not exceed \$4,036,249.84. Original payment terms and conditions shall apply to this Amendment.

#### **TERM**

All previous terms and conditions remain in effect. Please sign and return the copy marked "original" to the Contracts Specialist at MTS. Retain the other copy for your records.

Sincerely,

Accepted:

Paul C. Jablonski  
Chief Executive Officer

---

Al Cavagnero  
G.M. MobileView/Interlogix



1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
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## Agenda Item No. 12

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

September 18, 2014

#### SUBJECT:

FEDERAL COMMUNICATIONS COMMISSION (FCC) MANDATED 800 MHz BAND  
RECONFIGURATION – IMPLEMENTATION PHASE CONTRACT AWARDS

#### RECOMMENDATION:

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

- 1) Execute MTS Doc. No. G1738.0-15 (in substantially the same format as Attachment A) with Ross & Baruzzini (R&B) for project planning and technical support for the implementation phase of the project for the not-to-exceed amount of \$149,930.00;
- 2) Execute MTS Doc. No. G1739.0-15 (in substantially the same format as Attachment B) with Day Wireless Systems (DWS) for hardware reprogramming services for the implementation phase of the project for the not-to-exceed amount of \$180,180.00; and
- 3) Execute MTS Doc. No. G1740.0-15 (in substantially the same format as Attachment C) with Xerox Transport Solutions, Inc. (Xerox) for back-office and vehicle firmware reprogramming for the implementation phase of the project for the not-to-exceed amount of \$552,483.80.

#### Budget Impact

The total cost of this Board approval would not exceed \$882,593.80. The projects will be funded through account 951-53114 (800 MHz Rebanding). The total amount of these expenses will be reimbursed by Nextel of California, Inc. (Sprint) under the terms of a Frequency Reconfiguration Agreement which was mandated by the Federal Communications Commission (FCC)



## DISCUSSION:

On April 1, 2013, the FCC issued document DA 13-586 addressing the "New 800 MHz Band Plan for U.S. – Mexico Sharing Zone," which affects the international allocation of communication bands in the 800 MHz spectrum for radio communications. MTS transit bus operations utilize these communications bands within our Regional Transit Management System (RTMS), which is the radio network to support communications and location technology for MTS transit bus operations. Currently DWS and Xerox provide maintenance support services as subcontractors for the Motorola maintenance contract for RTMS.

Sprint has negotiated with the FCC to obtain additional bandwidth in the Southern California – Mexican border region. The costs to relocate licensees to other radio frequencies, such as MTS, who hold FCC licenses to operate within the 800 MHz frequency, are to be reimbursed by Sprint.

The standard rebanding effort for licensees has two phases, both of which are complete. Phase one included negotiating an agreement with Sprint to plan the process of radio rebanding, and phase two included negotiating an agreement with Sprint to implement the process of radio rebanding. Staff is recommending approval on the contracts below to authorize the required phase two support and services.

1. R&B will provide project planning and technical support for the implementation phase of the rebanding effort between MTS, DWS and Xerox. R&B retains professional staff experienced in wireless networks, radio frequency, and other projects similar to MTS's current requirements, as well as detailed knowledge of MTS's current technical operations. Staff has determined R&B's costs to be fair and reasonable and recommends the award of a sole source contract, MTS Doc. No. G1738.0-15.
2. DWS will provide hardware reprogramming services for the implementation phase of the rebanding effort. DWS has unique technical expertise to provide reprogramming services related to the radios and radio towers, which are used for the communications within the 800 MHz band. They are experienced in wireless networks, radio frequency, and other projects similar to MTS's current requirements, as well as detailed knowledge of MTS's current technical operations. Staff has determined DWS's costs to be fair and reasonable and recommends the award of a sole source contract, MTS Doc. No. G1739.0-15.
3. Xerox will provide back-office and vehicle firmware reprogramming services for the implementation phase of the rebanding effort. MTS uses Xerox's Orbital Computer Aided Dispatch / Automatic Vehicle Location (CAD/AVL) system to manage and communicate with the transit bus fleet. The equipment on these buses, as well as the software, which runs on the computers and servers at MTS, are manufactured, programmed and supported exclusively by Xerox. There are no other authorized companies.

Xerox has unique technical expertise to provide firmware reprogramming services related to the back-office and vehicle equipment, which are used for the communications within the 800 MHz band. Xerox is also experienced in wireless



networks, radio frequency, and other projects similar to MTS's current requirements, as well as detailed knowledge of MTS's current technical operations. Staff has determined Xerox's costs to be fair and reasonable and recommends the award of a sole source contract, MTS Doc. No. G1740.0-15.

In accordance with MTS Policy 52 (Procurement of Goods and Services), Section 52.4E (Procurement Special Provisions); Federal Transit Administration (FTA) Circular 4220.1F (Third Party Contracting Guidance), Chapter VI, Section 3, i.(1)(c) (Methods of Procurement, Unusual and Compelling Urgency); and FTA Best Practices Procurement Manual (BPPM) Chapter 4, Section 4.6.1, 1(b) (Non-Competitive Sole Source Proposals), staff recommends the MTS Board of Directors to approve sole source contract awards to R&B, DWS and Xerox.

  
Paul C. Jablonski  
Chief Executive Officer

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

Attachments: A. Draft Standard Services Agreement; R&B Contract G1738.0-15  
B. Draft Standard Services Agreement; DWS Contract G1739.0-15  
C. Draft Standard Services Agreement; Xerox Contract G1740.0-15

## STANDARD SERVICES AGREEMENT

G1738.0-15  
 CONTRACT NUMBER  
 951-53114  
 FILE NUMBER(S)

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2014, 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: Ross & BaruzziniAddress: 6 South Old Orchard

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

St. Louis, MO 63119Telephone: 314-918-8383

Authorized person to sign contracts: David A. Kipp  
 Name

Sr. Vice President  
 Title

**The attached Standard Conditions are part of this agreement. The Contractor agrees to furnish to MTS the following:**

Project Consulting and documentation as specified in the Scope of Services (attached as Exhibit A), the Standard Services Agreement, including Standard Conditions, Services (attached as Exhibit B), MTS Safety Department's SOP (SAF 016-03) (attached as Exhibit C), and Travel Expense Policy Guidelines 44-C applicable to this contract, (attached as Exhibit D).

The total project shall not exceed \$149,930.00 unless otherwise stipulated in writing by MTS.

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
\$149,930.00	951-53114	2015

By: \_\_\_\_\_  
 Chief Financial Officer  
 (\_\_\_\_ total pages, each bearing contract number)

## STANDARD SERVICES AGREEMENT

G1739.0-15  
 CONTRACT NUMBER  
 951-53114  
 FILE NUMBER(S)

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, 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: US Mobile Wireless Communications, Inc.  
 dba: Day Wireless Systems

Address: 8300 Juniper Creek Lane Ste. 100

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

San Diego, CA 92126

Telephone: 858-537-0709

Authorized person to sign contracts: Joe Corrillo Area Operations Manager, California

Name

Title

**The attached Standard Conditions are part of this agreement. The Contractor agrees to furnish to MTS the following:**

Project Consulting and documentation as specified in the Scope of Services (attached as Exhibit A), the Standard Services Agreement, including Standard Conditions, Services (attached as Exhibit B), MTS Safety Department's SOP (SAF 016-03) (attached as Exhibit C), and Travel Expense Policy Guidelines 44-C applicable to this contract, (attached as Exhibit D).

The total project shall not exceed \$180,180.00 unless otherwise stipulated in writing by MTS.

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
\$180,180.00	951-53114	2015

By: \_\_\_\_\_  
 Chief Financial Officer  
 (\_\_\_\_ total pages, each bearing contract number)

## STANDARD SERVICES AGREEMENT

G1740.0-15  
 CONTRACT NUMBER  
 951-53114  
 FILE NUMBER(S)

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2014, 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: Xerox Transport Solutions, Inc. Address: 7160 Riverwood Drive  
 Form of Business: Corporation Columbia, MD 21046  
 (Corporation, partnership, sole proprietor, etc.) Telephone: (443) 413-1762

Authorized person to sign contracts: Michael Davis SVP & Managing Director Public Transport  
North America, Americas Local Government  
 \_\_\_\_\_  
 Name Title

**The attached Standard Conditions are part of this agreement. The Contractor agrees to furnish to MTS the following:**

Project Consulting and documentation as specified in the Scope of Services (attached as Exhibit A), the Standard Services Agreement, including Standard Conditions Services (attached as Exhibit B), MTS Safety Department's SOP (SAF 016-03) (attached as Exhibit C), and Travel Expense Policy Guidelines 44-C applicable to this contract, (attached as Exhibit D).

The total project shall not exceed \$552,483.80 unless otherwise stipulated in writing by MTS.

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
\$552,483.80	951-53114	2015

By: \_\_\_\_\_  
 Chief Financial Officer  
 (\_\_\_\_ total pages, each bearing contract number)



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## Agenda Item No. 13

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

September 18, 2014

#### SUBJECT:

FISCAL YEAR 2015 STATE TRANSIT ASSISTANCE CLAIM

#### RECOMMENDATION:

That the Board of Directors adopt Resolution No. 14-11, (Attachment A) approving the fiscal year (FY) 2015 State Transit Assistance (STA) claim.

#### Budget Impact

The FY 2015 STA claim would result in the approval of \$17,997,935 in STA funds for the San Diego Metropolitan Transit System (MTS) to be utilized in the FY 2015 operating and capital budgets.

#### DISCUSSION:

STA funding comes from the Public Transportation Act (PTA), which derives its revenue from the state sales tax on diesel fuel. STA revenues are pooled at the state level for the purposes of sections 99313 and 99314 of the California Public Utilities Code (PUC). The revenues for sections 99313 and 99314 are then allocated to transportation entities on a quarterly basis. PUC section 99313 allocations are based on the latest available annual population estimates from the Department of Finance. PUC section 99314 allocations are based primarily on qualifying revenues from the Annual Report of Financial Transactions of Transit Operators and Non-Transit Claimants under the Transportation Development Act.

Annually each August, the California State Controller's Office projects total sales tax revenues for the coming fiscal year and resulting STA revenue pool, and then estimates the allocation to each transportation entity. The State Controller's Office projects MTS will receive FY 2015 STA funding of \$17,997,935.



State law and MTS Policy No. 20, "Allocation of State Transit Assistance Funds" require that priority consideration be given to STA claims for the following purposes:

- to enhance existing public transportation services;
- to meet priority regional, county, or area-wide public transportation needs;
- to offset reductions in federal operating assistance and unanticipated increases in fuel costs.

STA revenues have been volatile in the past, and for that reason, the MTS Board has directed the majority of these revenues into the MTS Capital Improvement Program. However, in FY 2013, the MTS Board authorized the usage of a portion of annual STA proceeds for the operating budget to fund service restoration. For FY 2015, the usage projects as follows:

- |                               |               |
|-------------------------------|---------------|
| • Capital Improvement Program | \$ 14,400,000 |
| • Operating Budget            | \$ 3,597,935  |

Since these STA revenue allocations are based on sales tax revenue projections, in certain instances, it may be necessary to revise the original STA claim. MTS will claim up to the amount authorized by the attached Board resolution (Attachment A), and any revisions over the amount of this claim will come back to the MTS Board for approval.

 for

Paul C. Jablonski  
Chief Executive Officer

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

Attachment: A. MTS Resolution No. 14-11

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

RESOLUTION NO. 14-11

Resolution Approving the MTS Area Fiscal Year 2015 STA Claim

WHEREAS, California Public Utilities Code (PUC) Sections 99313.3 and 99313.6 established a State Transit Assistance (STA) fund and grants the San Diego Metropolitan Transit System (MTS) authority to allocate monies from this fund; and

WHEREAS, MTS, through its various operating entities and divisions, including San Diego Transit Corporation (SDTC), San Diego Trolley, Inc. (SDTI), MTS Contracted Services (collectively referred to as "MTS"), and other operators on the basis of revenue generated, qualifies for STA monies under the provision of PUC Section 99260 et seq.; and

WHEREAS, the County Auditor has informed MTS that its eligible STA allocation for Fiscal Year 2015 is \$17,997,935, and

WHEREAS, the claimants' proposed expenditures of STA monies are in conformance with the *Regional Transportation Plan* and *Transportation Improvement Program*; and

WHEREAS the level of passenger fares and charges is sufficient to enable MTS to meet the fare revenue requirements of the PUC sections 99268.2, 99268.3, 99268.5, and 99268.9 as they may be applicable to MTS, and

WHEREAS MTS is making full use of federal funds available under the Urban Mass Transportation Act of 1964, as amended, and

WHEREAS, the sum of MTS' allocations of STA and local transportation funds do not exceed the amounts they are eligible to receive during the fiscal year; and

WHEREAS, priority consideration has been given to claims to offset reductions in federal operating assistance and the unanticipated increase in the cost of fuel, to enhance existing public transportation services, and to meet high-priority, area-wide public transportation needs; and

WHEREAS, MTS has made reasonable efforts to implement productivity improvements recommended pursuant to PUC section 99244, including continuing efforts to maintain and improve the cost efficiency of MTS directly operated bus service as recommended in the Fiscal Year 2010-2012 triennial performance audit dated June 2013, and

WHEREAS, in the last thirteen months, MTS has received a certification from the California Highway Patrol verifying that MTS is in compliance with section 1808.1 of the Vehicle Code, as required in PUC section 99251, and

WHEREAS, MTS is in compliance with the eligibility requirements of PUC section 99314.6,

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED that the MTS Board does hereby direct and empower MTS staff to prepare and transmit allocation instructions to the County Auditor to disburse to MTS the Fiscal Year 2015 STA amount totaling \$17,997,935.

PASSED AND ADOPTED by the Board this \_\_\_\_\_ day of \_\_\_\_\_ 2014, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAINING:

---

Chairman  
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





1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
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## Agenda Item No. 14

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

September 18, 2014

#### SUBJECT:

SAN DIEGO STATE UNIVERSITY (SDSU) STATION ELECTRICAL ROOM FIRE  
SUPPRESSION SYSTEM - CONTRACT AWARD

#### RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. PWL154.0-14 (in substantially the same format as Attachment A) with Schmidt Fire Protection, for the procurement and installation of the Sapphire fire suppression system at the SDSU station.

#### Budget Impact

The total value of this agreement will not exceed \$123,160.88. Funding is provided by the San Diego Metropolitan Transit System (MTS) Capital Improvement Project (CIP) 11377-0200.

#### DISCUSSION:

MTS owns and operates an underground station with twin tunnels that pass under the SDSU campus. Because of its location, the station is equipped with a sophisticated emergency warning system, as well as intricate communication, surveillance and train signaling systems. Also contained within the station is electrical equipment for its elevators, escalators and lighting. The station is presently equipped with a water-based fire extinguishment system. If activated, water will be discharged as the primary fire-fighting agent. Because water is known to cause severe, and in some cases irreparable damage to electrical and electronic equipment, it is not considered to be the optimum solution in an environment where electrical equipment is present. Thus, staff launched a competitive procurement for the purchase and installation of a waterless fire suppression system.

Sapphire is a fire suppression system that represents the most effective fire protection in the market today. These systems are especially suited to suppress fires in areas where



an electrically non-conductive medium is required and where electronic systems cannot be shut down in an emergency. By installing this system at the SDSU station, MTS's high value electrical, surveillance and communication equipment are protected from fire in a manner that minimizes catastrophic equipment damage and incorporates a system that is both waterless and non-toxic.

An Invitation for Bids (IFB) securing and installing a Sapphire fire suppression system was issued on July 2, 2014. A total of five bids were received on August 15, 2014 from the following companies: Costco Fire Protection, Diversified Protection, Jam Fire, Schmidt Fire Protection and Simplex Grinnell. As detailed in Attachment B, three organization's bids were deemed responsive and two bids were determined non-responsive due to improper completion of bid forms.

Staff held a price reasonableness analysis and determined that the pricing presented by Schmidt Fire Protection, as shown in Attachment B, was fair and reasonable and was the lowest responsive and responsible bid. Staff recommends that the Board of Directors authorize the CEO to contract with Schmidt Fire Protection to procure and install the Sapphire fire suppression system at the SDSU station.

A handwritten signature in black ink that reads "Sharon Cooney for". The signature is written in a cursive, flowing style.

Paul C. Jablonski  
Chief Executive Officer

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

Attachment: A. Draft MTS Doc. No. PWL154.0-14  
B. Cost Summary

## ATTACHMENT A

**DRAFT**

STANDARD PROCUREMENT AGREEMENT  
FOR  
SDSU STATION ELECTRICAL ROOM FIRE SUPPRESSION SYSTEM

<u>PWL154.0-14</u> <b>CONTRACT NUMBER</b>  <u>OPS 970.4</u> <b>FILE/PO NUMBER(S)</b>
--

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2014, 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: Schmidt Fire Protection Company Inc. Address: 4760 Murphy Canyon Road  
 Form of Business: Corporation San Diego CA 92123  
 (Corporation, Partnership, Sole Proprietor, etc.) Telephone: 858 279-6122

Authorized person to sign contracts: James Moore Manager  
 Name Title

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

Provide material, labor and all equipment necessary for the procurement and installation of SDSU Fire Suppression System, as specified in the Technical Specifications (attached as Exhibit A), the Bid Summary (attached as Exhibit B), and the Standard Procurement Conditions (attached as Exhibit C),.

The total amount of this contract shall not exceed \$123,160.88 including all applicable sale taxes.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM	CONTRACTOR AUTHORIZATION
By: _____ Paul C. Jablonski, Chief Executive Officer	Firm: _____
Approved as to form:	By: _____ Signature
By: _____ Office of General Counsel	Title: _____

AMOUNT ENCUMBERED	BUDGET ITEM	FISCAL YEAR
<u>\$ 123,160.88</u>	<u>11377-0200</u>	<u>FY 2015</u>

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

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

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**SDSU STATION ELECTRICAL ROOM FIRE SUPPRESSION**  
**MTS DOC. NO. PWL154.0-14**

**COST SUMMARY**

	<b>FIRM</b>	<b>COST</b>
	<b><i>Schmidt Fire Protection</i></b>	<b><i>\$123,160.88</i></b>
<b>**</b>	Simplex Grinnell	\$126,507.00
<b>**</b>	Diversified Protection	\$171,262.60
	Costco Fire Protection	\$200,137.24
	Jam Fire	\$222,097.00

**\*\*** Non Responsive



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## Agenda Item No. 15

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

September 18, 2014

#### SUBJECT:

SOLAR POWERED RAIL LUBRICATORS - CONTRACT AWARD

#### RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. L1198.0-14 (in substantially the same format as Attachment A) with Zemarc Corporation for the provision of up to sixteen solar powered rail lubricator kits.

#### Budget Impact

The value of this agreement will not exceed \$237,616.37 and is funded from MTS Capital Improvement Project (CIP) number 11371.

#### DISCUSSION:

Solar powered rail lubricator kits are required by MTS's Rail Operations to help minimize the wear of the trolley tracks by the Light Rail Vehicle (LRV), thereby increasing the life of the rails by at least ten years. Also, the lubricant has the added value of decreasing the noise the trolley makes and allowing for a smoother ride, which creates a better experience for the customers and surrounding communities.

The kits are comprised of three major parts; the reservoir, pump and displacement valve. MTS needs up to four 200 lbs. reservoirs and up to twelve 800 lbs. reservoirs. The smaller reservoirs are needed for locations that have smaller right of way space. The pump is used to transfer the lubricant from the reservoir to the displacement valve which releases the required amount of lubricant onto the rail as the trolley passes.

MTS has opted to use solar power pumps because they require less maintenance and are more reliable than battery powered pumps. The solar power rail lubricators are placed at 17 locations throughout the Blue, Green and Orange Lines. One unit was replaced in fiscal year 2013, leaving 16 other units in need of replacement. The table



below details the per unit cost for 200 lbs. kits and 800 lbs. kits as submitted by Zemarc Corporation.

Description	Qty.	Unit Price	Ext. Price
200 Lbs. Kit	Up to 4 Kits	\$ 13,750.76	\$ 55,003.04
800 Lbs. Kit	Up to 12 Kits	\$ 13,751.01	\$ 165,012.12
CA Sales Tax - 8.00%			\$ 17,601.21
<b>Grand Total:</b>			<b>\$ 237,616.37</b>

MTS Policy No. 52, governing the procurement of goods and services, requires a formal competitive process for procurements exceeding \$100,000.

An Invitation for Bid (IFB) was issued on May 27, 2014. One responsive and responsible bid was received by Zemarc Corporation on the due date of July 3, 2014.

After conducting a price analysis, staff determined that the pricing presented by Zemarc Corporation was fair and reasonable. The table below depicts the difference between the MTS Independent Cost Estimate (ICE) and the cost proposed by Zemarc Corporation. Zemarc Corporation's bid is 7% lower than the ICE calculated by MTS staff.

<b>SOLAR POWER RAIL LUBRICATORS</b>	<b>MTS</b>	<b>ZEMARC</b>
Independent Cost Estimate (per unit)	\$ 14,781	
COST PROPOSAL (per unit)		\$13,751

  
 Paul C. Jablonski  
 Chief Executive Officer

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

Attachment: A. Draft MTS Doc. No. L1198.0-14

**ATTACHMENT A  
(DRAFT)**

**STANDARD PROCUREMENT AGREEMENT  
FOR  
SOLAR POWER RAIL LUBRICATORS**

**L1198.0-14**  
**CONTRACT NUMBER**

FILE/PO NUMBER(S)

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2014, 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: Zemarc Corporation Address: 1255 Stone Drive

Form of Business: Corporation San Marcos, CA 92078  
(Corporation, partnership, sole proprietor, etc.)

Telephone: 760-471-0901

Authorized person to sign contracts: Andy Fitz-Patrick Product Manager  
Name Title

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

Solar Power Rail Lubricators, as specified in the Scope of Work (attached as Exhibit A), Zemarc Corporation's Bid dated July 1, 2014 (attached as Exhibit B), and in accordance with the Standard Conditions Services (attached as Exhibit C), and the Federal Requirements (attached as Exhibits D). This contract will be effective for one year from the issuance of the Notice to Proceed.

Total contract shall not exceed **\$237,616.37** without the express written consent of MTS.

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	
<u>\$ 237,616.37</u>	<u>CIP 11371</u>	<u>FY 15</u>	

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

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

SA-SERVICES REVISED (REV 6-13)  
DATE



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## Agenda Item No. 16

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

SEPTEMBER 18, 2014

#### SUBJECT:

INVESTMENT REPORT – JUNE 2014

#### INFORMATIONAL ONLY

##### Budget Impact

None.

#### DISCUSSION:

Attachment A comprises a report of MTS investments as of June 30, 2014. The combined total of all investments has decreased from \$192.1 million to \$183.5 million in the current month. This \$8.6 million decrease is attributable to not receiving \$7 million in TDA revenue. In FY14, this funding was received from the County of San Diego on a monthly basis from July through May, with two payments in July and no payment in June. In addition, there was a \$1.9 million reduction in investments restricted for debt service to satisfy the scheduled annual lease/leaseback obligation, expenditures of \$2.4 million for acquisition of capital assets, as well as normal timing differences in other payments and receipts.

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.

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

  
Paul C. Jablonski  
Chief Executive Officer

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

Attachment: A. Investment Report for June 2014





**San Diego Metropolitan Transit System  
Investment Report  
June 30, 2014**

	<u>Restricted</u>	<u>Unrestricted</u>	<u>Total</u>	<b>Average rate of return</b>
Cash and Cash Equivalents				
JP Morgan Chase - concentration account	-	21,360,669	21,360,669	0.00%
Total Cash and Cash Equivalents	-	21,360,669	21,360,669	
Cash - Restricted for Capital Support				
US Bank - retention trust account	8,740,742	-	8,740,742	N/A *
San Diego County Investment Pool Proposition 1B TSGP grant funds	3,862,010	109,875	3,971,885	
Total Cash - Restricted for Capital Support	12,602,752	109,875	12,712,627	
Investments - Working Capital				
Local Agency Investment Fund (LAIF)	18,474,806	14,751,387	33,226,193	0.228%
Total Investments - Working Capital	18,474,806	14,751,387	33,226,193	
Investments - Restricted for Debt Service				
US Bank - Treasury Strips - market value (Par value \$39,474,000)	39,410,751	-	39,410,751	
Rabobank - Payment Undertaking Agreement	76,816,296	-	76,816,296	7.69%
Total Investments Restricted for Debt Service	116,227,047	-	116,227,047	
Total cash and investments	<u>\$ 147,304,605</u>	<u>\$ 36,221,931</u>	<u>\$ 183,526,536</u>	

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



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## Agenda Item No. 17

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

SEPTEMBER 18, 2014

#### SUBJECT:

INVESTMENT REPORT – JULY 2014

#### INFORMATIONAL ONLY

##### Budget Impact

None.

#### DISCUSSION:

Attachment A comprises a report of MTS investments as of July 31, 2014. The combined total of all investments has decreased month to month from \$183.5 million to \$177.9 million. This \$5.6 million decrease is attributable to 3 payroll cycles in the month for SDTC, a year end push to pay invoices increasing operating expenses by \$3.3 million, as well as normal timing differences in other payments and receipts.

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.

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

A handwritten signature in black ink that reads 'Sharon Cooney for'.

Paul C. Jablonski  
Chief Executive Officer

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

Attachment: A. Investment Report for July 2014



**San Diego Metropolitan Transit System  
Investment Report  
July 31, 2014**

	<b>Restricted</b>	<b>Unrestricted</b>	<b>Total</b>	<b>Average rate of return</b>
Cash and Cash Equivalents				
JP Morgan Chase - concentration account	-	15,801,615	15,801,615	0.00%
Total Cash and Cash Equivalents	-	15,801,615	15,801,615	
Cash - Restricted for Capital Support				
US Bank - retention trust account	8,740,742	-	8,740,742	N/A *
San Diego County Investment Pool Proposition 1B TS GP grant funds	3,866,721	-	3,866,721	
Total Cash - Restricted for Capital Support	12,607,463	-	12,607,463	
Investments - Working Capital				
Local Agency Investment Fund (LAIF)	19,745,588	13,490,795	33,236,383	0.244%
Total Investments - Working Capital	19,745,588	13,490,795	33,236,383	
Investments - Restricted for Debt Service				
US Bank - Treasury Strips - market value (Par value \$39,474,000)	39,414,847	-	39,414,847	
Rabobank - Payment Undertaking Agreement	76,816,295	-	76,816,295	7.69%
Total Investments Restricted for Debt Service	116,231,142	-	116,231,142	
Total cash and investments	<b>\$ 148,584,193</b>	<b>\$ 29,292,410</b>	<b>\$ 177,876,603</b>	

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



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## Agenda Item No. 18

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

September 18, 2014

#### SUBJECT:

UNALLOCATED TRANSPORTATION DEVELOPMENT ACT (TDA) FUNDS FOR  
TRANSIT-RELATED PROJECTS

#### RECOMMENDATION:

That the Board of Directors approve the use of \$15,000 in unallocated TDA funds currently held by the County of San Diego. These TDA funds, along with the \$141,610 that the City of Santee already received to date, will allow for the installation of five bus shelters.

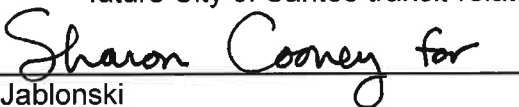
#### Budget Impact

The use of unallocated TDA funds set aside by the County for transit-related projects in various jurisdictions would have no impact on MTS's operating or capital budgets. The total available unallocated TDA held for the benefit of the City of Santee would be reduced by \$15,000 resulting in a remaining balance of \$91,616 held by the County for future transit-related projects pending MTS Board approval.

#### DISCUSSION:

On July 16, 2014, MTS received a request from the City of Santee (Attachment A) for an additional \$15,000 of the City of Santee's portion of unallocated TDA held by the County to complete the installation of five bus shelters. This project was already funded with \$141,610 of unallocated TDA approved by the MTS Board on May 15, 2014, however, the final bid came in higher than previously budgeted, and an additional \$15,000 is needed to complete the project.

The total available City of Santee unallocated TDA funds, totaling \$106,616, will be reduced by \$15,000 resulting in a remaining balance of \$91,616 held by the County for future City of Santee transit-related projects.

A handwritten signature in black ink that reads 'Sharon Cooney for'.

Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, [Sharon.Cooney@sdmts.com](mailto:Sharon.Cooney@sdmts.com)  
Attachment A: Request from City of Santee





# CITY OF SANTEE

**MAYOR**  
Randy Voepel

**CITY COUNCIL**  
Jack E. Dale  
Rob McNelis  
John W. Minto  
John Ryan

Wednesday, July 16, 2014

**ACTING  
CITY MANAGER**  
Pedro Orso-Delgado

Eric Cheng  
Capital Accountant  
Metropolitan Transit System  
1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490

Dear Mr. Cheng:

This is to request additional allocation of TDA funds for the Santee Bus Stop Upgrade Project. The City has previously received TDA funds from MTS in the amount of \$141,610 for this project.

The City opened bids on May 29<sup>th</sup> for the project and the responsive and responsible low bid was \$128,376 which was higher than previously budgeted. City Council awarded the contract in its June 25 meeting and authorized additional funding in the amount of \$15,000 to cover the additional cost for construction, change orders, and staff time. The table below is a detailed description of project cost.

Item Description	Previous Total	New Total
Project Design	\$ 7,000	\$ 8,278
Construction	\$ 123,000	\$ 128,376
Construction Engineering	\$ 3,000	\$ 7,119
Contingencies/Change Orders(10%)	\$ 8,610	\$ 12,837
Total project cost	\$ 141,610	\$ 156,610

I understand there are unallocated TDA funds for the City of Santee in the County of San Diego for transit related activities. The City of Santee requests that MTS request \$15,000 in TDA funds on behalf of the City to cover the full cost to install five bus shelters. A copy of the Santee City Council resolution is attached.

If you have questions regarding this matter, please contact staff member Minjie Mei at (619) 258-4100 X 189.

Sincerely,

Melanie Kush  
Acting Director, Development Services

Cc: Minjie Mei, Principal Traffic Engineer

S:\TRAFFIC\Grants and Projects\Active projects\2011 Bus Shelter Project\FUNDING\TDA Clock Tower additional Funds 7-2014.docx

**RESOLUTION NO. 047 – 2014**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTEE, CALIFORNIA  
AWARDING THE CONSTRUCTION CONTRACT FOR THE BUS SHELTER  
PROJECT CIP 2011-30 TO ND ELECTRICAL CONSTRUCTION, INC.,  
AUTHORIZING THE EXECUTION OF THE CONSTRUCTION CONTRACT AND  
CHANGE ORDERS, AND APPROPRIATING FUNDS**

**WHEREAS**, the City Clerk, on the 29<sup>th</sup> day of May 2014, publicly opened and examined five (5) bids for the Bus Shelter Project, CIP 2011-30 ("Project"); and

**WHEREAS**, the apparent low bidder, Alvand Construction, Inc., requested to withdraw their bid due to a calculation error; and,

**WHEREAS**, staff recommends consenting to the withdrawal of the bid from Alvand Construction, Inc.; and,

**WHEREAS**, ND Electrical Construction, Inc., was found to be the lowest responsive and responsible bidder with their total bid amount of \$128,376 for the Base Bid; and

**WHEREAS**, staff recommends awarding the contract to ND Electrical Construction, Inc., for the Base Bid totaling \$128,376; and

**WHEREAS**, the City has received \$141,610 in Transportation Development Act (TDA) funds for the project; and

**WHEREAS**, staff has requested an additional \$15,000 in Transportation Development Act (TDA) funds for the project; and

**WHEREAS**, based on a preliminary environmental assessment, the project was determined to be exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15303 (c).

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Santee, California, as follows:

**SECTION 1.** Consent to the withdrawal of the bid from Alvand Consturction, Inc.

**SECTION 2.** Award the contract for the Bus Shelter Project, CIP 2011-30 to the lowest responsive and responsible bidder ND Electrical Construction, Inc., in the amount of \$128,376 for the Base Bid.

**SECTION 3.** Appropriate an additional \$15,000 in Transportation Development Act funds for the project.

**SECTION 4.** Authorize the City Manager to execute the contract on behalf of the City.

**RESOLUTION NO. 047 – 2014**

**SECTION 5.** Authorize the Director of Development Services to execute change orders up to a total of \$12,837 (10%) for unforeseen changes and additional work.

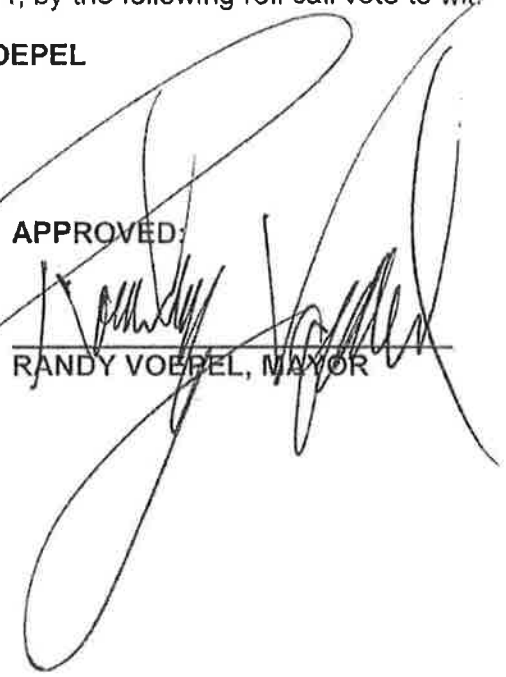
**ADOPTED** by the City Council of the City of Santee, California, at a Regular Meeting thereof held this 25th day of June 2014, by the following roll call vote to wit:

**AYES: DALE, MINTO, RYAN, VOEPER**

**NOES: MCNELIS**

**ABSENT: NONE**

**APPROVED:**

  
RANDY VOEPER, MAYOR

**ATTEST:**

  
PATSY BELL, CMC, CITY CLERK



1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
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## Agenda Item No. 19

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

September 18, 2014

#### SUBJECT:

UNALLOCATED TRANSPORTATION DEVELOPMENT ACT (TDA) FUNDS FOR  
TRANSIT-RELATED PROJECTS

#### RECOMMENDATION:

That the Board of Directors approve the use of \$177,800 in unallocated TDA funds currently held by the County of San Diego. These TDA funds will allow for the purchase/ refurbish of CNG station equipment and rehabilitation of transit facilities for the City of Chula Vista.

#### Budget Impact

The use of unallocated TDA funds set aside by the County for transit-related projects in various jurisdictions would have no impact on MTS's operating or capital budgets. The total available unallocated TDA held for the benefit of the City of Chula Vista would be reduced by \$177,800 resulting in a remaining balance of \$261,200 held by the County for future transit-related projects pending MTS Board approval.

#### DISCUSSION:

On August 6, 2014, MTS received a request from the City of Chula Vista (Attachment A) for \$177,800 of their portion of the unallocated TDA held by the County. The purpose of this request is for the purchase and installation of a programmable logic controller, refurbishing the existing natural gas dryer and rehabilitating the Public Works Center and Transit Yard.

The total available City of Chula Vista's unallocated TDA funds, totaling \$439,000, will be reduced by \$177,800 resulting in a remaining balance of \$261,200 held by the County for future City of Chula Vista transit-related projects.

*Sharon Cooney for*

Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, [Sharon.Cooney@sdmts.com](mailto:Sharon.Cooney@sdmts.com)  
Attachments: A. Letter from City of Chula Vista





**Public Works Department - Transit Division**

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August 6, 2014  
File No. DS 022

Mr. Paul C. Jablonski, Chief Executive Officer  
San Diego Metropolitan Transit System  
1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490

Dear Mr. Jablonski:

**CITY OF CHULA VISTA UNALLOCATED TDA CLAIM**

The City of Chula Vista is requesting City of Chula Vista prior-year, unallocated Transportation Development Act (TDA) funds for the following transit related projects:

Projects	Estimated Cost
<b>CNG Station Programmable Logic Controller (PLC)</b>	
PLC Panel	\$26,700
Labor, Startup, Freight, Contingency and Tax	\$27,200
	<b>\$53,900</b>
<b>CNG Dryer</b>	
Change Elements & Filters	\$6,126
Replace Desiccant	\$8,000
Labor & Contingency	\$9,774
	<b>\$23,900</b>
<b>Public Works Center/Transit Yard Rehabilitation</b>	
Labor and Material	<b>\$100,000</b>
<b>Estimated Total</b>	<b>\$177,800</b>

After twelve years of operating transit services from the City's Public Works yard, Transit staff has identified the above mentioned projects. On July 22, 2014, the Chula Vista City Council approved the resolution requesting these funds. We ask that the MTS Board take action on our request for the amount of \$177,800. A total of \$439,000 in TDA unallocated funds is available to the City. Please inform us of any additional requirements and/or procedures we need to complete in order for your agency to process this request. If you need additional information, please call me at 397-6061(o) or 921-9858 (m).

Sincerely,

A handwritten signature in black ink, appearing to read 'Andres S. Trujillo', with a long horizontal flourish extending to the right.

ANDRES S TRUJILLO  
TRANSIT MANAGER

AST:ast

Attachment

cc: Rick Hopkins, Director of Public Works  
Iracseman Quilantan, Asst. Director of Public Works  
Sookyung Kim, SANDAG  
Eric Cheng, SDMTS

RESOLUTION NO. 2014-142

RESOLUTION OF THE CITY OF COUNCIL OF THE CITY OF CHULA VISTA REQUESTING THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM TO APPROVE THE USE CITY OF CHULA VISTA PRIOR-YEAR UNALLOCATED TRANSPORTATION DEVELOPMENT ACT ARTICLE 4.0 FUNDS IN THE AMOUNT OF \$177,800, CURRENTLY HELD BY THE COUNTY OF SAN DIEGO FOR THE PURCHASE AND INSTALLATION OF A PROGRAMMABLE LOGIC CONTROLLER FOR THE NATURAL GAS COMPRESSOR STATION, REFURBISHING THE NATURAL GAS DRYER, AND REHABILITATION OF THE PUBLIC WORKS CENTER/TRANSIT YARD BUILDINGS AND AUTHORIZING THE APPROPRIATION OF \$177,800 OF TRANSPORTATION DEVELOPMENT ACT FUNDS TO THE CAPITAL EXPENSE CATEGORY OF THE TRANSIT CAPITAL PROJECTS FUND

WHEREAS, the City of Chula Vista's transit service has been operating from the John Lippitt Public Works Center (PWC) since 2002; and

WHEREAS, the PWC is in need of facility repairs, after twelve years of operating transit services; and

WHEREAS, Public Works staff has recommended the use of City of Chula Vista unallocated prior-year Transportation Development Act (TDA) funds to undertake these repairs; and

WHEREAS, staff has estimated the amount of \$177,800 to complete the recommended repairs that include purchasing and installing a programmable logic controller in the City's compressed natural gas station's control room, refurbishing the natural gas dryer, and rehabilitating the PWC buildings; and

WHEREAS, the City currently has approximately \$428,000 deposited at the County of San Diego that can be used for the above mentioned projects.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chula Vista, that it approve a claim of prior-year TDA funds in the form presented, as may have been modified by the Council prior to its approval and with such minor modifications as may be required or approved by the City Attorney, a copy of which shall be kept on file in the Office of the City Clerk, and authorizes and directs the City Manager to execute same.


BE IT FURTHER RESOLVED by the City Council of the City of Chula Vista that it appropriates \$177,800 from the prior-year TDA account to the Fiscal Year 2014/2015 Capital expense budget of the Transit Capital Projects Fund for the repairs at the PWC.

Resolution No. 2014-142

Page No. 2

Presented by

Approved as to form by

  
Richard A. Hopkins  
Director of Public Works

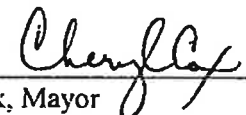
  
Glen R. Googins  
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 22nd day of July 2014 by the following vote:

AYES: Councilmembers: Aguilar, Bensoussan, Salas and Cox

NAYS: Councilmembers: None

ABSENT: Councilmembers: Ramirez

  
Cheryl Cox, Mayor

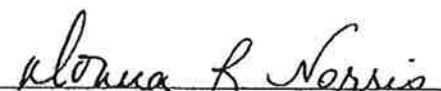
ATTEST:

  
Donna R. Norris, CMC, City Clerk

STATE OF CALIFORNIA     )  
COUNTY OF SAN DIEGO    )  
CITY OF CHULA VISTA     )

I, Donna R. Norris, City Clerk of Chula Vista, California, do hereby certify that the foregoing Resolution No. 2014-142 was duly passed, approved, and adopted by the City Council at a regular meeting of the Chula Vista City Council held on the 22nd day of July 2014.

Executed this 22nd day of July 2014.

  
Donna R. Norris, CMC, City Clerk



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## Agenda Item No. 20

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

September 18, 2014

#### SUBJECT:

STAFF ATTORNEY – REGULATORY COMPLIANCE POSITION

#### RECOMMENDATION:

That the Board of Directors authorize the CEO to add one (1) Staff Attorney – Regulatory Compliance to the FY15 budget, increasing total Full Time Equivalent (FTE) positions from 0 to 1.

#### Budget Impact

Total annual cost of \$89,900 - anticipated FTE salary within Salary Grade #9 (\$61,093 minimum to \$98,802 maximum) and benefits. Some of these costs will be offset by reducing payments to outside legal counsel.

#### DISCUSSION:

MTS employs a single attorney (General Counsel) to provide legal representation and advice to the MTS Board and staff; manage the administration of all agency procurements, contracts, licenses, leases, and permits; ensure compliance with all applicable regulatory requirements; oversee and manage all agency real estate functions and negotiations; monitor and manage an extensive group of outside attorneys. The General Counsel is also designated as the Federal Transit Administration (FTA) Disadvantaged Business Enterprise (DBE) Liaison Officer. In addition, the MTS Chief of Staff is designated as the FTA Title VI Liaison Officer.

Regulatory compliance requirements for MTS have increased significantly over the past several years. Compliance with various federally mandated programs is the condition of MTS's federal funding. In addition, new state laws require adjustments to MTS policies and procedures as they are enacted. Because of these expanded regulatory requirements, and the high risks associated with failure to comply, MTS's compliance efforts would benefit from a dedicated Staff Attorney to stay abreast of new and changing requirements or federal guidelines, assist staff in developing and implementing



compliance monitoring programs, and provide additional support in advance of state and federal audits.

The proposed Staff Attorney – Regulatory Compliance position will report to the General Counsel and provide additional in-house legal advice with a special focus on Regulatory Compliance, including but not limited to:

- Compliance with FTA grant requirements

- Disadvantaged Business Enterprise (DBE) programs (49 CFR Part 26)

- Including serving as the MTS DBE Liaison Officer

*Need:* The FTA has issued new regulations and/or increased its oversight of DBE programs in recent years. Particular focus has been on identifying the methods each agency takes to create opportunities for DBE contractors for federally funded projects, and implementing corrective action plans for reporting periods where an agency does not meet its goal. While MTS has been more successful in meeting its DBE goal of 4.1% during this current triennial period (October 1, 2012 to September 30, 2015), the FTA's more targeted focus on DBE programs and each agency's good faith efforts requires MTS to conduct continual reviews of our DBE program, stay aware of FTA audit concerns, and create recommendations for how to comply with the FTA's DBE requirements. Given recent trends in FTA audits, staff anticipates that MTS may be the subject of a DBE-specific audit in the next 1-2 years.

- Buy America (49 CFR Part 661)

*Need:* MTS grant requirements mandate that all purchases using federal funds comply with Buy America requirements. In recent years, each re-authorization of federal transit funding includes changes to the Buy America rules or regulations. The FTA is currently engaged in various rulemaking procedures to expand the application of Buy America and increase the requirements in this area of law.

- Competitive Bidding requirements (FTA Circular 4220.1F)

*Need:* Each time MTS purchases equipment or services with federal funding, MTS's procurement process must comply with FTA rules and regulations concerning the bidding process and required clauses for certain types of contracts.

- Title VI civil rights programs (FTA Circular 4702.1B)

- Including serving as the MTS Title VI Liaison Officer

*Need:* FTA transit funding includes various civil rights programs under Title VI. Such programs include a discrimination complaint process, an analysis of the impacts of service changes on disadvantaged populations, requirements for Limited English Proficiency services, and other initiatives. Recent years have seen increased requirements for each program, which must be integrated into MTS operations.

- Americans with Disabilities Act (ADA) (FTA Circular 4710.1)

*Need:* MTS, through its contractor First Transit, provides ADA paratransit services as required by federal law. On fixed route services, MTS is often required to address and respond to various issues related to the ADA,

including service animals, wheelchairs/mobility devices, and accessible facilities. The FTA is in the process of issuing a new Circular (4710.1) addressing ADA issues. Once issued, MTS will be required to comply with the new rules and guidelines.

- Compliance with other local, state and federal law requirements
  - Public Records Act responses
  - California Environmental Quality Act
  - Taxicab Regulation issues
  - First Amendment Activity Permit process

The Staff Attorney – Regulatory Compliance position will also conduct research or work on special projects as directed by the General Counsel.

A handwritten signature in cursive script, reading "Sharon Cooney" followed by a small flourish.

Paul C. Jablonski  
Chief Executive Officer

Key Staff Contact: Jeff Stumbo, Director of Human Resources and Labor Relations,  
619.557.4509, [jeff.stumbo@sdmts.com](mailto:jeff.stumbo@sdmts.com)



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## Agenda Item No. 21

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

September 18, 2014

#### SUBJECT:

PURCHASE OF HEAD LEASE RIGHTS TO 52 LIGHT RAIL VEHICLES FROM WELLS  
FARGO BANK AND UTRECHT-AMERICA FINANCE CO.

#### RECOMMENDATION:

That the MTS Board of Directors authorize and direct staff to take all actions necessary to execute the purchase of the Head Lease Rights to 52 light rail vehicles as set forth in the Participation Agreement and other leverage lease documents executed by MTS on December 15, 1995.

#### Budget Impact

Funds allocated for the purchase of the Head Lease Rights are currently being held in two restricted accounts. These funds, held at Rabobank and U.S. Bank (Treasury Strips), will fully satisfy the outstanding debt obligation totaling \$119,146,625 and will be paid in seven installations (Table A) over the course of calendar year 2015. Estimated costs to complete this transaction are \$20,000 in outside counsel expenses, paid for from the Legal Department budget.

#### DISCUSSION:

#### History of Leverage Lease Transaction for SD-100 LRVs

In 1995, MTS used a leverage lease transaction to purchase 52 Siemens SD-100 light rail vehicles (LRV).<sup>1</sup> The transaction was for an initial 20 year term, expiring on January

---

<sup>1</sup> The parties to the leverage lease agreements are MTS; First Union National of Florida, since acquired by Wells Fargo Bank (Investor); Utrecht-America Finance Co. (Lender); Fleet National Bank of Connecticut, whose interests have been succeeded by U.S. Bank (Trustee); Cooperative Centrale Raifeisen-Boierenleenbank B.A., Rabobank Nederland (Payment Undertaker); and First Union National Bank of North Carolina, also acquired by Wells Fargo Bank (Designated Depository Institution). For clarity's sake, each party will be referred to by the entity currently holding that interest.





2, 2015. Under the agreements, on the expiration date of the MTS sublease, MTS must either purchase the lease rights from Wells Fargo Bank (the Head Lease Rights) through a series of six payments in calendar year 2015 (Table A), or find a new sublessee to replace MTS and transfer control and use of the SD-100 LRVs to that new sublessee (other transit agencies using Siemens LRVs were identified as “permitted successor sublessees”). Since MTS continues to use the SD-100 LRVs in its operating plan, it is not in MTS’s best interests to find a successor sublessee for this transaction.

Instead, staff proposes that MTS exercise its right to purchase the Head Lease Rights and close out this transaction during calendar year 2015. MTS has sufficient assets to make the \$119,146,625 in payments required from accounts set aside for this transaction. MTS’s government zero coupon bonds (Treasury Strips) restricted for this transaction are scheduled to be valued at \$39,474,000 upon each bond’s maturity date. MTS’s Rabobank restricted fixed rate deposit account is anticipated to contain \$79,676,912 on January 2, 2015.

As part of this complex transaction, MTS purchased the Siemens SD-100 LRVs (at a cost of \$100,204,000) and leased them to U.S. Bank (trustee) and Wells Fargo (investor) (the “Head Lease”). U.S. Bank and Wells Fargo then subleased the SD-100 LRVs back to MTS.

MTS received Head Lease prepayments from Wells Fargo and lender Utrecht-America Finance Co. of approximately \$102.7 million. MTS used approximately \$90.7 million of these funds to place two investments that were reserved for making the interest and principal payments on this transaction. MTS placed \$78.8 million in a fixed-rate deposit with Rabobank and invested \$11.9 million in government zero-coupon bonds. The interest earned on the deposit together with the principal and the maturities of the zero-coupon bonds were structured to cover MTS’s obligation. MTS pays rent annually on the SD-100 LRVs using the funds from the Rabobank account. Under the agreements, the sublease rent/Rabobank proceeds are designated to repay Utrecht-America Finance Co. and the Treasury Strips investment is designated to buy out Wells Fargo’s Head Lease Rights.

The additional \$12 million received by MTS was unrestricted and used for discretionary projects when the funds were received in or about 1996.

On January 2, 2015, a final \$7,614,890 sublease payment is due. In addition, during calendar year 2015, six lump sum payments totaling \$111,531,735 are due and designated for the purchase of the “Head Lease Rights” (Table A).

Table A: Calendar Year 2015 Payment Schedule

Payment Date	Payment Amount	Purpose/Recipient	Funding Source
1/2/2015	\$ 7,614,890.49	Sublease Rent to UFA*	Rabobank Acct
1/2/2015	\$ 72,062,021.32	Purchase Option to UFA	Rabobank Acct
1/2/2015	\$ 3,253,067.19	Purchase Option to WF**	Treasury Strips
4/15/2015	\$ 9,054,161.51	Purchase Option to WF	Treasury Strips
6/15/2015	\$ 9,054,161.51	Purchase Option to WF	Treasury Strips
9/15/2015	\$ 9,054,161.51	Purchase Option to WF	Treasury Strips
12/15/2015	\$ 9,054,161.51	Purchase Option to WF	Treasury Strips
<b>Total</b>	<b>119,146,625.04</b>		

\*UFA refers to Utrecht-America Finance Co.

\*\* WF refers to Wells Fargo Bank

The Head Lease Rights purchase transaction is expected to close on January 2, 2015, the same day the Sublease expires.

Under the Sublease, MTS must provide 90 days' notice of its intent to either purchase the Head Lease Rights or arrange for a successor sublessee. If no notice is provided, MTS will be deemed to have elected to purchase the Head Lease Rights.

In today's proposed action, staff seeks permission to provide U.S. Bank, Wells Fargo Bank, Utrecht-America Finance Co. and the other parties to this transaction a 90 day notice of MTS's intent to purchase the Head Lease Rights (Attachment A), which would be on or before October 4, 2014. This notice is irrevocable once given.

The Sublease describes the purchase of the Head Lease Rights and places the burden to prepare "a termination of Sublease and an assignment of the Head Lease Rights and such other documents and opinions as the Sublessee may reasonably request" on MTS. MTS outside counsel has been tasked with preparing the necessary documents and assist MTS in negotiating and executing the purchase of the Head Lease Rights.

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

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

Attachment: A. Notice of Intent to Purchase Head Lease Rights

September 18, 2014

Arthur L. Blakeslee  
Vice President  
U.S. Bank Global Corporate Trust Services  
225 Asylum Street, 23<sup>rd</sup> Floor  
Hartford, CT 06103

Re: San Diego Metropolitan Transit Development Board (MTDB) Election to Purchase Head Lease Rights under Participation Agreement(s) dated December 15, 1995

Dear Mr. Blakeslee:

MTDB (also known as San Diego Metropolitan Transit System or MTS) is a party to a Participation Agreement (and related agreements) dated December 15, 1995 for the lease and sublease of 52 Siemens SD-100 light rail vehicles. Pursuant to the Sublease in this transaction (also dated December 15, 1995), MTDB hereby provides the following notice:

Pursuant to and in accordance with Section 14(b) of the Sublease, MTDB hereby provides irrevocable notice that MTDB elects to purchase the Head Lease Rights on the Sublease Expiration Date (January 2, 2015). Such purchase will be at the purchase price and in the manner provided in Sections 14(a)(i) and 14 (d) of the Sublease.

The parties to the Participation Agreements are:

- MTDB (Lessor and Sublessee);
- First Union National of Florida, since acquired by Wells Fargo Bank (Equity Investor and Lessee);
- Utrecht-America Finance Co. (Lender);
- Fleet National Bank of Connecticut, whose interests have been succeeded by U.S. Bank (Trustee);
- Cooperative Centrale Raiffeisen-Boerenleenbank B.A., Rabobank Nederland (Payment Undertaker); and
- First Union National Bank of North Carolina, also acquired by Wells Fargo Bank (Designated Depository Institution).

MTDB will be represented in this transaction by Patrick Monroe, Esq. of Best Best & Krieger LLP ([Patrick.Monroe@bbklaw.com](mailto:Patrick.Monroe@bbklaw.com); 619-525-1329) and MTDB General Counsel, Karen Landers ([Karen.Landers@sdmts.com](mailto:Karen.Landers@sdmts.com); 619-557-4512). It is our understanding that Mr. Monroe will coordinate the necessary documents to close this transaction with Wells Fargo's attorney, Bob Baker of Moore & Van Allen.

Regards,

San Diego Metropolitan Transit Development Board

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

Cc:

Bradley T. Hubacher  
Wells Fargo Bank, National Association  
Duke Energy Center  
550 South Tryon St., 5th Floor  
MAC D1086-051  
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Hans den Baas  
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Best Best & Krieger LLP  
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San Diego, CA 92101  
(counsel for MTDB)

Bob Baker  
Moore & Van Allen

(counsel for Wells Fargo)



1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101-7490  
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## Agenda Item No. 30

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

September 18, 2014

#### SUBJECT:

AMENDMENTS TO ORDINANCE NO. 4, ESTABLISHING A METROPOLITAN  
TRANSIT SYSTEM FARE-PRICING SCHEDULE (KAREN LANDERS)

#### RECOMMENDATION:

That the Board of Directors:

- 1) Read the title of Ordinance No. 4, An Ordinance Establishing a Metropolitan Transit System Fare-Pricing Schedule;
- 2) Waive further readings of the ordinance;
- 3) Introduce the ordinance for further consideration at the next Board meeting on October 9, 2014; and
- 4) Direct publication of an ordinance summary.

#### Budget Impact:

None.

#### DISCUSSION:

Staff proposes various minor amendments to Ordinance No. 4 recognizing Universal Pass (UPass) Agreements as a type of group pass agreement and identifying the new Rapid-branded service that was launched in June 2014 (Attachment A). The proposed amendments do not add or modify any MTS fare pricing.

#### The proposed Ordinance No. 4 changes address the following:

UPass Agreements. Defines a UPass as a pass that “[p]rovides unlimited rides on select transit services for an agreed upon period of time to individuals associated with a sponsoring entity, where the sponsoring entity guarantees universal



participation/purchase by its employees, students, or other membership.” Under the San Diego Association of Government’s (SANDAG) revised Comprehensive Fare Ordinance (effective August 25, 2014), MTS and NCTD “shall each have the right to negotiate Universal Pass (UPass) agreements, individually or jointly, with sponsoring entities. MTS and NCTD may establish their own policies, terms, or eligibility rules regarding the sale of the UPass in the sales agreements.” In practice, UPass pricing structures are based on an analysis of estimated travel and ridership patterns for each particular agreement, and structured so as to compensate MTS for the cost or value of the estimated ridership. Historically, MTS has entered into such agreements where a sponsoring entity agrees to reimburse MTS for certain passengers and trips. This ordinance amendment is intended to formally recognize such agreements.

For example, since 1969, MTS and UCSD have executed agreements wherein UCSD reimbursed MTS for students or faculty trips on certain bus routes, at a rate negotiated to compensate MTS for the average fare for such trips. As a change to this limited subsidized transit privilege, in May 2014, UCSD students passed a fee referendum to allow UCSD to assess a fee each quarter that will allow each UCSD student to have a MTS transit pass for each applicable UCSD quarter. In exchange for a guarantee that every student will pay the fee, MTS planning staff has calculated a discounted per pass price that takes into account estimated transit usage for this group of passengers and reimburses MTS for the actual costs of such ridership. The proposed ordinance changes simply acknowledge that such agreements are permitted under MTS Ordinance No. 4.

Rapid Services: Several language changes are needed to include the new Rapid-branded services. While these routes are using the fares of existing services, language in numerous locations needs to be updated to reflect the existence of the Rapid services. The new Rapid Route 235 (serving northern inland San Diego, Kearny Mesa, City Heights, and Downtown San Diego) uses the same fare structure as the Trolley and Express Routes. The Premium Express routes have been rebranded to Rapid Express and have the same fares.

Other Minor Changes: Other language changes are proposed to better clarify, simplify, and codify the fare rules for the region.

SANDAG approved these changes at its Board Meeting on July 25, 2014, making changes to the comprehensive Fare Ordinance (Attachment B). This action incorporates those changes into MTS Ordinance No. 4.



Paul C. Jablonski  
Chief Executive Officer

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

Attachments: A. Redline draft of Ordinance No. 4  
B. SANDAG Agenda Item No. 14-07-12 (July 25, 2014)

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

CODIFIED ORDINANCE NO. 4  
(as amended through ~~1/19/12~~10/9/14)

An Ordinance Establishing a Metropolitan Transit System Fare-Pricing Schedule

Section 4.1: Findings

This Ordinance is adopted to implement a Metropolitan Transit System (MTS) Fare-Pricing Schedule approved by the Metropolitan Transit System Board of Directors and to authorize future modifications or amendments to the schedule to be made by the MTS Board of Directors.

Section 4.2: Definitions

A. Senior - Any person 60 years of age or older. Acceptable proof of senior fare eligibility shall be a Medicare Card, a valid driver's license, a State of California Senior identification card, or an MTS identification card in the MTS area, or a North County Transit District (NCTD) identification card in the NCTD area. This definition applies to persons who seek to purchase and/or use a Senior/Disabled/Medicare Monthly Pass or Senior/Disabled/Medicare cash fare on fixed-route transit or general public demand-responsive services.

B. Disabled/Medicare - Any person with a permanent or temporary mental or physical disability. Acceptable proof of disabled fare eligibility shall be an MTS identification card, Medicare Card, NCTD disabled identification card, State of California Department of Motor Vehicles (DMV) disabled identification card, or DMV placard identification card. This definition applies to persons who seek to purchase and/or use a Senior/Disabled/Medicare Monthly Pass or Senior/Disabled/Medicare cash fare for fixed-route transit or general public demand-responsive services.

C. Youth - Any person 6-18 years of age (inclusive). Acceptable proof of youth fare eligibility in the MTS area shall be an MTS Youth identification card, a valid driver's license, or current school photo identification card (through high school only).

D. College Student - Any person enrolled as a student with a current enrollment for seven units or more in a participating accredited San Diego area post-secondary school.

E. Child - Any person five years of age or under.

F. Compass Card - The Compass Card is an electronic fare medium based on contactless smart card technology. The Compass Card can hold either transit products or cash for use on regional transit services. Transit products include, but are not limited to, multiday passes, college semester passes, and special event period passes. The Compass Card utilizes wireless technology to interface with Compass validator devices on regional buses, rail platforms, and regional ticket vending machines. Patrons using their Compass Card must touch or tap their card to a validator device before each ride as a condition precedent to using MTS services.

G. Bus - Rubber-tired transit vehicles operated by MTS San Diego Transit Corporation, Chula Vista Transit, MTS Contract Services, and NCTD.

- H. Trolley - Light rail transit vehicles operated by San Diego Trolley, Incorporated.
- I. Local Service - Bus service on local roads serving neighborhood destinations and feeding transit centers in the immediate area.
- J. Urban Service - Moderate-speed bus service primarily on arterial streets with frequent stops.
- K. Express/-Corridor Service - Bus service with stops only at major transit centers, residential centers and activity centers; has more than six stops outside Centre City or at collector end of route; generally traveling less than 50 percent of the one-way trip miles on freeways and averaging at least 15 miles per hour, with an average passenger trip length of approximately 10.0 miles or under, and uses standard transit buses.
- L. Premium-Rapid Express - Bus service with stops only at major transit centers, residential centers and activity centers; generally traveling 50 percent or more of the one-way trip miles on freeways; averaging at least 20 miles per hour, with an average passenger trip length of over 10.0 miles, and using commuter coaches.
- M. Rural Service - Bus service providing limited daily or weekly service linking Rural Northeastern and Southeastern San Diego County to a multimodal transit center or major shopping center generally provided on a two-lane highway or roadway with one-way vehicle trip lengths ranging from 15 to 80 miles.
- N. Station - That fixed site at which the San Diego Trolley stops to load and unload passengers.
- O. Supplement - A charge paid on a one-time basis to permit the use of a fare product for a transit ride that requires a more expensive fare.
- P. Zone(s) - For ADA complementary paratransit service, a zone is the geographical area defined by fixed boundaries within which particular fares are established. The boundaries for the zones are determined by each of the contracting agencies for the local operator of the paratransit service. The zones are as follows:
- Zone 1     Central San Diego
- Zone 2     Mid-County: Poway, Rancho Bernardo, Rancho Penasquitos, Carmel Mountain Ranch, and Sabre Springs
- Zone 3     East County: La Mesa, El Cajon, Santee, Lakeside, Lemon Grove, Spring Valley, and parts of Alpine
- Zone 4     South Bay: Chula Vista, Coronado, National City, Imperial Beach, Palm City, Nestor, Otay Mesa, and San Ysidro
- Q. Transfer - The action by passengers in which they leave one bus or rail vehicle and board a subsequent bus or rail vehicle to complete their trips.
- R. Upgrade - An additional fare required to enhance the value of a transit pass to travel on a higher-fare service. Upon payment of an upgrade, the original pass is converted to



the new, more expensive product.

S. ADA Complementary Paratransit Service - Specialized ~~curb-to-curb~~origin-to-destination transportation services provided to persons who qualify as eligible for such services under the guidelines of the ADA Except for commuter bus, commuter rail, or intercity rail systems, each public entity operating a fixed-route system shall provide complementary paratransit or other special service to individuals with disabilities (who cannot access or use fixed-route transit due to a qualifying disability) that is comparable to the level of service provided to individuals without disabilities who use the fixed-route system.

T. Personal Care Attendant - In relation to the ADA complementary paratransit service, a personal care attendant is a person who is designated by the ADA eligible passenger to aid in their mobility. The person may be a friend, family member, or paid employee. A personal care attendant is not charged a fare on the ADA complementary paratransit service vehicle on which she/he accompanies the ADA-eligible passenger. The need for and use of a personal care attendant must be indicated at the time of eligibility certification.

U. Dedicated Transportation Service - In relation to social services agencies or other organizations, a dedicated transportation service is defined as paratransit vehicle usage that is set apart for and guaranteed to an agency for the transportation of its eligible clients. The vehicle, for a particular time frame, is for the definite use of these persons and a ride is unavailable to other eligible persons within the community.

V. Rapid - MTS brand name for a premium rapid transit service operated wholly or partly on exclusive bus lanes, guideways, managed lanes, or use of other transit priority measures. Depending on specific route characteristics, individual Rapid routes may be classified as MTS Rapid or MTS Rapid Express for purposes of Section 4.5.

W. Universal Pass (UPass) - Provides unlimited rides on select transit services for an agreed upon period of time to individuals associated with a sponsoring entity, where the sponsoring entity guarantees universal participation/purchase by its employees, students, or other membership.

**(Section 4.2 amended 10/9/14)**

Section 4.3: Regional Fare-Pricing Schedule

Section 4.3.1: Regional Passes and Tickets

Section 4.3.1a: Regional Monthly or 30-Day Passes

1) Except as provided in Section 4.3.1b, 4.3.1c, and 4.3.1d of this Ordinance, the price of a monthly or 30-day pass shall be based on service type.

Regional Passes. The price of a Regional Monthly or 30-Day Pass for Local, Urban, and Express bus and Trolley service shall be \$72.00. The Regional Monthly or 30-Day Pass shall entitle the person to whom the pass is issued to unlimited rides during the period for which the pass is designated on any equal or lower priced regularly scheduled bus and rail service provided by MTS and NCTD, except for COASTER, for which the pass entitles the holder a \$0.50 discount per boarding. The Regional Monthly Pass is accepted on Premium Express with the payment of a \$2.00 Supplement. Refer to Section 4.7.3 for use on Rural services.

Premium Passes. The price of a Premium Monthly or 30-Day Pass shall be \$100.00 and entitle the person to whom the pass is issued unlimited rides on the services covered by the Regional Monthly or 30-Day Pass and Premium Express except for COASTER, for which the pass entitles the holder to a \$0.50 discount per boarding. The Premium Monthly or 30-Day Pass is accepted on 1-Zone Rural service without payment of a Supplement and is accepted on 2-Zone Rural service with the payment of a \$4.00 Supplement.

## 2) Employer-Based Group Sales Pass Program

Employers may purchase in bulk, discounted monthly or 30-day passes for their employees subject to the following conditions:

The discount is available for the advance purchase of 25 or more passes a month for up to three months for a "trial program." Price would be set according to what the price would be for an annual program using the same number of passes per month. Only one "trial program" is allowed per employer. The trial program agreement must be for a specific fiscal year. Advance payment for the total number of Trial Program passes is required. The discount is available for an employer purchasing 300 or more passes for an annual (12 months) program. The program can be pro-rated to accommodate the time left in the fiscal year. The annual program agreement and payment must be for a specific fiscal year. Advance payment for the total number of annual monthly passes is required.

The price of the Employer-Based Group Sales Pass Program will be tiered according to the number of annual regular adult passes purchased. The discount offered shall be as follows:

<u>Employer-Based Group Sales Pass Program</u> <u>Tiered-Discount Table</u>		
Employees Using Transit Per Month	Passes Per Year	Discount
25 to 100	300 to 1,200	10%
101 to 400	1,212 to 4,800	20%
401 or more	4,812 or more	25%

### ***(Section 4.3.1a adopted and amended 1/19/12)***

#### Section 4.3.1b: Senior/Disabled/Medicare Monthly or 30-Day Passes

Regional Pass. The price of a Regional Senior/Disabled/Medicare Monthly or 30-Day Pass is \$18.00 and shall entitle the Senior, Disabled, or Medicare passenger to unlimited trips during the month or 30-day period for which the pass is designated on all regularly scheduled MTS and NCTD services except (i) Premium, unless a \$1.00 Supplement is paid; (ii) COASTER, for which the pass entitles the holder to a \$0.50 discount per trip; and (iii) Rural (as defined by Section 4.2L), unless a \$2.00 Supplement per zone is paid.

Premium Passes. The price of a Premium Senior/Disabled/Medicare Monthly or 30-Day Premium Pass is \$25.00 and entitles the person to whom the pass is issued unlimited rides on the services covered by the Premium Monthly or 30-Day Pass and to a \$0.50 discount per boarding on COASTER. The Premium Senior/Disabled/Medicare Monthly or 30-Day Pass is accepted on 1-Zone

Rural service without the payment of a Supplement and is accepted on 2-Zone Rural service with the payment of a \$2.00 Supplement.

***(Section 4.3.1.b adopted and amended 11/19/12)***

**Section 4.3.1c: Youth Monthly or 30-Day Passes**

Regional Passes. The price of a Regional Youth Monthly or 30-day Pass is \$36.00 and shall entitle the youth passenger to unlimited trips during the month or 30-day period for which the pass is designated on all regularly scheduled MTS and NCTD services except (i) Premium, unless a \$2.00 Supplement is paid; (ii) COASTER, for which the pass entitles the holder to a \$0.50 discount; and (iii) Rural (as defined by Section 4.2L), unless a \$4.00 Supplement per zone is paid.

Premium Passes. The price of a Premium Youth Monthly or 30-Day Premium Pass is \$50.00 and entitles the person to whom the pass is issued unlimited rides on the services covered by the Premium Monthly or 30-Day Pass except for COASTER, for which the pass entitles the holder to a \$0.50 discount per boarding. The Youth Monthly or 30-Day Premium Pass is accepted on 1-Zone Rural service without the payment of a Supplement and is accepted on 2-Zone Rural service with the payment of a \$4.00 Supplement.

***(Section 4.3.1c adopted and amended 1/19/12)***

**Section 4.3.1d: Regional Day Passes- General Public**

The price of a one-day Regional Day Pass is \$5.00 and shall entitle the person to whom the pass is issued unlimited rides during the day for which the pass is valid on all regularly scheduled MTS and NCTD services except (i) Premium Express, unless a \$2.00 Supplement is paid; (ii) COASTER, for which the pass entitles the holder to \$0.50 discount per trip, (iii) ADA Complementary Paratransit service; and (iv) Rural, unless a \$4.00 Supplement per zone is paid.

The price of a two-day Regional Day Pass is \$9.00 and shall entitle the person to whom the pass is issued unlimited rides during the days for which the pass is valid on all regularly scheduled MTS and NCTD services except (i) Premium Express, unless a \$2.00 Supplement is paid; (ii) COASTER, for which the pass entitles the holder to \$0.50 discount per trip, (iii) ADA Complementary Paratransit service, and (iv) Rural, unless a \$4.00 Supplement per zone is paid.

The price of a three-day Regional Day Pass is \$12.00 and shall entitle the person to whom the pass is issued unlimited rides during the days for which the pass is valid on all regularly scheduled MTS and NCTD services except (i) Premium Express, unless a \$2.00 Supplement is paid; (ii) COASTER, for which the pass entitles the holder to \$0.50 discount per trip, (iii) ADA Complementary Paratransit service, and (iv) Rural, unless a \$4.00 Supplement per zone is paid.

The price of a four-day Regional Day Pass is \$15.00 and shall entitle the person to whom the pass is issued unlimited rides during the days for which the pass is valid on all regularly scheduled MTS and NCTD services except (i) Premium Express, unless a \$2.00 Supplement is paid; (ii) COASTER, for which the pass entitles the holder to \$0.50 discount per trip, (iii) ADA Complementary Paratransit service, and (iv) Rural, unless a \$4.00 Supplement per zone is paid.

The price of a 14-day Regional Pass is \$43.00 and shall entitle the person to whom the pass is issued unlimited rides during the days for which the pass is valid on all regularly scheduled MTS and NCTD services except (i) Premium Express, unless a \$2.00 Supplement is paid; (ii) COASTER,

for which the pass entitles the holder to \$0.50 discount per trip, (iii) ADA Complementary Paratransit service; and (iv) Rural, unless a \$4.00 Supplement per zone is paid.

***(Section 4.3.1d adopted and amended 1/19/12)***

**Section 4.3.1.e: Region Plus Day Passes**

The Region Plus Day Pass is priced at \$12.00 and entitles the person to whom the pass is issued unlimited rides during the day for which the pass is valid on all services covered by the Premium Monthly or 30-Day Pass, COASTER, and for travel on 1-Zone Rural service. The Region Plus Day Pass is accepted for 2-Zone Rural service with the payment of a \$4.00 Supplement.

The price of a Premium 14-Day Pass is \$60.00 and entitles the person to whom the pass is issued unlimited rides on the services covered by the Premium Monthly or 30-Day Pass.

**Section 4.3.1f: Group Advance Pass Sales**

Group event day passes, valid for one to seven days, may be issued to groups (minimum quantity= 100) only on a 21-day or longer advance sales basis. The discounted rates for group event advance sales passes shall be as follows:

One-Day Pass	= \$4.50
Two-Day Pass	= \$8.00
Three-Day Pass	= \$11.00
Four-Day Pass	= \$14.00
Five-Day Pass	= \$16.00
Six-Day Pass	= \$18.00
Seven-Day Pass	= \$20.00

The group event day pass shall entitle the person to whom the pass is issued unlimited rides during the corresponding number of consecutive days for which the pass is valid on all regularly scheduled MTS and NCTD services except (i) Premium Express, unless a \$2.00 Supplement is paid; (ii) COASTER, for which the pass entitles the holder to a \$0.50 discount per trip; (iii) Rural (as defined by Section 4.2L), unless a \$4.00 Supplement per zone is paid; and (iv) ADA Complementary Paratransit service.

Group event day passes for special events may be purchased in bulk in advance at discounted rates as follows or as otherwise agreed to by the Board:

1,000-1,999 passes	= 5 percent discount per pass
2,000 or more passes	= 10 percent discount per pass

**Section 4.3.1g: Classroom Day Pass**

Classroom Day Passes, valid for one day during nonpeak hours, may be issued to school and youth groups (up to 18 years of age) on an advance sales basis only. Group size is limited at the discretion of the operator. The price of Classroom Day Passes is \$1.50 per person.

**Section 4.3.1h: Post-Secondary Monthly & Quarter/Semester Passes**

MTS shall offer a pass for a college or university school term of 63 or more days that is priced

at \$1.51 a day, payable in advance, sold only during the term's registration and/or a monthly pass good for a calendar month, priced at \$57.60 a month, payable in advance. Post-Secondary Monthly and Quarter/Semester Passes are valid for travel on all regularly scheduled bus and rail services provided by MTS and NCTD except for (i) Premium Express, unless a \$2.00 Supplement is paid; (ii) COASTER, for which the passes entitle the passenger to a \$0.50 discount per trip; (iii) ADA Complementary Paratransit services, and (iv) Rural (as defined by Section 4.2M) unless a \$4.00 Supplement per zone is paid. Post-Secondary Monthly and Quarter/Semester Passes are to be sold only at schools, colleges, and universities that meet the following requirements: accredited by recognized accrediting institution; provide an on-site sales location; track sales to individual qualified students; limit sales to one pass per student currently enrolled with a minimum of seven credit hours; only issue to students with a current school year photo identification card; provide a benefit to each student purchasing the term and/or monthly pass to encourage public transit use; and promote the pass through school information materials.

#### Section 4.3.1i: Scratch One-Day Pass

The Scratch One-Day Pass is a one-day day pass that is priced at the standard one-day price but with scratch-off instead of punched month, day, and year boxes. The Scratch One-Day Pass has a unique serial number code, and customers may not return or exchange Scratch One-Day Passes.

#### Section 4.3.1j: San Diego County Juror Day Pass

Upon entering an agreement with MTS that meets MTS requirements, courts located in San Diego County may purchase the following special fare media to be distributed to jurors summoned to jury duty in courts in San Diego County:

The Juror Regional Day Pass is valid for travel on all regular MTS and NCTD services except (i) Premium, unless a \$2.00 Supplement is paid; (ii) COASTER, for which the pass entitles the holder to a \$0.50 discount per trip; and (iv) Rural services, unless a \$4.00 Supplement per zone is paid.

The Juror Regional Premium Day Pass is valid for travel on all MTS and NCTD regular and premium services and on 1-Zone Rural service. Travel on 2-Zone Rural service requires the payment of a \$4.00 Supplement.

Juror Passes are not valid for travel on any special services or ADA Complementary - Paratransit services.

#### Section 4.3.1k: Universal Pass (UPass)

Upon entering into an agreement with MTS that meets MTS requirements, sponsoring entities may purchase a UPass at the negotiated rate to provide to the designated, guaranteed participation group. The negotiated fare/payment shall be sufficient to compensate MTS for the estimated actual ridership from the guaranteed participation group.

#### Section 4.3.2: Regional Monthly or 30-Day Pass Supplements

Passengers holding a valid monthly or 30-day pass as described in Section 4.3.1a must pay a \$4.00 Supplement per zone to ride Rural services. The Supplement for Senior/Disabled/ Medicare Pass holders is \$2.00 per zone.

Premium Regional Monthly or 30-Day Passes shall be valid for 1-Zone Rural travel without the payment of a Supplement. Travel on 2-Zone Rural service requires the payment of a \$4.00 Supplement (\$2.00 for Senior/Disabled/Medicare Premium Pass holders).

Section 4.3.3: Regional Fares for Children

Up to two children, as defined in Section 4.2.E, shall ride for free when accompanied by a fare-paying passenger. This shall be applicable to all fixed-route bus service, Trolley service, and Rural service.

***(Section 4.3 adopted and amended 11/19/12 10/9/14)***

Section 4.4: Trolley Fare-Pricing Schedule

Section 4.4.1a: One-Way Cash Fares

The cash fare for a single, one-way trip involving any number of stations shall be \$2.50 for an adult and free transfers shall be permitted between Trolley lines. A one-way ticket shall entitle the person to a one-way trip in a direction away from the station of issue. The one-way ticket is valid for two hours and must be valid during the entire Trolley trip.

***(Section 4.4.1a adopted and amended 1/19/12)***

Section 4.4.1b: Round-Trip Cash Fares

In lieu of an adult round-trip cash fare, the Day Pass is offered and free transfers between Trolley lines shall be permitted.

Section 4.4.2: Senior/Disabled/Medicare Cash Fares

The Senior/Disabled/Medicare cash fare shall be \$1.25 per one-way trip on the Trolley.

***(Section 4.4.2 adopted and amended 1/19/12)***

Section 4.4.3: Tokens

Effective March 1, 2012, universal tokens shall be available for \$2.50 each, and shall entitle the person holding the universal token to up to a \$2.50 cash fare value trip on any MTS bus or Trolley service except ADA paratransit services. Some services may require payment of a Supplement in conjunction with the universal token.

***(Section 4.4 adopted and amended 11/19/12)***

Section 4.4.4: Compass Card

Use of a Compass Card with a "stored value" is defined as use of any Compass Card for a debit transaction for transit service when transit cash has been placed on the card.

Compass Card users who have a transit product stored on their card must validate their card on each transit service that they ride each time they use the service as a condition precedent to

using MTS services. Compass Card users must validate their cards via onboard validators on Buses, or station platform validators for Trolleys, and in accordance with Ordinance No. 13.

Patrons who fail to validate their Compass Card in the manner described above and as set forth in Ordinance No. 13 will be deemed to not be in possession of a valid fare and subject to applicable fines and penalties.

Users of the Compass Card must produce the Compass Card for inspection by authorized MTS, employees, security, contractors, or law enforcement staff upon demand.

The Compass Card is intended as a fare payment device on MTS services and NCTD services, and any unauthorized use of the card is strictly forbidden. Persons found to be using the Compass Card in a fraudulent manner may have their Compass Card confiscated and their account suspended.

Refunds of transit products on Compass Cards will not be provided.

Refunds of cash value remaining on voluntarily surrendered cards and confiscated cards will be considered on an individual basis for holders of registered Compass Cards only and may be obtained by request to SANDAG. Registered Compass Card holders seeking a refund must complete an application form (available from The Transit Store or NCTD Customer Service) and follow the submission instructions on the application. SANDAG reserves the right to refuse any request for refund or to make a partial refund. SANDAG also reserves the right to deduct a processing fee of not more than 10 percent on any refund.

Refunds will be issued as credit on the same card as the original purchase if made by credit card. Original payments made by cash, check, or debit card will be refunded by check.

***(Section 4.4.4 added 11/13/08)***

Section 4.5: MTS Bus Fare-Pricing Schedule

Section 4.5.1: Cash Fares

Section 4.5.1a: Local Services

The price of a trip on MTS Local service, as described in Section 4.21 of this Ordinance, shall be \$2.25.

Section 4.5.1b: Urban Services

The price of a trip on MTS Urban service, as described in Section 4.2J of this Ordinance, shall be \$2.25.

Section 4.5.1c: Express/ Rapid and ~~Premium~~ Rapid Express Services

The price of a trip on Express and Premium Express service, as described in Sections 4.2K and 4.2L of this Ordinance, shall be:

Express/Rapid	=	\$2.50
<del>Premium</del> Rapid Express	=	\$5.00

Section 4.5.1d: Senior/Disabled/Medicare Cash Fares

The Senior/Disabled/Medicare Bus cash fare shall be \$1.10 except as otherwise provided in Section 4.7 concerning Rural service.

The Senior/Disabled/Medicare Bus cash fare shall be \$1.25 on Express service and \$2.50 on Premium Express service.

Section 4.5.2: Special Fares

Section 4.5.2a: Shuttle Fare

The price of a trip on shuttle services shall be \$2.25. The Senior/Disabled/Medicare shuttle service fare shall be \$1.10.

Section 4.5.2b: Stadium/Ballpark Bus Fares

The price of a trip on special buses with the primary purpose of traveling to and from events at Qualcomm Stadium or PETCO Park may be equal to twice the one-way fare of Premium Express service and entitle the holder to one-way or round-trip travel.

***(Section 4.5 adopted and amended 10/9/141/19112)***

Section 4.6.5: Demand-Responsive Fares

MTS does not offer demand-responsive service at this time.

***(Section 4.6.5 amended 11/13/08)***

Section 4.6.5a: ADA Complementary Paratransit Services Cash Fares

The ADA Complementary Paratransit services, provided in accordance with the ADA, are only available to persons with qualifying disabilities that prevent them from using fixed-route transit services. These services shall have a cash fare of no more than double the predominant adult cash fare in the area of service. Section 4.2.0 establishes the ADA paratransit zones. The urban zone (Zone 1) shall use the Urban Service fare defined in Section 4.2.1 to calculate the MTS Access cash fare. The three suburban zones (Zones 2, 3, and 4) shall use the Local Service fare defined in Section 4.2.H to calculate the ADA Suburban paratransit cash fare. Passes are not accepted on ADA paratransit services. Paying ADA paratransit passengers will be issued (upon request) a Premium Regional Day Pass for use on connecting fixed-route and Trolley services. Passengers transferring from ADA paratransit service in Zones 2, 3, or 4 to ADA paratransit service in Zone 1 may be required to pay a Supplement on the Zone 1 vehicle if the price of the MTS Urban Service Fare is greater than the price of the MTS Local Service Fare. Full-price (no discount) tickets for ADA paratransit services may be sold to passengers in advance. No passes, tokens, or discounts and no other tickets are accepted on ADA paratransit services. Personal Care Attendants (PCA) required by disabled passengers are not required to pay a fare.

***(Section 4.6 amended 7/17/08)***



Section 4.7: Rural Service

Rural service, as defined in Section 4.2L, shall have applied to it a two-zone based fare structure. Zone boundaries shall generally be located on a north-south axis and have zone boundaries at Ramona (Ramona Station), Alpine (Tavern Road and Alpine Boulevard), and the Tecate border crossing (Tecate Road and Thing Road). Passenger trips remaining within one zone shall have applied to them the 1-Zone fare.

Section 4.7.1: 1-Zone and 2-Zone One-Way Cash Fares

The price of a 1-Zone cash fare shall be \$5.00 for each one-way trip. The price of a 2-Zone cash fare shall be \$10.00 for each one-way trip.

Section 4.7.2: One-Way Senior/Disabled/Medicare Cash Fare

The price of Senior/Disabled/Medicare cash fares shall be equal to 50 percent of the regular cash fare: the price of a 1-Zone Senior/Disabled/Medicare cash fare shall be \$2.50 for each one-way trip and the price of a 2-Zone cash fare shall be \$5.00 for each one-way trip.

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#### Section 4.7.3: Prepaid Monthly or Daily Pass Supplement or Upgrade Required

Passengers exhibiting a valid MTS Monthly or 30-Day Adult or Youth Pass, Post-Secondary Monthly or Quarter/Semester Pass, or Day Pass shall be provided a \$1 discount per Zone for Rural service: the 1-Zone Supplement shall be \$4.00 for each one-way trip. The 2-Zone cash Supplement shall be \$8.00 for each one-way trip. Senior/Disabled/Medicare passengers exhibiting a valid Senior/Disabled/Medicare Monthly Pass shall be given a \$0.50 cent discount per zone: the 1-Zone cash Supplement shall be \$2.00 for each one-way trip. The 2-Zone cash Supplement shall be \$4.00 for each one-way trip.

#### Section 4.7.4: Other Fare Media

- Effective March 1, 2012, tokens shall be accepted at the value of \$2.50; change will not be provided in instances where token value exceeds required fare.
- A San Diego County Juror Premium pass is valid for travel for 1-Zone Rural bus service. Use of this pass for a 2-Zone Rural trip requires payment of a \$4.00 Supplement in each direction.
- Transfers from ADA complementary service shall not require the payment of a Supplement or an upgrade.

***(Section 4 adopted and amended 1/19/12)***

#### Section 4.8: Sorrento Valley Coaster Connection

The one-way cash fare on Sorrento Valley Coaster Connection (SVCC) services shall be \$1.00 for adults and \$0.50 for Senior/Disabled/Medicare.

The price for a Monthly or 30-Day Pass for the SVCC shall be \$40.00 for adults, \$20.00 for Youth, and \$10.00 for Senior/Disabled/Medicare.

All Regional and Premium Day Passes and Regional and Premium Monthly or 30-Day Passes and 14-Day Passes will be accepted on SVCC services.

MTS may enter into an agreement with third parties to cover the cost of fares for patrons on the SVCC in lieu of charging passengers.

***(Section 4.8 adopted and amended 1/19/12)***

#### Section 4.9: Special Fares

MTS shall be allowed to adjust fares for special events with the approval of the Chief Executive Officer.

***(Section 4.9 amended 7/17/08)***

#### Section 4.10: Other Metropolitan Transit System Operators and Special Cash Fares

##### Section 4.10.1: Cash Fares

Any special fares of any operator in the region not listed within this Ordinance shall be included in the Uniform Fare Structure Agreement.

**(Section 4.10 amended 7/17/08)**

Section 4.11: Public Notice

Before the expiration of fifteen (15) days after its passage, a summary of this Ordinance shall be published once with the names and members voting for and against the same in a newspaper of general circulation published in the County of San Diego.

**(Section 4.11 amended 7/17/08)**

Section 4.12: Effective Date of Ordinance

This Ordinance shall become effective on ~~January 20, 2012~~ November 9, 2014.

**(Section 4.12 ~~adopted and amended 1/19/12~~ 1/19/14)**

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Amended: 10/9/14	Repealed & Readopted: 02/23/89
<del>Amended &amp; Adopted: 1/19/12</del>	Amended: 11/10/88
Amended: 5/28/09	Repealed & Readopted: 02/25/88
Amended: 11/13/08	Amended: 12/10/87
Amended: 7/17/08	Amended: 10/09/86
Amended: 11/8/07	Amended: 04/24/86
Amended: 12/8/05	Amended: 03/01/86
Amended: 1/15/04	Repealed & Readopted: 12/05/85
Amended: 11/13/03	Amended: 07/11/85
Amended: 05/22/03	Amended: 05/23/85
Amended: 04/10/03	Amended: 10/04/84
Amended: 10/17/02	Amended: 07/19/84
Amended: 06/14/01	Repealed & Readopted: 02/27/84
Amended: 05/10/01	Amended: 07/25/83
Amended: 08/10/00	Amended: 07/11/83
Amended: 07/13/00	Repealed & Readopted: 05/24/82
Amended: 05/13/99	Amended: 10/05/81
Amended: 02/26/98	Amended: 07/08/81
Repeal & Readopted: 07/17/97	Amended: 06/30/81
(operative – 11/23/97)	Adopted: 06/08/81
Amended: 04/28/94	
Amended: 01/13/94	
Amended: 07/08/93	
Amended: 02/11/93	
Repealed & Readopted: 05/28/92	
Amended: 01/09/92	
Repealed & Readopted: 03/14/91	
Amended: 09/27/90	
Amended: 05/10/90	

**JURISDICTION VOTE TALLY WEIGHT**

Carlsbad	Yes	1	3
Chula Vista	Yes	1	8
Coronado			
County A	Yes	1	8
County B	Yes		8
Del Mar	Yes	1	1
El Cajon	Yes	1	3
Encinitas	Yes	1	2
Escondido	Yes	1	5
Imperial Beach	Yes	1	1
La Mesa	Yes	1	2
Lemon Grove			
National City			
Oceanside	Yes	1	5
Poway	Yes	1	1
San Diego A	Yes	1	20
San Diego B	Yes		20
San Marcos	Yes	1	3
Santee	Yes	1	2
Solana Beach			
Vista	Yes	1	3

**Agenda Item 12  
Proposed Amendments to  
Comprehensive Fare Ordinance**

**Action: APPROVE**

Tally	Weight
15	95
100%	100%

**Pass**

**BOARD OF DIRECTORS  
JULY 25, 2014**

**AGENDA ITEM NO. 14-07-12  
ACTION REQUESTED – APPROVE**

**PROPOSED AMENDMENTS TO  
COMPREHENSIVE FARE ORDINANCE**

File Number 3320100

**Introduction**

The Comprehensive Fare Ordinance (Ordinance) provides guidelines for setting a uniform, fair, and equitable region-wide fare system within the County of San Diego for the Metropolitan Transit System (MTS) and the North County Transit District (NCTD). Changes are proposed to the Ordinance that provide MTS and NCTD the ability to implement Universal Pass (UPass) agreements with post-secondary educational institutions and/or large groups as well as add language that clarifies, simplifies, and better codifies the fare rules for the region. The proposed changes in the language of the Ordinance have been coordinated with the staffs of both NCTD and MTS.

**Recommendation**

The Board of Directors is asked to: (1) approve Resolution No. 2015-03 (Attachment 1), related to findings supporting a California Environmental Quality Act exemption for the proposed amendments to the Comprehensive Fare Ordinance (Ordinance); and (2) approve the proposed amendments to the Ordinance (Attachment 2), as recommended by the Transportation Committee.

The Board of Directors conducted the first reading of the proposed changes to the Ordinance at its June 27, 2014, meeting. The Transportation Committee reviewed the changes to the Ordinance on July 18, 2014, and recommends the Board of Directors adopt the amended Ordinance.

**Discussion**

***Overview of Proposed Ordinance Changes***

The proposed changes to the Ordinance are included as Attachment 2. There are no fare changes (increases or decreases) in this amendment. The proposed changes are focused on the following:

- **UPass Agreements:** UC San Diego has been working with the transit operators on instituting UPass on its campus, which would allow all undergraduate and graduate students to ride on most MTS and NCTD routes. The students voted on a fee referendum in May 2014 to allow UC San Diego to assess a fee each quarter. In anticipation of this vote, MTS requested that SANDAG amend the Ordinance to allow MTS and NCTD to negotiate UPass agreements. The current version of the Ordinance does not specifically allow for a UPass-type agreement to be negotiated by MTS or NCTD with educational institutions or other large groups willing to purchase a transit pass for all its students or employees. Section 6 of the current version of the Ordinance includes options for the transit operators to sell passes at a discounted price. The revised Ordinance separates the discounted passes into one section for educational institutions

and another section for group passes. A new section, Section 6.2.2 in the new Group Pass section, adds the UPass as an option for the transit operators.

- **Rapid Services:** Several language changes are needed to include the new Rapid-branded services. While these routes are using the fares of existing services, language in numerous locations needs to be updated to reflect the existence of the Rapid services. The new Rapid Route 235 (serving northern inland San Diego, Kearny Mesa, City Heights, and Downtown San Diego) will use the same fare structure as the Trolley and Express Routes. The Premium Express routes have been rebranded to Rapid Express and have the same fares.
- **Compass Card:** With the administration of the Compass Card Program recently moved to MTS, all language referring to SANDAG as the responsible entity has been removed. Language has been added to Section 12 to demonstrate that regional ticket and pass administration and revenue sharing may be the subject of one or more separate agreements between MTS and NCTD as they see fit.
- **Other Minor Changes:** Other language changes are proposed to better clarify, simplify, and codify the fare rules for the region.

#### ***California Environmental Quality Act Compliance***

The California Environmental Quality Act (CEQA) provides that CEQA does not apply to the "establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies" that the public agency finds in writing are for specified purposes, including meeting operating expenses.

In order to establish a basis for this CEQA exemption, the Board of Directors is asked to make a finding that the fare ordinance modifications set forth in the proposed Ordinance amendment are calculated to provide MTS and NCTD the ability to implement UPass agreements with post-secondary educational institutions and/or large groups as set forth in Resolution No. 2015-03 (Attachment 1).

#### **Next Steps**

Pending Board approval, the Ordinance changes are scheduled to go into effect on August 25, 2014, after the minimum 30-day waiting period mandated by Board Policy No. 004: Rules of Procedure for Board of Directors and Committees.

GARY L. GALLEGOS  
Executive Director

#### **Attachments:**

1. Resolution No. 2015-03
2. Proposed Changes to the Comprehensive Fare Ordinance

Key Staff Contact: Brian Lane, (619) 699-7331, [brian.lane@sandag.org](mailto:brian.lane@sandag.org)

**RESOLUTION**  
**NO. 2015-03**

401 B Street, Suite 800  
San Diego, CA 92101  
Phone (619) 699-1900 • Fax (619) 699-1905  
[www.sandag.org](http://www.sandag.org)

FINDINGS IN SUPPORT OF NOTICE OF EXEMPTION UNDER THE  
CALIFORNIA ENVIRONMENTAL QUALITY ACT RELATING TO FARE MODIFICATIONS  
INCORPORATED INTO AN AMENDED COMPREHENSIVE FARE ORDINANCE

WHEREAS, a Comprehensive Fare Ordinance amendment incorporating modifications is necessary to provide the Metropolitan Transit System (MTS) and the North County Transit District (NCTD) the ability to implement Universal Pass agreements with post-secondary educational institutions and/or large groups; and

WHEREAS, other modifications are necessary to incorporate the newly implemented Rapid Services as well add language that clarifies, simplifies, and better codifies the fare rules for the region; and

WHEREAS, the SANDAG Board of Directors wishes to render written findings in support of the determination that the amended Regional Comprehensive Fare Ordinance does not require an Environmental Impact Report before it approves such amendment; and

WHEREAS, if a project falls within a category exempt by administrative regulation under the California Environmental Quality Act (CEQA), no further agency evaluation of environmental impact is required; and

WHEREAS, establishment of fares and fare modifications are exempt from CEQA pursuant to an exemption for fees charged by a public agency for the purpose of meeting operating expenses pursuant to Public Resources Code, § 21080, subd. (b)(8); and California Code of Regulations Title 14, § 15273, subd. (a); and

WHEREAS, it has been made clear that any increased revenues obtained from the fare modification will be used for operations purposes rather than for capital improvements.

NOW THEREFORE, BE IT RESOLVED that SANDAG makes the following findings:

Both MTS and NCTD need the ability to implement discounted Transit Pass agreements with post-secondary educational institutions and/or large groups.

PASSED AND ADOPTED this 25th of July, 2014.

\_\_\_\_\_  
CHAIRPERSON

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
SECRETARY

MEMBER AGENCIES: Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, Vista, and County of San Diego.

ADVISORY MEMBERS: California Department of Transportation, Metropolitan Transit System, North County Transit District, Imperial County, U.S. Department of Defense, San Diego Unified Port District, San Diego County Water Authority, Southern California Tribal Chairmen's Association, and Mexico.

**SAN DIEGO ASSOCIATION OF GOVERNMENTS  
COMPREHENSIVE FARE ORDINANCE**

**An Ordinance Establishing a Regional  
Fare Pricing Schedule ~~and~~ Revenue Allocation Formula**

The San Diego Association of Governments (SANDAG) ordains as follows:

**SECTION 1: FINDINGS**

This Ordinance is adopted to implement a Comprehensive Fare Ordinance setting forth a fare structure for all public transit service providers in San Diego County.

**SECTION 2: REGIONAL TRANSIT SERVICE DEFINITIONS**

**2.1 ACCESS:** the complementary Americans with Disabilities Act (ADA) service operated by the Metropolitan Transit System (MTS) in Zone 1.

**2.2 ADA:** Americans with Disabilities Act, as defined in Title 49, Part 37, of the United States Code.

**2.3 ADA Complementary Paratransit Service:** Specialized origin-to-destination curb-to-curb transportation services provided to persons who qualify as eligible for such services under the guidelines of the ADA.

**2.4 BREEZE:** North County Transit District (NCTD) fixed-route bus service brand name.

**2.5 Bus:** Rubber-tired transit vehicles operated by MTS and NCTD.

~~**2.6 Bus Rapid Transit:** A form of premium rapid transit service operated wholly or partly on exclusive bus lanes, guideways, or managed lanes.~~

~~**2.72.6**~~ **Cash Fare:** Term used to describe fares purchased with United States currency.

~~**2.82.7**~~ **Child:** Any person five years of age or under.

~~**2.92.8**~~ **COASTER:** The brand name of the commuter rail service operated by NCTD in the coastal corridor from Oceanside to San Diego.

~~**2.102.9**~~ **College Student:** Any person currently enrolled as a student in a participating accredited San Diego area post-secondary school with a valid picture identification issued by the school.

~~**2.112.10**~~ **Companion:** In relation to the ADA complementary paratransit service, a companion is someone who accompanies an ADA passenger on board a Paratransit~~paratransit~~ vehicle, but is not a personal care attendant as specified in the passenger's ADA certification application.

~~**2.122.11**~~ **Compass Card:** –The Compass Card is an electronic fare medium based on contactless smart card technology. The Compass Card may hold either transit products or cash for use on



regional transit services. Transit products may include but are not limited to Monthly Passes, ~~post-secondary student semester passes, single-day and multi-day passes, and stored value.~~

The Compass Card utilizes wireless technology to interface with validator devices on buses, rail platforms, and Ticket Vending Machines (TVMSs). Passengers must tap their Compass Card on a validator in order to utilize transportation services.

**2.132.12 Day Pass:** a fare medium that allows a passenger to ride one Service Day.

**2.13 Discount:** A reduction in the price of a fare or fare product as a result of the passenger holding a special identification card, or an existing fare product.

**2.14 LIFT:** The complementary ADA service operated by NCTD.

**2.15 Limited Use Compass Card:** A Compass Card printed on a disposable material. Limited Use Compass Cards have a limited lifetime and may not accept all fare products available for loading onto a plastic Compass Card.

**2.16 Medicare Recipient:** Any person to whom the Federal Government has issued a Medicare identification card, regardless of age.

**2.17 MetroLink:** The Commuter rail service operated by the Southern California Regional Rail Authority.

**2.18 Monthly Pass:** This term refers to either the Calendar Month Pass or the 30-Day Pass.

**2.19 MTS:** The San Diego Metropolitan Transit System which operates services in all areas of San Diego County outside the jurisdiction of NCTD. MTS operates MTS Bus, Rural Bus, MTS Express, MTS Rapid, MTS Premium Rapid Express, MTS Trolley service, and ADA Access Service.

**2.20 MTS Suburban Paratransit:** The complementary ADA service operated by MTS in suburban areas (ADA Zones 2, 3, and 4).

**2.21 NCTD:** North County Transit District operating services in Northern San Diego County. NCTD services include the BREEZE, COASTER, SPRINTER, and LIFT.

**2.22 OCTA:** Orange County Transportation Authority.

**2.23 Person with Disability:** Any person with a permanent or temporary mental or physical disability as defined by the ADA (Title 49, Part 37 of the Code of Federal Regulations). In order to qualify for a disabled fare a passenger for regular (non-ADA paratransit) transit must be in possession of a transit identification card or a valid Compass Card with a picture identifying the person as a person with a qualifying disability. In order to qualify for ADA ~~Paratransit~~paratransit service the person with a disability must be ADA certified.

**2.24 Personal Care Attendant:** In relation to the ADA complementary paratransit service, a personal care attendant is a person who is designated by the ADA eligible passenger to aid in their mobility who is not charged a fare to ride on the ADA complementary paratransit vehicle when accompanying the ADA-eligible passenger. The person may be a friend, family member,

or paid employee. The need for and use of a personal care attendant must be indicated at the time of eligibility certification.

**2.25 Platform Validator:** A validator located in a standalone device on a rail platform. Platform validators must be tapped before boarding a rail vehicle unless a new Compass Card product is loaded and validated at a TVM.

**2.252.26 Rapid:** MTS brand name for a premium rapid transit service operated wholly or partly on exclusive bus lanes, guideways, Managed Lanes, or use of other transit priority measures. Depending on specific route characteristics, individual Rapid routes may be classified as MTS Rapid or MTS Rapid Express for purposes of Table 2.

**2.262.27 Regional Fare System:** The Regional Fare System is governed by SANDAG Board Policy Nos. 018: Transit Service Policies, Board Policy No. 029: Regional Fare Policy and Comprehensive Fare Ordinance, this Ordinance, MTS and NCTD transit operations ordinances and policies, and any other fare agreements, including agreements entered into by SANDAG with transit operators.

**2.272.28 Regular Fare:** Applies to all persons age six and older, except persons eligible for Senior, Disabled, and Medicare (S/D/M) or Youth fares.

**2.282.29 S/D/M:** Acronym that stands for Senior, Disabled, and Medicare passengers.

**2.292.30 Senior:** Any person who meets the age requirement for transit fares provided in the *TransNet* Ordinance, Section 4, Paragraph (c)(3), is eligible to pay the discounted Senior Cash Fare or purchase a Senior pass.

**2.302.31 Service Day:** 4:00 a.m. until 3:59 a.m. on the subsequent day.

**2.312.32 Sorrento Valley COASTER Connection (SVCC):** A peak period only Community Shuttle service operated by MTS between the Sorrento Valley COASTER Station, and nearby employment centers.

**2.322.33 SPRINTER:** The brand name of the Oceanside to Escondido rail service operated by NCTD with Diesel Multiple Units (DMUs) in a light rail mode.

**2.332.34 Station:** A light rail, Bus Rapid Transit or commuter rail passenger stop.

**2.342.35 Stored Value:** cash value that can be debited to purchase fare products or pay a Cash Fare on a Compass Card.

**2.352.36 Supplement:** A charge paid on a one-time basis to permit the use of a fare product for a transit ride that requires a more expensive fare. Payment of a supplement does not change the original fare product.

**2.37 Sworn Peace Officers:** San Diego County, state, and federal sworn peace officers. Sworn peace officers include but are not limited to: all municipal police department officials, all County Sheriff Department deputies, County Marshals, all County of San Diego Probation

~~oOfficers, State Highway Patrol officers, State Police, U.S. Marshals, Federal Bureau of Investigation oOfficers, and U.S. Immigration and Customs officers.~~

**~~2.362.38~~ Tap:** The act of touching a Compass Card on a validator.

**~~2.372.39~~ Transit Service Types:**

**2.39.1** Local – Fixed-route bus service on local or arterial roads serving neighborhood destinations and feeding transit centers. Includes BREEZE and MTS Bus. Also includes routes operating extensively on arterials with transit priority features and limited stops (Rapid Services).

**2.39.2** Corridor – A frequent transit service with limited stops including, but not limited to, major transit centers, residential centers, and activity centers that ~~have~~ more than six stops outside Centre City. Corridor services ~~include~~ MTS Trolley, MTS Rapid, SPRINTER, and express buses generally traveling less than 50 percent of the one-way trip miles on freeways. Corridor services travel at least 12 miles per hour, with an average passenger trip length of approximately 10 miles or under.

**2.39.3** ~~Premium Rapid Express~~ – Includes bus service with stops only at major transit centers, residential centers, and activity centers; generally traveling 50 percent or more of the one-way trip miles on freeways; averaging at least 20 miles per hour, with an average passenger trip length of over 10 miles; and using commuter coaches. ~~The future will include BRT operating at least 10 one-way route miles on a network of managed lanes or routes with transit priority measures.~~

**2.39.4** Commuter Rail – The commuter rail service operated in the coastal corridor from Oceanside to San Diego by NCTD under the brand COASTER.

**2.39.5** Rural – A rural bus service providing limited daily or weekly service linking rural areas to a multimodal transit center or major shopping center and designated by the MTS or NCTD Board of Directors as having a special one or two zone fare. Service is generally provided in rural areas with one-way vehicle trip lengths ranging from 15 to 80 miles.

**~~2.382.40~~ Transfer:** The action of a passenger leaving one bus, train, or other transit vehicle and within a brief time, without a stopover, boarding a subsequent bus, train, or other transit vehicle to complete his or her trip.

**~~2.392.41~~ Transfer Slip:** A document that may be issued by a driver to enable a passenger to board another transit vehicle free of charge or for a reduced amount. Transfer slips are not issued for travel entirely within San Diego County solely on the fixed-route system. Transfer slips may be issued for transfers between ADA services and fixed-route services and between fixed-route services and other systems outside San Diego County.

**~~2.402.42~~ TransNet:** The *TransNet* Ordinance is a SANDAG ordinance passed by voters in 2004 that provides for a half-cent transactions and use tax collected in San Diego County and used for transportation-related projects.

**~~2.412.43~~ Trolley:** Light-rail transit service operated by MTS.

**2.44 TVM:** Ticket Vending Machine used for the sale of single and multi-trip fare products.

**2.45 Universal Pass:** Provides unlimited rides on select transit services for an agreed upon period of time to individuals associated with a sponsoring entity, where the sponsoring entity guarantees universal participation/purchase by its employees, students, or other membership.

**2.422.46 Upgrade:** An additional fare required to enhance the value of a transit pass to travel on a transit service with a higher fare. Upon payment of an upgrade, the original fare instrument is converted to the new, more expensive product and the original product is no longer available.

**2.432.47 Validator:** A device for tapping a Compass Card in order to validate the fare product. Validators may be standalone devices, located on bus fareboxes, or part of a TVM. Validators located in TVMs may not be used as platform validators.

**2.442.48 Youth:** A person as defined in the *TransNet* Ordinance Section 4(C)(3).

**2.452.49 Zone:** For ADA purposes a zone is defined as:

Zone 1 Central San Diego

Zone 2 Mid-County: Poway, Rancho Bernardo, Rancho Peñasquitos, Carmel Mountain Ranch, and Sabre Springs

Zone 3 East County: La Mesa, El Cajon, Santee, Lakeside, Lemon Grove, Spring Valley, and parts of Alpine

Zone 4 South Bay: Chula Vista, Coronado, National City, Imperial Beach, Palm City, Nestor, Otay Mesa, and San Ysidro

Zone 5 NCTD Service area

For the COASTER, the fare zones are set forth in Table 3. The fares zones applicable to Rural Fares are set forth in Section 3.4 of this Ordinance.

### **SECTION 3: SINGLE TRIP, SINGLE DAY, & AND MULTI-DAY FARES**

#### **3.1 Fare Product Limitations**

**3.1.1** SPRINTER/BREEZE fare products may only be used on the SPRINTER and BREEZE.

**3.1.2** Regional fare products may not be used on COASTER, ADA, Premium-Rapid Express and Rural bus services without paying an Upgrade or Supplement.

**3.1.3** Premium fare products (Rapid Express, COASTER, and RegionPlus) may be used on Local, Corridor, Premium Rapid Express, and single zone Rural services. Regional fare products may be used with the Supplements indicated in Table 1.

**3.1.4** COASTER and RegionPlus fare products may be used on all transit services operated by MTS and NCTD, but require Supplements for two zone rural services. Discounts are available to holders of Premium and Regional fare products using the COASTER, as shown in Table 1.

**3.1.5** Sorrento Valley COASTER Connection fare products are only valid on the Sorrento Valley COASTER Connection.

### 3.2 Fares and Pass Products

Tables 1 and 2 list transit fares available to the general public. The tables show the fare for each type of service by passenger category, and which passes are accepted on specific services. The notes below the tables show the amount of any Supplement or Discount that may be required or available.

**Table 1**  
**Pass Prices, Acceptance, and Required Supplements or Discounts**

Service	Pass Type and Price						Acceptance - Supplements – Discounts for Single Ride, Round Trip, or Day Pass						
	Day Pass Price	S/D/M Day Pass Price	Monthly/ 30-Day Pass Price	14-Day Pass Price	S/D/M Monthly Pass Price	Youth Monthly	BREEZE SPRINT ER	Trolley MTS Bus	Premium	COASTER	1 Zone Rural	2 Zone Rural	Sorrento Valley Coaster Connection or {SVCC}
Sorrento Valley SPRINTER/ BREEZE	\$5	n/a	\$40.00	n/a	\$10.00	\$20.00	No	No	No	No	No	No	Yes
Regional		\$2.25	\$59.00 *1	n/a	n/a	n/a	Yes	No	No	*23	No	No	No
Premium Rapid Express	\$12.00	n/a	\$72.00	\$43.00	\$18.00	\$36.00	Yes	Yes	*56	*23	*34	*45	Yes
COASTER 1 Zone		n/a	\$100.00	\$60.00	\$25.00	\$50.00	Yes	Yes	Yes	*12, *23	Yes	*34	Yes
COASTER 2 Zone		n/a	\$120.00	n/a	\$41.25	\$82.50	Yes	Yes	Yes	Yes	Yes	*34	No *12
COASTER 3 Zone		n/a	\$150.00	n/a			Yes	Yes	Yes	Yes	Yes	*34	No *12
		n/a	\$165.00	n/a			Yes	Yes	Yes	Yes	Yes	*34	No *12

**Table 2**  
**Single Boarding Fares by Service, Acceptance, Required Supplements, and Discounts**

Service	Single Boarding- Fare		Passes Accepted				
	Regular	Senior Disabled and	Regional	Premium	SVCC	COASTER/ RegionPlus	SPRINTER/ BREEZE

		Medicare					
Sorrento Valley Coaster Connection	\$1.00	\$0.50	Yes	Yes	Yes	No/Yes	No
MTS Bus/MTS Rapid <sup>#</sup>	\$2.25	\$1.10	Yes	Yes	No	Yes/Yes	No
MTS Trolley	\$2.50	\$1.25	Yes	Yes	No	Yes/Yes	No
MTS Express/MTS Rapid <sup>#</sup>	\$2.50	\$1.25	Yes	Yes	No	Yes/Yes	No
MTS Premium Rapid Express	\$5.00	\$2.50	*56	Yes	No	Yes/Yes	No
Rural Bus 1 Zone	\$5.00	\$2.50	*34	Yes	No	Yes/Yes	No
Rural Bus 2 Zones	\$10.00	\$5.00	*45	*34	No	*34	No
BREEZE	\$1.75	\$0.75	Yes	Yes	No	Yes/Yes	Yes
SPRINTER	\$2.00	\$1.00	Yes	Yes	No	Yes/Yes	Yes
COASTER 1 Zone	\$4.00	\$2.00	*23	*23	No	Yes/Yes	*23
COASTER 2 Zone	\$5.00	\$2.50	*23	*23	No	Yes/Yes	*23
COASTER 3 Zone	\$5.50	\$2.75	*23	*23	No	Yes/Yes	*23

### Special Notes for Tables 1 and 2

\*1 Calendar Monthly Only

\*21 RegionPlus Day Pass Accepted.

\*32 \$0.50 Discount on Single Ride Tickets for Regular, Youth, and Senior/Disabled/Medicare Passes on Compass Pass; \$1.00 Discount on Round Trip Tickets for Regular, Youth, and Senior/Disabled/Medicare Passes on Compass Pass.

\*43 \$4.00 Supplement for Regular and Youth; \$2.00 Supplement for Senior/Disabled/Medicare.

\*54 \$8.00 Supplement for Regular and Youth; \$4.00 Supplement for Senior/Disabled/Medicare.

\*65 \$2.00 Supplement for Regular and Youth; \$1.00 Supplement for Senior/Disabled/Medicare.

<sup>#</sup> Rapid routes that run on arterial roadways will be priced the same as MTS Bus, while those Rapid routes that run primarily on freeways will be priced the same as MTS Express.

### 3.3 COASTER Zones

The COASTER Fares are based on three zones. The number of zones between stations is shown in Table 3. Passengers must purchase a single-trip or round-trip ticket or pass based on the number of zones between their origin and destination.

**Table 3**  
**COASTER Stations and Zones**

To From	Oceanside	Carlsbad Village	Carlsbad Poinsettia	Encinitas	Solana Beach	Sorrento Valley	Old Town	Santa Fe Depot
Oceanside		1	1	1	1	2	3	3
Carlsbad Village	1		1	1	1	2	3	3
Carlsbad Poinsettia	1	1		1	1	2	3	3
Encinitas	1	1	1		1	2	3	3
Solana Beach	1	1	1	1		2	3	3
Sorrento Valley	2	2	2	2	2		2	2

Old Town	3	3	3	3	3	2		1
Santa Fe Depot	3	3	3	3	3	2	1	

One-way and round-trip tickets and passes are valid only for travel between the number of zones or the stations listed on the ticket or pass.

### 3.4 Rural Bus Service Zones

Zone 1 of the rural areas is west of the line that runs due south from a point 14 miles east of Interstate -15 on the San Diego – Orange County line through the mid point of Palomar Mountain State Park and then to Ramona (Ramona Station), Alpine (Tavern Road and Alpine Blvd. Boulevard), and Tecate border crossing (Tecate Road and Thing Road). Zone 2 of the rural area is east of this line.

### 3.5 Senior/Disabled/Medicare

The single-trip Cash Fare for persons eligible for S/D/M fares shall be 50 percent of the single-trip regular fare, rounded down to the nearest \$0.05.

### 3.6 Children

NCTD and MTS may each determine how many children five years old and under may ride free on all bus, light rail, and commuter rail services when traveling with a paying passenger.

### 3.7 NCTD Reduced Fare Identification Card on BREEZE and SPRINTER

Passengers holding a valid NCTD issued Paratransit Reduced Fare Identification Card may ride BREEZE, or SPRINTER services without payment of any fare. A personal care attendant may also ride free accompanying the passenger with a Reduced Fare Identification Card if the requirement for a personal care attendant is noted on the NCTD Paratransit Reduced Fare Identification Card.

### 3.8 Regional Day Pass

**3.8.1** With the exception of Juror Day Passes and special marketing programs or event tickets/passes, all All-Day Passes shall be valid for travel on the specified services from the time of issue for the number of consecutive days indicated on the Day Pass or Compass Card product. The Day Pass is valid for travel until the end of the Service Day. The prices for all 1-Day, 14-Day, Monthly, and 30-Day Passes are shown in Table 1.

**3.8.2** Regional Day Passes will also will be available for two, three, and four days from the Transit Store, North County Customer Service Centers, and select TVMs at the prices shown in Table 4.

**Table 4**  
**2, 3, and 4 Day Pass Prices**

Day Pass	Price
----------	-------

2 Day Regular:	\$9.00
3 Day Regular	\$12.00
4 Day Regular	\$15.00

**3.8.3** The price of 14-Day Passes shall be 60 percent of the cost of Monthly Passes rounded to the nearest dollar.

### **3.9 RegionPlus Day Pass**

A RegionPlus Day Pass is valid on all services except for LIFT, ACCESS, and MTS Suburban Paratransit. Upgrade required for travel on Rural ~~Zone 2~~. The price of a RegionPlus Day Pass is \$12.00.

### **3.10 Classroom Day Tripper**

Classroom Day Trippers are valid for travel between 9 a.m. and 3 p.m., and after 6 p.m., Monday ~~to through~~ Friday, and may be issued to school and youth groups (up to 18 years of age) on an advance sales basis only. Each group shall consist of a minimum of 15 people. One chaperone per every five students may ride at the Regional Classroom Day Tripper price.

Valid on	Price
MTS Bus, SPRINTER, BREEZE, and <del>Premium-Rapid Express</del>	\$1.50
COASTER only	\$3.00
COASTER plus any of the following: MTS Bus, MTS Trolley, <del>Premium-Rapid Express</del> , SPRINTER, and BREEZE	\$4.50

A maximum of 135 students and adults per group are permitted to ride a single scheduled COASTER train. Advance confirmation of the availability of space is required at the time of purchase for all COASTER Classroom Day Trippers.

### **3.11 SPRINTER/BREEZE Social Services Agency Day Pass**

The SPRINTER/BREEZE Social Service Agency Day Pass is a one-day NCTD Day Pass, sold in packs of ten priced at \$45.00, which is validated by social service agencies by identifying the day, month, and year. It is sold only to qualified social service agencies who agree to dispense the Day Pass according to NCTD requirements. The Social Service Agency Day Pass has a unique serial number code, and the customer may not return or exchange a Social Service Agency Day Pass. Valid for unlimited travel on SPRINTER/BREEZE for day punched.

### **3.12 Juror Day Pass**

Any state or federal court in San Diego County may purchase Juror Passes after signing an agreement with SANDAG/MTS. Juror Passes are not valid for use on any special service with a higher fare (e.g., Stadium Bus Service) or ADA complementary paratransit service.



A Regional Juror Day Pass is valid for travel on all NCTD and MTS services except, ~~PremiumRapid-Express~~, COASTER, or Rural services. A ~~Region-Plus~~RegionPlus Juror Day Pass is valid for travel on all NCTD and MTS services except ~~2-Zone~~ Designated Rural services.

The price for Regional Juror Day Passes sold to the courts shall be based on the price of the Regional Day Pass and included in the agreement with the court. The price for ~~Region-Plus~~RegionPlus Juror Day Passes sold to the courts shall be based on the price of the ~~Region-Plus~~RegionPlus Day Pass and included in the agreement with the court.

Each Juror Day Pass becomes activated/valid on the day it is tapped by the passenger.

### 3.13 Advance Purchase Group Day Pass Sales

Groups wishing to purchase a minimum of 100 Regional Day Passes shall be entitled to obtain passes at the rates shown in Table 5 when the passes are purchased at least 21 days in advance. Groups purchasing 1,000 or more Day Passes shall be entitled to discounts from the Table 5 prices, as shown in Table 6. Additional discounts require the approval of the SANDAG Transportation Committee or SANDAG Board of Directors.

**Table 5**  
**Prices for Advance Purchase Group Day Passes**

Days	Regional
One Day	\$4.50
Two Day	<del>\$8.00</del>
Three Day	<del>\$11.00</del>
Four Day	<del>\$14.00</del>
Five Day	<del>\$16.00</del>
Six Day	<del>\$18.00</del>
Seven Day	<del>\$20.00</del>

**Table 6**  
**Additional Discount for Bulk Purchase of Advance Purchase Group Day Passes**

Passes Purchased	Discount
1,000-1,999	5%
2,000-2,999	10%
3,000 - 3,999	15%
4,000 or more	20%

### 3.14 Monthly Passes

All Calendar Month Passes shall be valid until the end of the Service Day on the last day of the calendar month. All 30-Day Passes shall be valid for 30 consecutive days commencing on the first day the pass is validated.

### 3.15 Upgrades to RegionPlus Day Pass

~~Upon implementation of Stored Value, Effective January 1, 2010, a Regional Day Pass residing on a Compass Card may be upgraded to a RegionPlus Day Pass upon payment of the difference between the original price paid and the new pass price. This upgrade is only only is available on Compass Cards with a sufficient Sstored Vvalue balance and occurs automatically when a Compass Card with a valid Regional Day Pass is tapped prior to boarding a service requiring a RegionPlus Day Pass. An upgrade does not extend the period of validity of the pass and is not available for paper Day Passes.~~

#### **SECTION 4: MULTI RIDE TICKETS ~~AND~~ TOKENS**

##### **4.1 Round Trip Tickets**

Any transit operator may, at its option, sell round trip tickets at two times the price of a single-trip ticket for any fare category or service. Outbound and return trips must be taken on the same service day and are valid roundtrip from the point of origin to the destination.

##### **4.2 Multi-Trip Ticket Packs**

Any transit operator may, at their option, bundle multiple single-trip tickets for any service they operate, and sell the tickets for the full face value of the tickets or with a discount of up to ~~10~~<sup>ten</sup> percent.

##### **4.3 Tokens**

~~If tokens are made available, they shall be sold for \$2.25 each, in multiples of 20 (\$45.00) or 40 (\$90.00), and shall entitle the person holding the universal token to up to a \$2.252.50 cash fare value trip on any MTS bus, Trolley, BREEZE, or SPRINTER, or Trolley service, except ADA paratransit services. Some services may require a cash upgrade in conjunction with the Regional Universal Token.~~

~~Tokens will not be accepted for payment of any COASTER, SPRINTER, Access, LIFT, or Premium Rapid Express single-trip fare. Multiple tokens may be used to pay fares or purchase passes with a value of more than one local bus trip, but change will not be given.~~

#### **SECTION 5: ~~STORED VALUE COMPASS CARDS~~**

##### **5.1 Card Acquisition and Registration**

~~MTSSANDAG, the administrator of the Compass Card Program, may require a nonrefundable fee for passengers wishing to acquire a Compass Card. The fee shall not exceed \$5.00.~~

Compass Card users may elect to register their card. If registered, users will be entitled to one free replacement if the card is lost or stolen. Additionally, registered users of the Compass Card are entitled to balance protection. Registered users will be reimbursed the value of their cash or transit product at the time the card is reported lost or stolen. Reimbursement will be provided on a new Compass Card. An unregistered user shall have no right to reimbursement or refund of a Compass Card balance even if the card is lost or stolen. Registered Compass Cards are not transferable.

Compass Card users may opt not to participate in the registration program, but shall be required to pay the above-mentioned fee and will not receive the benefits of registration. Whether or not a user pays a fee or participates in the registration program, the Compass Card shall be the property of ~~MTS, SANDAG~~ and may be revoked and/or confiscated by ~~SANDAG, MTS, or NCTD~~.

## **5.2 Validating a Compass Card**

Compass Card users who have a transit fare product or ~~S~~stored ~~V~~value loaded on their card must validate their card each time they board a bus or train. Passengers who fail to tap and validate their Compass Card as required may be deemed to not be in possession of a valid fare consistent with the ordinances and policies of MTS and NCTD.

## **5.3 Inspection and Use of Compass Cards**

Users of the Compass Card must produce the Compass Card for inspection by authorized ~~SANDAG, MTS, or NCTD~~ personnel or their designated agents. The Compass Card is intended as a fare payment device on MTS, NCTD, or any transportation service that is part of the San Diego Regional Fare System. Any nonauthorized use of the card is strictly forbidden.

## **5.4 Refunds of Stored Value and Transit Products**

Refunds will not be issued for transit pass products loaded onto a Compass Card. Refunds of ~~S~~stored ~~V~~value remaining on voluntarily surrendered cards and confiscated cards will be available for registered Compass Cards only. Registered Compass Card holders seeking a refund must complete an application form available from the Transit Store or NCTD Customer Service, and follow the submission instructions on the application. Refunds will only be issued up to the maximum value of any receipts that show cash being loaded onto the subject Compass Card. All refunds are subject to a processing and waiting period of up to 90 days. ~~MTS or NCTD, SANDAG~~ may refuse any improper request for refund, or may make a partial refund. ~~SANDAG and the transit operators~~ MTS or NCTD may deduct a processing fee of not more than ~~ten~~ 10 percent on any refund. Refunds will be issued as a credit on the same card as the original purchase if made by credit card. Original payments made by cash, check, or debit card will be refunded by check.

## **5.5 Photographs of Cardholders**

A photograph of a registered card holder may be printed onto a Compass Card if requested by the registered user. ~~MTS or NCTD, NCTD, MTS and SANDAG~~ may charge up to an ~~\$8.00~~ fee for placement of a photograph on the Compass Card. Compass Cards bearing a photograph ~~may only~~ only be used by the person whose photograph appears on the card.

## **5.6 Stored Value**

Once implemented by MTS or NCTD, the ~~The~~ ~~S~~stored ~~V~~value feature of a Compass Card may be loaded with cash value. A Compass Card with ~~S~~stored ~~V~~value may not be used to purchase an additional or replacement Compass Card. A Compass Card with ~~S~~stored ~~V~~value may not be

used to purchase fare products or ~~S~~stored ~~V~~alue to be loaded onto a different Compass Card.

## **5.7 Default Fare for Stored Value**

All card holders boarding any bus or rail vehicle and paying their fare with ~~S~~stored ~~V~~alue on a Compass Card will have the applicable Day Pass cost deducted from the Compass Card when a farebox or platform validator is tapped. Passengers boarding a bus must advise the driver before tapping if they wish to pay a single-trip fare or purchase a product other than the default Day Pass. Passengers boarding a service at any station or stop equipped with platform validators and TVMs must use the TVM if the passenger prefers to purchase a paper single-trip ticket or a product other than the default Day Pass for the service they will be boarding.

## **SECTION 6: ~~DISCOUNTED POST-SECONDARY AND GROUP PASSES POST-SECONDARY MONTHLY, QUARTER, AND SEMESTER PASS~~**

### **6.1 ~~Post-Secondary Discounted Passes~~**

#### **~~Post-Secondary Calendar Month & Semester Regional Passes~~**

MTS and NCTD shall each have the ~~exclusive right to sign negotiate agreements, individually or jointly,~~ with educational institutions ~~within their own district boundaries.~~ MTS and NCTD may establish their own policies, terms or eligibility rules regarding the sale of the passes in the sales agreements; ~~however,~~ the prices to the education institutions must conform to this Ordinance.

#### **6.1.12 Discounted Calendar Monthly Post-Secondary Regional Pass**

The price of a Calendar Month Pass for post-secondary institutions shall be 80 percent of the price of a Regional ~~Monthly 30-Day~~ Pass. The discounted pass shall be valid for unlimited travel during a calendar month period until the end of the Service Day on the last day of the month~~30th day~~. All Regional Pass discounts, supplements, and upgrade rules apply to the Monthly Post-Secondary Pass.

#### **6.1.23 Discounted Post-Secondary Regional Quarter/Trimester/Semester Pass**

The price of the quarter/~~trimester~~/semester pass for post-secondary educational institutions shall be based on 65 percent of the price of a ~~Local & Corridor~~ Regional Monthly Pass, divided by 31 and multiplied by the number of days in the ~~quarter or semester~~ academic term. ~~The period of validity of a Post-Secondary Regional Quarter/Semester Pass shall not be less than 90 days.~~

The discounted pass shall be valid for unlimited travel during ~~a semester~~ an academic term until the end of the Service Day on the last day of the academic term. All Regional Pass discounts, supplements, and upgrade rules apply to the Post-Secondary Regional Quarter/~~Trimester~~/Semester Pass.

#### **6.1.34 SPRINTER/BREEZE Only ~~Post-Secondary~~ Pass**

The SPRINTER/BREEZE Monthly Pass may be sold to post-secondary educational institutions with a discount of \$10.00 per month.

## **6.25 ~~Ecopass~~ Group Sales Pass Program**

### **6.2.1 Ecopass Group Sales Pass Program**

This program is for businesses or groups who purchase Regional and Premium passes and who are willing to purchase sufficient passes to provide a full year of transportation for 25 employees or members at a discounted rate and execute a participation agreement.

The pass price discount would be based on the pre-purchase of a specified number of passes for a 12-month period. Only one three-month trial program is permitted per employer or group interested in testing the program. Advance payment is required for both the trial program and permanent program annual passes. Participants may purchase additional monthly passes as provided in the participation agreement at a discounted rate.

The price of the employer or group sales pass program shall be set according to the number of annual regular adult passes purchased as defined in the participation agreement. All passes purchased in excess of limits in the participation agreement will be sold at retail rates.

### **6.2.2 Universal Pass Program**

MTS and NCTD shall each have the right to negotiate Universal Pass (UPass) agreements, individually or jointly, with sponsoring entities. MTS and NCTD may establish their own policies, terms, or eligibility rules regarding the sale of the UPass in the sales agreements.

## **SECTION 7: TRANSFERS WITH OTHER TRANSIT OPERATORS**

### **7.1 MetroLink Trip Tickets and Monthly Passes**

MetroLink Trip Tickets and Monthly Passes are valid as full boarding fare on NCTD buses and the SPRINTER on all routes directly serving the Oceanside Transit Center. MetroLink tickets and passes are not valid for transferring between NCTD routes or between NCTD and MTS. MetroLink tickets are not valid for transfers to the COASTER. The rules governing the acceptance of the MetroLink tickets and passes are as follows:

**7.1.1 MetroLink Monthly/7Day Pass:** This pass must have the correct current month, year, and list Oceanside as a valid city in order to be valid.

~~**7.1.2 MetroLink Ten-Ride Ticket:** This ticket has a validation printing area for each of ten (10) rides on METROLINK. In order to be valid to board an NCTD bus at Oceanside, the current date must appear in one of the boxes numbered 1–10.~~

**7.1.23 MetroLink Round-Trip Ticket:** This ticket must be imprinted with the current date and is valid until the time shown on that date on the BREEZE or the SPRINTER at Oceanside Transit Center.

**7.1.34 MetroLink One-Way Ticket:** This ticket must be imprinted with the current date and is valid until the time shown on that date, to board the BREEZE or the SPRINTER departing the Oceanside Transit Center.

## **7.2 NCTD and Orange County Transit Authority (OCTA) Transfers**

The following transfer agreement is in effect with the Orange County Transit Authority (OCTA) between its Route 1 and Route 191 and BREEZE Route 395:

**7.2.1 BREEZE Route 395 to OCTA Route 1 or Route 191:** The passenger will pay the appropriate NCTD single Cash Fare (or Day Pass fare) and be issued an interagency transfer onboard the 395. This transfer or Day Pass will be accepted by OCTA drivers as full fare for one boarding. In addition, NCTD BREEZE Passes and Regional Passes will be accepted by OCTA as full fare for one boarding on its system.

**7.2.2 OCTA Route 1 or Route 191 to BREEZE Route 395:** An OCTA passenger may transfer from an OCTA bus to NCTD Route 395 by displaying a valid OCTA Day Pass, or a valid OCTA Monthly Pass. No further fare supplement will be required. The OCTA Day Pass or Monthly Pass is good for one boarding only on NCTD service. Therefore, the OCTA Day Pass or OCTA Monthly Pass is valid only on Route 395 in San Clemente, as this is the only route that connects with OCTA. Passengers continuing on other routes in Oceanside will need to pay a single Cash Fare or purchase an NCTD Day Pass.

## **7.3 Rail 2 Rail**

The Rail 2 Rail program is subject to renewal with the National Railroad Passenger Corporation (Amtrak). When an agreement is in effect: persons holding valid Amtrak tickets may ride any COASTER train between Oceanside, Solana Beach, and Santa Fe Depot within the origin and destination listed on their Amtrak ticket or pass, and persons holding fares valid for COASTER use may ride Amtrak trains designated on the NCTD COASTER schedule as Rail 2 Rail trains. Passengers can determine if an agreement is in place by contacting NCTD. ~~persons holding valid Amtrak tickets may ride any COASTER train between Oceanside, Solana Beach and Santa Fe Depot within the origin and destination listed on their Amtrak ticket or pass; or, for an upgrade fee (\$59 for a one-zone pass, and \$84 for a three-zone pass) payable to Amtrak, persons holding a valid COASTER Pass may ride the Amtrak between Oceanside, Solana Beach, and Santa Fe Depot within the zones listed on their Compass Pass. Passengers can determine if an agreement is in place by contacting NCTD.~~

## **SECTION 8: PARTICIPATION IN THE REGIONAL FARE SYSTEM**

The requirements for participation in the Regional Fare System by transportation providers shall be as follows:

**8.1** Transit operators participating in the Regional Fare System must operate fixed-route transit service with fixed, published schedules.

- 8.2** Transit Operators must serve an area not currently served by an existing publicly subsidized, fixed-route bus operator.
- 8.3** New transit operators will be incorporated into the Compass Card system to the extent feasible and practical as determined by ~~SANDAG~~MTS.
- 8.4** Any transit provider selling or receiving Compass Card or other ~~MTS SANDAG~~ fare media shall have a secure handling procedure for all fare media. All tickets, passes, and transfers shall be handled as cash-value media, with appropriate security provided for acceptance, inspection, storage, distribution, and disposal.

## **SECTION 9: SPECIAL FARES**

### **9.1 Sworn Peace Officers**

MTS and NCTD transit operators will allow all San Diego County, state, and federal sworn peace officers, in uniform or in civilian clothes, to ride on scheduled bus and train routes without charge. Officers must show identification when requested by MTS or NCTD. This privilege does not apply to special events for off-duty officers.

### **9.2 Temporary, Promotional, ~~and~~ Experimental Fares**

MTS and NCTD shall have the ability to set temporary, promotional, and experimental fares. Temporary, promotional, and experimental fares are defined as fares implemented for no more than ~~twelve~~ 12 months for seasonal events or for marketing purposes. These fares, because of their short term/temporary nature, are not included in this Ordinance.

## **SECTION 10: ~~S/D/M AND~~ YOUTH COMPASS CARDS ELIGIBILT ~~AND~~ REQUIREMENTS**

### **10.1 Eligibility**

In order to be eligible to purchase discounted ~~S/D/M~~ Passes, passengers must present an ~~S/D/M~~ or person with disabilities Compass Card with integral photo identification or one of the valid identification cards listed in Sections 10.2 through 10.3.

### **10.2 Seniors**

Seniors must provide a valid Medicare card, state-issued driver's license, government-issued photo identification, or an ~~S/D/M~~ Compass Card with integral photo identification when paying a Cash Fare, purchasing a Senior Pass, or boarding a transit vehicle with a Senior Pass.

### **10.3 Persons with Disabilities ~~and~~ Medicare**

#### **10.3.1 Cash Fares**

All persons with a valid MTS identification card, Medicare Card, NCTD disabled identification card, State of California Department of Motor Vehicles (DMV) disabled identification card, or DMV placard identification card shall be permitted to pay the ~~S/D/M~~ single cash fare.

### **10.3.2 Compass Cards**

In order to receive a reduced fare Compass Card, a person with a disability must present for approval their completed application form and show a government-issued photo identification card and original versions of at least one of the following (photocopies will not be accepted) at the time of submitting the application:

**10.3.2.1** State of California ~~Department of Motor Vehicles~~ DMV disabled identification card, (the white receipt from the DMV)

**10.3.2.2** State of California ~~Department of Motor Vehicles~~ DMV placard identification card

**10.3.2.3** ADA Paratransit Identification Card

**10.3.2.4** Certification on the application form by a ~~D~~doctor or a qualified health care professional or a statement from a physician or rehabilitation center (on original letterhead or prescription notepad with an original signature). In addition to the nature of the disability, the statement should identify whether it is permanent or temporary in nature

**10.3.2.5** Individualized Education Program from school for disabled students

**10.3.2.6** Current year Supplemental Security Income. (S.S.I.) or Social Security Administration (S.S.A.), or Social Security Disability Insurance (S.S.D.I.). award letter

**10.3.2.7** Letter from the Epilepsy Foundation

**10.3.2.8** Letter from the San Diego Center for the Blind

**10.3.2.9** Letter from the San Diego Regional Center

**10.3.2.10** Unexpired MTS or NCTD disabled identification card

## **10.4 Youth**

Youth must provide on request valid school, college, or government-issued photo identification to establish eligibility for a Youth discount when boarding a transit vehicle with a Youth pass.

## **SECTION 11: ADA Paratransit**

### **11.1 Fares**

The Cash Fare for ADA ~~Paratransit~~ paratransit per ride for ADA-~~C~~ Certified passengers for one complete trip, origin to destination, regardless of any need to transfer between ADA transit operators or zones, shall be double the local fixed-route fare of the typical fixed-route service linking the origin and destination based on a determination by MTS or NCTD. Such



determination must be made by calculating the regular fixed-route fare, including transfers for a trip of similar length, at a similar time of day, on the transit operators fixed-route system.

All ADA prepaid fare media ~~will only~~ will be good on the system for which it was created. ADA prepaid fare media may not be loaded onto a Compass Card.

One personal care attendant may ride free with each ADA passenger riding an ADA Paratransitparatransit or transit vehicle if requirement is identified on ADA certification.

## 11.2 ADA Transfers

There is no charge to transfer from any ADA service to any Local, Corridor, or Regional bus or rail service.

A transfer slip or proof of fare payment will be issued by the driver of an MTS ADA Paratransitparatransit service to allow ADA passengers to transfer to regular transit services. Passengers transferring from LIFT to SPRINTER or BREEZE will not require any transfer slip or proof of payment.

Passengers transferring from any fixed-route service must pay a Supplement if the fare paid on the fixed-route service is less than the fare on the ADA Paratransitparatransit service they are boarding. The Supplement required will be the applicable ADA Paratransitparatransit Fare less the amount of any fare paid on the fixed-route service. Passengers transferring from fixed-route to ADA will only receive a transfer credit if the fare paid on the fixed-route service is a fare for which a paper transfer or proof of payment is issued. This includes single and return trip rail tickets, or Regional or Region PlusRegionPlus dDay pPasses. If a single trip Cash Fare is deposited into a fixed-route farebox without a proof of payment, the ADA passenger will be required to pay the full fare when boarding a subsequent ADA vehicle as receipts are not issued for single trip Cash Fares deposited into the farebox.

One personal care attendant may ride free with each ADA passenger riding an ADA Paratransitparatransit or transit vehicle if requirement is identified on ADA certification.

## SECTION 12: REGIONAL TICKET AND PASS ADMINISTRATION, REVENUE SHARING

Processes and rules regarding regional ticket and pass administration and revenue sharing may be the subject of one or more separate agreements between MTS and NCTD as they see fit.

### 12.1 ~~Policy Manual~~

~~SANDAG shall prepare and maintain a Policy and Procedures Manual that identifies the roles, responsibilities and procedures that will be used to manage the printing, sales, revenue allocation and revenue collection for all pre-paid transit fare media. The Policy and Procedures Manual shall be reviewed and updated not less than once each year. The Manual shall cover the administration of printing, sales, boarding counts, revenue collection, and~~

revenue allocation for fare products, including tickets, passes and tokens. The Manual does not apply to ADA transit operators.

## **12.2 SANDAG Responsibilities**

SANDAG manages transit fares for the San Diego region. Pursuant to Board Policy No. 009 SANDAG complies with state and federal laws and regulations including the Americans with Disabilities Act of 1990 (ADA), Title VI of the Civil Rights Act of 1964 (Title VI) and other federal and state discrimination laws. SANDAG's Third Party Complaint Procedures are available at [www.sandag.org/legal](http://www.sandag.org/legal) and should be utilized in the event a person believes this Ordinance is being applied in a discriminatory manner. SANDAG is forbidden from operating transit services by state law. The transit operators are responsible for transit operations. Persons who believe they have been subjected to discrimination by a transit operator should contact the transit operator directly for assistance.

SANDAG shall:

- 12.2.1** — Ensure that each transit operator submits monthly counts by category for all fare products subject to regional revenue distribution.
- 12.2.2** — Distribute monthly the proportion of revenues from all regional fare media in accordance with Exhibit 1.
- 12.2.3** — Prepare a yearly summary of passes, tokens, and ticket riders (by transit operator).
- 12.2.4** — Fund and administer the design and printing of all regional passes, tokens, and tickets. The design of which shall be subject to approval by the transit operators.
- 12.2.5** — Fund the regional prepaid fare program encompassing the distribution and sales reconciliation of all fare products subject to regional revenue distribution.
- 12.2.6** — Prepare monthly summaries of *TransNet* local transportation sales tax subsidies for *S/D/M* and Youth Passes, or any other local jurisdiction subsidy by the end of the month.
- 12.2.7** — Prepare monthly summaries of regional fare products that include all ticket revenue distribution, including subsidies, and shall submit a copy of these data, SANDAG summary counts, and allocation percentages to each transit operator.
- 12.2.8** — Keep a separate fund for all pass and ticket sales revenue received.
- 12.2.9** — Distribute monthly, within ten working days from the first of the month, to each transit operator its portion of regional fare products in accordance with Exhibit 1.
- 12.2.10** — Bill local jurisdictions monthly for any subsidy payments that may result from a reduced price Monthly Pass program established by that jurisdiction and apportion such revenue to the appropriate transit operators.

## **12.3 Vendor Commissions**

~~SANDAG may at its discretion enter into commercial agreements for the sale of transit fare products by third parties and such agreement may allow the vendor to earn a commission on the sale of products. The commission paid to any vendor may not exceed an aggregate of five percent of total product sales.~~

**SECTION 13: TRANSIT OPERATOR RESPONSIBILITIES**

- ~~13.1~~ Each transit operator shall determine pass riders by category and a daily record shall be maintained and kept on file for a one-year period. Such records shall be made available to SANDAG at its request.
- ~~13.2~~ Each transit operator shall prepare a monthly summary of pass riders by category and route, where applicable, using the formula in Exhibit 1.
- ~~13.3~~ Each transit operator shall permit SANDAG to be the decision maker in case of questions regarding pass counts, and SANDAG shall justify its decision to the transit operator(s) in writing.

**SECTION 134: EFFECTIVE DATE OF ORDINANCE OR AMENDMENTS**

This Ordinance shall go into effect on ~~August 25, 2014~~ January 20, 2012. Notwithstanding Board Policy No. 004: Rules of Procedure for Board of Directors and Committees, all amendments shall go into effect not less than ~~fifteen~~ thirty days after the second reading and approval of the Board of Directors, unless approved in accordance with Board Policy No. 004 as an urgency measure.

PASSED AND ADOPTED this ~~25th of July 2014~~ 16th of December 2011.

CHAIRPERSON \_\_\_\_\_ ATTEST: \_\_\_\_\_ SECRETARY \_\_\_\_\_

Member Agencies: Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, Vista, and County of San Diego.

**ADVISORY MEMBERS:** California Department of Transportation, Metropolitan Transit System, North County Transit District, Imperial County, U.S. Department of Defense, San Diego Unified Port District, San Diego County Water Authority,  
Southern California Tribal Chairmen's Association, and Mexico.

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, Clerk of the Board of SANDAG, do hereby certify that the foregoing is a true copy of an Ordinance adopted by the SANDAG Board of Directors on 25th of July 2014 ~~December 16, 2012~~, at the time and by the vote stated above, which said Ordinance is on file in the office of SANDAG.

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
Clerk of the Board

**Exhibit 1**

**REVENUE SHARING AGREEMENTS**

REGIONAL MONTHLY PASS  
REVENUE ALLOCATION FORMULA

PROCEDURE DESCRIPTION

This formula shall be applied to all Regional Monthly Passes sold. The Premium Express passes are not part of the formula except that five percent of the total revenue from the Premium Express Passes is retained for the region and combined with the Regional Monthly Pass revenue. (The five percent rate represents the transfer rate on the Premium Express routes that accept the Premium Express passes. MTS keeps all the remaining Premium Express Pass revenue.) The base pass revenue is then allocated to each transit operator that accepts the Regional Monthly Pass based on the revenue the transit operator's percentage of Regional Monthly Pass boardings for all adult passes.

PASS REVENUE ALLOCATION PROCEDURES

Step 1

- 1a. ~~The total number of Regional Monthly Adult passes sold x current price + five percent of Premium Express Adult Monthly pass revenue = Monthly Pass base revenue.~~
- 1b. ~~The total number of Regional Monthly Pass riders on all routes operated by transit operator "x" / the total number of Regional Monthly Pass riders on all routes operated by all transit operators = proportion of Regional Monthly Pass base revenue allocated to transit operator "x."~~
- 1c. ~~1a x 1b = Current Price of Regional Monthly Pass base pass revenue allocated to transit operator "x."~~

Step 2

- 2a. ~~All Premium Express Monthly Pass revenue (minus the five percent included in the current Regional Monthly Pass base) is allocated to MTS.~~

Step 3

3. ~~Any interest accrued by SANDAG as a result of the holding of Regional Monthly Pass revenues before allocation to the transit operators shall be paid to the operators.~~

REGULAR AND PREMIUM REGIONAL DAY PASS  
REVENUE ALLOCATION FORMULA

PROCEDURE DESCRIPTION FOR REGIONAL DAY PASS

I. ~~Applicability~~

~~This fare revenue allocation formula is applicable only to Regional Day Passes used by passengers that cross the boundary between the MTS and NCTD service areas. Regional Day Passes are passes that may be used on regular MTS and NCTD bus services (not Rural or Premium services), the SPRINTER and the Trolley. When conducting the revenue allocation formula calculations SANDAG shall treat multiple day Regional Day Passes in the same manner as a single day Regional Day Pass. Each transit operator shall retain 100 percent of revenue earned from the sale of day passes used exclusively on services within their own service area.~~

II. ~~Regional Day Passes~~

~~1. At least once every year SANDAG shall conduct a survey of Regional Day Pass use on bus routes that cross the transit service area boundary between MTS and NCTD. The survey shall be conducted during the school year. Each transit operator shall retain 100 percent of the revenue earned from the sale of Regional Day Passes within their service area onboard buses and at ticket vending machines unless the following conditions occur as determined by the SANDAG survey:~~

- ~~a. The number of Regional Day Passes purchased in the NCTD service area and used on MTS services exceeds by more than ten percent the number of Regional Day Passes sold in the MTS service area and used on NCTD services; **or**~~
- ~~b. The number of Regional Day Passes purchased in the MTS service area and used on NCTD services exceeds by more than ten percent the number of Regional Day Passes sold in the NCTD service area and used on MTS services; **and**~~
- ~~c. If the ten percent margin is exceeded and there is a difference of more than 25 passes per weekday between the number of passes sold on each system, the revenue from the number of passes in the imbalance shall be shared equally between the two transit operators. The number of day passes used annually shall be calculated by SANDAG based on the ratio of Regional Day Passes to other fares and applied to the annual ridership of the services that cross the boundary between the MTS and NCTD transit service areas. If the ten percent margin is exceeded and there is a difference of less than 25 passes, then no revenue sharing shall be required.~~
- ~~d. Any interest accrued by SANDAG as a result of the holding of Regional Day Pass revenues before allocation to the transit operators shall be paid to the operators.~~

PROCEDURE DESCRIPTION FOR REGIONAL PREMIUM DAY PASS

The total number of Premium Day Passes issued by MTS and NCTD shall be collected and verified.

Each boarding on a MTS bus or NCTD bus with a Premium Day Pass shall be recorded and the total number of boardings shall be reported to SANDAG.

A monthly survey of Trolley riders and a quarterly survey of SPRINTER riders shall be conducted using the statistical procedures developed by SANDAG. From this survey the monthly or quarterly number of Premium Day Pass passengers shall be determined.

The NCTD percentage share of Day Pass revenue shall be calculated by dividing the number of NCTD Premium Day Pass boardings by the total (MTS + NCTD) number of boardings each reporting period. The MTS percentage share of Day Pass revenue shall be calculated by dividing the number of MTS Premium Day Pass boardings by the total (MTS + NCTD) number of boardings each reporting period.

The total revenue from the distribution of all Premium Day Passes shall be determined by adding the revenue received from one day Premium Day Passes. The revenue allocation for MTS shall be the total revenue times the percentage of Premium Day Pass Boardings on MTS. The revenue allocation for NCTD shall be the total revenue times the percentage of Premium Day Pass Boardings on NCTD.

Any interest accrued by SANDAG as a result of the holding of Premium Day Pass revenues before allocation to the transit operators shall be paid to the operators.



SENIOR/DISABLED/MEDICARE AND YOUTH  
PASS REVENUE ALLOCATION FORMULA

- ~~1. The total number of pass riders (by category) on all routes operated by transit operator "x," divided by the total number of pass riders (by category) on all routes operated by all transit operators equals the proportion of pass revenue (by category) allocated to transit operator "x."~~
- ~~2. Any interest accrued by SANDAG as a result of the holding of Senior/Disabled/Medicare and Youth Pass revenues before allocation to the transit operators shall be paid to the operators.~~

JUROR PASS REVENUE SHARING

~~Revenues from the sale of Juror Passes shall be shared as provided in the Memorandum of Understanding for the Juror Pass Program among the courts, the transit operators, SANDAG, and sponsors.~~

~~Any interest accrued by SANDAG as a result of the holding of Juror Pass revenues before allocation to the transit operators shall be paid to the operators.~~

TOKEN PROGRAM

TOKEN REVENUE ALLOCATION

1. ~~The monthly token boardings for all participating transit operators will be calculated by the actual tokens sold.~~
2. ~~All tokens received will be reported to SANDAG monthly.~~
3. ~~All token sales revenue will be remitted to SANDAG.~~
4. ~~Transit operators shall sort tokens from other currency and deliver them in a sealed envelope to SANDAG on a monthly basis for reimbursement. The envelope should be marked on the outside with the transit operator name and the number of tokens enclosed. SANDAG will reimburse the transit operator for each token submitted based on the calculated value of each token at the time of sale using a first in first out methodology. SANDAG will reimburse transit operators following submittal of tokens in the monthly distribution report.~~
5. ~~Any interest accrued by SANDAG as a result of the holding of Token revenues before allocation to the transit operators shall be paid to the operators.~~

~~COASTER REVENUE SHARING AGREEMENT~~

~~Five percent of net COASTER Revenue, including single tickets, round-trip tickets, and Monthly Passes shall be allocated by NCTD to MTS.~~

~~NCTD shall advise SANDAG of the total COASTER net revenue and pay 5 percent to SANDAG. Direct payments to participating agencies (i.e., Trolley for special event coordination) shall be deducted from the 5 percent net revenue submitted to SANDAG. Based on the data provided by NCTD, SANDAG shall forward the 5 percent share to MTS once each year in the year end distribution (June).~~

~~MTS shall have the responsibility for allocating the revenue to the transit operators within the MTS organization. SANDAG will direct the funds based on the MTS allocation. SANDAG will conduct a survey at least every three years of COASTER transfers patterns. MTS may elect to use the survey of transfer patterns to determine how the COASTER revenue is allocated among transit operators.~~

~~Any interest accrued by SANDAG as a result of the holding of COASTER revenues before allocation to the transit operators shall be paid to the operators.~~



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## Agenda Item No. 31

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

September 18, 2014

#### SUBJECT:

AMENDED AND RESTATED MTS-BNSF-NCTD SAN DIEGO SUBDIVISION SHARED-  
USE AGREEMENT (KAREN LANDERS)

#### RECOMMENDATION:

That the Board of Directors:

- 1) Approve the Amended and Restated Shared-Use Agreement between MTS, Burlington Northern Santa Fe (BNSF), and North County Transit District (NCTD), in substantially the same format as Attachment A; and
- 2) Authorize the Chief Executive Officer and/or the General Counsel to make minor, non-material changes to the document prior to execution by all parties.

#### Budget Impact

None.

#### DISCUSSION:

On October 30, 1992, MTS, NCTD, and six other agencies from Orange, Los Angeles, and Riverside counties entered into a purchase agreement with the Atchison, Topeka and Santa Fe Railway Company (ATSF) for certain railroad lines and property located in these counties.

Concurrent with that purchase agreement, ATSF entered into a Shared-Use Agreement with the respective purchasing agencies. The Shared-Use Agreement set forth the terms and conditions for the joint use of the newly purchased rail lines between freight and passenger rail operations. ATSF was later purchased by the Burlington Northern Santa Fe Railway (BNSF) making BNSF a party to the Shared-Use Agreement.



The Shared-Use Agreement between MTS, NCTD, and BNSF pertains to the rail alignment between Oceanside and Escondido, which is known as the Escondido Subdivision, and the rail alignment south of Orange County to San Diego along the coast, which is known as the San Diego Subdivision. NCTD owns the Escondido Subdivision property. For the San Diego Subdivision property, NCTD owns the right-of-way from Oceanside to Del Mar. MTS owns the right-of-way from Del Mar to Santa Fe Depot.

The Shared-Use Agreement for these subdivisions identified the following key elements:

1. Operations, including the prioritization of passenger operations during peak-commuter hours.
2. Maintenance responsibilities that include an annual payment from BNSF for its share of the costs.
3. Facilities and construction.
4. Easements that continue to allow BNSF to provide quality freight-rail service.
5. Insurance and indemnification.
6. Rights and responsibilities.
7. Cost allocations.

MTS, NCTD, and BNSF have amended the original Shared-Use Agreement several times with the last amendment executed on June 29, 2004.

The amendments to the Shared Use Agreement in today's proposed action are intended to address two major deficiencies in the original agreement. First, the Restated Shared-Use Agreement revises and clarifies the liability and indemnification provisions between the parties. The current language is confusing and does not logically assign risk to the party best able to control for or mitigate against that risk. Second, the current agreement reflects MTS and NCTD's joint obligations towards BNSF, but does not discuss MTS and NCTD's obligations to each other. The amended agreement formalizes the past practices of MTS and NCTD and also institutes a new requirement for NCTD and MTS to cooperate and coordinate project planning in the San Diego Subdivision to minimize impacts to each agency or conflicts with future projects.

The Restated Shared-Use Agreement includes the following key changes:

1. Coordination of Capital Improvements and Specified Maintenance Projects: The agreement specifies a protocol for NCTD and MTS staff coordination for capital projects and maintenance activities on the MTS-owned portion of the San Diego Subdivision. The new Standard Operating & Maintenance Procedure for projects led by MTS or NCTD is attached (Attachment B).
2. Derailments: Under the Restated Shared-Use Agreement, BNSF is responsible for the actual costs due to derailment or damage to BNSF property when the derailment does not involve an NCTD or MTS train, and the derailment is not in whole or in part caused by the condition of the tracks or the property. In the

event that the derailment is in part caused by this condition of the tracks, then BNSF and MTS proportionately share in the costs.

3. Allocation of Liability: Under the Restated Shared-Use Agreement, the allocation of liability is much more precise than the allocation set out in the original Shared-Use Agreement. For example, under the original Shared-Use Agreement, in most instances regardless of the party at fault, NCTD and MTS are required to indemnify and hold harmless BNSF for the first \$10 million of liability in a single occurrence. Thereafter BNSF is liable for the next \$10 million to \$85 million incurred by BNSF and MTS/NCTD indemnifies and holds harmless BNSF for any portion of liability that exceeds \$85 million. Under the Restated Shared-Use Agreement, MTS, NCTD, and BNSF are solely responsible for the damages to their respective parties and for third-party losses caused by their respective operations. Allocation of joint liability involving two or more parties is expressly established in the Restated Shared-Use Agreement.
4. Additional Maintenance Payment: Under the Restated Shared-Use Agreement, BNSF will pay annually to NCTD an additional \$337,500 from 2014 to 2018 for track (other than freight tracks) and freight rail facilities maintenance. This will bring the annual maintenance payment for FY 14 to \$6,355,356. NCTD currently maintains the heavy rail tracks and charges a pro-rated portion of these costs back to BNSF. The additional payment under this provision was negotiated between NCTD and BNSF.
5. Insurance: NCTD and BNSF shall each be insured for general liability coverage for up to \$200 million. MTS shall be insured for general liability coverage for up to \$75 million. This limit matches MTS's current excess coverage.
6. Good-Faith Negotiations: All parties agree to continue periodic good-faith negotiations related to future passenger and/or freight-rail expansion needs.

The Amended and Restated Shared-Use Agreement does not alter BNSF's right to maintain "quality rail freight service" or provide any designated priority of passenger service or station space between MTS and NCTD.

For the reasons set forth, staff recommends that the Board approve the Amended and Restated Shared-Use Agreement between MTS, BNSF, and NCTD. The Amended and Restated Shared-Use Agreement in Attachment A may be subject to minor, non-material changes before execution by all parties. Today's action would authorize the Chief Executive Officer and/or the General Counsel to make such changes.

  
Paul C. Jablonski  
Chief Executive Officer

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

Attachment: A. Amended and Restated Shared Use Agreement  
B. Standard Operating & Maintenance Procedure for projects led by MTS or NCTD

## **AMENDED AND RESTATED SHARED USE AGREEMENT**

THIS AMENDED AND RESTATED SHARED USE AGREEMENT (the "Restated SUA") dated as of \_\_\_\_\_, 2014, is entered into by and among BNSF Railway Company (BNSF), a Delaware corporation, the North County Transit District (NCTD) formerly known as the North San Diego County Transit Development Board, a California public agency, and the San Diego Metropolitan Transit System (MTS) also known as the San Diego Metropolitan Transit Development Board, a California public agency, collectively hereafter "the Parties."

### **RECITALS**

- A. Whereas Atchison, Topeka and Santa Fe Railway Company (AT&SF), NCTD and MTS previously entered into that certain document entitled San Diego County Shared Use Agreement ("Original SUA") dated October 28, 1992, regarding the Property (defined below); and
- B. Whereas the Original SUA delineated the rights, duties, and responsibilities of those parties relative to their use of the San Diego Subdivision and the Escondido Subdivision; and
- C. Whereas AT&SF merged into and with BNSF on or about December 30, 1996;
- D. Whereas the Parties entered into a First Amendment to the Original SUA dated October 4, 1993, a Second Amendment to the Original SUA dated October 10, 2000, and a Third Amendment to the Original SUA dated June 29, 2004 (collectively referred to herein as "Amendments to Original SUA"); and
- E. Whereas circumstances and operations have changed since the Original SUA and the Amendments to Original SUA were signed and the Parties now wish to modify, amend, and restate their rights, title, interest and obligations with respect to the Property (as defined below), the shared use of the Property and to accommodate Passenger Rail Service and Rail Freight Service over the Property.

NOW THEREFORE in consideration of the foregoing and the mutual covenants contained herein the parties hereby amend and restate the Original SUA as follows:

### **ARTICLE 1 DEFINITIONS**

The following capitalized terms are used in this Restated SUA and have the meanings set forth below:

- 1.1 "AAR" shall mean the Association of American Railroads.
- 1.2 "Agencies" shall mean collectively NCTD and MTS.



- 1.3 "Agency Rail Service" shall mean any rail (commuter, intercity or light) Passenger Service operated by, or provided under contract for, NCTD or MTS.
- 1.4 "Amtrak" shall mean the National Railroad Passenger Corporation.
- 1.5 "BNSF" shall mean the BNSF Railway Company, the successor by merger of AT&SF.
- 1.6 "BNSF Party" means any one or more of (i) BNSF and its affiliates and subsidiaries and one or more of their officers, directors, employees, agents, customers, tenants, licensees, successors, assignees, or contractors while using, or on, the Property in connection with performing duties of any kind for BNSF including, among others, performing duties relating to or arising under this Restated SUA; (ii) persons (other than an NCTD Party or MTS Party) receiving services of BNSF involving use of the Property or using the Property under authority of or by agreement with BNSF; (iii) any "BNSF Party," at or proximate to a Passenger Station used in Passenger Service who is struck by equipment or cargo of a BNSF Train on tracks at or adjacent to a Passenger Station; or (iv) any passenger on a BNSF business and excursion trains.
- 1.7 "BNSF Train" shall mean any freight rail vehicle, locomotive, business or excursion train operated by a BNSF Party.
- 1.8 "Burdened Portion of the Property" shall mean the portion of the Property encumbered by the Reserved Rail Freight Service Easement.
- 1.9 "Construction Index" shall mean the index of changes in material prices, wage rates and supplements combined, excluding fuel, as reported in the AAR Railroad Cost Index, Quarterly Indexes of Charge Out Prices and Wage Rates (West). An example illustrating the adjustment is set forth in Exhibit "A," attached hereto and by this reference incorporated herein.
- 1.10 "Dangerous Materials Cars" shall mean all BNSF freight cars containing explosives, radioactive materials, etiologic agents, flammable or toxic liquids or gases, combustible liquids, oxidizing or corrosive materials, compressed gases, or materials that could form toxic gases or liquids.
- 1.11 "Environmental Loss or Damage" shall mean any loss, cost (including, without limitation, any cost of remediation), claim, damage, liability, disbursement, expense, or monetary settlement, of any kind or nature, whether foreseeable or unforeseeable, arising out of or in relation to the release of Hazardous Materials.
- 1.12 "Escondido Subdivision" shall mean that portion of the tracks on the Escondido Subdivision Property from the Oceanside Transit Center extending eastbound to Third Street and Quince Street in Escondido from mile post 99.3 to 121.6.
- 1.13 "Escondido Subdivision Property" shall mean the portion of the Property described in Exhibit "B," attached hereto and by this reference incorporated herein.
- 1.14 "First Priority" means that as to a train or class of trains to which such priority is accorded under this Restated SUA, (i) such train shall not be stopped or delayed by the dispatcher in order to accommodate the operation or movement of a train of another class, whether operating in the same or opposing direction, and (ii) the dispatcher will

ensure that the train of another class will be in the clear so that the train with first priority will in no case be stopped or delayed by the train of another class. As used herein, a train of another class is one as to which another train holds first priority.

- 1.15 "FRA" shall mean the Federal Railroad Administration.
- 1.16 "Free of Charge" shall mean no rental charge or other compensation for ownership interest ever shall be due from the using or named party (or its customers), but it shall not preclude charges for maintenance, capital improvements and other expenses as set forth in this Restated SUA.
- 1.17 "Freight Rail Facilities" shall mean all Freight Track and other rail freight loading or unloading facilities and rail freight weighing scales used in the ordinary course of business exclusively for Rail Freight Service.
- 1.18 "Freight Track" shall mean any Track which, at the time in question, is used in the ordinary course of business, exclusively for Rail Freight Service, including without limitation, rail lines to shippers and receivers.
- 1.19 "Hazardous Materials" shall mean any chemical, material or substance that is now, or at any time during this Restated SUA or the Original SUA was, regulated or governed by any law pertaining to explosives, radioactive materials, etiologic agents, flammable or toxic liquids or gases, combustible liquids and materials, oxidizing or corrosive materials, compressed gases, or materials that could form toxic gases or liquids or any other material which, when released, would cause significant physical ecological damage.
- 1.20 "Loss or Damage" shall mean all fines, penalties, damages (including, without limitation, punitive damages), claims (formal or informal), actions, judgments, suits, liability, cost, injuries, deaths, losses, fees, charges, cleanups, removals and remediations of non-Hazardous Materials, requirements and expense of every character (including, without limitation, amounts paid under any State or Federal workers compensation law, and including all expenses and attorneys' fees incurred in the investigation, defense or settlement of any actual or threatened legal proceeding), incident or related to loss or destruction of or damage to property (including real property and improvements thereon, and personal property, including injury or death to animals, and including property of the Parties and of Third Parties) and injury to and death of persons (including officers, directors, agents, employees, contractors, invitees, customers, or patrons of the Parties, and Third Parties) arising from the performance under or existence of this Restated SUA or the Parties' respective use of, or activities on, the Property and those activities or occurrences at or proximate to (i) an NCTD Station or MTS Station, or (ii) other areas subject to a lease, license, easement or other right from time to time granted by BNSF, NCTD or MTS; provided that Loss or Damage does not include Environmental Loss or Damage.
- 1.21 "LRV" shall mean a light rail vehicle.
- 1.22 "Knowledge" shall mean, with respect to any party to this Agreement, and with respect to any issue or portion of the Property under this Restated SUA, the actual knowledge of such party's officers or supervisory employees with supervisory responsibility for such issue or portion of the Property.

- 1.23 "Major Safety Incident" shall mean a death or serious injury to a person or persons.
- 1.24 "MTS" shall mean the San Diego Metropolitan Transit System also known as the San Diego Metropolitan Transit Development Board.
- 1.25 "MTS Party" means any one or more of: (i) MTS and its affiliates and subsidiaries and their officers, directors, employees, agents, or contractors, including any MTS contractor while on, adjacent to or using the Property; or while performing any duties related to or arising under this Restated SUA or related to the Property; (ii) any passenger of an MTS Train while the passenger is on a MTS Train owned or operated by MTS, or its agents or contractors; or (iii) any other person boarding, alighting or riding an MTS Train, or at or proximate to (x) a MTS Station, and/or (y) other areas subject to a lease, license, easement or other right from time to time granted by MTS.
- 1.26 "MTS Station" means a station operated and/or maintained by an MTS Party on the Property for the purpose of boarding and alighting passengers, as listed in Exhibit "C," attached hereto and by this reference incorporated herein. Exhibit "C" shall be modified, as a ministerial matter, to include those stations if and when they are constructed. For stations with multiple platforms used by each party, "MTS Station" shall only refer to the platforms serving MTS passengers. For example, at Old Town Transit Center and Santa Fe Depot, "MTS Station" shall not refer to the Amtrak or COASTER platforms at such stations.
- 1.27 "MTS Train" shall mean a light rail vehicle or train owned or operated by or for an MTS Party.
- 1.28 "NCTD" shall mean the North County Transit District.
- 1.29 "NCTD Party" shall mean any one or more of: (i) NCTD, Amtrak, Metrolink and their affiliates and subsidiaries and their officers, directors, employees, agents, customers, or contractors, including any NCTD contractor while on, adjacent to or using the Property; or while performing any duties related to or arising under this Restated SUA or related to the Property; (ii) any passenger of a NCTD Train while the passenger is on an NCTD Train owned or operated by NCTD, Amtrak, their agents or contractors; or (iii) any other person (other than a BNSF Party or MTS Party) boarding, alighting or riding an NCTD Train, or at or proximate to (x) an NCTD Station, and/or (y) other areas subject to a lease, license, easement or other right from time to time granted by NCTD.
- 1.30 "NCTD Station" shall mean any station operated and/or maintained by an NCTD Party on the Property for the purpose of boarding and alighting passengers, as listed in Exhibit "C," attached hereto and by this reference incorporated herein. Exhibit "C" shall be modified, as a ministerial matter, to include those stations if and when they are constructed. For stations with multiple platforms used by each party, "NCTD Station" shall only refer to the platforms serving NCTD passengers. For example, at Old Town Transit Center and Santa Fe Depot, "NCTD Station" shall refer to the Amtrak or COASTER platforms at such stations.
- 1.31
- 1.32 "NCTD Train" shall mean a passenger, commuter, intercity or light rail vehicle, Diesel Multiple Unit (DMU) or other train owned or operated by or for an NCTD Party.

- 1.33 "Parties" shall mean BNSF, NCTD and MTS collectively.
- 1.34 "Passenger Service" shall mean all forms of transportation operated by NCTD or MTS (or any entity that contracts with NCTD or MTS to provide these services) for the purpose of moving or transporting people, and shall be exclusive of freight.
- 1.35 "Passenger Station" shall mean an MTS Station and/or NCTD Station.
- 1.36 "Property" shall mean the Escondido Subdivision Property and the San Diego Subdivision Property collectively, as depicted in Exhibit "D".
- 1.37 "Quality Rail Freight Service" shall mean efficient and reliable rail freight service to BNSF's current and future customers, with service and schedules that are competitive with other freight railroads serving Southern California including the rail haul portion of intermodal service offered by those other railroads in Southern California, but without reference to cost.
- 1.38 "Rail Freight Service" shall mean the operations and activities permitted under the Reserved Rail Freight Service Easement.
- 1.39 "Reserved Rail Freight Service Easement" shall mean that exclusive and permanent rail freight service easement reserved by BNSF's predecessor in the grant deed attached hereto as Exhibit "E," attached hereto and by this reference incorporated herein.
- 1.40 "Restricted Freight Periods" shall mean (a) between 5:30 a.m. and 8:30 a.m. and between 4:00 p.m. and 7:00 p.m. for all portions of the Property south of Milepost 225.1 at Fallbrook Junction and (b) between 4:30 a.m. and 8:00 a.m. and 4:00 p.m. and 7:30 p.m. for all portions of the Property north of Milepost 225.1 at Fallbrook Junction, and for all portions of the Property within the Escondido Subdivision, shall mean between the hours of 3:30 a.m. and 9:30 p.m., and shall not exceed 5 nights per week, which nights are Sunday Night through Thursday Night (allowing NCTD to operate late passenger train service on Friday and Saturday nights), subject to adjustment as provided in Section 4.2 (b) and (c).
- 1.41 "San Diego Subdivision" shall mean that portion of the tracks on the San Diego Subdivision Property from the southern border of Orange County/San Diego County boundary line to the south end crossing at Broadway in the City of San Diego from approximately mile post 207.4 to mile post 267.7.
- 1.42 "San Diego Subdivision Property" shall mean the portion of the Property described in Exhibit "F," attached hereto and by this reference incorporated herein.
- 1.43 "Schedule" shall mean to appoint a time for the departure and/or arrival of BNSF Trains, NCTD Trains, MTS Trains on the track at origin, principal intermediate points and destinations which information shall be specified in a document which contains the intended times of operation of BNSF Trains, NCTD Trains, MTS Trains on the tracks and which document shall not be changed more often than quarterly, except where agreed in writing by all Parties hereto; and also shall mean such document.

- 1.44 "Terminal Tracks" shall mean (i) sidings or other tracks, or (ii) industry tracks or team tracks, upon which the Parties mutually agree.
- 1.45 "Timetable" shall mean AT&SF's Timetable No. 2 effective 12:01 a.m., Sunday, April 7, 1991, as set forth in Exhibit "G", attached hereto and by this reference incorporated herein.
- 1.46 "Third Party" or "Third Parties" shall mean any person(s) and/or entities other than a BNSF Party, MTS Party and/or NCTD Party.
- 1.47 "Tracks" shall mean all rails, tracks (including without limitation passing tracks and sidings), turnouts, crossovers, interlocking devices and plants that are located now or in the future on the Property, except such tracks used exclusively for light rail passenger services by MTS or its operator.
- 1.48 "Train" shall mean one or more locomotive units and cars, if any, attached thereto but shall not include LRVs operated by MTS or its operator.
- 1.49 "Train-Mile" shall mean the movement of a train, whether or not revenue generating, over a one mile distance on the Tracks.

## **ARTICLE 2**

### **BNSF RESERVED RAIL FREIGHT EASEMENT**

#### **2.1 Rail Freight Service Easement.**

- a. BNSF shall have the right to operate Rail Freight Service (but no other service or use) in the exercise of the rights reserved by BNSF (as successor in merger to AT&SF) in the Reserved Rail Freight Service Easement.
- b. BNSF shall retain for itself and others access to the Property to the extent and as described with particularity in the license granted pursuant to the provisions of Section 1(a) of the Reserved Rail Freight Service Easement. This right of access shall not be deemed to require the Agencies to take any actions or expend any funds to enable others to exercise such right of access and such access shall not more than minimally interfere with Agency Rail Service operations. In addition, BNSF has assigned to the Agencies the benefit of any and all indemnities available to BNSF under any existing contracts as of the date of the Original SUA with any agency, contractor, freight shipper or freight receiver permitting such party access to the Property, or in the absence of such assignment being effective, will indemnify the Agencies for liability for injury or death of such persons or damage to property not involving an NCTD Train or MTS Train to the extent of any indemnification available to BNSF under such contracts. With respect to contracts after the date of the Original SUA permitting such access, BNSF shall require indemnification of both BNSF and the Agencies for liability for injury or death of such persons or damage to property to the fullest extent BNSF is indemnified by such third party, or in the absence of obtaining such contractual indemnification, BNSF will indemnify the Agencies to the extent BNSF is indemnified by such third party.

- c. BNSF shall have any and all rights, duties, responsibilities and obligations arising under the Interstate Commerce Commission Termination Act which require BNSF to serve its existing and any future rail freight shippers, it being understood and agreed that nothing set forth herein or in the Reserved Rail Freight Service Easement shall be construed to obligate, permit, or require the Agencies to assume, adopt, or acquire any duties, liabilities, responsibilities or obligations to provide any Rail Freight Service to any current or future freight shippers or freight receivers of BNSF.
  - d. BNSF shall have no right to operate a BNSF Train over any portion of the Property with respect to which BNSF has abandoned its common carrier rail freight service obligations.
- 2.2 No Fees for Shared Use. The use of the Property by BNSF under the Reserved Rail Freight Service Easement and this Restated SUA shall be Free of Charge to BNSF.
- 2.3 Ownership. Subject to Section 5.1 (b), NCTD shall own all Tracks and other improvements on the Property, including without limitation improvements constructed on the Property at the cost and expense of BNSF from Milepost 207.4 to Milepost 245.6, and the Escondido Subdivision. Subject to Section 5.1 (b), MTS shall own all Tracks and other improvements on the Property, including without limitation improvements constructed on the Property at the cost and expense of BNSF from Milepost 245.6 to Milepost 267.7. Nothing in this Restated SUA shall be construed as granting or reserving to BNSF any interest or right in the Property, the Tracks, the Freight Rail Facilities, or other improvements on the Property other than the rights expressly provided herein or in the Reserved Rail Freight Service Easement.
- 2.4 Track Agreements between BNSF and Shippers. Subject to Section 7.10, BNSF, in its sole discretion and at its sole cost and expense, may enter into agreements directly with shippers or receivers governing the construction, use and maintenance of new and existing industry Tracks for Rail Freight Service, provided that (a) such agreements do not more than minimally interfere with Agency Rail Service and (b) such agreements have been approved by the Agencies, such approval not to be unreasonably withheld or delayed. As between BNSF and the Agencies, BNSF's payment to Agencies for the costs of construction and maintenance of new and existing industry Tracks for Rail Freight Service shall be as provided by Sections 6.3 and 7.6 as more fully set forth below.

### **ARTICLE 3 OPERATIONS**

- 3.1 General.
- a. BNSF shall be responsible for providing and operating Rail Freight Service on the Property. The Agencies shall be responsible for providing and operating Passenger Service on the Property.
  - b. BNSF and the Agencies shall comply with:
    - (i) all federal, state or local laws, regulations or rules applicable to their respective operations on the Tracks;

- (ii) a code of operating rules promulgated by the Agencies; and
    - (iii) all of the Agencies' timetables, general orders, bulletins, and other standards relating to such operation, maintenance, condition, inspection, testing, or safety, which timetables, general orders, bulletins and other standards shall be provided in writing to BNSF by the Agencies. In promulgating the operating rules, general orders, bulletins and other standards, the Agencies shall treat BNSF fairly.
  - c. No party shall have any responsibility for inspecting, maintaining, servicing, or repairing any Trains, LRVs, or rolling stock operated or used by any other party to this Restated SUA.
- 3.2 Personnel. The Parties shall provide competent employees to operate their Trains and LRVs on the Property and the Agencies shall provide competent employees to maintain the Property. The Agencies shall have the right to exclude from the Property, after consultation with BNSF, any employee of BNSF who is in violation of the Agencies' rules, general orders, bulletins or other standards, subject to the terms of BNSF's applicable collective bargaining agreements.
- 3.3 Special Operations Issues.
- a. If a Train of any party becomes stalled or disabled on the Tracks and is unable to proceed or is crippled, or otherwise defective rolling stock is set out from any such Train, then the party whose Train or rolling stock is involved in the incident shall immediately provide notice to the other parties and shall be responsible for promptly furnishing motive power or other assistance necessary to repair or move such Train or rolling stock. If the Train is a BNSF Train or rolling stock and is not promptly removed or repaired, the Agencies shall have the right to repair or remove the BNSF Train or rolling stock and bill BNSF for the costs of this activity as set forth in Article 8, so long as the BNSF Train or rolling stock is not the subject of a federal investigation.
  - b. Whenever any Train requires rerailling, wrecking service, or wrecking train service NCTD shall arrange for such service. The costs for such service are to be borne by the party whose Train requires the service. In the case of any conflict between this payment provision and the payment provisions of Article 8, the provisions of Article 8 shall govern.
- 3.4 Regulatory Approvals. BNSF shall obtain and maintain all applicable federal, state, and/or local and all AAR regulatory approvals as may be required for the conduct of Rail Freight Service on the Property.
- 3.5 Railroad Security. None of the Parties shall have any responsibility to provide security services or measures to protect from theft, vandalism or other damage any property, lading or equipment owned or operated by any other party.
- 3.6 Loading and Unloading of Freight Cars. All BNSF loading and unloading of freight cars on the Property shall be in compliance with all applicable federal, state, and local safety regulations and subject only to the following restrictions:

- a. As to existing Tracks, BNSF shall load and unload freight cars only on Terminal Tracks, in addition:
- (i) Loading and unloading of any boxcar on any Track within twenty feet from any Track used for Passenger Service shall occur only on the side opposite of any Track used for Passenger Service.
  - (ii) Loading and unloading from any open top car or lumber car on any Track shall occur only on a Track located more than twenty feet from any Track used for Passenger Service.
  - (iii) Loading and unloading of Dangerous Materials Cars shall occur only at (1) any location which has been used to load, unload or store Dangerous Materials Cars between June 18, 1990, and June 18, 1992 (which locations are identified in Exhibit "H," attached hereto and by this reference incorporated herein), provided however, that with respect to any such locations that are within fifty feet from any Track used for Passenger Service, or within 250 feet from any NCTD Station or MTS Station, if NCTD and MTS provide an alternative location reasonably acceptable to BNSF, then BNSF shall relocate such loading and unloading of Dangerous Materials Cars to the alternate location, (2) any other Track existing on the date this Restated SUA is signed which is more than 250 feet from any NCTD Station or MTS Station, or (3) on other Tracks as mutually agreed between all Parties.
  - (iv) Loading and unloading of intermodal cars shall be subject to the restrictions that (1) if side loaders are used for loading or unloading, such loading and unloading shall occur only on the side opposite of any Track used for Passenger Service, to the extent necessary to keep such loading or unloading operations at least twenty feet away from any Track used for Passenger Service, and (2) if an overhead crane is used for loading an unloading, such crane shall not be operated within twenty feet of any Track used for Passenger Service.
  - (v) Neither loading nor unloading of freight cars shall occur on the Property in a manner contrary to applicable law or within 250 feet of any grade crossing where such activity would restrict sight distance at that crossing.
  - (vi) With respect to loading or unloading of any type of freight cars not referenced in subsection (i) through (v) above, if NCTD and/or MTS discover safety problems resulting from that loading or unloading, all Parties agree to work together to explore resolution of those problems.
- b. As to Tracks to be constructed in the future, BNSF shall load and unload freight cars only on Terminal Tracks, and further BNSF:
- (i) Shall not load or unload any boxcar, open top car, or lumber car on any Track that is located within twenty feet from any Track used for Passenger Service.



- (ii) Shall not unload into any pit or conveyor system, or load from any chute or conveyor system.
- (iii) Shall not load or unload any Dangerous Materials Cars.
- (iv) Shall not load or unload within 250 feet of any grade crossing where such activity would restrict sight distance at the crossing.
- (v) Loading and unloading of intermodal cars shall be subject to the restrictions that (1) if side loaders are used for loading or unloading, such loading and unloading shall occur only on the side opposite of any Track used for Passenger Service, to the extent necessary to keep such loading or unloading operations at least twenty feet away from any Track used for Passenger Service, and (2) if an overhead crane is used for loading and unloading, such crane shall not be operated within twenty feet of any Track used for Passenger Service.

### 3.7 Storage of Freight Cars.

- a. As to existing Tracks, BNSF's storage of loaded and empty freight cars is restricted as follows:
  - (i) Storage of Dangerous Materials Cars shall occur only at (1) any location which has been used to load, unload or store Dangerous Materials Cars between June 18, 1990 and June 18, 1992 (which locations are identified in Exhibit "H," attached hereto and by this reference incorporated herein), provided however, that with respect to any such locations that are within fifty feet from any Track used for Passenger Service, or within 250 feet from any NCTD Station or MTS Station, if NCTD and MTS provide an alternative location reasonably acceptable to BNSF, then BNSF shall relocate such storage of Dangerous Materials Cars to the alternate location, (2) any other Track existing on the date this Restated SUA is signed which is more than 250 feet from any NCTD Station or MTS Station, or (3) on other Tracks as mutually agreed between all Parties.
  - (ii) BNSF shall comply, at its sole cost and expense, with all customary and appropriate safety and maintenance procedures (including, without limitation, derails).
  - (iii) Freight cars shall not be stored on the Property in a manner contrary to applicable law, or within 250 feet of any grade crossing where such activity would restrict sight distance at that crossing.
  - (iv) If NCTD and MTS believe that storage creates a hazard affecting their operations, at the request of either NCTD or MTS, all Parties shall work together to reduce or eliminate such a hazard in a manner acceptable to all Parties.
- b. As to Tracks to be constructed in the future, BNSF's storage of loaded and empty freight cars is restricted as follows:

- (i) The restrictions set forth in Section 3.7 (a)(ii), (iii) and (iv) shall apply.
- (ii) BNSF shall not store any Dangerous Materials Cars.

3.8 Santa Fe Depot Platform Assignments. NCTD, MTS and BNSF acknowledge that future and expanded Agency Rail Service along the San Diego Subdivision may require changes to the platform assignments given to individual Trains or LRVs at the Santa Fe Depot located at MP 267.7. The Parties agree to work cooperatively to develop a mutually agreeable plan for platform assignments at Santa Fe Depot, and any other station along the San Diego Subdivision, to accommodate Passenger Service in the San Diego County region. The Parties hereto agree that any modifications subject to this Section 3.8 must meet the requirements for Quality Rail Freight Service and Passenger Service including reliability and capacity that currently exist and that any modification must not unreasonably interfere with intercity commuter or freight rail operations.

#### **ARTICLE 4 DISPATCHING AND SCHEDULING**

##### **4.1 Dispatching responsibilities.**

- a. NCTD shall provide dispatching service for all Train movements over the Tracks on the San Diego Subdivision from Milepost 207.4 to Milepost 267.7 and the Escondido Subdivision from Milepost 99.3 to Milepost 121.3. When dispatching NCTD shall give BNSF Trains, NCTD Trains and MTS Trains the priorities set forth in this Restated SUA. MTS shall dispatch MTS Trains operated on the tracks used solely by MTS.
- b. The movement and dispatching of any Trains and rolling stock over the Tracks shall, at all times be subject to the exclusive direction and control of NCTD, and in accordance with such operating rules as NCTD shall, from time to time, institute in accordance with the terms and conditions of this Restated SUA except as set forth in Article 5.
- c. BNSF and MTS shall have the right to monitor, on reasonable notice, NCTD's performance of the dispatching responsibilities under this Restated SUA. If at any time any party asserts that NCTD is not dispatching trains in a reasonably safe and prudent manner consistent with dispatching standards in the industry, the Parties will work together in good faith to resolve any safety concerns by mutual agreement.

##### **4.2 Priorities and Permissible Times of Operation.**

- a. In order to provide safe, reliable, punctual and efficient Passenger Service, all NCTD Trains and MTS Trains shall be dispatched with First Priority over any BNSF Trains. In furtherance thereof, all operating, dispatching and maintenance decisions by NCTD affecting the movement of Trains on the Tracks shall be made in a manner that gives NCTD Trains and MTS Trains First Priority over BNSF Trains, provided however, that at times other than during Restricted Freight Periods, NCTD shall dispatch all BNSF Trains operating on the Property reasonably so as to enable BNSF to conduct Quality Rail Freight Service and to

provide BNSF continued regular access to all yards and freight customers. The relative priority between NCTD Trains and MTS Trains shall be determined solely by NCTD and MTS together. Subject to the foregoing, when dispatching, NCTD shall treat BNSF Trains and MTS Trains fairly with each other and with NCTD Trains. Notwithstanding any other provision in this Section 4.2, BNSF's local Rail Freight Service on the Escondido Subdivision shall be scheduled and operated only during hours that allow NCTD to offer rail service schedules consistent with reasonable market demands and industry standards for Passenger Service, and that assures BNSF of continued ability to provide reasonable Rail Freight Service to its customers.

- b. Except as expressly provided in this Section 4.2 (b), and in Section 4.2 (d) and 4.3 (b), there shall be no Rail Freight Service during Restricted Freight Periods and BNSF shall operate BNSF Trains over the Property only during times other than Restricted Freight Periods. Occasionally if as a result of delay a BNSF Train remains on the line during any Restricted Freight Period, or is operating on the line by special arrangement approved by the Agencies, such Train may be advanced, provided that the dispatcher reasonably can determine that such Train (i) is powered by at least two locomotives and is otherwise adequately powered to maintain freight train timetable speeds, and (ii) will be in the clear at least ten minutes prior to a meet. If such conditions cannot be so determined, then the dispatcher shall hold the BNSF Train at a siding or other location until the end of the Restricted Freight Period. Upon written request by NCTD, BNSF agrees to enter into good faith negotiations with NCTD regarding potential extension of the Restricted Freight Periods, which negotiations would include potential consideration to BNSF for any agreed upon extension and be consistent with Quality Rail Freight Service. However, BNSF has no obligation to agree to any such extension.
- c. NCTD shall have the right, upon reasonable prior written notice to BNSF and MTS, to (i) revise the Restricted Freight Periods for the Property, provided that the total daily duration of the Restricted Freight Periods is not expanded as a result of such revision; and (ii) extend the time for any Restricted Freight Period, up to a maximum of thirty minutes for each morning and each evening Restricted Freight Period at any time after the execution of this Restated SUA, provided that such extension shall not more than minimally impair BNSF's ability to provide Quality Rail Freight Service, as reasonably determined by the Parties. If such extension shall more than minimally impair BNSF's ability to provide Quality Rail Freight Service, NCTD and MTS may not so extend the Restricted Freight Period until such time as sufficient capital improvements have been installed by NCTD and MTS to permit such extended Restricted Freight Periods without more than minimally interfering with BNSF's ability to provide Quality Rail Freight Service.
- d. BNSF may operate one manifest overhead BNSF Train over the portion of the Property north of Milepost 225.1 at Fallbrook Junction during each of the Restricted Freight Periods, to be scheduled by mutual agreement of BNSF and NCTD; provided that the dispatcher reasonably can determine that the freight train (1) is powered by at least two locomotives and is otherwise adequately powered to maintain freight train timetable speeds and (2) will be in the clear at least ten minutes prior to a meet.

#### 4.3 Schedules.

- a. NCTD shall determine the Schedules for NCTD Trains and MTS shall determine the Schedules for MTS Trains and each shall provide such Schedules, and any changes thereto, in a timely manner to BNSF.
- b. BNSF shall provide, in a timely manner to NCTD, Schedules for all BNSF Trains on the Property. NCTD shall have the right to approve BNSF's Schedules for BNSF Trains over the Property, which approval shall not be unreasonably withheld or delayed. Schedules shall comply with the restrictions and principles set forth in this Article 4. Except as set forth in Section 4.2 (d), BNSF will not Schedule any BNSF Trains during the Restricted Freight Period; provided however, if NCTD or MTS is not then using the full Restricted Freight Period for Passenger Service:
  - (i) BNSF may Schedule and operate BNSF Trains during the Restricted Freight Periods up to ten minutes prior to the first scheduled NCTD or MTS Train operating during a Restricted Freight Period or ten minutes after the last NCTD or MTS Train operating during a Restricted Freight Period; and
  - (ii) The dispatcher shall dispatch such BNSF Train according to its Schedule, provided that the dispatcher reasonably can determine that the BNSF Train (1) is powered by at least two locomotives and is otherwise adequately powered to maintain freight train timetable speeds, and (2) will be in the clear at least ten minutes prior to a meet, provided further that if NCTD's and/or MTS' Train Schedules later change, any such BNSF Train shall be rescheduled to comply with the standard set forth in (i) above, and when NCTD and/or MTS fully uses the Restricted Freight Periods, BNSF will neither Schedule nor operate BNSF Trains during such period except as set forth in Section 4.2 (b) or 4.2 (d).

4.4 Conferences. The Parties shall meet periodically to evaluate and discuss scheduling and dispatching over the Property. NCTD shall provide BNSF and MTS appropriate management review tools, including at least monthly route conflict reports, as reasonably necessary to evaluate and discuss scheduling and dispatching performance. Additionally, when in the reasonable opinion of any party there are substantial problems with scheduling and/or dispatching performance over the Property, the Parties shall establish by mutual agreement approaches or mechanisms to reduce the number of instances of route conflicts and to improve the efficiency and reliability of Passenger Service and Rail Freight Service.

#### 4.5 Dispatching Costs.

- a. BNSF shall pay to NCTD \$0.97 per Train-Mile for dispatching costs and operation of communications, signals, and interlockers for BNSF Trains dispatched by NCTD over the Property. Such amount shall be adjusted annually by increases or decreases in the Construction Index, commencing as of April 1, 2014, and each April 1 thereafter, based on the change in such index between

the first quarter of that year and the first quarter of the immediately preceding year, as reported for the most recently published Construction Index.

- b. Bills for such dispatching costs may be submitted no more than once a month for payment as provided in Article 8, and shall contain a statement as to the calculation of such bill (including the number of Train-Miles dispatched) in such reasonable detail as the party receiving such bill may request.

- 4.6 Inapplicability to Light Rail. This Article shall not be applicable to light rail operations of MTS or its operators on tracks used exclusively for MTS Passenger Service.

## **ARTICLE 5 OWNERSHIP AND SAFETY**

### **5.1 NCTD Ownership.**

- a. Except as provided in Section 2.3, the Parties hereto agree and acknowledge that NCTD owns that portion of the San Diego Subdivision and San Diego Subdivision Property from Milepost 207.4 to Milepost 245.6 (commonly referred to as Oceanside to the City of Del Mar) and that NCTD and BNSF operate on this portion of the San Diego Subdivision while MTS has no operations in this area. Additionally NCTD owns the Escondido Subdivision and Escondido Subdivision Property on which MTS has no operations.
- b. The Parties further agree and acknowledge that notwithstanding the provisions in Section 2.3 (a), all capital improvements constructed since the date of the Original SUA and any capital improvements constructed in the future, from Milepost 245.6 to Milepost 267.7, the Escondido Subdivision, constructed by NCTD, by the San Diego Association of Governments (SANDAG) on behalf of NCTD, or any other entity on behalf of NCTD, shall be owned by NCTD, with a contingent ownership interest in federal or state funding agencies, in an amount equal to the value of the improvements that have been made thereto. NCTD agrees and acknowledges that it is solely responsible for any liability and for maintaining and insuring such capital improvements consistent with the requirements established by FRA and/or other agencies providing grant funds for such improvements. The Parties hereto further agree that NCTD shall implement a controlled access program and plan for such facilities to support safety, security and configuration management control in furtherance of the obligations set out in this Restated SUA. NCTD shall work cooperatively to provide designated BNSF and MTS personnel access to such facilities in a timely and efficient manner.

- 5.2 MTS Ownership. Except as provided in Section 2.3, the Parties acknowledge that MTS owns that portion of the San Diego Subdivision and San Diego Subdivision Property from approximately Milepost 245.6 to Milepost 267.7 (commonly referred to as the southern border of the City of Del Mar to the south end of the crossing at Broadway in the City of San Diego) and that NCTD and BNSF operate on the two westerly tracks of this portion of the San Diego Subdivision while MTS operates on the two easterly tracks.

- 5.3 The Parties acknowledge and agree that although MTS and NCTD both operate Passenger Service, that NCTD operates heavy rail vehicles and MTS operates light rail vehicles and that the two forms of Passenger Service are physically separated.
- 5.4 As set forth above, NCTD and not BNSF, has the scheduling and dispatching authority for NCTD Trains and BNSF Trains operating over the San Diego Subdivision on both the portion owned by NCTD as well as the portion owned by MTS.
- 5.5 If MTS believes a Major Safety Incident (MSI), was caused by NCTD's dispatching, operating rules, or general orders, MTS shall notify NCTD of such MSI. The Chief Executive Officer of MTS and the Executive Director of NCTD shall meet and confer regarding the MSI and work together to resolve the concerns of each party.

## **ARTICLE 6 MAINTENANCE AND REPAIR**

- 6.1 Maintenance Responsibilities. NCTD shall have exclusive control over the maintenance and repair of, and shall maintain and repair, the Property, Tracks, Freight Rail Facilities, and other improvements on the Property, except the real property, tracks and improvements (including signals and gates) on the San Diego Subdivision used exclusively for light rail operations by MTS which shall be maintained and controlled exclusively by MTS. Specific to the shared corridor, MP 264.2 Taylor Street to MP 267.5 Broadway, where MTS light rail operations run parallel with passenger train operations that share at grade public crossings, MTS shall be responsible for the signal and gate warning devices for light rail tracks, and NCTD shall be responsible for the signal and gate warning devices for heavy rail tracks. NCTD shall not be required to maintain or repair Tracks on the San Diego Subdivision Property that are not used for Freight Service, Agency Rail Service, or by Amtrak or any other NCTD contracted operator.
- 6.2 Maintenance Standards. The Tracks shall be maintained by NCTD to safe levels consistent with industry practice and applicable law, so as to permit operating speeds at least as high as those in effect in the Timetable at the time the Original SUA was executed. All Freight Rail Facilities shall be maintained and repaired by NCTD to a safe level consistent with industry practice and applicable law for the current classification of such track. NCTD shall have no duty to inspect Freight Rail Facilities and shall only be required to perform maintenance and repair work upon the written request of BNSF. To the extent practicable, all repairs and maintenance shall be performed in a manner that does not more than minimally interfere with BNSF's Quality Rail Freight Service.
- 6.3 Cost and Expense.
  - a. Except as specifically set forth in this Section 6.3, all maintenance and repair costs on the Property shall be paid by the Agencies.
  - b. As its share of maintenance costs for the Tracks (other than Freight Tracks) and Freight Rail Facilities located on the Property, BNSF shall pay NCTD \$6,003,744 per year. Such total amount shall be adjusted annually by increases or decreases in the Construction Index, commencing as of April 1, 2014, and each April 1 thereafter, based on the change in the index the first quarter of that year

and the first quarter of the immediately preceding year, as reported for the most recently published Construction Index. These payments shall be made in advance in equal monthly installments on the fifteenth day of each month commencing on the execution of this Restated SUA. Conditioned on BNSF's understanding that payments made to NCTD by BNSF under this Section 6.3(b) are not reimbursements, and that any information provided by NCTD shall not be used as a basis of payment, upon request by BNSF NCTD shall provide BNSF with non-confidential information describing amounts incurred by NCTD for capital and non-capital maintenance, repair and replacement on the Property. BNSF shall pay NCTD an additional amount equal to \$337,500 each year for maintenance costs for the Tracks (other than Freight Tracks) and Freight Rail Facilities located on the Property for the years 2014 through and including 2018, commencing on January 1, 2014. Additionally, if NCTD constructs new Freight Rail Facilities for BNSF pursuant to Article 7 below, BNSF shall pay an additional annual fee for the maintenance of such facilities, which fee shall be determined by mutual agreement prior to the installation of the facilities by NCTD. BNSF shall also reimburse NCTD for all maintenance costs incurred with respect to any Freight Rail Facilities. NCTD shall provide BNSF with periodic statements for such services.

- c. The provisions of this Section 6.3 (other than payments for maintenance and repair of Freight Rail Facilities) will be subject to renegotiation every 10 years after the execution of this Restated SUA, to adjust upward or downward the maintenance charge prospectively in the event that there is a material change in the number of Car-Miles operated by BNSF on the Property measured from the date of execution of this Restated SUA. Such adjustment shall be based on the principle that BNSF shall pay all increased maintenance costs attributable to increased BNSF Car Miles and shall be entitled to a reduction for all reduced maintenance costs attributable to reduced BNSF Car Miles compared to the BNSF Car Miles. In the event either party desires to enter into negotiations pursuant to this Section 6.3(c) it shall provide written notice to the other party of its intent at least 60 days prior to the 10th anniversary of execution of this Restated SUA, and every 10th year following thereafter.
- d. Except as specified in Section 6.3(e), below, maintenance and repair costs as referenced in this Section 6.3 shall include the costs of replacement of signal facilities, communications facilities, rails, bridges, ties, ballast, drainage and surfacing, where the replacement does not constitute additions or betterments to the Property. The cost of such additions or betterments shall be allocated between the Parties as set forth in Article 7 of this Restated SUA.
- e. In the event of a derailment of a BNSF Train, not involving an NCTD Train or MTS Train and not caused in whole or in part by the condition of the Track or Property, which derailment causes damage to the rails, ties or ballast on the Property, BNSF shall be responsible for the reasonable and actual cost of repairing such rails, ties and ballast provided however, BNSF shall not be responsible for the cost of repairing any passenger related facilities. If the derailment was caused in part by the condition of the Track or Property based on the completion of an independent investigation commissioned by BNSF and NCTD, BNSF and NCTD will share the costs of repairing damage to the rails, ties or ballast in proportionate manner based on the determination of the

forementioned independent investigation, but such determination shall have no bearing on the allocation of other costs of Loss or Damage set forth in this Restated SUA.

6.4 Coordination of Capital Improvements and Specified Maintenance Projects.

Subject to Article 7, NCTD and MTS recognize that the San Diego Subdivision from MP 267.7 to 245.6 may be improved in the future to accommodate trains and or LRVs. It is, therefore, in the best interest of MTS and NCTD to coordinate any Capital Improvement Project (CIP) or significant maintenance activity in a timely manner to avoid and or mitigate potential conflicts and allow for the most efficient and cost effective use of the Property. To accomplish this goal, NCTD and MTS agree to work together on capital improvements and to coordinate significant maintenance activities that are planned between MP 267.7 to 245.6 as follows:

- a. Regional Projects Led by SANDAG. For all projects led by SANDAG between MP 267.7 to 245.6, both MTS and NCTD will be signatories to an Addendum to the Master MOU (MTS Doc. No. G0930.0-04) that specifies project planning, development, and construction and will provide input throughout all phases of the project.
- b. Capital Improvement Projects and Maintenance Activities Led by MTS and or NCTD. With the exception of minor and routine maintenance or repairs, both NCTD and MTS agree to coordinate any CIP, maintenance activity, or any activity that could impact current or future planned operations or construction activities. Both NCTD and MTS agree to develop a detailed Standard Operating & Maintenance Procedure to accomplish this requirement. Any work performed on behalf of NCTD or MTS by a third-party contractor shall be subject to a joint right of entry permit providing insurance and indemnification to both NCTD and MTS.
- c. Projects Sponsored By Third Party Entities. MTS is the primary lead for all capital improvement projects sponsored by Third Party Entities between MP 267.7 to 245.6 and will work with NCTD to coordinate project activities. NCTD will be a co-signatory on all right of entry permits.

**ARTICLE 7  
FACILITIES AND IMPROVEMENTS PROVISIONS**

7.1 General Rights and Responsibilities.

- a. BNSF shall have no right to construct, reconstruct, relocate or remove (or cause to be constructed, reconstructed, relocated or removed) any facilities or other improvements on the Property other than as provided in this Article 7.
- b. Unless otherwise agreed to in writing by the Parties, NCTD and MTS shall perform all construction, reconstructions, relocation or removal of facilities and improvements on the Property. No future improvements on the Property shall, after they are constructed, more than minimally interfere with BNSF Rail Freight Service on such portion of the Property except to the extent that NCTD and/or



MTS operate light rail service on the Escondido Subdivision or on the San Diego Subdivision Property south of the City of Del Mar.

- 7.2 Ownership. Except as otherwise provided in Section 2.3, all existing and future capital improvements on the Property shall be owned by NCTD if located north of the southern border of the City of Del Mar and by MTS if south of the southern border of the City of Del Mar.
- 7.3 Relocation of the Main Line. Neither NCTD nor MTS shall relocate any main line track without BNSF's approval which approval shall not be unreasonably withheld.
- 7.4 Removal of Track. NCTD and/or MTS, after reasonable notice to BNSF and completion by NCTD and/or MTS of any discontinuance or abandonment proceedings required by applicable law, but without compensation to BNSF, may remove, take over or retire from service any Track on the Property used solely or primarily for Rail Freight Service; provided however, that if such Track is actively being used by BNSF for its Rail Freight Service at the time NCTD and/or MTS propose to remove, take over or retire the Track, then NCTD and/or MTS must first construct and provide an equivalent substitute Track for BNSF's use, Free of Charge to BNSF. As used in the foregoing sentence, the phrase "actively being used" shall mean documented use by BNSF within the last twelve months. At NCTD and/or MTS' request, BNSF from time to time shall provide NCTD and/or MTS with track diagrams and documentation showing active Tracks.
- 7.5 Removal of Shipper/Receiver Connection Facilities. As between the Parties, NCTD and/or MTS shall have the right to remove connection facilities and related Tracks on the Property to any freight shipper or receiver (i) with the consent of such shipper or receiver, where such shipper or receiver does not ship or receive any rail freight via such connection facilities over any period longer than twelve months but less than twenty-four months and (ii), without the consent of such shipper or receiver, where such shipper or receiver does not ship or receive any rail freight via such connection facilities over any period more than twenty four months; provided however, if such shipper or receiver seeks through legal process the reinstallation of the connection facilities at BNSF's cost, NCTD and/or MTS shall be afforded the right to defend the claim. If BNSF is subsequently required to reinstall any such removed connection facilities or related Tracks at BNSF's cost, then the party defending the claim shall bear the cost of such reinstallation.
- 7.6 Construction of New Freight Rail Facilities. Subject to restrictions set forth in Sections 3.6 and 3.7 NCTD and MTS shall, at BNSF's request, design and construct new Freight Rail Facilities on the Property in support of BNSF's current or future Rail Freight Service needs at BNSF's sole cost. This construction shall be subject to the prompt approval of the location, design, specifications, and cost of such Freight Rail Facilities by all Parties, provided that such Freight Rail Facilities do not more than minimally interfere with Passenger Service or related activities. If such Freight Rail Facilities would more than minimally interfere with Passenger Service or related activities, then such improvements still may be constructed if BNSF pays the cost of reducing any such interference to more than minimal. In addition to the foregoing, NCTD and/or MTS may withhold or condition consent to proposed Freight Rail Facilities if such party anticipates a specific and identified future use of such portion of the Property that interferes with the proposed freight use. In the absence of restrictions or conditions so imposed by NCTD and/or MTS, should any area over which such new Freight Rail Facilities are located later be

needed for NCTD or MTS Passenger Service, either NCTD or MTS may relocate such Freight Rail Facilities, at that party's cost, to another location that allows BNSF to continue to provide Quality Rail Freight Service to its shippers and receivers. Such relocation shall be subject to BNSF's approval of the location and design of such Freight Rail Facilities, which approval shall not be unreasonably withheld or delayed.

7.7 Signal Improvements. NCTD and/or MTS shall not, without BNSF's approval, initiate any signal improvements that would require BNSF to install cab signals and/or automatic train control in any of BNSF's locomotives, unless required by state or federal law. The Parties will cooperate to develop a mutually acceptable train control system.

7.8 General Cost Allocations.

- a. As between the Parties, BNSF shall be responsible for the entire cost of future capital improvements benefiting only Rail Freight Service.
- b. As between the Parties, NCTD and/or MTS shall be responsible for the entire cost of future capital improvements to the Property benefiting only NCTD and/or MTS Passenger Service (costs may be allocated amongst the Agencies by mutual agreement of the Agencies). In addition, NCTD and/or MTS shall be responsible for the entire cost of adding or upgrading main track sections or switching leads as necessary to commence or continue Passenger Service operations on the Property.
- c. With respect to future capital improvements benefiting all Parties, and not covered by other specific provisions of this Restated SUA, the Parties constructing such capital improvements shall share the cost of such capital improvements in a manner to be determined on a case by case basis.
- d. As between all Parties, NCTD or MTS shall be responsible for the entire costs of any capital improvement that is initiated by that Party that would benefit all Parties if BNSF reasonably would not have made such improvement at the time that such improvement is made, including all capital improvements initiated by either NCTD or MTS (i) made to dispatching and signaling systems, or (ii) made to permit operating speeds higher than those shown in the Timetable for train operations on any segment of the Tracks.
- e. Pursuant to the terms of the Second Amendment to the Original SUA, dated October 10, 2000, the parties agree that BNSF shall not be responsible for any share of the cost of any grade separation projects across, or in any manner over or under any portion of the San Diego Subdivision, the Escondido Subdivision, or both. The Agencies shall pay all costs of any such grade separation projects that are assessed against any and all railroads operating on the San Diego Subdivision, the Escondido Subdivision, or both. The Agencies shall indemnify, defend and hold harmless BNSF from any cost of any kind that is related to any claim that BNSF should pay any portion of the cost of any grade separation project across, or in any manner over or under any portion of, the San Diego Subdivision, the Escondido Subdivision, or both.

- f. Each party shall have the right, exercisable on every fifth anniversary of the execution of this Restated SUA, by giving notice to all other Parties at least 3 months prior, to review and renegotiate future capital improvement allocations.
- 7.9 Amtrak Improvements. Nothing in this Restated SUA shall obligate any party to make or pay for capital improvements requested by Amtrak.
- 7.10 Restriction on Construction of New Freight Rail Facilities. BNSF shall not request NCTD and/or MTS to construct on BNSF's behalf (and neither NCTD and/or MTS shall have any obligation to construct or to allow the construction of) any new Freight Rail Facilities on either side of BNSF's main line track between Old Town, San Diego near Milepost 263.2 and the Miramar Wye track, near Milepost 253.0 (except that BNSF's access to the Miramar Wye shall not be blocked by a light rail line), except with the prior written consent of NCTD and MTS which consent shall not be unreasonably withheld. NCTD and/or MTS may reasonably withhold consent to construction of any such Freight Rail Facilities if the Property in question is being considered as a likely location for a light rail line or related facilities, or such line or facilities already have been constructed thereon.
- 7.11 Miramar Wye and Washington Street Wye Tracks. As provided in Section 1.1(a)(iii) of the Purchase and Sale Agreement dated October 30, 1992 by and between BNSF's predecessor AT&SF, NCTD and MTS (hereinafter "Purchase and Sale Agreement"), NCTD and MTS may, in their sole discretion, provide to BNSF equivalent alternative facilities to the Miramar Wye track and the Washington Wye track, at a location and upon terms and conditions satisfactory to BNSF, in which event BNSF shall relocate its Reserved Rail Freight Service Easement to such alternate facilities. Notwithstanding the above, the Parties acknowledge that effective July 21, 2010, the Department of Navy terminated the agreement with BNSF, eliminating MTS' and NCTD's right to operate on the Washington Street Wye.
- 7.12 Loading Platforms. NCTD and/or MTS may construct and use for Passenger Service and related Passenger Service activities, passenger loading platforms at Passenger Station on the Reserved Rail Freight Service Easement, on the condition that such facilities comply with all standards of the California Public Utilities Commission and applicable FRA regulations. BNSF shall not have the right to require such construction to comply with standards more restrictive than applicable California Public Utilities Commission standards or applicable FRA regulations.

## **ARTICLE 8 BILLING PROCEDURES**

- 8.1 Payment of Bills. Except as provided in Section 6.3(a), within thirty days after BNSF's receipt of a bill for any dispatching, maintenance, capital improvement, clearing derailments or other costs or expenses to be borne by BNSF under this Restated SUA, BNSF shall pay the amount of such bill to the party rendering the bill. If BNSF fails to pay any bill within 30 days after receipt thereof, then such bill shall accrue interest at the rate of 6.5% per year from such thirtieth day until paid. Upon payment of such bill, BNSF shall also pay any accrued interest. Neither the accrual nor payment of interest shall relieve BNSF from the obligation to pay in a timely manner the amount set forth in any bill.

- 8.2 Errors or Disputes. If any portion of the bill is in dispute, BNSF nonetheless shall pay on a timely basis the undisputed portion. No exception to any bill shall be honored, recognized or considered if filed after the expiration of two years from the last day of the calendar month during which the bill is rendered. No bill shall be rendered later than two years after either (i) the last day of the calendar month in which the expense covered thereby is incurred, or (ii) with respect to a project for which a roadway completion report is required or with respect to unliquidated liability claims, then sixty days following the date the amount is settled and/or liability is established.
- 8.3 Books and Records. Each party at a reasonable time, upon reasonable notice and at its own expense, may inspect and/or audit the books, accounts and records of the other Parties, to the extent the same relate to matters covered by this Restated SUA. If any discrepancy is found, the party owing an adjustment shall make settlement within thirty days.

## **ARTICLE 9 LIABILITY**

- 9.1 Allocation of Liabilities for Loss or Damage. The Parties agree that liability for Loss or Damage shall be apportioned as follows:
- a. NCTD shall, as among the Parties, bear all Loss or Damage to an NCTD Party.
  - b. BNSF shall, as among the Parties, bear all Loss or Damage to a BNSF Party.
  - c. MTS shall, as among the Parties, bear all Loss or Damage to an MTS Party.
  - d. When Loss or Damage to a Third Party involves a NCTD Train and does not result from and is not contributed to by an accident, collision, or derailment of a BNSF Train or an MTS Train, such Loss or Damage shall, as among the Parties, be borne exclusively by NCTD.
  - e. When Loss or Damage to a Third Party involves a BNSF Train and does not result from and is not contributed to by an accident, collision, or derailment of an NCTD Train or an MTS Train, such Loss or Damage shall, as among the Parties, be borne exclusively by BNSF.
  - f. When Loss or Damage to a Third Party involves an MTS Train and does not result from and is not contributed to by an accident, collision, or derailment of a BNSF Train or an NCTD Train, such Loss or Damage shall, as among the Parties, be borne exclusively by MTS.
  - g. When Loss or Damage to a Third Party involves an NCTD Train and an MTS Train and does not result from and is not contributed to by an accident, collision, or derailment of a BNSF Train, such Loss or Damage shall, as among the Parties, be borne exclusively by NCTD and MTS and shall not be borne by BNSF. NCTD and MTS shall allocate all such Loss or Damage based upon the following percentages: 50% to NCTD and 50% to MTS.

- h. When Loss or Damage to a Third Party involves a BNSF Train and an MTS Train and does not result from and is not contributed to by an accident, collision, or derailment of an NCTD Train, such Loss or Damage shall, as among the Parties, be borne exclusively by BNSF and MTS and shall not be borne by NCTD. BNSF and MTS shall allocate all such Loss or Damage based upon the following percentages: 50% to BNSF and 50% to MTS.
  - i. When Loss or Damage to a Third Party involves a BNSF Train and an NCTD Train and does not result from or is not contributed to by an accident, collision, or derailment of an MTS Train, such Loss or Damage shall, as among the Parties, be borne exclusively by BNSF and NCTD and shall not be borne by MTS. BNSF and NCTD shall allocate all such Loss or Damage based upon their relative use of the Property as determined by BNSF Train Miles or NCTD Train Miles as a percentage of the aggregate Train Miles operated by BNSF and NCTD on the Property during the previous calendar year.
  - j. When Loss or Damage to a Third Party involves Trains operated by all Parties, such Loss or Damage shall, as among the Parties, be borne by the Parties based upon the following percentages: 33.3% BNSF, 33.3% NCTD and 33.3% MTS.
  - k. Loss or Damage occurring on the Property and not involving a BNSF Train, NCTD Train or MTS Train shall be borne by the party responsible for maintaining that portion of the Property on which the Loss or Damage occurred. In the event that MTS is maintaining the Property at the request of NCTD (for example at Old Town Transit Center), then NCTD shall bear the Loss or Damage. A list of Property maintained by MTS at the request of NCTD is set out in Exhibit "I," attached hereto and by this reference incorporated herein. Exhibit "I" shall be modified, as a ministerial matter, to reflect maintenance responsibility changes agreed to between MTS and NCTD.
  - l. Costs incurred by MTS, or Loss or Damage incurred by MTS, including but not limited to the redesign of any station, grade crossing, platform, or other device, resulting from or arising out of NCTD's exclusive direction and control of the movement and dispatching of any Train and/or rolling stock (as set forth in paragraph 4.1) shall be borne by NCTD.
- 9.2 The allocation of Loss or Damage among the Parties provided in this Article 9 shall not be affected by any allocation of Loss or Damage as between a party hereto and another person or entity.
- 9.3 The Parties agree that in any litigation involving one or more of the Parties and any Third Party in which Loss or Damage is sought to be imposed under applicable law without regard to the provisions of this Restated SUA, the Parties will not introduce Articles 9, 10, or 11 into evidence and each Party will oppose introduction of said Articles by any Third Party to this Restated SUA.
- 9.4 For purposes of Article 9, neither BNSF, nor its employees, agents, contractors, attorneys, licensees, lessees, invitees, customers, or patrons shall be considered employees, agents, or contractors of NCTD and/or MTS or any NCTD Party and/or MTS Party and neither MTS and/or NCTD, nor their employees, agents, contractors,

attorneys, licensees, lessees, invitees, customers, or patrons shall be considered employees, agents, or contractors of BNSF or any BNSF Party.

- 9.5 For purposes of Article 9, the definition of Loss or Damage shall not include losses arising out of or in relation to the release of Hazardous Materials which shall be governed by Article 10 of this Restated SUA.

## **ARTICLE 10 ENVIRONMENTAL LIABILITY**

### **10.1 Environmental Liability.**

- a. BNSF agrees that it shall not release any Hazardous Materials on the Property. Except as provided in Article 9 or Section 11.4, BNSF shall indemnify, defend, and hold NCTD and MTS harmless from and against any Environmental Loss or Damage of any kind or nature, whether foreseeable or unforeseeable, arising out of or in relation to the release of Hazardous Materials on, in, or from the Property to the extent caused by (i) the activities of BNSF, or a BNSF party, (ii) the activities of BNSF's shippers and receivers in connection with rail freight shipping or receiving activities with BNSF on the Property, or (iii) the loading, unloading, and/or storage of Dangerous Materials Cars on the Property.
- b. NCTD agrees that it shall not release any Hazardous Materials on the Property. Except as provided in Article 9 or Section 11.4, NCTD shall indemnify, defend and hold BNSF and MTS harmless from and against any Environmental Loss of any kind or nature, whether foreseeable or unforeseeable, arising out of or in relation to the release of Hazardous Materials on, in, under or from the Property, to the extent caused by NCTD, or an NCTD Party, except any release of Hazardous Materials covered by Section 10.1(a).
- c. MTS agrees that it shall not release any Hazardous Materials on the Property. Except as provided in Article 9 or Section 11.4, the MTS shall indemnify, defend and hold BNSF and NCTD harmless from and against Environmental Loss of any kind or nature, whether foreseeable or unforeseeable, arising out of or in relation to the release of Hazardous Materials on, in, under or from the Property, to the extent caused by MTS, or an MTS Party, except any release of Hazardous Materials covered by Section 10.1(a).
- d. With respect to liability for a release of Hazardous Materials caused by the concurrent negligence of the Parties, the Parties shall bear such liability in proportion to their relative degrees of fault and BNSF and the Agencies hereby indemnify each other for their respective portion of such liability.

### **10.2 Notice of Claim.**

- a. Upon receiving notice of any suit, claim, or demand asserted by a Third Party that NCTD and/or MTS believes is covered by this Section 10, such party shall give BNSF written notice of the matter and an opportunity to defend such suit, claim, or demand, at BNSF's sole cost and expense, with legal counsel

satisfactory to NCTD and/or MTS. NCTD and/or MTS may also require that BNSF defend them.

- b. Upon receiving notice of any suit, claim, or demand asserted by a third party that BNSF believes is covered by this indemnity, BNSF shall give NCTD and/or MTS written notice of the matter and an opportunity to defend such suit, claim, or demand, at NCTD and/or MTS' sole cost and expense, with legal counsel satisfactory to BNSF. BNSF may also require that NCTD and/or MTS defend BNSF.

10.3 Abatement. Except as provided in Article 9, BNSF shall, at the request of NCTD or MTS, characterize and remediate or abate to the extent required by applicable federal or state statutes, orders, and regulations, at BNSF's sole cost and expense, any Hazardous Materials on, in, or under the Property arising from any release of Hazardous Materials to the extent resulting from (a) the activities of BNSF, or any BNSF Party, (b) rail freight shipping or receiving activities with BNSF on such Property, the activities of any BNSF Party's shippers or receivers, or (c) the loading, unloading, and storage of Dangerous Materials Cars on the Property. BNSF shall conduct such characterization, remediation, and/or abatement in compliance with all applicable laws and with all guidelines of any governmental regulatory agency having jurisdiction over such matters in a manner that causes the Property to comply with all applicable federal or state statutes, orders, or regulations and eliminates any adverse effect or exposure to liability resulting from noncompliance. Any such characterization, remediation, and/or abatement shall be conducted by a reputable contractor, approved by the Agencies, such approval not to be unreasonably withheld. BNSF shall commence and complete such characterization, remediation, and/or abatement as promptly as practicable (without overtime). BNSF shall, in no event more than minimally, interfere with Passenger Service and shall otherwise conduct such characterization, remediation and/or abatement in accordance with such reasonable terms and conditions as required by the Agencies (to the extent such can be done without breaching the orders and regulations of all governmental agencies having jurisdiction over such matters).

10.4 If, and to the extent the release of Hazardous Materials in, on, or under the Property arising from the activities of NCTD, an NCTD Party, MTS and/or an MTS Party materially interferes with Rail Freight Service, the Agencies shall conduct such characterization, remediation, and/or abatement as is required to eliminate such interference. Any such characterization, remediation, and/or abatement shall be conducted by a reputable contractor. The Agencies shall commence and complete such characterization, remediation, and/or abatement as promptly and as practicably (without overtime) as possible.

## **ARTICLE 11 RELEASE AND INDEMNIFICATION**

11.1 NCTD agrees to release and covenants not to sue BNSF (including for all purposes of this paragraph, BNSF's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns) and MTS (including for all purposes of this paragraph, MTS' employees, directors, contractors, officers, agents, attorneys, subsidiaries, predecessors, successors, and assigns) from and for any claims it could otherwise assert against BNSF and/or MTS for Loss or Damage or Environmental Loss

or Damage for which NCTD shall be liable under the provisions of Articles 9 or 10 other than to enforce the allocation of such liability and covenants as provided herein.

- 11.2 MTS agrees to release and covenants not to sue BNSF (including for all purposes of this paragraph, BNSF's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns) and NCTD (including for all purposes of this paragraph, NCTD's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns) from and for any claims it could otherwise assert against BNSF and/or NCTD for Loss or Damage or Environmental Loss or Damage for which MTS shall be liable under the provisions of Articles 9 or 10 other than to enforce the allocation of such liability and covenants as provided herein.
- 11.3 BNSF agrees to release and covenants not to sue NCTD (including for all purposes of this paragraph, NCTD's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns) and MTS (including for all purposes of this paragraph, MTS' employees, directors, contractors, officers, agents, attorneys, predecessors, successors, and assigns) from and for any claims it could otherwise assert against NCTD and/or MTS for Loss or Damage or Environmental Loss or Damage which BNSF shall be liable under the provisions of Articles 9 or 10 other than to enforce the allocation of such liability and covenants as provided herein.
- 11.4 To the maximum extent permitted by state and federal law, each party shall pay all Loss or Damage or Environmental Loss or Damage for which such party shall be liable under the provisions of Articles 9 and 11 and shall defend, indemnify and hold harmless the other party (including without limitation the other party's employees, directors, contractors, officers, agents, attorneys, predecessors, successors, assigns, and subsidiaries) against such Loss or Damage or Environmental Loss or Damage, notwithstanding any alleged or actual passive or active negligence of the party to be indemnified and held harmless.
- 11.5 The indemnification obligations assumed by the Parties hereunder shall include Loss or Damages under the Federal Employer's Liability Act, the Safety Appliance Act, the Locomotive Inspection Act, including claims for strict liability, and the California Tort Claims Act.
- 11.6 The indemnification obligations of this Article are not intended to constitute a waiver of or operate to defeat any other immunities, limitations, or defenses imposed by or available under any statute or common law to Third Parties which may be applicable to any party. Notwithstanding the previous sentence, with respect to each other only, BNSF NCTD, and MTS, by mutual negotiation, hereby waive any immunity against claims for which they have assumed an indemnification obligation hereunder that would otherwise be available under applicable law.
- 11.7 If any provision of this Restated SUA purports to indemnify a party against Loss or Damage and such indemnification would be prohibited by or unenforceable under the any applicable federal or state law, the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by applicable law. Further, to the extent that BNSF is thereby deprived of the protection it would otherwise have had under this Restated SUA, the Parties agree to negotiate in good faith to ensure equivalent protection for BNSF.



- 11.8 It is mutually understood and agreed that the allocations of liability, releases, and indemnifications under this Restated SUA shall survive any termination of this Restated SUA.
- 11.9 In the event a suit is commenced or a claim is asserted for or on account of a Loss or Damage or Environmental Loss or Damage against any party for which another party may be solely or jointly liable under the provisions of this Article 11, the party so sued or against whom the claim is asserted shall promptly notify the other party in writing of the pendency of the suit or claim, and thereupon such other party may assume or join in the defense of such suit or claim.
- 11.10 Each Party shall have the exclusive right to defend, investigate, settle, or cause to be settled all claims for Loss or Damage or Environmental Loss or Damage for which such Party acknowledges in writing it is responsible to bear pursuant to this Restated SUA. During the course of such Party's investigation and/or defense of any such claim, the other Parties agree to cooperate fully with such Party, including sharing relevant information and providing access to necessary witnesses and other company experts or expertise without additional cost to such Party.
- 11.11 For any claims for which Section 11.10 above does not apply, each Party shall have the right for itself only, to settle, or cause to be settled for it, all claims for Loss or Damage or Environmental Loss or Damage, or to defend or cause to be defended all suits for such claims. In the event that a party who is liable for Loss or Damage or Environmental Loss or Damage settles a claim for such Loss or Damage by a voluntary payment of money or other valuable consideration, the settling party shall endeavor to obtain a full release from liability for and in the name of all Parties who may be jointly liable for such claim. Other parties who may be jointly liable can waive this requirement. A settlement not including all Parties who may be jointly liable hereunder shall not alter the allocations of Loss or Damage or Environmental Loss or Damage set forth in Articles 9 and 10.
- 11.12 Prior to settling any claim or suit for an amount in excess of One Hundred Thousand Dollars (\$100,000) (as adjusted for changes in the CPI) in the aggregate in any given calendar year, the settling party shall obtain the written consent of the other party named in the claim or suit, which consent shall not be unreasonably withheld. The party being requested to give consent shall provide the same within ten (10) business days of the request being made. In the event that a response is not received within said ten (10) business days it shall be conclusively presumed that such consent has been given. Giving of such consent, impliedly or expressly, shall not be deemed an admission that such claim involves joint liability.
- 11.13 No party shall be conclusively bound by any judgment against the other Parties, unless that party shall have had reasonable notice requiring it to defend and reasonable opportunity to make such defense. As between the Parties only, when such notice and opportunity shall have been given, the party so notified shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit.
- 11.14 Article 11 Notices.

All notices and other communications under this Article 11 shall be in writing and shall be deemed to have been duly given (i) on the date of delivery, if delivered personally on

the party to whom notice is given, or (ii) on receipt, if mailed to the party to whom notice is to be given by First Class mail, postage prepaid, and properly addressed as follows:

To BNSF:

Vice President-Environmental  
BNSF Railway  
2500 Lou Menk Drive AOB-3  
Fort Worth, TX 76131

With a copy to:

Vice President and General Counsel  
BNSF Railway  
2500 Lou Menk Drive AOB-3  
Fort Worth, TX 76131

To MTS:

General Counsel  
San Diego Metropolitan Transit System  
1255 Imperial Avenue, Suite 1000  
San Diego, California 92101-7490  
Telephone No.: 619-557-4512

With a copy to:

Manager of Risk & Claims  
San Diego Metropolitan Transit System  
1255 Imperial Avenue, Suite 1000  
San Diego, California 92101-7490  
Telephone No.: 619-557-4502

To NCTD:

General Counsel  
North County Transit District  
810 Mission Avenue  
Oceanside, California 92054  
Telephone No.: 760-966-6532

With copy to:

Risk & Insurance Management Specialist  
North County Transit District  
810 Mission Avenue  
Oceanside, California 92054  
Telephone No.: 760-967-2847

## ARTICLE 12 INSURANCE

12.1 Each party shall procure and maintain for the duration of this agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with their operations as respects this agreement. The requirements of each party, and all parties as a whole, are as described in each of the following sections:

### 12.2 Insurance Requirements for NCTD

#### *A. Minimum Scope of Insurance*

Coverage shall be at least as broad as:

1. A standard public entity liability policy form covering general and automobile liability with no exclusion for the ownership or operation of a railroad.
2. Workers' Compensation insurance as required by the State of California and Employers' Liability insurance.
3. "All Risk" (Special Form) property insurance covering any owned property (including rolling stock) that is within the subject of this agreement.

#### *B. Minimum Limits of Insurance*

Limits of coverage shall be maintained in amounts not less than:

- |  |  |
|--|--|
| 1. General Liability:<br>(Including premises &<br>operations, products &<br>completed operations.) | <b>\$200,000,000</b> per occurrence for bodily injury,<br>personal injury and property damage.   |
| 2. Automobile Liability:   | <b>\$1,000,000</b> per accident for bodily injury and<br>property damage.  |
| 3. Workers' Compensation   | As required by the State of California.  |
| 4. Employers' Liability:   | <b>\$1,000,000</b> each accident, <b>\$1,000,000</b> policy limit<br>bodily injury by disease, <b>\$1,000,000</b> each employee<br>bodily injury by disease. |
| 5. Property:   | Replacement cost for real and personal property,<br>actual cash value for rolling stock.   |

### 12.2 Insurance Requirements for MTS

#### *A. Minimum Scope of Insurance*

Coverage shall be at least as broad as:

1. A standard public entity liability policy form covering general and automobile and omissions liability with no exclusion for the ownership or operation of a railroad.
2. Workers' Compensation insurance as required by the State of California and Employers' Liability insurance.
3. "All Risk" (Special Form) property insurance covering any owned property

(including rolling stock) that is within the subject of this agreement.

*B. Minimum Limits of Insurance*

Limits of coverage shall be maintained in amounts not less than:

- |   |  |
|---|--|
| 1. General Liability<br>(Including premises &<br>operations, products &<br>completed operations.) | <b>\$75,000,000</b> per occurrence for bodily injury, personal<br>injury and property damage.  |
| 2. Automobile Liability:  | <b>\$1,000,000</b> per accident for bodily injury and property<br>damage.  |
| 3. Workers' Compensation  | As required by the State of California.  |
| 4. Employers' Liability:  | <b>\$1,000,000</b> each accident, <b>\$1,000,000</b> policy limit<br>bodily injury by disease, <b>\$1,000,000</b> each employee<br>bodily injury by disease. |
| 5. Property:  | Replacement cost for real and personal property,<br>actual cash value for rolling stock.   |

12.3 Insurance Requirements for BNSF

*A. Minimum Scope of Insurance*

Coverage shall be at least as broad as:

1. A standard public entity liability policy(s) form covering general and automobile and omissions liability with no exclusion for the ownership or operation of a railroad.
2. Coverage for BNSF's obligations under the Federal Employers' Liability Act.
3. "All Risk" (Special Form) property insurance covering any owned property (including rolling stock) that is within the subject of this agreement.

*B. Minimum Limits of Insurance*

Limits of coverage shall be maintained in amounts not less than:

- |  |   |
|--|---|
| 1. General Liability (Including premises & operations, products & completed operations.) | <b>\$200,000,000</b> per occurrence for bodily injury, personal injury and property damage. |
| 2. Automobile Liability:   | <b>\$1,000,000</b> per accident for bodily injury and property damage.                      |
| 3. Workers' Compensation   | Not applicable  |
| 4. Federal Employers' Liability Act:   | As required by applicable Federal regulation  |
| 5. Property:   | Replacement cost for real and personal property, actual cash value for rolling stock.       |

#### 12.4 Insurance Provisions Applying to all Parties

##### *A. Deductibles and Self-Insured Retentions*

Any deductibles or self-insured retentions must be declared at least annually to the other parties to this agreement. Excepting BNSF, in no event shall any party retain more than \$10,000,000 without the express written consent of the other parties. BNSF may elect to self-insure any and all insurance requirements established by this Agreement without the express written consent of the other parties, subject to any applicable governmental regulations. Any deductible, self-insured retention or other financial responsibility for claims not covered by insurance shall be covered directly by each respective party.

##### *B. Additional Insured Status*

The General Liability and Automobile Liability policies for each party to this agreement are to contain, or be endorsed to contain, the following provisions as respects the other parties to this agreement:

“...its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the named insured; and with respect to liability arising out of work or operations performed by or on behalf of the named insured.”

As respects MTS, included as additional insureds shall include the following MTS wholly-owned subsidiaries: San Diego Trolley, Inc. (SDTI), San Diego and Arizona Eastern Railway (SD&AE) and San Diego Transit Corporation (SDTC).

##### *C. Cancellation*

Should any of the required policies be cancelled before their expiration date, notice will be delivered in accordance with the policy provisions.

##### *D. Claims Made Policy Provisions*

If any required coverage is written on a "claims made" basis (however labeled) then:

1. The retroactive date must be shown, and must be before or on the effective date of this agreement.
2. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after the termination of this agreement.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the insured party must purchase extended reporting period coverage for a minimum of three (3) years after cancellation or non-renewal.

*E. Acceptability of Insurers*

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A-:VII, unless otherwise acceptable to the parties. An exception to this requirement is granted for any coverage provided by the State Compensation Insurance Fund.

*F. Verification of Coverage*

The parties shall each provide to the other certificates of insurance at least annually verifying that insurance is in place in compliance with this Article. Further, each party shall provide to the other copies of endorsements or complete copies of policies that effect coverage required by this Article. In the event a party to this agreement elects to self-insure all or part of its obligations herein, a letter describing the program of self-insurance from an authorized representative in lieu of a certificate of insurance is acceptable.

*G. Waiver of Subrogation*

The parties hereby agree to waive rights of subrogation which any insurer may acquire by virtue of the payment of any loss.

*H. Subcontractors*

If any portion of the operation is to be subcontracted by any party, that party shall either list such subcontractor as an additional insured under its policies, or shall require and ensure that such subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming the other respective Parties as an additional insured, and shall require that the subcontractor shall release, defend and indemnify the other respective Parties to the same extent and under the same terms and conditions as the subcontracting party is required to release, defend and indemnify the other respective Parties herein.

*I. Insurance Requirement Section Review*

At intervals of five (5) years from the effective date of this Agreement or during any cessation of service under this Agreement, the Parties shall meet and confer in good faith to reassess and re-evaluate their exposure, and the insurance requirements set out

in Article 12 (including, but not limited to, the amount of deductible or self insurance retention and major changes in the insurance market affecting availability and cost of liability coverage including coverage for railroad operations), and to reopen and renegotiate a new level of insurance intended to reflect the Parties' exposure to liability, and to make an increase or reduction, if necessary, to the insurance coverage required by this Article.

*J. Amtrak Reform and Accountability Act of 1997*

In the event the provisions of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. § 28103) (or a successor provision) is changed, or held by a court of competent jurisdiction, to be inapplicable to Passenger Service of the nature to be provided under this Agreement, then the Parties agree to reopen and renegotiate new terms for the general liability (including that for rail operations) insurance intended to reflect any resulting change in either party's exposure to liability, giving due consideration to the additional costs or savings of such a change.

*K. Lapse of Insurance*

With the exception of approved self-insurance, in the event that any party fails to maintain the insurance set forth in this Article, the party whose insurance has lapsed shall immediately cease all operations until such time as the party complies with the insurance requirements of this Article. In addition, either of the remaining two parties may jointly or separately procure the insurance required by this section and the party who failed to maintain such insurance shall be liable to the party or Parties for their costs to procure the insurance. Acceptance or receipt of a certificate of insurance that does not comply with the provisions of this Article shall not operate as a waiver of any party's obligations there under

**ARTICLE 13  
BREACHES AND DEFAULT**

- 13.1 Default Notice and Cure. In the event that NCTD, MTS or BNSF fails to perform or comply with any of its obligations or the terms contained in this Restated SUA, the injured party shall have all rights and remedies available at law or in equity, including damages, and specific performance, termination of this Restated SUA, and all remedies available in the Reserved Rail Freight Service Easement, which remedies shall be cumulative and not exclusive, except for circumstances where an exclusive remedy is otherwise specified, or the time or manner of bringing a claim is specified, elsewhere in this Restated SUA.
- 13.2 Costs of Enforcement. In any action to enforce this Restated SUA and/or any of its terms, to collect damages as a result of a breach of its provisions, or to collect any indemnity provided for herein, the prevailing party also shall be entitled to collect all its costs in such action, including, without limitation, the costs of investigation, settlement, expert witnesses, and reasonable attorneys' fees and costs, together with all additional costs incurred in enforcing or collecting any judgment rendered.

- 13.3 Penalties and Fines. If any failure on the part of any party to perform in accordance with this Restated SUA shall result in a governmental fine, penalty, cost, or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the noncomplying party, and the nonperforming party shall promptly reimburse, defend, and indemnify the other party for such fine, penalty, cost, or charge and all expenses and reasonable attorneys' fees incurred in connection therewith.

## **ARTICLE 14 ALTERNATIVE DISPUTE RESOLUTION**

- 14.2 Alternative Dispute Resolution Regarding the Restated SUA.

The Parties agree that every effort shall be made to resolve any dispute arising under this agreement informally through their designated representatives. If the informal efforts are unsuccessful, then any party may request mediation by submitting a written request signed by an officer with the authority to bind the party. Within five (5) business days of the request of any party, the Parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. If the Parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may arrange for the office of the Judicial Arbitration and Mediation Services (JAMS) in downtown San Diego, California, to perform the mediation. The initiating party shall then schedule the mediation so that it is conducted within fifteen (15) business days of the mediator's appointment. The costs of the mediation and fees of the mediator, if any, shall be borne by the requesting party. Any dispute not resolved through the mediation may proceed to litigation in a court of competent jurisdiction in the County of San Diego, State of California, unless the Parties agree in writing to submit the dispute to binding arbitration. In the event matters under this SUA proceed to litigation, the parties agree to waive the right to a jury for all such claims.

\_\_\_\_\_  
BNSF

\_\_\_\_\_  
MTS

\_\_\_\_\_  
NCTD

## **ARTICLE 15 FIBER-OPTICS PROVISIONS**

- 15.1 Fiber Optic Rights. The Grant Deed attached to this Restated SUA as Exhibit "E" reserves unto BNSF rights relating to its rights and obligations under the, MCI Telecommunications Corporation ("MCI") agreement between BNSF and MCI negotiated in accordance with the letter agreement between BNSF and MCI dated April 6, 1992. BNSF's reservation of fiber optics rights is coextensive in scope and time with rights granted to MCI, and following relinquishment of MCI of its rights, BNSF shall have no further fiber optics rights with respect to the Property. BNSF shall indemnify the Agencies in connection with the fiber optics rights as provided in Article 18 of the Reserved Rail Freight Services Easement.



**ARTICLE 16  
TERM**

- 16.1 Term of the Restated SUA. This Restated SUA shall be effective on the date of closing of the sale of the Escondido Subdivision Property and the San Diego Subdivision Property, respectively, with respect to each portion of the Property, and shall continue in effect in perpetuity however, subject to the terms of Section 13.1 herein. Notwithstanding the foregoing, immediately upon BNSF's abandonment of rail service, this Restated SUA shall terminate as to BNSF and the abandoned portion of the Property.

**ARTICLE 17  
ASSIGNMENTS**

17.1 BNSF.

- a. BNSF's rights and obligations hereunder may be assigned only as set forth in the Reserved Rail Freight Service Easement.
- b. Shortline Assignment.
  - (i) NCTD and MTS consent to BNSF assigning to Pacific Sun Railroad Company the right to conduct (1) all rail freight service over the Escondido rail line, and a trackage rights license to conduct all connecting rail service between the Escondido line and Stuart Mesa rail yard; and (2) all local Rail Freight Service on the San Diego Subdivision rail line to and from San Onofre, on the north, and Miramar, on the south, and any other locations on the San Diego Subdivision rail line between San Onofre and Miramar.

17.2 Agencies.

- a. Either NCTD or MTS may appoint an agent to exercise any or all of their rights under this Restated SUA subject to the terms and conditions of this Restated SUA.
- b. Either NCTD or MTS, without the consent of BNSF, may transfer or assign the Burdened Portion of the Property, and all of its rights hereunder, to one or more of the agencies signatory to the Purchase and Sale Agreement. If the transferee under such an assignment assumes in writing, for the benefit of BNSF, all of the transferor's obligations under this Restated SUA, then upon such transfer, the transferor shall be released from all liability under this Restated SUA.
- c. Except as set forth in Section 17.2(b), either NCTD or MTS may transfer or assign the Burdened Portion of the Property and all of its rights hereunder to, and all of its corresponding obligations and duties hereunder may be assumed by any party on the conditions that (i) any transferee or assignee must assume in writing, for the benefit of BNSF, all of the party's obligations under this Restated SUA with respect to the portion of the Property or rights transferred, (ii) any transferee or assignee must be capable, in BNSF's reasonable judgment, of

adequately maintaining the Burdened Portion of the Property, (iii) any transferee or assignee must not, in BNSF's reasonable judgment, jeopardize safe and efficient Rail Freight Service on any of the Burdened Portion of the Property, and (iv) any transferee or assignee must be financially capable, in BNSF's reasonable judgment, of maintaining any liability insurance required by this Restated SUA.

## **ARTICLE 18 TRACKAGE RIGHTS**

### **18.1 Grant of Trackage Rights.**

In addition, BNSF has granted to NCTD, continuing in perpetuity, Passenger Service trackage rights, Free of Charge to NCTD, between San Diego Subdivision Milepost 267.2 in San Diego, and the southern right-of-way line of 8th Avenue (Milepost 268.74) in San Diego, immediately south of the connection between the San Diego Subdivision and the MTS rail yard in San Diego (hereinafter "Trackage Rights Line"). The location of the Trackage Rights Line is depicted on the map set forth in Exhibit "J," attached hereto and by this reference incorporated herein. The grant of trackage rights is made on the condition that if Passenger Service on the Trackage Rights Line interfere, in the reasonable judgment of BNSF, with BNSF's freight train movements or with BNSF's yard switching operations in or out of, or within, BNSF's 22nd Street (Crosby Street) yard, NCTD will pay the cost of extending the eastern lead track to just north of Fifth Avenue, and adding a turnout, as necessary to permit efficient BNSF Rail Freight Services.

### **18.2 Operations.**

- a. NCTD shall have the right to operate its Trains over the Trackage Rights Line for Passenger Service. Employees of NCTD shall have such access to the Trackage Rights Line and adjacent property of BNSF as is reasonably necessary in connection with providing Agency Rail Service, provided that such right of access shall not be deemed to require BNSF to take any actions or expend any funds to enable such persons to exercise such rights of access (other than as set forth in this Restated SUA), and provided further that such access shall not more than minimally interfere with Quality Rail Freight Service. All rights and obligations with respect to the Trackage Rights Line are exclusively contained in or expressly cross-referenced in this Article 18.
- b. In operating on the Trackage Rights Line, BNSF and NCTD shall comply (i) with all applicable federal, state, or local laws, regulations or rules governing operations on the Trackage Rights Line, (ii) with an agreed code of operating rules, and (iii) with timetables, general orders, bulletins, and other standards relating to operations, and all of which shall treat the parties fairly. Neither NCTD nor BNSF shall have any responsibility for inspecting, maintaining, servicing, or repairing any equipment used by the other party on the Trackage Rights Line.
- c. The Parties shall provide competent employees to operate their Trains that use the Trackage Rights Line. The parties shall have the right to exclude from the Trackage Rights Line, after consultation, any employee of either party who is in violation of applicable rules, general orders, bulletins or other standards.

- d. If any MTS Train, NCTD Train or BNSF Train becomes stalled or disabled on the Trackage Rights Line and is unable to proceed, or if crippled or defective rolling stock is, in an emergency, set out from any NCTD Train, MTS Train or BNSF Train, then the party whose train or LRV is involved shall immediately provide notice to the other party and promptly shall furnish the motive power or other assistance necessary to move or repair such train or LRV. The parties shall immediately consult and determine responsibility for performing such service. The costs of such service are to be borne by the party whose train requires such service. In the case of any conflict between the payment provisions of this Section 18.2(d) and the payment provisions of Article 6, the provisions of Article 6 shall govern.
- e. The provisions of Sections 3.5 and 3.6 of this Restated SUA shall apply on the Trackage Rights Line.

18.3 Dispatching and Scheduling. The provisions of Article 4 of this Restated SUA, as they relate to the San Diego Subdivision Property south of Fallbrook Junction, shall apply to Trains on the Trackage Rights Line.

18.4 Maintenance and Repair. Except as provided in the BNSF-MTS agreement dated December 21, 1988 (attached as Exhibit "K"), with respect to maintenance of flashing light signals and gates, BNSF shall have exclusive responsibility for the maintenance and repair of the Trackage Rights Line, at no cost to NCTD, except that if BNSF constructs any new rail facilities or improvements on or along the line for NCTD pursuant to Section 19.5, NCTD shall pay an annual fee for maintenance of those facilities or improvements in an amount or on a basis which shall be determined by mutual agreement prior to such construction. The Trackage Rights Line shall be maintained by BNSF to a safe condition consistent with industry practice and at least at such a level as to allow continued Train operations at the speeds shown in the Timetable. Maintenance and repair costs shall be as defined in Section 6.3(d).

18.5 Capital Improvements.

- a. BNSF shall own the Trackage Rights Line and all improvements that constitute the line or are located on BNSF property along the Trackage Rights Line, including any improvements constructed at the cost of NCTD.
- b. NCTD shall have no right to construct, reconstruct, relocate, or remove any facilities or other improvements that constitute the Trackage Rights Line or are located on BNSF property along the Trackage Rights Line. Upon the request of NCTD, BNSF shall construct on or along the Trackage Rights Line any facilities or improvements to be used for Passenger Service, so long as such facilities and improvements do not more than minimally interfere with BNSF's Quality Freight Rail Service, or, if they are signal improvements initiated by the Agencies, so long as they also do not require BNSF to install cab signals and/or automatic train control in any of BNSF's locomotives.
- c. The allocation of costs of capital improvements shall be as set forth in Section 7.8.

- 18.6 Assignments. Any and all rights hereunder may be assigned by the holder thereof, without obtaining the consent of the other party, and without remaining liable under this Restated SUA, on the condition that the transferee assumes in writing, for the benefit of the other party, all of the transferring party's existing and continuing obligations under this Restated SUA.
- 18.7 Convention Center Operations. BNSF shall also grant to NCTD, Free of Charge, a license to permit NCTD to build, operate and maintain a passenger loading and unloading platform along the west side of the Trackage Rights Line between First and Eighth Avenues to serve the San Diego Convention Center, and to operate NCTD Trains between the San Diego passenger station, this Convention Center passenger platform and the MTS yard, on the conditions that (1) the NCTD Train will not block the main track south of Fifth Avenue for longer than ten minutes, and (2) the NCTD Train would be operated only after BNSF had been given at least a seven-day advance notice of the exact date and time of this train operation. The provisions of Section 7.12 shall govern with respect to the construction of the platform. Passengers shall have such access to the Trackage Rights Line as to allow them the intended use of the Convention Center platform. Liability terms with respect to these trains, or use or construction of the passenger loading platform, shall be as set forth in Article 9.
- 18.8 Other Matters.

Billing procedures shall be as set forth in Sections 8.1 and 8.2 of this Restated SUA with billing and payment by the appropriate party. Personal and property liability and indemnity responsibility shall be allocated between BNSF and NCTD on the terms set forth in Article 9 of this Restated SUA. The liability insurance provisions of Article 9 shall apply to operations on the Trackage Rights Line. Articles 13, 14, and 19 of the Restated SUA also shall apply to these trackage rights.

## **ARTICLE 19 MISCELLANEOUS**

- 19.1 Force Majeure. Neither party shall be liable to the other in damages nor shall a default be deemed to have occurred, and each party shall be excused from performance of any of its obligations hereunder (except obligations involving the payment hereunder of money to the other party or to a third party for activities not related to any suspended obligations), during the time when such nonperformance is occasioned by fire, earthquake, flood, unusual rainfall, mud slide, washout, storm, blockage, explosion, wreck, derailment, mechanical breakdown, casualty, strike, lockout, unavoidable accident, riot, insurrection, civil disturbance, acts of civil or military authorities, act of public enemy, embargo, war, act of God, inability to obtain labor, materials or supplies, frustration of railroad operations caused by governmental actions, terrorism, or any other similar cause beyond the party's reasonable control; provided, that if either party suffers a work stoppage due to a labor dispute, such party shall make such reasonable efforts, if practicable, to staff its operations so as to minimize disruptions to rail operations on the Property. Each party agrees to notify the other party promptly when the nonperformance of its obligations hereunder is the result of any of the circumstances described in this Section 19.1 and, except when the circumstance involves a labor dispute, shall use all reasonable efforts to remedy the situation. Each party further agrees to provide the

other party with periodic reports describing in reasonable detail the current condition of such circumstance for so long as such circumstance prevents the performance of an obligation required hereunder. In the event of any strike, lockout or other labor dispute against BNSF, BNSF promptly shall remove any BNSF train from the tracks that impedes Passenger Service, using management personnel, if necessary, and arrange for such repairs to the Trackage Rights Line to allow continued Agency Rail Service as necessary with the cooperation of the Agencies.

19.2 Amendment or Waiver. No provision of this Restated SUA shall be altered, amended, modified, revoked, or waived except by an instrument in writing signed by the party to be charged with such alteration, amendment, modification, revocation, or waiver. NCTD and BNSF may separately agree in writing to alter, amend, modify, revoke or waive any provision of this Restated SUA, without MTS approval so long as such alteration, amendment, modification, revocation or waiver does not materially impact MTS' rights provided under this Restated SUA.

19.3 Headings. The article and section headings in this Restated SUA are for convenience only and shall not be used in its interpretation or considered part of this Restated SUA.

19.4 Notices.

Except with regard to notices required under Article 11, all notices and other communications under this Restated SUA shall be in writing and shall be deemed to have been duly given (i) on the date of delivery, if delivered personally on the party to whom notice is given or (ii) on receipt, if mailed to the party to whom notice is to be given by First Class mail, postage prepaid, and properly addressed as follows:

To BNSF:

Assistant Vice President-Passenger Operations  
BNSF Railway  
2500 Lou Menk Drive AOB-3  
Fort Worth, TX 76131

With a copy to:

Vice President and General Counsel  
BNSF Railway  
2500 Lou Menk Drive AOB-3  
Fort Worth, TX 76131

To MTS:

Mr. Paul C. Jablonski  
Chief Executive Officer  
San Diego Metropolitan Transit System  
1255 Imperial Avenue, Suite 1000  
San Diego, California 92101-7490  
Telephone No.: 619-231-1466

With a copy to:

General Counsel  
San Diego Metropolitan Transit System  
1255 Imperial Avenue, Suite 1000  
San Diego, California 92101-7490  
Telephone No.: 619-557-4512

To NCTD:

Mr. Matt Tucker  
Executive Director  
North County Transit District  
810 Mission Avenue  
Oceanside, California 92054  
Telephone No.: 760-967-2869

With a copy to:

General Counsel  
North County Transit District  
810 Mission Avenue  
Oceanside, California 92054  
Telephone No.: 760.966.6532

- 19.5 Survivability. Articles 9, 10, and 15 and Section 2.1(b) shall survive termination of this Restated SUA as to matters arising from events occurring prior to termination, and any and all obligations to make payments in respect of costs incurred at or prior to the date of termination shall survive termination of this Restated SUA.
- 19.6 Merger of Prior Agreements. This Restated SUA, the Purchase and Sale Agreement, the Grant Deed constitute the entire agreement between the Parties relating to the subject matter described herein and therein and supersedes all prior and contemporaneous agreements and understandings between the Parties relating to the subject matter herein and therein.
- 19.7 No Third-Party Rights. The provisions of this Restated SUA are for the exclusive benefit of BNSF, the agencies and their permitted successors and assigns, and no other person or entity shall have any right or claim, or shall be entitled to enforce any provision, against any party by reason of any provision of this Restated SUA.
- 19.8 Governing Law. This Restated SUA shall be governed and construed in accordance with the laws of the State of California.
- 19.9 Counterparts. This Restated SUA may be executed in counterparts, each of which shall have the force and effect of an original.
- 19.10 [Reserved.]
- 19.11 Amtrak. The parties agree that this Restated SUA does not affect the rights of Amtrak under its Basic Agreement with BNSF, as amended or supplemented, which shall

continue in full force and effect according to its terms unless otherwise amended or supplemented by the parties thereto. In the event that the Agencies do not elect to accept assignment of the Amtrak Basic Agreement, BNSF shall retain all rights with respect to the Property necessary to perform its duties and obligations under such Basic Agreement as amended or supplemented. In the event the Agencies elect to accept such assignment, they may do so or otherwise enter into an agreement transferring such rights and obligations only upon terms mutually agreeable to BNSF and the Agencies. BNSF agrees to cooperate in the process of review by the Agencies of the provision of service under such Basic Agreement and agree to provide operational data, data on incentives, expenses, and compensation associated with Amtrak service over the Property.

- 19.12 Business and Excursion Trains. BNSF shall have trackage rights to operate over the Tracks, Free of Charge, for the purpose of the operation by BNSF of freight customer trains, board of directors' trains, employee excursion trains, or trains with government officials (including business cars at the end of freight trains). Such right shall be subject to scheduling and operating times acceptable to the party over whose tracks BNSF will conduct such operation and shall not more than minimally interfere with Passenger Service. BNSF will provide the Agencies with seven days' advance notice of the intended operation of excursion trains and 48 hours' advance notice of the intended operation of business cars on regularly scheduled trains.
- 19.13 No Partnership. The parties do not intend that this Restated SUA create, and this Restated SUA shall not create, any partnership, joint venture, or other relationship between BNSF and the Agencies, other than the express contractual relationship of the parties under this Restated SUA in accordance with and subject to the terms of this Restated SUA.
- 19.14 Approvals. The persons executing this Restated SUA on behalf of the Agencies and BNSF have obtained the approval of their respective board of directors, board of commissioners, or other appropriate executive body.

IN WITNESS WHEREOF, the parties to this Restated SUA have duly executed it as of the date first set forth above to be effective upon the date of signing.

**BNSF:**

**BNSF RAILWAY COMPANY**  
**a Delaware Corporation**

By: \_\_\_\_\_  
Richard E. Weicher  
Vice President and General Counsel-  
Regulatory

**THE AGENCIES:**

**SAN DIEGO METROPOLITAN TRANSIT  
SYSTEM**

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

Approved as to form:

By: \_\_\_\_\_  
Karen Landers  
General Counsel

**NORTH COUNTY TRANSIT DISTRICT**

By: \_\_\_\_\_  
Matthew O. Tucker  
Executive Director

Approved as to form:

By: \_\_\_\_\_  
Lori A. Winfree  
General Counsel



**MEMORANDUM OF UNDERSTANDING BETWEEN  
SAN DIEGO METROPOLITAN TRANSIT SYSTEM AND NORTH COUNTY TRANSIT  
DISTRICT CONCERNING COORDINATION OF WORK ON THE SAN DIEGO SUBDIVISION**

**Standard Operating & Maintenance Procedure**

THIS Memorandum of Understanding (MOU) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by the San Diego Metropolitan Transit System (also known as the San Diego Metropolitan Transit Development Board)(MTS) and the North County Transit District (NCTD, collectively referred to herein as the "Parties" or individually as a "Party.").

**RECITALS**

**WHEREAS**, MTS owns the San Diego Subdivision railroad right-of-way, designated as Milepost 245.6 to Milepost 267.7 (SDSROW) (commonly referred to as the southern border of the City of Del Mar to the south end of the crossing at Broadway in the City of San Diego) in San Diego, California;

**WHEREAS**, pursuant to an Amended and Restated Shared Use Agreement (SUA) (MTS Doc. No. L0143.4-93), NCTD has the right to operate on the San Diego Subdivision;

**WHEREAS**, pursuant to the SUA, NCTD is required to maintain the Property, Tracks, Freight Rail Facilities (as each term is defined in the SUA), and other improvements on the SDSROW, except the real property, tracks and improvements (including signals and gates) on the SDSROW used exclusively for light rail operations by MTS;

**WHEREAS**, the Parties may have Capital Improvement Projects (CIPs) on the SDSROW in the future;

**WHEREAS**, the Parties wish to avoid conflicts in CIPs design and construction that may impact future projects planned for the SDSROW;

**WHEREAS**, the Parties recognize that Emergency Repairs (as defined in Addendum 18 to the Master MOU – MTS Doc. No. G0930.18-04) will present unique circumstances that must be addressed, but nonetheless desire to establish basic guidelines which, in combination with the general principles established through the SUA and this MOU and other addenda thereto will define the functions and responsibilities in the rapid and efficient pursuit of such Emergency Repairs;

**WHEREAS**, the implementation of the CIPs and Emergency Repairs benefit regional transit and transportation goals through continued and expanded transit and freight capacity and accessibility;

**WHEREAS**, the CIPs and Emergency Repairs will consist of implementing each project through design, construction and project implementation in a coordinated manner on the SDSROW; and

**WHEREAS**, as agreed to in Section 6.4 of the SUA, the Parties seek to implement a single MOU that clarifies the responsibilities of the Parties when they are coordinating their efforts on CIPs or Emergency Repairs.

## **AGREEMENT**

**NOW THEREFORE**, in consideration of the mutual promises set forth herein, the Parties agree as follows:

### **I. ROUTINE MAINTENANCE.**

- a. Maintenance Responsibilities. Pursuant to Article 6 of the SUA, NCTD and MTS have assigned responsibility for routine maintenance of the SDSROW as follows:

6.1 *Maintenance Responsibilities.* NCTD shall have exclusive control over the maintenance and repair of, and shall maintain and repair, the Property, Tracks, Freight Rail Facilities, and other improvements on the SDSROW, except the real property, tracks and improvements (including signals and gates) on the SDSROW used exclusively for light rail operations by MTS which shall be maintained and controlled exclusively by MTS. Specific to the shared corridor, MP 264.2 Taylor Street to MP 267.5 Broadway, where MTS light rail operations run parallel with passenger train operations that share at grade public crossings, MTS shall be responsible for the signal and gate warning devices for light rail tracks, and NCTD shall be responsible for the signal and gate warning devices for heavy rail tracks. NCTD shall not be required to maintain or repair Tracks on the SDSROW that are not used for Freight Service, Agency Rail Service, or by Amtrak or any other NCTD contracted operator.

- b. The Parties agree that no advance notice or coordination is required for routine maintenance activities, as further defined in attached Exhibit "A" and pursuant to Section 6.1 of the SUA, unless such activity will impact the other party's operations. All applicable Federal Railroad Administration (FRA) and California Public Utilities Commission (CPUC) rules and regulations shall be followed.

### **II. PROJECT COORDINATION.** Subject to Article 7 of the SUA, NCTD and MTS recognize that the SDSROW may be improved in the future to accommodate trains and or light rail vehicles. It is, therefore, in the best interest of MTS and NCTD to coordinate any Capital Improvement Project (CIP) or significant maintenance activity in a timely manner to avoid and/or mitigate potential conflicts and allow for the most efficient and cost effective use of the Property. To accomplish this goal, NCTD and MTS agree to work together on CIPs and to coordinate significant maintenance activities that are planned on the SDSROW as follows:

- a. Regional Projects Led by SANDAG. For all projects led by SANDAG on the SDSROW, planning, design and construction shall be according to the terms of the Master MOU, Addendum 18 (MTS Doc No. G0930.18-04).

- b. Capital Improvement Projects and Maintenance Activities Led by MTS or NCTD. With the exception of minor and routine maintenance or repairs as defined in Section 6.1 of the SUA, both NCTD and MTS agree to coordinate any CIP, maintenance activity, or any activity that could impact current or future planned operations or construction activities. For all such projects, MTS and NCTD agree to involve the other party at the earliest possible time in the project planning so as to identify and avoid design conflicts with future projects and other concerns.
1. Staff Contacts. Each Party shall inform the following MTS or NCTD contact of proposed projects: MTS Manager of Real Estate Assets and NCTD Director of Real Estate and Facilities.
  2. Early Involvement. Each Parties' staff contact will be invited to an initial meeting or project briefing early enough in the planning process that design suggestions and modifications may feasibly be taken into consideration. Subsequent participation in the design and planning process by the MTS or NCTD contact shall be determined on a case-by-case basis as needed by the particular project and its potential to impact other projects or operations on the SDSROW. Where it is determined by a Party after its participation in the initial meeting that further participation in the design and processing is not required, that Party will notify the other Party in writing.
  3. Plan Review. MTS or NCTD shall be provided with the design plans at the 30%, 60%, 90% and 100% milestones for review and comment. Draft specifications for the construction contract shall also be provided to confirm that the project coordination and insurance provisions are sufficient.
  4. Right-of-Entry. An executed construction contract or job order shall require its construction contractor and its subcontractors to obtain a Joint Right of Entry (JROE) Permit from MTS and NCTD to access the SDSROW in accordance with the contract requirements. Prior to admittance onto the SDSROW all other NCTD or MTS contractors, consultants, and sub-contractors, shall obtain a JROE Permit from MTS and NCTD, in using the Parties' then-current JROE Permit form, which will address the Parties' conditions including adherence to laws and regulations, safety, work plans, schedules, flag protection, work windows, staging and material storage areas, site access, insurance, indemnity provisions, and any other requirements therein listed. In the event the general contractor's railroad protective insurance policy covers work by subcontractors, then no separate JROE permit is required for the general contractor's subcontractors. The Parties may recover staff time for processing the JROE permit, either through a direct fee to the CIP contractor or by a charge against the CIP account.

- c. Projects Sponsored By Third Party Entities. MTS is the primary lead for all CIPs sponsored by Third Party Entities on the SDSROW and will work with NCTD to coordinate project activities. NCTD will be a co-signatory on all JROE permits.

### III. EMERGENCY REPAIR PROJECTS

- A. Emergency Contacts. Whenever personnel from NCTD or MTS determine that any event may reasonably necessitate Emergency Repairs to MTS property or its operating system, the following individuals (Emergency Contacts), or their then-current designees, shall be notified at the earliest reasonable opportunity:
  - o NCTD Executive Director
  - o MTS Chief Executive Officer
- B. Repair or Replacement. To the extent the Emergency Repairs involve only the repair and/or replacement of existing equipment, facilities or improvements, the Emergency Repair work shall be performed in accordance with Section I - Routine Maintenance.
- C. Emergency Repairs Involving Relocation or New Installation. To the extent the Emergency Repairs involve the relocation of existing equipment, facilities or improvements or the installation of new equipment, facilities or improvements, the Emergency Repairs shall follow the protocols set forth in Section II - Project Coordination.

### IV. INDEMNIFICATION

- A. NCTD. Neither NCTD nor any officer, employee or agent thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by MTS, San Diego Trolley Inc. (SDTI), San Diego & Arizona Eastern Railway Co. (SD&AE), their contractors, or their agents or employees, under or in connection with any work, authority or jurisdiction delegated to MTS under this agreement. It is understood and agreed that MTS shall fully defend, indemnify and hold NCTD and its contractors, directors, officers, employees, and agents, harmless from and against any and all liability or claim of liability, loss or expense, including reasonable defense costs and legal fees and claims for damages of whatsoever character, nature and kind, whether directly or indirectly arising from or connected with an act or omission of MTS, SDTI, SD&AE, their contractors, or any of their respective employees, agents, invitees, or other persons acting by or on behalf of MTS, SDTI, SD&AE or their contractors, on or about the SDSROW under or in connection with any work, authority or jurisdiction delegated to MTS under this agreement, including, but not limited to, liability, expense, and claims for bodily injury, death, personal injury, or property damage; provided, however, that nothing herein shall relieve any party indemnified hereunder from liability to the extent that such liability arises from such party's sole established negligence or willful misconduct. This indemnity shall not require payment of a claim by NCTD, or its respective directors, officers, employees, or agents, as a condition precedent to NCTD's recovery hereunder. MTS's obligation to indemnify hereunder shall not be restricted to insurance proceeds, if any, received by NCTD or its contractors, or their respective

directors, officers, employees, or agents.

- B. MTS. Neither MTS, SDTI, SD&AE, nor any officer, employee or agent thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by NCTD, or its contractors, agents, or employees under or in connection with any work, authority or jurisdiction delegated to NCTD or its contractors under this agreement. It is understood and agreed that NCTD shall fully defend, indemnify and hold MTS, SDTI, SD&AE, and their respective directors, officers, employees, and agents, and their contractors, harmless from and against any and all liability or claim of liability, loss or expense, including reasonable defense costs and legal fees and claims for damages of whatsoever character, nature and kind, whether directly or indirectly arising from or connected with an act or omission of NCTD, or any employee, agent, invitee, contractor of NCTD, or other person acting by or on behalf of NCTD on or about the SDSROW under or in connection with any work, authority or jurisdiction delegated to NCTD or its contractors under this agreement, including, but not limited to, liability, expense, and claims for: bodily injury, death, personal injury, or property damage; provided, however, that nothing herein shall relieve any party indemnified hereunder from liability to the extent that such liability arises from such party's sole established negligence or willful misconduct. This indemnity shall not require payment of a claim by MTS SDTI, SD&AE, their contractors, or their respective directors, officers, employees, or agents as a condition precedent to MTS's recovery hereunder. NCTD's obligation to indemnify hereunder shall not be restricted to insurance proceeds, if any, received by MTS, its contractors, SDTI, SD&AE, their contractors, or their respective directors, officers, employees, or agents.
- C. This agreement is not intended to affect the legal liability of the Parties by imposing any standard of care for delivering projects different from the standards imposed by law.
- D. The Parties will notify each other of any potential lawsuits, claims, or legal action pertaining to projects covered by this agreement. The Parties will confer and collaborate to resolve legal actions affecting any projects covered by this agreement and will include each other in opportunities to pursue early resolution.
- E. In order to retain resolution possibilities for potential future claims, the Parties will confer on construction claims that may affect delivery of projects, or Parties' liability or responsibility under this agreement. Neither Party will prejudice the rights of the other Party until after the Parties confer on the claim.
- F. If a potential conflict of interest arises between Parties, the Parties will discuss the issue, and either Party may involve outside counsel at their own expense, and/or enter into a separate agreement concerning any appropriate waiver or method for reducing the potential conflict. This agreement does not, nor is it intended to, constitute a waiver of any conflict of interest which may apply to a given situation, but merely offers a method of addressing potential conflicts of interest.

## V. GENERAL PROVISIONS

- A. Heirs and Assigns. All terms, conditions and provisions herein shall inure to and shall bind each of the Parties hereto, and each of their respective heirs, executors, administrators, and assigns.
- B. Independent Entities. For purposes of this agreement, the relationship of the Parties is that of independent entities and not as agents of each other or as joint venturers or partners. The Parties shall maintain sole and exclusive control over their personnel, agents, consultants and operations.
- C. Modifications. No modifications of the terms of this agreement shall be valid unless made in writing and signed by the Parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.
- D. Third Parties. Nothing in the provisions of this agreement is intended to create duties or obligations to or rights in third parties to this agreement or affect the legal liability of the parties to third parties.
- E. Execution in Counterparts. This agreement may be executed in any number of identical counterparts, each of which shall be deemed to be the original, and all of which together shall be deemed to be one and the same instrument when each party has signed one such counterpart.

IN WITNESS HEREOF, the Parties have caused this agreement to be executed as of the date above set forth.

NORTH COUNTY TRANSIT DISTRICT

SAN DIEGO METROPOLITAN TRANSIT  
SYSTEM

---

Matt Tucker  
Executive Director

---

Paul Jablonski  
Chief Executive Officer

APPROVED AS TO SUFFICIENCY OF  
FORM AND LEGALITY:

APPROVED AS TO FORM:

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NCTD Office of General Counsel

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MTS Office of General Counsel

Exhibit "A" - Routine Maintenance Activities

Routine Maintenance Activities shall include, but are not limited to:

1. Removal, upgrade, repair, maintenance and replacement of tracks, ties, ballast, signals and switches within the SDSROW; provided, however, that such work does not affect existing supports or slopes or any existing structure, facility or crossing used by MTS.
2. Weed control within the SDSROW.
3. Inspections of the SDSROW, both from the rails and from the ground.
4. Repair, replacement, maintenance and inspection of drainage facilities, including culverts, pipes and other facilities within the SDSROW; provided, however, there is no material alteration to the location or volume of the discharge outside of the SDSROW or violation of any applicable law or regulation caused by such repair, replacement, maintenance or inspection.
5. Repair, maintenance and inspection of trestles, bridges, access ways and other buildings and structures within the SDSROW.
6. Temporary storage of rails, ties, ballast, signal equipment and related supplies and equipment within SDSROW. NCTD and MTS acknowledge that future projects may require relocation of materials and equipment storage areas to a location outside of the SDSROW.



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## Agenda Item No. 32

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

September 18, 2014

#### SUBJECT:

2014 MILLS BUILDING BOARD ROOM IMPROVEMENT PROJECT (JEFF STUMBO)

#### RECOMMENDATION:

That the Board of Directors authorize the renovation of the 10<sup>TH</sup> Floor Board Room through Colliers International, the Mills Building on-site property management company.

#### Budget Impact

\$122,000 - Limited remodel including new audio/video equipment, paint, wall treatments and carpeting, OR

\$285,359 - Full remodel that includes all aspects of the limited remodel, as well as a new MTS Board of Directors dais and expanded public seating.

Funding will be through the FY15 CIP 11200 (Miscellaneous Capital).

#### DISCUSSION:

#### Background

The MTS headquarters is located in the Mills Building at 1255 Imperial Avenue, San Diego, CA 92101. The Mills Building opened in 1991 and is owned by the San Diego Regional Building Authority (SDRBA), a joint powers authority comprised of MTS and the County of San Diego. Under a series of financing leases, MTS occupies the 9<sup>th</sup> and 10<sup>th</sup> floors and has the right to lease out retail space on the 1<sup>st</sup> floor. The County of San Diego occupies the 2<sup>nd</sup> through 8<sup>th</sup> floors of the building. MTS and the County of San Diego jointly fund building expenses using various cost-sharing formulas.

SDRBA contracts with Colliers International to manage the Mills Building, which includes overseeing all construction projects on the property, providing security, and maintaining janitorial and maintenance staff. Under the SDRBA and Colliers International property management contract, additional tenant-related projects may be assigned to Colliers International for project management on a case-by-case basis.





### Proposed Board Room Renovation Option A (Limited Remodel):

The Board Room's audio/visual equipment was installed in 1991 and requires significant upgrades to remain functional and reliable.

#### *Display System*

Provide and install two (2) 80" LED displays on opposite walls of the Board Room. In addition, up to two (2) 48" displays will be installed for additional viewing toward the rear of the room. The displays will be integrated with a laptop connection at the Presenter's station via network transmitters and receivers. The 80" displays will be mounted on flat wall-mount brackets, while the 48" displays will be mounted on articulated wall-mounted brackets. All displays will be controlled via a Crestron control system. A network receiver will be installed in the adjacent conference room to allow the audience to view proceedings from the Board Room while in the conference room.

#### *Audio System*

The audio system and DSP units will be replaced with a new audio processor and DSP units, integrated and programmed for the existing speakers and microphones. The new DSP units will be programmed in a mix/minus setup for the microphones and speakers at the lectern. Upon replacing the units in the existing AV rack, the cabling/wiring in the rack will be redone and properly dressed, labeled and laced. Two new wireless hand-held microphones will be provided for audience and Americans with Disabilities Act Compliance.

#### *Control System*

The existing AMX control system will be replaced with a new Creston control system that will include two (2) 7" wired touch panels for user control. One of the touch panels will replace the existing Panja button panel in the dais and the other touch panel will reside in the rear of the room at the IT station.

#### *Construction*

The contractor will install new carpet, paint, acoustic wall panels, window coverings and applicable electrical and cabling.

Colliers International has proven an effective project manager in the Mills Building and we wish to rely on its expertise to manage this project. Assigning this work to Colliers International also ensures that the work will be completed in accordance with the requirements of the SDRBA and building engineer. Pursuant to the terms of the SDRBA and Colliers International property management contract, three bids have been obtained from reputable companies and estimated project cost, without including the new furniture option discussed in detail below, is \$122,000. MTS is required to pay building invoices for this project within 15 days. Today's action would allow the CEO to authorize Colliers International to proceed with the Board Room Improvement Project.

### Proposed Board Room Renovation Option B (Full Remodel):

#### *Full Remodel Including New Furniture*

At the June 19<sup>th</sup> MTS Board of Directors meeting, the Board requested that staff investigate furniture and space utilization options to increase the public seating capacity of the Board Room, which currently seats only 51 guests.

To accommodate this request, MTS hired the design firm Facility Solutions to assess the current Board Room structure and propose viable space planning solutions. Facility Solutions recommended that all existing furniture be replaced with more compact and space-saving furniture in order to effectively increase guest capacity. Facility Solutions provided a design (Attachment A) that would increase guest capacity from 51 to 81.

Attachment B sets forth an itemized cost estimate of both Proposed Board Room Renovation Option A (limited remodel without furniture) and Proposed Board Room Renovation Option B (full remodel with furniture to increase audience capacity).

*Recommendation*

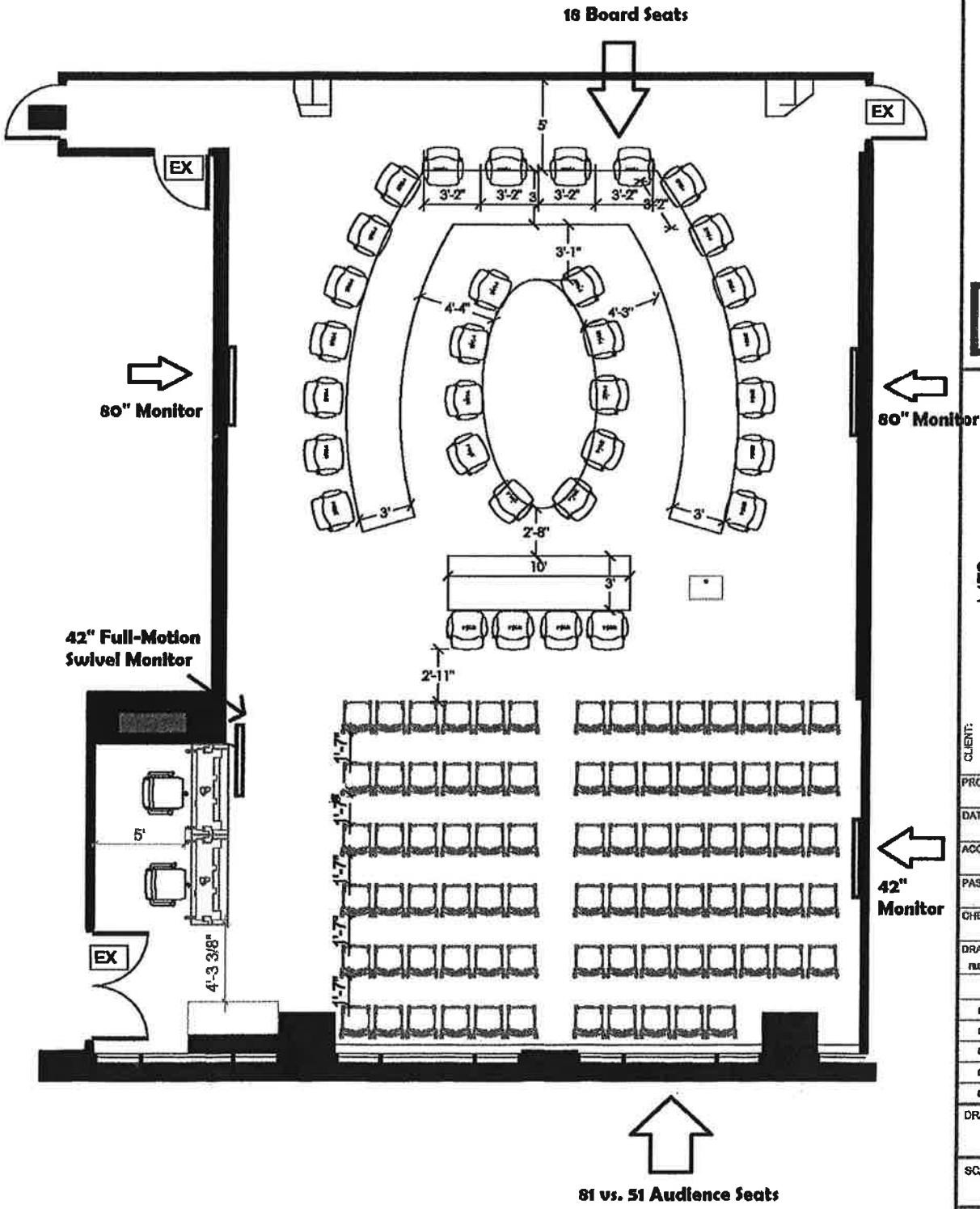
Authorize CEO to proceed with either Option A (limited remodel) at a cost not to exceed \$122,000 or Option B (remodel with furniture) at a cost not to exceed \$285,000.

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

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

Attachment: A. Facility Solution Design  
B. Itemized Cost Spreadsheet

# BOARDROOM - REVISED



**Business Interiors**  
*"Elevate your Workplace"™*  
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**CLIENT:**  
**MTS**  
**SAN DIEGO**  
1255 IMPERIAL AVE  
SAN DIEGO, CA 92101  
10TH FLOOR

**PROJECT #**  
100042

**DATE:**  
09.10.2014

**ACCOUNT EXEC:**  
DIANA POLSEUSS

**PAS:**  
TES

**CHECKED BY:**  
--

**DRAWING:**  
FILE PATH

**REVISIONS**

NO.	DATE	DESCRIPTION
001	08.26.2014	
002	09.10.2014	
003	10.01.2014	
004	10.01.2014	
005	10.01.2014	

**DRAWING TITLE:**  
REVISED LAYOUT

**SCALE:**  
1/8"=1'-0"

**SHEET #:**  
1 OF 1

<b>Proposed Board Room Renovation Option A</b>	
<b>Cost</b>	<b>Description</b>
\$ 12,400.00	Contractor & GC Fees
\$ 4,800.00	Demolition
\$ 25,000.00	Framing/Acoustical Wall Panels
\$ 3,400.00	Paint
\$ 3,600.00	Blinds
\$ 3,800.00	Electrical
\$ 12,400.00	Flooring
\$ 35,000.00	Audio/Visual Equipment
\$ 15,300.00	Audio/Visual Installation
\$ 6,300.00	Miscellaneous Costs
<b>\$ 122,000.00</b>	<b>Option A Total Cost</b>
<b>Proposed Board Room Renovation Option B</b>	
<b>Cost</b>	<b>Description</b>
\$ 12,400.00	Contractor & GC Fees
\$ 4,800.00	Demolition
\$ 25,000.00	Framing/Acoustical Wall Panels
\$ 3,400.00	Paint
\$ 3,600.00	Blinds
\$ 3,800.00	Electrical
\$ 12,400.00	Flooring
\$ 35,000.00	Audio/Visual Equipment
\$ 15,300.00	Audio/Visual Installation
\$ 86,119.00	Board, Conference, Presenter & IT Table
\$ 36,643.00	Guest, Boardmember & Presenter Chairs
\$ 1,644.00	Lectern & Credenza
\$ 16,253.00	Miscellaneous Costs/Tax
\$ 20,000.00	Allowance for Additional Cabling, Microphones, Speakers
\$ 9,000.00	Removal, Disposal, Assemble and Install New Furniture
<b>\$ 285,359.00</b>	<b>Option B Total Cost</b>



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## Agenda Item No. 45

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

September 18, 2014

#### SUBJECT:

2014 COMIC-CON SERVICE RECAP (TOM DOOGAN & ROB SCHUPP)

#### INFORMATIONAL ONLY

##### Budget Impact

None.

#### DISCUSSION:

The 2014 Comic-Con consumer and trade show was held at the San Diego Convention Center from Wednesday, July 23, through Sunday, July 27. The role of MTS Rail operations continues to grow resulting in record ridership, revenue, service levels, and resources expended.

Staff is prepared to answer any questions.

  
Paul C. Jablonski  
Chief Executive Officer

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



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## Agenda Item No. 46

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

September 18, 2014

#### SUBJECT:

OPERATIONS PRELIMINARY BUDGET STATUS REPORT FOR FISCAL YEAR 2014  
(LUKE KROMER)

#### INFORMATIONAL ONLY

##### Budget Impact

In the fiscal year 2014 operating budget mid-year amendment, revenues were projected to exceed expenses by \$1.8 million, and these net proceeds were programmed to increase the contingency reserve balance. The preliminary fiscal year 2014 results reflect an additional \$441,000 favorable to budget, which would result in \$2.2 million being added to the contingency reserves. The exact amount is pending the completion of the year end audit.

#### DISCUSSION:

This report summarizes MTS's preliminary operating results for the fiscal year ending June 2014 compared to the amended fiscal year 2014 budget. Attachment A-1 combines the operations, administration and other activities results for fiscal year 2014. Attachment A-2 details the fiscal year 2014 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 fiscal year 2014 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 fiscal year ending June 2014, MTS net-operating income unfavorable variance totaled \$1,043,000 (-0.8%). Operations produced a \$588,000 (-0.4%) unfavorable variance and the administrative/other activities areas were unfavorable by \$455,000.



## MTS COMBINED RESULTS

Revenues. The fiscal year combined revenues through June 2014 were \$105,415,000 compared to the fiscal year budget of \$104,885,000, representing a \$530,000 (0.5%) favorable variance.

Expenses. The fiscal year combined expenses through June 2014 were \$240,786,000 compared to the budget of \$239,213,000, resulting in a \$1,573,000 (-0.7%) unfavorable variance.

Personnel Costs. Fiscal year personnel-related costs totaled \$115,993,000 compared to a budgetary figure of \$115,957,000, producing an unfavorable variance of \$36,000 (-0.0%).

Outside Services and Purchased Transportation. Total outside services for the fiscal year totaled \$79,881,000 compared to a budget of \$79,948,000, resulting in a favorable variance of \$67,000 (0.1%).

Materials and Supplies. Total materials and supplies expenses were \$9,498,000 compared to a budgetary figure of \$9,566,000, resulting in a favorable expense variance of \$68,000 (0.7%). This favorable variance is primarily due to revenue parts costs within Transit Services Operations.

Energy. Total energy costs were \$27,177,000 compared to the budget of \$25,593,000, resulting in an unfavorable variance of \$1,585,000 (-6.2%). The unfavorable variance is due to increased natural gas and electricity rates.

Risk Management. Total expenses for risk management were \$4,888,000 compared to the budget of \$4,870,000, resulting in an unfavorable variance totaling \$17,000 (-0.4%).

General and Administrative. The general and administrative costs, including vehicle and facilities leases, were \$71,000 (-2.2%) unfavorable to budget, totaling \$3,350,000, compared to a budget of \$3,279,000.

## MTS NON-OPERATING ACTIVITIES RESULTS

As indicated within Attachment A-1, for the fiscal year ending June 2014, MTS subsidy and non-operating revenues totaled \$137,636,000 compared to the fiscal year budget of \$136,152,000, producing a favorable variance of \$1,484,000 (1.1%).

### Subsidy Revenue

For fiscal year 2014, subsidy revenue was favorable to budget by \$988,000. This positive variance is detailed as:

- Increases in the usage of federal preventive maintenance funding (\$12.8 million), allowed MTS to draw federal funds in a timelier manner. This resulted in a shifting of Transportation Development Act (TDA) and federal funds in the operating budget resulting in a net zero impact overall. Outside the preventive maintenance correction above, Federal revenues were favorable by \$561,000 due to favorable variances in 5307, 5311 and Jobs Access Reverse Commute (JARC) revenues.
- Outside the preventive maintenance correction above, TDA revenues were unfavorable to budget by \$6,000.

- State Transit Assistance (STA) revenues were unfavorable by \$278,000, due to lower than projected tax revenues from the State Controller's Office (expected \$19.7M; received \$19.5M).
- TransNet revenues were favorable by \$670,000 primarily due to additional operating expense reimbursement from the Sabre Springs Transit Center and the I-15 Bus Rapid Transit service.
- Other State revenues were favorable by \$31,000.
- Other local revenues were favorable by \$11,000.

#### Other Non-Operating Revenue

For fiscal year 2014, other non-operating revenue was favorable to budget by \$496,000 primarily due to revenue gained from the sale of assets and lower interest expense costs; partially offset by less reserve revenue required to fund Taxicab / San Diego and Arizona Eastern Railway Company activities.

  
Paul C. Jablonski  
Chief Executive Officer

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

Attachment: A. Comparison to Budget



**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**MTS**  
**CONSOLIDATED**  
**COMPARISON TO BUDGET - FISCAL YEAR 2014**  
**JUNE 30, 2014**  
**(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	VAR. %
Passenger Revenue	\$ 96,662	\$ 96,890	\$ (228)	-0.2%
Other Revenue	8,753	7,995	758	9.5%
<b>Total Operating Revenue</b>	<b>\$ 105,415</b>	<b>\$ 104,885</b>	<b>\$ 530</b>	<b>0.5%</b>
Personnel costs	\$ 115,993	\$ 115,957	\$ (36)	0.0%
Outside services	79,881	79,948	67	0.1%
Transit operations funding	-	-	-	-
Materials and supplies	9,498	9,566	68	0.7%
Energy	27,177	25,593	(1,585)	-6.2%
Risk management	4,888	4,870	(17)	-0.4%
General & administrative	2,263	2,173	(90)	-4.1%
Vehicle/facility leases	1,087	1,106	19	1.7%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	(0)	0	0	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 240,786</b>	<b>\$ 239,213</b>	<b>\$ (1,573)</b>	<b>-0.7%</b>
<b>Operating income (loss)</b>	<b>\$ (135,371)</b>	<b>\$ (134,328)</b>	<b>\$ (1,043)</b>	<b>-0.8%</b>
<b>Total public support and nonoperating revenues</b>	<b>137,636</b>	<b>136,152</b>	<b>1,484</b>	<b>1.1%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ 2,265</b>	<b>\$ 1,824</b>	<b>\$ 441</b>	<b>24.2%</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**CONSOLIDATED OPERATIONS**  
**COMPARISON TO BUDGET - FISCAL YEAR 2014**  
**JUNE 30, 2014**  
**(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	VAR. %
Passenger Revenue	\$ 96,662	\$ 96,890	\$ (228)	-0.2%
Other Revenue	1,291	689	602	87.3%
<b>Total Operating Revenue</b>	<b>\$ 97,953</b>	<b>\$ 97,579</b>	<b>\$ 374</b>	<b>0.4%</b>
Personnel costs	\$ 97,713	\$ 97,977	\$ 264	0.3%
Outside services	66,314	66,550	237	0.4%
Transit operations funding	-	-	-	-
Materials and supplies	9,479	9,541	62	0.6%
Energy	26,375	24,844	(1,531)	-6.2%
Risk management	4,506	4,512	6	0.1%
General & administrative	347	328	(19)	-5.8%
Vehicle/facility leases	802	822	20	2.4%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	27,717	27,717	0	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 233,253</b>	<b>\$ 232,291</b>	<b>\$ (961)</b>	<b>-0.4%</b>
<b>Operating income (loss)</b>	<b>\$ (135,300)</b>	<b>\$ (134,712)</b>	<b>\$ (588)</b>	<b>-0.4%</b>
<b>Total public support and nonoperating revenues</b>	<b>135,300</b>	<b>134,712</b>	<b>588</b>	<b>0.4%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ (0)</b>	<b>\$ (0)</b>	<b>\$ 0</b>	<b>-97.4%</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**TRANSIT SERVICES (SAN DIEGO TRANSIT CORPORATION)**  
**COMPARISON TO BUDGET - FISCAL YEAR 2014**  
**JUNE 30, 2014**  
**(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	VAR. %
Passenger Revenue	\$ 27,781	\$ 27,671	\$ 111	0.4%
Other Revenue	34	5	29	587.7%
<b>Total Operating Revenue</b>	<b>\$ 27,816</b>	<b>\$ 27,676</b>	<b>\$ 140</b>	<b>0.5%</b>
Personnel costs	\$ 64,984	\$ 65,043	\$ 59	0.1%
Outside services	1,768	1,647	(121)	-7.4%
Transit operations funding	-	-	-	-
Materials and supplies	4,708	4,819	111	2.3%
Energy	6,107	5,710	(396)	-6.9%
Risk management	2,791	2,535	(256)	-10.1%
General & administrative	166	170	4	2.4%
Vehicle/facility leases	294	308	15	4.8%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	10,307	10,307	(0)	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 91,124</b>	<b>\$ 90,540</b>	<b>\$ (584)</b>	<b>-0.6%</b>
<b>Operating income (loss)</b>	<b>\$ (63,309)</b>	<b>\$ (62,864)</b>	<b>\$ (444)</b>	<b>-0.7%</b>
<b>Total public support and nonoperating revenues</b>	<b>63,309</b>	<b>62,864</b>	<b>444</b>	<b>0.7%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ -</b>	<b>\$ 0</b>	<b>\$ (0)</b>	<b>-</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**RAIL OPERATIONS (SAN DIEGO TROLLEY, INCORPORATED)**  
**COMPARISON TO BUDGET - FISCAL YEAR 2014**  
**JUNE 30, 2014**  
**(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	VAR. %
Passenger Revenue	\$ 40,188	\$ 40,611	\$ (423)	-1.0%
Other Revenue	1,256	684	572	83.6%
<b>Total Operating Revenue</b>	<b>\$ 41,444</b>	<b>\$ 41,295</b>	<b>\$ 149</b>	<b>0.4%</b>
Personnel costs	\$ 31,629	\$ 31,770	\$ 141	0.4%
Outside services	3,824	3,949	125	3.2%
Transit operations funding	-	-	-	-
Materials and supplies	4,721	4,700	(21)	-0.5%
Energy	11,219	10,426	(794)	-7.6%
Risk management	1,690	1,952	262	13.4%
General & administrative	170	142	(28)	-19.5%
Vehicle/facility leases	354	357	3	1.0%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	15,652	15,652	0	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 69,259</b>	<b>\$ 68,947</b>	<b>\$ (312)</b>	<b>-0.5%</b>
<b>Operating income (loss)</b>	<b>\$ (27,815)</b>	<b>\$ (27,652)</b>	<b>\$ (163)</b>	<b>-0.6%</b>
<b>Total public support and nonoperating revenues</b>	<b>27,815</b>	<b>27,652</b>	<b>163</b>	<b>0.6%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ -</b>	<b>\$ 0</b>	<b>\$ (0)</b>	<b>-</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**MULTIMODAL OPERATIONS (FIXED ROUTE)**  
**COMPARISON TO BUDGET - FISCAL YEAR 2014**  
**JUNE 30, 2014**  
**(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	VAR. %
Passenger Revenue	\$ 23,932	\$ 23,810	\$ 122	0.5%
Other Revenue	-	-	-	-
<b>Total Operating Revenue</b>	<b>\$ 23,932</b>	<b>\$ 23,810</b>	<b>\$ 122</b>	<b>0.5%</b>
Personnel costs	\$ 543	\$ 495	\$ (48)	-9.7%
Outside services	42,371	42,700	330	0.8%
Transit operations funding	-	-	-	-
Materials and supplies	15	8	(8)	-99.9%
Energy	6,316	6,078	(238)	-3.9%
Risk management	-	-	-	-
General & administrative	1	2	1	71.1%
Vehicle/facility leases	15	17	2	10.2%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	1,227	1,227	0	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 50,488</b>	<b>\$ 50,527</b>	<b>\$ 39</b>	<b>0.1%</b>
<b>Operating income (loss)</b>	<b>\$ (26,556)</b>	<b>\$ (26,717)</b>	<b>\$ 161</b>	<b>0.6%</b>
<b>Total public support and nonoperating revenues</b>	<b>26,556</b>	<b>26,717</b>	<b>(161)</b>	<b>-0.6%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ -</b>	<b>\$ (0)</b>	<b>\$ 0</b>	<b>-</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**MULTIMODAL OPERATIONS (PARATRANSIT)**  
**COMPARISON TO BUDGET - FISCAL YEAR 2014**  
**JUNE 30, 2014**  
**(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	VAR. %
Passenger Revenue	\$ 2,093	\$ 2,129	\$ (36)	-1.7%
Other Revenue	-	-	-	-
<b>Total Operating Revenue</b>	<b>\$ 2,093</b>	<b>\$ 2,129</b>	<b>\$ (36)</b>	<b>-1.7%</b>
Personnel costs	\$ 140	\$ 141	\$ 1	1.0%
Outside services	12,327	12,285	(42)	-0.3%
Transit operations funding	-	-	-	-
Materials and supplies	-	-	-	-
Energy	2,455	2,362	(93)	-3.9%
Risk management	15	15	-	0.0%
General & administrative	2	5	2	47.3%
Vehicle/facility leases	140	140	(0)	0.0%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	392	392	0	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 15,471</b>	<b>\$ 15,340</b>	<b>\$ (131)</b>	<b>-0.9%</b>
<b>Operating income (loss)</b>	<b>\$ (13,377)</b>	<b>\$ (13,211)</b>	<b>\$ (167)</b>	<b>-1.3%</b>
<b>Total public support and nonoperating revenues</b>	<b>13,377</b>	<b>13,211</b>	<b>167</b>	<b>1.3%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ -</b>	<b>\$ (0)</b>	<b>\$ 0</b>	<b>-</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**CONSOLIDATED CHULA VISTA TRANSIT OPERATIONS**  
**COMPARISON TO BUDGET - FISCAL YEAR 2014**  
**JUNE 30, 2014**  
**(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	VAR. %
Passenger Revenue	\$ 2,668	\$ 2,669	\$ (2)	-0.1%
Other Revenue	-	-	-	-
<b>Total Operating Revenue</b>	<b>\$ 2,668</b>	<b>\$ 2,669</b>	<b>\$ (2)</b>	<b>-0.1%</b>
Personnel costs	\$ 341	\$ 339	\$ (2)	-0.6%
Outside services	5,686	5,631	(55)	-1.0%
Transit operations funding	-	-	-	-
Materials and supplies	35	14	(20)	-139.4%
Energy	278	268	(10)	-3.9%
Risk management	10	10	-	0.0%
General & administrative	8	9	1	13.2%
Vehicle/facility leases	-	-	-	-
Amortization of net pension asset	-	-	-	-
Administrative Allocation	139	139	(0)	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 6,496</b>	<b>\$ 6,410</b>	<b>\$ (86)</b>	<b>-1.3%</b>
<b>Operating income (loss)</b>	<b>\$ (3,829)</b>	<b>\$ (3,741)</b>	<b>\$ (88)</b>	<b>-2.3%</b>
<b>Total public support and nonoperating revenues</b>	<b>3,829</b>	<b>3,741</b>	<b>88</b>	<b>2.3%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ -</b>	<b>\$ 0</b>	<b>\$ (0)</b>	<b>-</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OPERATIONS**  
**CORONADO FERRY**  
**COMPARISON TO BUDGET - FISCAL YEAR 2014**  
**JUNE 30, 2014**  
**(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	VAR. %
Passenger Revenue	\$ -	\$ -	\$ -	-
Other Revenue	-	-	-	-
<b>Total Operating Revenue</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>-</b>
Personnel costs	\$ -	\$ -	\$ -	-
Outside services	183	183	-	0.0%
Transit operations funding	-	-	-	-
Materials and supplies	-	-	-	-
Energy	-	-	-	-
Risk management	-	-	-	-
General & administrative	-	-	-	-
Vehicle/facility leases	-	-	-	-
Amortization of net pension asset	-	-	-	-
Administrative Allocation	-	-	-	-
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 183</b>	<b>\$ 183</b>	<b>\$ -</b>	<b>0.0%</b>
<b>Operating income (loss)</b>	<b>\$ (183)</b>	<b>\$ (183)</b>	<b>\$ -</b>	<b>0.0%</b>
<b>Total public support and nonoperating revenues</b>	<b>183</b>	<b>183</b>	<b>(0)</b>	<b>0.0%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ (0)</b>	<b>\$ (0)</b>	<b>\$ (0)</b>	<b>24.6%</b>



**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**ADMINISTRATION**  
**CONSOLIDATED**  
**COMPARISON TO BUDGET - FISCAL YEAR 2014**  
**JUNE 30, 2014**  
**(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	VAR. %
Passenger Revenue	\$ -	\$ -	\$ -	-
Other Revenue	6,274	6,306	(32)	-0.5%
<b>Total Operating Revenue</b>	<b>\$ 6,274</b>	<b>\$ 6,306</b>	<b>\$ (32)</b>	<b>-0.5%</b>
Personnel costs	\$ 17,551	\$ 17,253	\$ (298)	-1.7%
Outside services	13,365	13,164	(201)	-1.5%
Transit operations funding	-	-	-	-
Materials and supplies	13	18	6	31.4%
Energy	792	739	(53)	-7.2%
Risk management	366	341	(25)	-7.3%
General & administrative	1,813	1,736	(76)	-4.4%
Vehicle/facility leases	285	284	(1)	-0.3%
Amortization of net pension asset	-	-	-	-
Administrative Allocation	(27,826)	(27,826)	0	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 6,359</b>	<b>\$ 5,709</b>	<b>\$ (649)</b>	<b>-11.4%</b>
<b>Operating income (loss)</b>	<b>\$ (84)</b>	<b>\$ 597</b>	<b>\$ (681)</b>	<b>114.1%</b>
<b>Total public support and nonoperating revenues</b>	<b>2,349</b>	<b>1,227</b>	<b>1,122</b>	<b>91.4%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ 2,265</b>	<b>\$ 1,824</b>	<b>\$ 441</b>	<b>24.2%</b>

**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**  
**OTHER ACTIVITIES**  
**CONSOLIDATED**  
**COMPARISON TO BUDGET - FISCAL YEAR 2014**  
**JUNE 30, 2014**  
**(in \$000's)**

	YEAR TO DATE			
	ACTUAL	BUDGET	VARIANCE	VAR. %
Passenger Revenue	\$ -	\$ -	\$ -	-
Other Revenue	1,188	1,000	188	18.8%
<b>Total Operating Revenue</b>	<b>\$ 1,188</b>	<b>\$ 1,000</b>	<b>\$ 188</b>	<b>18.8%</b>
Personnel costs	\$ 728	\$ 727	\$ (2)	-0.2%
Outside services	202	234	32	13.6%
Transit operations funding	-	-	-	-
Materials and supplies	6	7	1	9.3%
Energy	11	10	(1)	-5.4%
Risk management	15	17	2	10.6%
General & administrative	104	109	5	4.8%
Vehicle/facility leases	-	-	-	-
Amortization of net pension asset	-	-	-	-
Administrative Allocation	109	109	-	0.0%
Depreciation	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$ 1,175</b>	<b>\$ 1,213</b>	<b>\$ 37</b>	<b>3.1%</b>
<b>Operating income (loss)</b>	<b>\$ 13</b>	<b>\$ (213)</b>	<b>\$ 226</b>	<b>106.1%</b>
<b>Total public support and nonoperating revenues</b>	<b>(13)</b>	<b>213</b>	<b>(226)</b>	<b>-106.1%</b>
<b>Income (loss) before capital contributions</b>	<b>\$ (0)</b>	<b>\$ (0)</b>	<b>\$ 0</b>	<b>-100.0%</b>



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## Agenda Item No. 62

Chief Executive Officer's Report

ADM 121.7

September 18, 2014

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 July 9, 2014 through September 11, 2014.



EXPENSE CONTRACTS				
Doc #	Organization	Subject	Amount	Day
G1729.0-14	SANDAG	GRAFFITI TRACKER INC	\$20,000.00	7/10/2014
G1544.1-13	XEROX	RTMS UPGRADE – NAME CHANGES	\$0.00	7/15/2014
L1052.1-12	SIEMENS INDUSTRY, INC.	COST REDUCTION	(\$1,352.33)	7/16/2014
G1727.0-14	LEXIS-NEXIS	SUBSCRIPTION	\$1,836.00	7/17/2014
G1477.1-12	SOFTCHOICE	RTMS EXPANSION EXTRA EQUIPMENT	\$48,289.59	7/22/2014
G1679.1-14	SIGNA	MAINTENANCE REPAIR ADDITIONAL PRINTER	\$6,930.00	7/28/2014
G1730.0-15	SIGNA	PURCHASE OF NEW CANON COPIER	\$19,675.08	7/28/2014
B0589.7-13	GILLIG	REMOVE FIRST FORWARD FACING SEAT	(\$10,584.00)	7/29/2014
G1734.0-15	SOLORZANO CARVAJAL GONZALEZ	MEXICO LEGAL SERVICES - R&R NEGOTIATIONS	\$50,000.00	7/29/2014
L1197.0-14	SAN DIEGO SWEEPING SERVICE	PARKING LOT SWEEPING	\$97,272.00	7/29/2014
B0521.7-09	APOLLO	TAX TRANSFER	\$19,014.30	7/30/2014
G1500.2-13	APPLIEDTRUST, INC.	CYBER SECURITY ASSESSMENT	\$35,000.00	8/4/2014
G1723.0-14	CHARGERS	2014 SEASON PARTNERSHIP	\$11,500.00	8/5/2014
G1422.3-12	BEST, BEST & KRIEGER	SERVICE PROGRAM	\$0.00	8/6/2014
G1262.2-09	SUPERLATIVE GROUP	TIME EXTENSION	\$0.00	8/8/2014
G1322.2-10	PRUDENTIAL OVERALL SUPPLY	ADD STRIPING TO SDTI JACKETS	\$0.00	8/14/2014
B0611.2-14	CREATIVE BUS SALES	AMEREX FIRE SUPPRESSION SYSTEM	\$22,595.46	8/14/2014
PWL150.4-14	GLOBAL POWER GROUP	TIME EXTENSION	\$0.00	8/19/2014
G1631.1-13	MASABI	EXTEND CONTRACT 1 YEAR	\$5,298.13	8/19/2014
B0616.0-14	XEROX TRANSPORTATION SOLUTIONS	SERVICE AGMT	\$0.00	8/22/2014
G1707.1-14	NTH GENERATION	TAX ADJUSTMENT	(\$8,135.44)	8/27/2014
G1708.1-14	NTH GENERATION	TAX ADJUSTMENT	\$2,126.74	8/28/2014
G1654.1-14	DAILY DISPOSAL SERVICES	REMOVE SANDAG FROM CONTRACT	\$0.00	9/3/2014
B0617.0-15	EF ENTERPRISES	IN-PLANT INSPECTIONS	\$12,250.00	9/9/2014

REVENUE CONTRACTS			
Doc #	Organization	Subject	Amount
L1208.0-14	DIVERSIFIED UTILITY SERVICES	DURABLE ROE	(\$1,500.00)
G0078.6-91	CITY OF POWAY	REGULATE FOR HIRE VEHICLES	\$0.00
G1640.1-14	CSUSM	COMPASS CARD - MOU FAIR MEDIA	\$0.00

# REVENUE CONTRACTS

Doc #	Organization	Subject	Amount	Day
G1724.0-14	THE IRVINE COMPANY	DUMP THE PUMP	\$0.00	7/14/2014
G1637.1-14	SAN DIEGO OFFICE OF EDUCATION	COMPASS CARD - TIME EXTENSION	\$0.00	7/16/2014
G0501.4-99	CITY OF LA MESA	REGULATE FOR HIRE VEHICLES	\$0.00	7/18/2014
G1720.0-14	CITY OF SANTEE	ROE	\$0.00	7/18/2014
G1721.0-14	CITY OF SANTEE	ROE	\$0.00	7/18/2014
S200-14-591	COX COMMUNICATIONS	LICENSE AGREEMENT	(\$1,500.00)	7/24/2014
S200-15-600	SAN DIEGO BICYCLE COALITION	ROE - BIKE THE BAY	(\$750.00)	7/24/2014
T0047.6-90	CITY OF SANTEE	REGULATE FOR HIRE VEHICLES	\$0.00	7/28/2014
T0049.7-90	CITY OF LEMON GROVE	REGULATE FOR HIRE VEHICLES	\$0.00	7/28/2014
G1722.0-14	UNIVERSITY OF SAN DIEGO	COMPASS CARDS - STUDENT MONTHLY PASS	\$0.00	7/29/2014
L5766.0-14	GRAY-ICE BUILDERS, INC.	MTS/NCTD JROE	(\$4,200.00)	7/29/2014
S200-14-595	STATE OF CALIFORNIA	DURABLE ROE	(\$3,000.00)	7/30/2014
L1211.0-14	DAVIS REED CONSTRUCTION, INC.	ROE - EXTERIOR BLDG DEMO HOTEL CHURCH	(\$2,800.00)	8/1/2014
B0562.3-11	QUALCOMM	FUND EXTRA TRIPS ON ROUTE 921	(\$19,088.00)	8/4/2014
S20013539.2	SDG&E	ROE	\$0.00	8/6/2014
L1218.0-15	COOPER INTERACTIVE MEDIA GROUP	ROE - FILM AT 12TH AND IMPERIAL	\$0.00	8/7/2014
G0225.9-95	CITY OF SAN DIEGO	REGULARE FOR HIRE VEHICLES	\$0.00	8/18/2014
G1124.2-08	CITY OF SAN DIEGO	SHELTER AND BENCH CONTRACT	\$0.00	8/19/2014
G1735.0-15	SAN DIEGO VINTAGE TROLLEY	FALL 2015 THIRD GRADE OUTREACH	(\$15,000.00)	8/19/2014
L1213.0-15	CABRILLO MONUMENT FOUNDATION	JROE	(\$750.00)	8/19/2014
L1215.0-15	DOWNTOWN SAN DIEGO PARTNERSHIP	DURABLE ROE	\$0.00	8/19/2014
G1726.0-14	CALIFORNIA DOT	DETOUR ROUTE 712	(\$20,000.00)	8/21/2014
L1220.0-15	JEAN ISAACS SAN DIEGO DANCE TH	ROE	\$0.00	8/22/2014
G1284.4-10	CHEVRON USA, INC.	TOLLING AGMT	\$0.00	8/25/2014
L1137.1-13	SCS ENGINEERS	ROE - TIME EXTENSION	\$0.00	8/25/2014
L1214.0-15	PAILPROS, INC.	ROE	\$0.00	8/25/2014
L5768.0-14	SWINERTON BUILDERS, INC.	ROE - INSTALL AND MAINTAIN WALL MURALS	\$0.00	8/25/2014
G1737.0-15	AMCAL VILLA ENCANTADA	DISPOSITION & DEVELOPMENT MAGMT	\$0.00	8/28/2014
L1222.0-15	SDG&E	LEASE AGMT	(\$21,950.00)	8/28/2014
S20009383.1	CBS OUTDOOR	EXTEND LEASE BY 5 YEARS	(\$28,200.00)	9/2/2014

REVENUE CONTRACTS					
Doc #	Organization	Subject	Amount	Day	
S20009413.1	CBS OUTDOOR	EXTEND LEASE BY 5 YEARS	(\$13,200.00)	9/2/2014	
S20009414.1	CBS OUTDOOR	EXTEND LEASE BY 5 YEARS	(\$21,700.00)	9/2/2014	
S20009415.1	CBS OUTDOOR	EXTEND LEASE BY 5 YEARS	(\$16,100.00)	9/2/2014	
S20009416.1	CBS OUTDOOR	EXTEND LEASE BY 5 YEARS	(\$80,700.00)	9/2/2014	
B0618.0-15	SDG&E	INTERCONNECTION AGMT	\$0.00	9/3/2014	
L1138.1-13	H&P GEOCHEMISTRY, INC.	ROE PERMIT - TIME EXTENSION	\$0.00	9/3/2014	
L1226.0-15	SDG&E	LEASE AGMT FOR APN 384-311-38-00	(\$30,480.00)	9/3/2014	
G1683.1-14	US DISTRICT COURT	COMPASS CARD - EXTEND CONTRACT	\$0.00	9/9/2014	
L1217.0-15	CITY OF LA MESA	EASEMENT OF UNDERGROUND SEWER MAIN	(\$5,285.00)	9/9/2014	
L6692.1-13	SANSKA USA	TIME EXTENSION	\$0.00	9/9/2014	
G1741.0-15	SAN DIEGO COUNTY AIR POLLUTION	DEFENSE AND INDEMNITY	\$0.00	9/10/2014	
G1742.0-15	MIRAMAR COLLEGE	TRANSFER OF SUPPLUS TRANSIT COUCH	\$0.00	9/11/2014	
M6711.0-15	DEL MAR PACIFIC GENERAL CONTRA	DURABLE ROE - EXTERIOR BUILDING AND FACI	(\$1,500.00)	9/11/2014	

PURCHASE ORDERS			
DATE	Organization	Subject	AMOUNT
7/17/2014	AT&T	NORTEL MAINTENANCE 1 YR	\$10,074.00
7/17/2014	COMMUNICATION WIRING	LOW VOLTAGE CABLING	\$41,672.60
7/18/2014	THE DAILY AZTEC	PRINT ADS	\$12,420.00
7/18/2014	ADDONS, INC	ON-CALL SERVICES FOR ELLIPSE	\$57,750.00
7/21/2014	RIDOUT PLASTICS	TIMETABLE AND FORM HOLDER	\$894.73
7/21/2014	CDWG	ASYNCHRONOUS MODULE	\$3,582.80
7/21/2014	NCE COMPUTER GROUP	CX300 MAINTENANCE	\$14,096.52
7/22/2014	MYTHICS, INC.	ORACLE DATABASE	\$9,947.09
7/22/2014	CDWG	MS SURFACE	\$2,960.88
7/22/2014	CDWG	APC NETSHELTER	\$3,422.80
7/23/2014	DELL	TOAD FOR ORACLE	\$1,074.60
7/24/2014	ANDERSON & BRABANT	APPRAISAL OF WASHINGTON WYE	\$3,500.00
7/25/2014	CUBIC	REPAIR OF VERIFONES	\$2,950.00
7/25/2014	CUBIC TRANSPORTATION	REPAIR OF VERIFONES	\$2,950.00

PURCHASE ORDERS			
DATE	Organization	Subject	AMOUNT
7/25/2014	CDWG	LASER JET COLOR PRINTER	\$446.76
7/25/2014	PIXEL IMAGING	TROLLEY WRAPS	\$52,420.00
7/28/2014	CDWG	HP LASER PRINTER HR KIOSKS	\$1,595.56
7/29/2014	CDWG	PRINTER	\$754.39
7/29/2014	CUBIC	SOFTWARE SCRIPT	\$1,881.00
7/30/2014	ALLIANT	FIDUCIARY INSURANCE	\$13,618.00
7/31/2014	3D ART EXPO	SAND SCULPTING PARTNERSHIP	\$5,150.00
8/1/2014	MONSTER	JOB POSTING FOR IT	\$770.00
8/6/2014	ABC CONSTRUCTION	HVAC INSULATION	\$14,719.00
8/7/2014	JACKSON & FOSTER	QUARTERLY MAINTENANCE	\$1,203.00
8/7/2014	CDWG	PRINTER	\$237.84
8/7/2014	HERZOG	RAIL DISTRIBUTION FOR BLUE/ORANGE	\$43,483.44
8/8/2014	DAYWIRELESS	PORTABLE RADIOS	\$15,679.81
8/11/2014	MOTOROLA SOLUTIONS	SET OF PORTABLE RAIDIOS	\$15,679.81
8/14/2014	TENNANT SALES & SERVICE	SCRUBBER MACHINES	\$43,978.43
8/19/2014	NCE COMPUTER GROUP	EMC - 3 YR MAINTENANCE	\$70,740.00
8/19/2014	DLT SOLUTIONS	SOLARWINDS UPGRADE	\$8,400.00
8/19/2014	EASTRIDGE ADMIN SERVICES	TEMP EMPLOYEE	\$7,296.00
8/19/2014	USPS HASLER	POSTAGE FOR METER	\$40,000.00
8/20/2014	PERFORMANCE POLYMERS	64 TRACK FEET OF 115 # RUBBER	\$6,066.66
8/20/2014	DELL COMPUTER CORP	LATTITUDE E7440	\$19,096.87
8/20/2014	CONAN CONSTRUCTION	CARPET INSTALLATION EOC	\$1,450.00
8/21/2014	OPEN TEXT INC	BI MAINTENANCE	\$15,311.88
8/21/2014	NATIONAL BUSINESS FURNITURE	DESK	\$3,213.29
8/22/2014	FIDELITY	FIS MAINTENANCE	\$37,051.34
8/22/2014	DIAMOND ENVIRONMENTAL	PORTA POTTYS VARIOUS LOCATIONS	\$1,533.00
8/26/2014	AT&T	CALL RECORDING SOLUTION	\$52,634.03
8/27/2014	CROSSMAN LANDSCAPE INC	LANDSCAPING SERVICES	\$6,000.00
8/28/2014	CDWG	MICRO RAID CONTROLLER	\$868.12
8/28/2014	IACCESS	HID CARDS	\$11,124.00

# PURCHASE ORDERS

DATE	Organization	Subject	AMOUNT
8/28/2014	DELL	TOAD FOR ORACLE	\$888.15
8/29/2014	ESS	MATERIALS PER STATION	\$17,328.00
9/4/2014	NTH GENERATION	STORAGE UPGRADES	\$30,534.88
9/5/2014	TELERIK, INC	KENDO UI LIC AND SUPPORT	\$1,066.75
9/5/2014	CDWG	KVM 2 G SERVER MODULES	\$1,433.02
9/9/2014	CDWG	EPSON PRINT SERVER	\$651.11

# WORK ORDERS

Doc #	Organization	Subject	Amount	Day
G1493.0-13.07	KIMLEY-HORN	MONUMENT SIGN FOUNDATION DESIGN	\$3,982.79	7/28/2014
L0901.0-10.26	BRICEHOUSE STATION	SCRIPPS HEALTH CHECK	(\$1,000.00)	8/7/2014
L0901.2-10.25	BRICEHOUSE STATION	ENGINE SHOP GASLAMP QUARTER	(\$14,000.00)	8/7/2014
G1496.0-13.02.1	RAILPROS	SUPPORT FOR IAD BUS WAS	\$10,041.00	8/14/2014
G0930.17-04.37	SANDAG	SDTI FLAGGING SERVICES	(\$60,000.00)	8/25/2014
PWL 134.0-12.28.1	HERZOG	MERLIN DRIVE REPLACEMENT	\$1,537.25	9/9/2014
G0930.17-04.39	SANDAG	SDTI FLAGGING SERVICE	(\$100,000.00)	9/9/2014
G1493.0-13.09	KIMLEY-HORN	FIELD SURVEY	\$2,100.00	9/9/2014