

## Agenda

### MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM EXECUTIVE COMMITTEE

July 9, 2015

Executive Conference Room  
9:00 a.m.

#### ACTION RECOMMENDED

- |    |  |                    |
|----|--|--------------------|
| A. | ROLL CALL  |                    |
| B. | APPROVAL OF MINUTES - May 7, 2015  | Approve            |
| C. | COMMITTEE DISCUSSION ITEMS   |                    |
| 1. | <u>Pacific Imperial Railroad (PIR) Desert Line Agreement - (Karen Landers)</u><br>Action would forward a recommendation to the Board of Directors to authorize the Chief Executive Officer (CEO) to execute an Amendment to the Desert Line Lease and Operating Agreement (MTS Doc. No. S200-13-560.1) substantially in conformance with Attachment A.   | Possible           |
| 2. | <u>Comic-Con 2015 (Wayne Terry and Rob Schupp)</u>   | Information        |
| 3. | CLOSED SESSION - CONFERENCE WITH REAL PROPERTY<br>NEGOTIATORS Pursuant to California Government Code Section 54956.8<br><u>Property:</u> APN 451-590-79-00 (Northeast side of Pacific Highway frontage road, north of Washington Street)<br><u>Agency Negotiators:</u> Paul Jablonski, Chief Executive Officer; Karen Landers, General Counsel; and Tim Allison, Manager of Real Estate Assets<br><u>Negotiating Parties:</u> Kennebec Properties II LLC<br><u>Under Negotiation:</u> Price and Terms of Payment | Possible<br>Action |
| D. | REVIEW OF DRAFT July 16, 2015 BOARD AGENDA   |                    |
| E. | <u>REVIEW OF SANDAG TRANSPORTATION COMMITTEE AGENDA</u><br>Review of SANDAG Transportation Committee Agenda and discussion regarding any items pertaining to MTS, San Diego Transit Corporation, or San Diego Trolley, Inc. Relevant excerpts will be provided during the meeting.   | Possible<br>Action |



- F. COMMITTEE MEMBER COMMUNICATIONS AND OTHER BUSINESS
- G. PUBLIC COMMENTS
- H. NEXT MEETING DATE: August 20, 2015
- I. ADJOURNMENT

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

May 7, 2015

MINUTES

A. ROLL CALL

Chairman Mathis called the Executive Committee meeting to order at 9:00 a.m. A roll call sheet listing Executive Committee member attendance is attached.

B. APPROVAL OF MINUTES

Mr. Cunningham moved for approval of the minutes of the April 9, 2015 MTS Executive Committee meeting. Mr. Roberts seconded the motion, and the vote was 3 to 0 in favor with Ms. Bragg abstaining and Mr. Gloria absent.

C. COMMITTEE DISCUSSION ITEMS

2. Mills Building, Suite 100: Proposed Relocation of The Transit Store and Restaurant Suite Renovation (Karen Landers and Laura Warner, CityWorks) (TAKEN OUT OF ORDER)

Paul Jablonski, Chief Executive Officer, provided an introduction and brief background for the proposed relocation of the Transit Store and restaurant suite renovation in the ground floor level of the Mills Building. Laura Warner, with CityWorks, continued the presentation and discussed the project goals, context and site analysis. Ms. Warner provided example options of floor plans for the Transit Store and a grab and go type restaurant. She also provided another example for a destination type restaurant floor plan. Ms. Warner reviewed the next steps for the project which include obtaining approvals to proceed, completing the Transit Store design, marketing and negotiating a lease for a restaurant and completing restaurant design and construction.

Mr. Jablonski commented that the lease of the Transit Store's current location will expire on June 30, 2016. He said that the first priority will be to get the Transit Store moved to the new location and then simultaneously begin the work on procuring the restaurant space.

Ms. Bragg asked if there will be a need for increased staff and working hours for the Transit Store based on its new location. Mr. Jablonski replied that the current staffing is planned to accommodate the new location. Ms. Bragg inquired if the new restaurant would have public restrooms. Mr. Jablonski replied that the restaurant would have restrooms for patrons only.

Mr. Jablonski stated that prevailing wage would be used for this project. The total project cost is estimated to be approximately \$400,000, and would be funded through the Land Management capital reserve account.

Action Taken

No action taken.

1. University City Transit Center (Sharon Cooney and Edgar Torres, Kimley Horn)

Sharon Cooney, Chief of Staff, provided a background on the University City (UTC) Transit Center and upcoming construction for the new Center. Ms. Cooney introduced John Alderson, with Westfield, and Edgar Torres, with Kimley Horn. Mr. Alderson continued the presentation and provided sample pictures and sketches of the UTC mall and Transit Center. He stated that the entire UTC mall renovation project is a \$900 million project and Westfield has partnered with JP Morgan Chase to fund the project. He reviewed the different plans for the mall and the Transit Center and provided sample picture renderings of what the site will look like after completion. Mr. Alderson said that the entire project will be completed by October 2017. Edgar Torres, with Kimley Horn, discussed the various Transit Center amenities that will be installed and noted that the amenities will be consistent to the other current transit stations and future transit stations.

Chairman Mathis asked how many parking spaces will be added to UTC mall. Mr. Alderson replied that there are almost 4,000 parking spaces right now and when construction is complete, there will be approximately 5,300 parking spaces. He also noted that there will be a more controlled parking environment to ensure less parking abuse from outside businesses and to help control traffic congestion.

Ms. Cooney commented that beginning in June 2015 the buses will be moved out of the current Transit Center on to the street while construction begins on the new Transit Center.

Action Taken

No action taken.

3. California Public Employees' Pension Reform Act of 2013 (PEPRA) (Paul Jablonski)

Mr. Jablonski provided a brief introduction and background on PEPRA and federal Section 13(c) requirements. He stated that MTS has signed a stand-alone agreement with the Amalgamated Transit Union in order for MTS to be temporarily exempt from PEPRA. Mr. Jablonski commented that MTS will be filing for its grants this month and it is hopeful that the grants will not be held up by the Department of Labor.

Action Taken

Informational item only. No action taken.

D. REVIEW OF DRAFT MAY 14, 2015, BOARD AGENDA

Recommended Consent Items

6. San Diego and Arizona Eastern (SD&AE) Railway Company Quarterly Reports and Ratifications of Actions Taken by the SD&AE Board of Directors at its Meeting on April 14, 2015
7. Increased Authorization for Three Legal Service Contracts to Pay Projected Expenses in Fiscal Years 2015 and 2016  
Action would approve increasing the dollar amount of three (3) legal services contracts to cover expenses through the remainder of Fiscal Year 2015 (FY15) and all of Fiscal Year 2016 (FY16).
8. Investment Report - March 2015
9. California Department of Transportation Program of Projects for Federal Transit Administration Section 5311(f) Funding, Fiscal Year 2015  
Action would approve Resolution No. 15-9 authorizing the use of, and application for, \$250,000 of Federal Transit Administration (FTA) Section 5311(f) funds for operating assistance in non-urbanized areas.
10. Funding of Orange Line Tie Replacement Project - Francis to 43rd Street  
Action would approve the use of \$463,825 in Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) program funding and transfer \$900,000 from the San Diego Metropolitan Transit (MTS) SD100 Replacement project (project number 11373) to fund the Orange Line Tie Replacement project.
11. SAP Public Services, Inc. - Contract Award  
Action would authorize the Chief Executive Officer (CEO) to: (1) ratify the \$63,227 in additional software license support included in MTS's contract with SAP Public Services, Inc. (SAP) (MTS Doc. No. G1680.0-14); and (2) authorize the CEO to execute MTS Doc. No. G1680.1-14 amending the contract with SAP to purchase MS SQL Server Run-Time Licenses for the SAP Implementation of the Enterprise Resource Planning (ERP)/Transit Asset Management (TAM) Project and consolidate software support expenses for other SAP licenses under a single contract.

E. REVIEW OF SANDAG TRANSPORTATION COMMITTEE AGENDA

There was no SANDAG Transportation Committee agenda discussion.

F. COMMITTEE MEMBER COMMUNICATIONS AND OTHER BUSINESS

There was no Committee Member Communications and Other Business discussion.

G. PUBLIC COMMENTS

There were no public comments.

H. NEXT MEETING DATE

The next Executive Committee meeting is scheduled for June 11, 2015, at 9:00 a.m. in the Executive Committee Conference Room.

I. ADJOURNMENT

Chairman Mathis adjourned the meeting at 10:02 a.m.



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Chairman

Attachment: Roll Call Sheet

**EXECUTIVE COMMITTEE**  
**SAN DIEGO METROPOLITAN TRANSIT SYSTEM**

ROLL CALL

MEETING OF (DATE) May 7, 2015

CALL TO ORDER (TIME) 9:00 a.m.

RECESS \_\_\_\_\_

RECONVENE \_\_\_\_\_


CLOSED SESSION \_\_\_\_\_

RECONVENE \_\_\_\_\_

ADJOURN 10:02 a.m.

BOARD MEMBER (Alternate)	PRESENT (TIME ARRIVED)	ABSENT (TIME LEFT)
BRAGG <input checked="" type="checkbox"/> (Rios) <input type="checkbox"/>	9:00 a.m.	10:02 a.m.
CUNNINGHAM <input checked="" type="checkbox"/> (McClellan) <input type="checkbox"/>	9:00 a.m.	10:02 a.m.
GLORIA <input type="checkbox"/> (Emerald) <input type="checkbox"/>		
MATHIS <input checked="" type="checkbox"/>	9:00 a.m.	10:02 a.m.
ROBERTS <input checked="" type="checkbox"/> (Cox) <input type="checkbox"/>	9:00 a.m.	9:42 a.m.
Transportation Committee Rep Slot (Mathis)		

SIGNED BY THE CLERK OF THE BOARD: 

CONFIRMED BY THE GENERAL COUNSEL: 



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## Agenda Item No. C1

### MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM EXECUTIVE COMMITTEE

July 9, 2015

#### SUBJECT:

PACIFIC IMPERIAL RAILROAD (PIR) DESERT LINE AGREEMENT (KAREN LANDERS)

#### RECOMMENDATION:

That the Executive Committee forward a recommendation to the Board of Directors to authorize the Chief Executive Officer (CEO) to execute an Amendment to the Desert Line Lease and Operating Agreement (MTS Doc. No. S200-13-560.1) substantially in conformance with Attachment A.

#### Budget Impact

MTS will continue to receive revenue as set forth in the Desert Line Agreement. To date, MTS has received \$2,500,000 in revenue related to this lease agreement. In addition, inspections have been undertaken of the Desert Line infrastructure by engineering firm JL Patterson, Inc. at no cost to MTS.

#### DISCUSSION:

#### Background

When the Board entered into its lease with PIR in December 2012, it sought to achieve a fair market return to the taxpayers from the underutilized Desert Line railroad right-of-way while also incentivizing PIR to move quickly to repair the 100 year old infrastructure and restore freight operations to this important East-West connection between Baja California, San Diego, and the greater United States' freight railroad network. This railroad connection has been identified as a high economic development priority by the Governor of Baja California, the US Consulate General Tijuana, the Smart Border Coalition, the San Diego Chamber of Commerce, the South County Economic



Development Council, and other community groups and leaders. The lease includes 5 years of performance milestones, requiring full operation of the railroad by January 2018. Earlier milestones set a 3 year target for Limited Operations (3 trains a week), which currently is set for December 21, 2015. To achieve Limited Operations on the 70 mile line, PIR must repair the line, including bridges, track, ties and tunnels, and test train movements on the repaired line. The Initial Repairs and Test Train milestones are currently set at September 1, 2015 and October 1, 2015.

#### PIR/BJRR Negotiations for Binational Freight Agreement

Because the Desert Line begins at the US/Mexico border, Limited Operations on the Desert Line are not financially feasible or practicable unless the operations originate in Baja California, delivering trains to the Desert Line at the border crossing. There are no freight shippers along first 60 miles of the Desert Line. With this business reality in mind, PIR concentrated its efforts in 2013 and 2014 primarily on negotiating with its Mexican counterpart, railroad operator Baja California Railroad (BJRR), to reach an agreement to jointly operate the Desert Line and the Tijuana-Tecate Short Line (T-T Short Line) as a binational railroad serving the manufacturing industry in Tijuana and Tecate. These negotiations were far more complicated, contentious and time consuming than either PIR or MTS originally anticipated when drafting the Lease milestones. Although PIR spent over \$600,000 and approximately 6 months having a railroad engineering consultant conduct in-depth inspections of the Desert Line infrastructure between July 2013 and January 2014, substantive work broke off on this front as the negotiations with Baja California Railroad faltered and PIR experienced turmoil and turnover in its executive leadership in early 2014. During this time, PIR continued to pay MTS the required \$500,000 semi-annual lease payment. To date, PIR has paid MTS \$2,500,000 under the lease.

The first half of 2015 appears to have been a turning point in the negotiations between PIR and BJRR. During the same 2013 to 2015 time period, BJRR has been investing federal money in improving the T-T Short Line infrastructure, including the replacement of track, construction of crossings, yards, and the daylighting of a collapsed tunnel near the Desert Line border crossing. More work is still required to bring the T-T Short Line up to the condition necessary to transport freight from the manufacturing facilities to the Desert Line. BJRR has estimated that its work will be complete in 2016/2017. Much of the most recent work is only beneficial to BJRR if the Desert Line is open, which is another sign of BJRR's interest and advantage in reaching agreement with PIR regarding joint operation of this railroad connection.

On June 22, 2015, BJRR and PIR reached a significant step by executing a memorandum of understanding expressly acknowledging the parties' desire and intent to work together to develop the binational railroad and outlining their expectations and the issues that need to be resolved. The MOU states that the parties will use their best efforts to reach a "definitive agreement" on these outstanding issues within 6 months. The definitive agreement will address technical issues such as the best method and location to interchange and transfer freight from BJRR's control to PIR's control, establishing a tariff schedule for customers and negotiating how that tariff will be divided between BJRR and PIR, obtaining concurrence in these arrangements from any necessary agencies (such as the US Surface Transportation Board, the US Department of Homeland Security/Customs and Border Patrol, and Mexico's Secretariat of

Communications and Transportation). Railroad retirement status and other similar issues will need to be considered. As a sign of his commitment to the binational railroad project and the negotiations with PIR, BJRR's majority owner, Fernando Beltran, requested that the signing of the MOU take place at MTS's headquarters. The representatives of PIR and BJRR in attendance at the signing ceremony expressed their belief that each of these issues can be successfully resolved.

#### Proposal to Modify Milestones

Acknowledging that the delays in reaching an agreement with BJRR have also delayed the construction work necessary to bring the Desert Line back to an operational condition, PIR has been working over the last several months to update and finalize the railroad engineering reviews completed in 2013 and create work plans for each piece of infrastructure. Railroad repairs are often accompanied by significant lead times for ordering specialized materials and supplies such as bridge timbers, railroad ties and rails. All of these delays, whether from the BJRR/PIR negotiations or standard construction timelines, have made it highly unlikely that PIR will achieve the next two milestones of Initial Repairs and Test Train Operations. PIR has therefore proposed that MTS agree to the modified milestones set forth in Attachment A, which still result in PIR meeting the original 5 year performance milestone for Full Scale Operations. The modified milestones address short-term and long-term goals of the project, both for MTS, PIR, BJRR, Union Pacific Railroad, and shipping customers such as Toyota. On this basis, staff recommends that the Board approve the modified milestones and authorize the Chief Executive Officer to execute an amendment to the Lease and Operating Agreement consistent with the modified milestones (see Attachment A).

In general, the modified milestones divide the reconstruction and operational milestones into two phases. In Phase I, PIR will focus on the eastern-most 9.5 miles of the line, from Coyote Wells to Plaster City. This portion is relatively flat and straight, which will allow longer trains and faster speeds once repairs are complete. PIR proposes repairing this section of track to Class III Federal Railroad Administration (FRA) track standards, as opposed to the lower Class II required in the current agreement. Bringing this portion of the right-of-way up to operational condition first will provide the following benefits: (1) create an area to build 100 car trains, which will meet the needs of the mainline freight carrier, Union Pacific Railroad; (2) prove-up to manufacturing shippers such as Toyota that the Desert Line has a plan and location to maintain continuity of shipping in the event a bridge or tunnel is out of service along the more remote western sections of the railroad; and (3) provide a source of revenue as an origination point for shipping while the Phase II repairs of the rest of the line are completed. PIR proposes to complete this Phase I work by March 1, 2016 and be operational by December 31, 2016.

In Phase II, PIR proposes to repair the remaining 60 miles of track, ties, bridges and tunnels on the Desert Line to a minimum Class I FRA track standard. This work would begin as soon as the Phase I work is completed in March 2016 and take approximately 13 months to complete. In general, PIR is estimating 2 months per bridge repair. Starting this work in March 2016 factors in the lead time required for materials orders. It also will allow PIR and BJRR to finalize the terms of their definitive agreement before work on this segment commences. After inspections and test trains, Limited Operations would commence on the full Desert Line no later than August 15, 2017.

Full Scale Repairs and Operations would maintain the existing milestones of December 21, 2017 and January 20, 2018.

In order to protect the revenue MTS is entitled to under this agreement, MTS has added a provision requiring any trucking revenue that is generated by a PIR-associated entity be captured under the percentage rent clause of the agreement.

  
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. Draft Amended and Restated Desert Line Lease and Operating Agreement – Amendment 1 (MTS Doc. No. S200-13-560.1)

**AMENDED AND RESTATED**  
**DESERT LINE LEASE AND OPERATING AGREEMENT**  
**Amendment 1**

THIS OPERATING AGREEMENT (“Lease” or “Agreement”), dated as of this 20<sup>th</sup> day of December, 2012 (the “Effective Date”), by and among Pacific Imperial Railroad, Inc. (“PIR”), a Delaware corporation with principal offices and place of business in San Diego County, California; San Diego and Arizona Eastern Railway Company (“SD&AE”), a Nevada nonprofit corporation; and San Diego Metropolitan Transit Development Board also known as the San Diego Metropolitan Transit System (“MTS”), a California public agency, with principal offices and place of business in San Diego, California. PIR, SD&AE and MTS may hereinafter be referred to collectively as the “parties”, or individually as a “party” hereto.

On July 16, 2015, the parties agreed to amend the Agreement to adjust the performance milestones set forth in Section 1.2. This Amendment 1 document incorporates the amended terms and fully restates all existing terms and conditions.

**RECITALS**

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

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

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

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

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

**AGREEMENT**

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

**1. TERM**

- 1.1. Subject to the Performance Milestone Requirements set forth in Section 1.2 below and SD&AE’s right to terminate this Lease and require PIR to discontinue operations PIR shall have a fifty (50) year term to provide freight rail service on the Desert Line, beginning upon the date hereof and ending on December 20, 2062. Notwithstanding this

base term of fifty (50) years, SD&AE and PIR expressly acknowledge that the purpose of this Lease is to provide for the repair and rebuilding of the Desert Line, and ultimately to resume freight service upon the Desert Line for the benefit of local, state, federal and international commerce. Therefore, an express prerequisite for PIR receiving the full fifty (50) year term, and any extension thereof, is that PIR meet the Performance Milestones established herein. In the event PIR fails to meet a specific milestone, then SD&AE shall have the right, in its sole and absolute discretion, to declare PIR in default and terminate this Agreement pursuant to Section 8 hereof. In the alternative, the parties may mutually agree to extend a particular Performance Milestone. Extension of any Performance Milestone shall be by written amendment to this Agreement.

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

1.2. Performance Milestone Requirements.

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

- 1.2.1.1. Supplemental Business Plan. A Business Plan Supplement outlining the impact of Amendment 1 to the Lease shall be submitted within 30 days from the date of signing this Amendment 1.

- 1.2.2. Desert Line Reconstruction Plan. The Desert Line Reconstruction Plan ("DLRP") described in Section 3.3 shall be submitted to SD&AE for review and approval no later than 90 days from the Effective Date of this Lease. No repairs, including the Initial Repairs, shall be commenced until SD&AE has approved the DLRP. PIR may, at its option, submit the DLRP to SD&AE according to the stages set forth in Section 3.3. PIR may not commence with pursuing a specific Performance Milestone unless and until the DLRP for that stage has been approved by SD&AE. SD&AE acknowledges receipt and approval of the DLRP and a DLRP Supplement (DLRP-S) under this provision, subject to conditions set forth in correspondence approving the DLRP dated August 28, 2014.

- 1.2.2.1. Amendment 1 – Supplemental DLRP (DLRP-S/A-1). The DLRP and DLRP-S as approved on August 28, 2014, shall be amended with DLRP-S/A-1 outlining the impact of this Amendment 1, which DLRP-S/A-1 shall be submitted within 30 days from the date of signing Amendment 1. The DLRP-S/A-1 shall include three Phases of reconstruction:

- 1.2.2.1.1. Pre-Phase I actions shall include the execution of a contract with JL Patterson for the engineering, and American Pacific Constructors for the construction.

1.2.2.1.2. Phase I (PIR-CW-Intermodal Freight Facility) shall allow for operational status of the line from Coyote Wells, at MP 120.09 to Plaster City, at MP 129.61 for a Class of Track to be Class III Track pursuant to the Federal Railroad Administration ("FRA") track safety standard, incorporating the Intermodal Facility at Coyote Wells, and essentially allowing the trains to operate at 40 mph. See Section 1.2.3.1 for the Phase I Milestones.

1.2.2.1.3. Phase II (PIR-CW-Interchange Freight Facility) shall allow for the interchange of trains from Mexico, which includes repairs of bridges, tunnels, track and ties from MP 59.60 at Division, California to MP 120.09 at Coyote Wells, California. See Section 1.2.3.2 for the Phase II Milestones.

1.2.2.1.4. Phase III (Full Operations) shall include both Phase I and Phase II reconstruction plans, in addition to bringing the Desert Line to full operations.

1.2.1.1.1.—

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

1.2.3.1. Phase I - Initial Repairs between MP 120.09 and MP 129.61, approximately 9.5 miles of miles track, rail, ballast, and bridges between Coyote Wells and Plaster City, shall be repaired to a Class III FRA Track Standard under the inspection and engineering by JL Patterson (JLP), by American Constructors (APC), or other qualified firm and shall be completed on the following schedule:

1.2.3.1.1. Operational Phase – Bridge Demolition Schedule. The portion of bridges requiring demolition shall commence July 20, 2015, and be completed on or about November 9, 2015 pursuant to the Bridge Demolition Schedule attached hereto as Exhibit A.

1.2.3.1.2. Operational Phase – Bridge Repair Schedule. The portion of bridges requiring repair shall commence on August 5, 2015, and be completed on or about December 23, 2015 pursuant to the Bridge Repair Schedule attached hereto as Exhibit B.

1.2.3.1.3. Operational Phase – Track Repair Schedule. The portion of Track including the approximately 11,000 ties, 48,000 spikes, 10,400 cubic yards of ballast, and 3,000 lineal feet of rail replacement shall commence on August 1, 2015 and be completed on or about March 1, 2016.

1.2.3.2. Phase II - Initial Repairs between MP 59.60 and MP 120.09, approximately 60 miles of track, rail, ballast, and bridges between Division and Coyote Wells shall be repaired to a Class I FRA Track Standard. This Phase II Initial Repair work shall be completed on the following schedule:

1.2.3.2.1. Bridge 66.77 – Commence Demolition and Repair work on or before March 15, 2016 and complete on or before May 15, 2016.

1.2.3.2.2. Bridge 119.99 – Commence Demolition and Repair work on or before April 15, 2016 and complete on or before June 15, 2016.

1.2.3.2.3. Bridge 119.80 -- Commence Demolition and Repair work on or before May 15, 2016 and complete on or before July 15, 2016.

1.2.3.2.4. Bridge 119.36 -- Commence Demolition and Repair work on or before June 15, 2016 and complete on or before August 15, 2016.

1.2.3.2.5. Bridge 118.60 -- Commence Demolition and Repair work on or before July 15, 2016 and complete on or before September 15, 2016.

1.2.3.2.6. Bridge 118.41 -- Commence Demolition and Repair work on or before August 15, 2016 and complete on or before October 15, 2016.

1.2.3.2.7. Bridge 117.38 -- Commence Demolition and Repair work on or before September 15, 2016 and complete on or before November 15, 2016.

1.2.3.2.8. Bridge 108.09 -- Commence Demolition and Repair work on or before October 15, 2016 and complete on or before December 15, 2016.

1.2.3.2.9. Bridge 97.94 -- Commence Demolition and Repair work on or before November 15, 2016 and complete on or before January 15, 2017.

1.2.3.2.10. Bridge 96.11 -- Commence Demolition and Repair work on or before December 15, 2016 and complete on or before February 15, 2017.

1.2.3.2.11. Bridge 95.86 -- Commence Demolition and Repair work on or before January 15, 2016 and complete on or before March 15, 2017.

1.2.3.2.12. Bridge 95.08 -- Commence Demolition and Repair work on or before February 15, 2016 and complete on or before April 15, 2017.

1.2.3.2.13. Replacement of Rail and Ties -- Commence on or before July 1, 2016 and complete on or before April 15, 2017.

1.2.1.1.2.1.2.3.2.14. Repair Tunnels -- Commence repairs on or before August 1, 2016 and complete on or before April 15, 2017.

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

1.2.4.1. Test Train Operations between MP 120.09 and MP 129.61 shall commence on or before April 1, 2016, and shall consist of railroad operations in conformity with FRA Track Safety Standards of Class III.

1.2.1.1.2.1.2.4.2. Test Train Operations between MP 59.60 and MP 120.09 shall commence on or before May 15, 2017 and shall consist of railroad operations in conformity with FRA Track Safety Standards for, at a minimum, Class I Track.

~~1.2.2.1.2.5.~~ Operating Plan. Limited Operations pursuant to Section 1.2.6, shall not commence until SD&AE has approved the Operating Plan required by Section 3.4.

~~1.2.6.~~ Limited Operations. ~~Within 36 months after the Effective Date, PIR shall commence Limited Operations on the Desert Line.~~ Limited Operations shall consist of operating over the Desert Line, at a time in which repairs and/or maintenance shall be consistent to ~~qualify the Class of Track at a minimum as a Class II Track pursuant to meet applicable~~ FRA track safety standards, and PIR shall commence part time (at least three trains a week) freight service on the Desert Line sufficient to insure an uninterrupted and efficient flow of freight shipments in an economically viable transportation mode, subject to normal closures due to renovation, repairs and maintenance. No hazardous materials may be transported over the Desert Line unless it meets Class II Track standards, with no exceptions

~~1.2.6.1.~~ Limited Operations between MP 120.09 and MP 129.61 shall commence not later than December 31, 2016.

~~1.2.2.1.2.6.2.~~ Limited Operations between MP 59.60 and MP 120.09 shall commence no later than August 15, 2017.

~~1.2.3.1.2.7.~~ Full Scale Repairs. Full Scale Repairs shall be completed no later than ~~60 months from the Effective Date~~December 21, 2017, which shall consist of repairs and renovation sufficient to maintain and operate the entire Desert Line at a standard no less than that contained in Section 1.2.6 and consistent with Section 4.5.2 on a full time basis sufficient to insure an uninterrupted and efficient flow of freight shipments in an economically viable transportation mode. The Full Scale Repairs shall be inspected and approved by an independent structural and track engineer and subjected to ultrasonic rail flaw detection, loaded gauge, and track geometry testing by a contractor approved by SD&AE before Full Scale Operations pursuant to Section 1.2.8 may begin.

~~1.2.4.1.2.8.~~ Full Scale Operations. Full Scale Operations shall commence thirty (30) days after the completion of Full Scale Repairs and shall consist of full time uninterrupted and efficient flow of freight shipments in an economically viable transportation mode consistent with the approved Operating Plan and PIR's maintenance obligations under Section 4.5.2.

~~1.2.5.1.2.9.~~ FRA Track Safety Standards. Qualification for the Class of Track to a particular FRA Track Safety Standard shall be independently verified by a construction or engineering firm capable of rendering such a report and approved by SD&AE SD&AE shall also have the right to approve or reject the independent inspector assigned this duty. The results of any ultrasonic rail flaw detection, loaded gauge, and track geometry testing conducted pursuant to this Section 1.2 shall be to the satisfaction of SD&AE or SD&AE shall have the right to terminate this Lease.

## 2. CONSIDERATION

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

2.1.1. By July 1, 2013, a lump sum payment of \$500,000. Semiannually thereafter, until Limited Operations begin pursuant to Section 1.2.6, PIR shall pay SD&AE an additional \$500,000, or a pro-rata portion thereof.

2.1.2. For purposes of determining freight operating revenues hereunder, all freight revenues attributable to the movement of freight over the Desert Line shall constitute freight operating revenues. PIR shall not manipulate freight revenues, contracts, or tariffs so as to assign additional revenue to the Mexico portion of the railroad and unreasonably diminish freight revenue attributable to the Desert Line. Unless SD&AE and PIR mutually agree to a different calculation method, the combined gross freight revenues attributed to a movement of freight that travels over both the Desert Line and the Mexico Line shall be assigned on a pro-rata mileage basis.

2.1.1.1.2.1.2.1. As consideration for SD&AE agreeing to the Phase I and Phase II milestone adjustments in Section 1.2, including the establishment of a Transload Facility at Coyote Wells, PIR shall include all trucking revenue attributable to mileage within the United States in the "freight operating revenues" subject to a rental payment in this Section 2.1. Trucking revenue shall be attributable to PIR if it is earned by an entity that is an affiliate, partner, subsidiary, or other business enterprise connected to PIR, its shareholders, employees or other established connection. SD&AE reserves the right to audit any trucking revenue and to investigate any business connections with a trucking entity to confirm that it is not associated with PIR or otherwise established to avoid or minimize the payments owed to SD&AE under this Agreement. In the event SD&AE determines that PIR has entered into an arrangement related to trucking to avoid or minimize such payments to SD&AE, this shall be a basis to declare PIR in default and terminate this Agreement. Failure of PIR to cooperate in an investigation of this nature shall also be considered a default of this Agreement.

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

2.1.2.1.2.1.3.1. Year 1: 10% of PIR's gross freight revenue

2.1.2.2.2.1.3.2. Year 2: 11% of PIR's gross freight revenue

2.1.2.3.2.1.3.3. Year 3: 12% of PIR's gross freight revenue

~~2.1.2.4.2.1.3.4.~~ Year 4: 13% of PIR's gross freight revenue

~~2.1.2.5.2.1.3.5.~~ Year 5: 14% of PIR's gross freight revenue

~~2.1.2.6.2.1.3.6.~~ Year 6 and thereafter: 15% of PIR's gross freight revenue

~~2.1.2.7.2.1.3.7.~~ Under no circumstances shall each quarterly payment to SD&AE be less than \$250,000. Starting in 2017, this minimum payment shall be increased by 5% every five years.

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

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

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

### 3. PIR RIGHT TO OPERATE DESERT LINE

3.1. Exclusive Operating Right. SD&AE hereby grants PIR the exclusive right to operate freight services along the Desert Line. All PIR freight operations shall be based upon an SD&AE-approved Business Plan. The Business Plan shall be updated whenever material changes are proposed, but no less than every five (5) years.

3.2. Business Plan. The Desert Line Business Plan shall include the following components: Executive Summary, Proposed Make Up of Initial Management Team, Financing Plan, Marketing Plan, Strategy & Implementation Plan, Desert Line Reconstruction Plan (see §3.3) and Operating Plan (see § 3.4). SD&AE shall have the right to review and approve the Desert Line Business Plan. If deficiencies are identified by SD&AE, PIR shall

correct the deficiencies and submit a revised Business Plan to SD&AE for review and approval.

3.2.1. The Business Plan submitted to SD&AE pursuant to Section 1.2.1 shall include the following elements:

3.2.1.1. Executive Summary. A brief summary of the overall plan to develop and operate the Desert Line.

3.2.1.2. Proposed Make Up of Management Team. Identify key personnel who will develop and operate the Desert Line. To the extent a specific management team member has not been identified or hired, the plan should describe the essential job functions and qualifications for each open position.

3.2.1.3. Financing Plan. The Financing Plan, at a minimum, shall include an existing description of PIR's assets and cash flow, sources of capital and/or financing, and the plan and status of obtaining outside funding to complete each stage of the Performance Milestones set forth in Section 1.2.

3.2.1.4. Marketing Plan. The Marketing Plan, at a minimum, shall describe PIR's plan to attract customers, including a description of each potential customer and anticipated freight volume, revenue estimated, and a proposed schedule for service to begin.

3.2.1.5. Strategy & Implementation Plan. The Strategy & Implementation Plan, at a minimum, shall include the steps PIR must take to reach each stage of the Performance Milestones set forth in Section 1.2, and PIR's plan for meeting each stage in a timely manner. The plan shall also include a description and plan to achieve PIR's long-term goals for the Desert Line, including any related development of freight lines in Mexico.

3.3. Desert Line Reconstruction Plan. The Desert Line Reconstruction Plan (DLRP) required in Section 1.2.2 shall include, at a minimum, a detailed schedule and description of the work to be completed prior to and in conjunction with each stage of operations (i) Test Train Operations as described in Section 1.2.4, (ii) Limited Operations as described in Section 1.2.6, and (iii) Full Scale Operations as described in Section 1.2.8.

3.3.1. Prior to Test Train Operations the DLRP shall be updated and submitted to SD&AE and at a minimum shall: (a) update the October 2007 Osmose Services Bridge Report, (b) repair and/or remediate the deficiencies identified in the Osmose Services Bridge Report, (c) commission a study of the tunnel and track conditions on the Desert Line including ultrasonic rail flaw, loaded gauge, track geometry and tunnel clearance testing by a contractor approved by SD&AE, and (d) repair and/or remediate any track or tunnel deficiencies identified through such testing. If additional repairs or modifications beyond those in the DLRP are

planned for the Desert Line infrastructure or later required in order to bring PIR into compliance with this Lease, PIR shall submit such plans to SD&AE for review and approval. The DLRP shall ensure that the Desert Line bridges meet Cooper Loading System standards based on maximum axle loading for the freight to be carried by PIR, but not less than 286 pounds per car.

3.4. Operating Plan. The Operating Plan required by Section 1.2.5 shall include the following elements:

- 3.4.1. Personnel & Staffing Plan. PIR will provide such personnel as shall be necessary to perform its obligations hereunder, and will maintain a business office in San Diego County, California. PIR shall identify the principal persons to manage this operation. Such principal personnel and any future substitutes therefor shall be subject to approval of the President of SD&AE, which approval shall not be unreasonably withheld but shall be based upon generally accepted criteria of experience and qualifications with short line railroad operations.
- 3.4.2. Revenue/Budget Estimates. Revenue and budget estimates shall be provided with a year-by-year analysis for the first five years of this Agreement, and shall be updated every year thereafter.
- 3.4.3. Operating Rules. PIR shall develop and submit to SD&AE for approval a set of General Code of Operating Rules ("GCOR"), similar to the GCORs adopted by other freight rail carriers in the same class of carriers as PIR. The GCOR shall cover such topics as employee responsibilities, signaling equipment, procedures for safe train movement, dealing with accidents and other topics that directly and indirectly affect railroad safety.
- 3.4.4. Maintenance of Way Plan. PIR shall develop and submit to SD&AE for approval a Maintenance of Way Plan identifying scheduled inspection, repair, maintenance work, and projects to be undertaken by PIR, and detailing PIR's specific maintenance schedule for accomplishing such work and projects during the Term. The plan shall address rail maintenance activities including but not limited to Rail Grinding, Rail Transposition, Rail Slotting, Rail Surface Welding Repair, Rail Joint Elimination and Rail Cascading. PIR shall update such plans on an annual basis not later than thirty (30) days prior to the anniversary date of the initial plan submittal and submit to the SD&AE for approval. In addition, SD&AE may request changes to any such Maintenance Of Way plans in order to maintain compliance with state and federal rules for operating a railroad of similar size, scope, and classification as PIR, and PIR shall make and agree to implement such proposed changes.
- 3.4.5. Safety & Security Plans. PIR shall establish SD&AE-approved Safety & Security Program Plans. The Safety Plan shall include Roadway Worker Safety and all other FRA mandatory training based on applicable FRA, STB, CPUC, and SD&AE regulations, ordinances, standards and guidelines, which will identify,

eliminate, minimize, and control safety hazards and their attendant risks. The Security Plan shall provide for, without limitation, e-RailSafe employee verification, an identification badge system for PIR employees; a vehicle control system for PIR employee vehicles on the Service Property; and a plan for restricting access to facilities. Such plans shall meet all applicable federal and other legal requirements and regulations, and must be provided to SD&AE no less than sixty (60) calendar days before the Maintenance Commencement Date. SD&AE shall review such plan, and shall either accept the plan or shall, within thirty (30) calendar days, direct PIR to revise such plan. PIR shall revise such plan accordingly within thirty (30) calendar days of receipt of such revisions from SD&AE.

- 3.4.6. Anti-Smuggling & Customs Enforcement Plan. PIR shall develop a plan to fully comply with federal laws in Title 18, Chapters 27 (Smuggling) & 77 (Human Trafficking) and Title 8, Sections §§1321-1324 (Aliens) of the United States Code.
- 3.4.7. Homeland Security Plan. PIR shall develop a plan to monitor and protect the Desert Line from vandalism, terrorism and other threats. The Homeland Security Plan shall require reporting of any threat or potential threat to the MTS Chief of Police within twelve (12) hours. PIR shall be responsible for providing security for the Desert Line facilities. To the extent PIR establishes a law enforcement force, the jurisdiction for PIR law enforcement shall only extend to the Desert Line. MTS, through its Chief of Police, shall have the right, but not the obligation, to assert jurisdiction to investigate and respond to an incident on the Desert Line. In the event MTS exercises this right, all PIR law enforcement personnel shall be subordinate to the MTS Chief of Police.
- 3.4.8. The Operating Plan shall ensure that PIR's freight operations comply with 49 C.F.R. Part 200 through 299 and applicable Surface Transportation Board (STB) and Association of American Railroads (AAR) rules.

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

- 4.1. Right to Provide Transportation Service. Beginning on the Effective Date and throughout the term of this Lease, subject to compliance with the terms and conditions of this Agreement, SD&AE hereby grants and PIR hereby acquires and assumes the exclusive right to provide rail transportation service on the Desert Line, and to lease or sublease the rail line in accordance with the provisions of this agreement to provide the common carrier obligation for rail freight service on the Desert Line.
- 4.2. Common Carrier Service. PIR shall provide service only as a common carrier with the power to establish through routes, make and collect rates, and enter into contracts with customers subject to the provisions of divisions or handling line agreements with connecting carriers.

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

- 4.3.5. Collateral Revenue Payments. The payment of Collateral Revenue to PIR shall be based upon revenue actually received and shall be paid concurrent with quarterly reports submitted pursuant to Section 5.1.2.
- 4.3.6. Collateral Revenue Reports. PIR shall be responsible for submitting reports to SD&AE pursuant to Section 5.1.2, which reports shall contain details of the various Concessions entered into by PIR, and the Gross Revenues achieved by each Concession.
- 4.4. Rates, Charges, Divisions, Revenues. PIR shall immediately commence and use its best efforts to negotiate appropriate rates, charges and divisions for the shipment of goods over the Desert Line and obtain shipper commitments for future shipments of bulk commodities.
- 4.4.1. Tariffs, Rates, & Revenues. So long as it is not in default, PIR shall have the exclusive right and obligation in the name of, and on behalf of SD&AE, to file with appropriate governmental agencies and to adopt and negotiate, modify existing tariffs, rates, and charges for the shipment of goods over the Desert Line, and shall be solely responsible for collecting those rates from its customers and for payment of fees to other connecting carriers.
- 4.4.2. Freight Commitments Progress Reports. Upon commencement of Limited Operations as defined herein, PIR shall advise SD&AE on a quarterly (45 days after the end of each Quarter) basis of its progress in obtaining commitments for sufficient operating revenues to meet operating expenses projected.
- 4.4.3. Economic Viability. PIR shall take all actions necessary for and commence operations of such through service on the Desert Line at such time as PIR determines that the commencement of operations appears economically viable considering progress made in obtaining funds to reimburse part or all of PIR's expenses in opening the Desert Line and the time period reasonably necessary to amortize any expense of PIR incurred and not reimbursed from other sources.
- 4.4.3.1. The economic viability of operation of through service on the line is a factor of capital and operating costs including lease payments as well as operating revenue based upon rates, charges and divisions and car loads. The determination of economic viability is not contingent upon a projection of any specific level of profits or losses by PIR.
- 4.4.3.2. A decision by PIR not to commence or continue operations on the Desert Line because of a lack of economic viability shall not impact or restrict SD&AE's right to terminate if PIR fails to meet the Performance Milestone Requirements in Section 1.
- 4.5. Desert Line Management and Maintenance. PIR or its approved sub-lessee or designee shall have exclusive control and responsibility in the management, maintenance, and operation of freight rail service on the Desert Line at PIR's sole cost and expense.

- 4.5.1. Management. Upon the Effective Date hereof, SD&AE hereby grants to PIR the right to manage the Desert Line. PIR shall be responsible for the operating policies, billing rates, and scheduling of transportation over the Desert Line and the relationship with all shippers and connecting rail carriers. PIR agrees to provide the following services as reasonably necessary for the efficient operation of the Desert Line and the transportation of freight:
- 4.5.1.1. Marketing. Actively promote and solicit additional shipments by rail, routine marketing consistent with the business plan of PIR;
- 4.5.1.2. Employees and Labor Relations. PIR shall ensure that all of its employees who shall operate its trains, locomotives, cars and equipment over the Leased Premises have received all necessary training, certification, and licensure required to operate in accordance with applicable Federal Railroad Administration ("FRA") rules and regulations and with all generally accepted industry standards, including those standards promulgated by the AAR. PIR shall be responsible for all labor relations matters, including any costs, related to its employees and/or its operations.
- 4.5.1.3. Operating Assignment of Cars and Crews. PIR shall be responsible for the operating assignment of all cars and crews as relates to the Desert Line.
- 4.5.1.4. Dispatching of trains. Subject to dispatching with regard to all joint use facilities and operations pursuant to a joint use rule book promulgated by SD&AE (see Section 7.8), which directions and rule book shall not unduly interfere with PIR's provision of adequate freight service, PIR shall be responsible for dispatching on the Desert Line.
- 4.5.1.5. PIR shall provide all equipment (locomotives, cars and other equipment and buildings or other structures within the Desert Line's right-of-way), maintenance, repair, car and locomotive supply, car repair and maintenance, and sufficient motive power, including fuel and supplies, and establishing a routine system in order to facilitate operations and compliance with industry rules, regulations and practices.
- 4.5.1.6. Subagreements. PIR shall be responsible for negotiating directly with all connecting railroads with respect to switch charges, divisions of revenue, car hire agreements, interchange agreements, and clerical/data exchange agreements. PIR may not, absent the written consent of SD&AE and only as consistent with this Lease, allow the use of the Desert Line by other railroads for rail freight operations, or enter into agreements with other railroads for such use.

- 4.5.1.7. Regional Cooperation. PIR shall cooperate in all reasonable respects with BNSF, Union Pacific, the Mexican Government, Port of San Diego, San Diego & Imperial Valley Railroad, MTS, and other similar parties to insure an uninterrupted and efficient flow of freight shipments in an economically viable transportation mode as determined by SD&AE with the advice of PIR.
- 4.5.2. Maintenance. PIR shall maintain and safely operate adequate freight service on the Desert Line as provided herein. At minimum, PIR shall maintain the Desert Line infrastructure according to the following standards:
- 4.5.2.1. General Maintenance, Inspection and Repair. Maintain the Desert Line in compliance with all state and federal statutes, rules and regulations, or as otherwise agreed to by the parties, and upon commencement of Limited Operations as defined in Section 1.2.6, maintain the track on Leased Premises to at least Class II standards, as defined by the Federal Railroad Administration ("FRA") track safety standards, at PIR's own cost and expense and to a standard that is sufficient to continue rail freight service commensurate with the needs of the rail users located thereon, provided that if on the Effective Date the condition of any portion of the Leased Premises is better than Class II standards, that portion of the Leased Premises shall be maintained at no worse condition than exists on the Effective Date.
- 4.5.2.1.1. PIR's obligations shall include routine inspection and maintenance of the Desert Line (including, but shall not be limited to, highway grade crossings, grade crossing signal protection devices, railroad bridges and trestles, culverts and other structures, signs, road crossing signals, crossings, lighting, sub-roadbed and all other improvements on the Desert Line.)
- 4.5.2.1.2. PIR's maintenance obligations shall include vegetation control and removal of fire hazards consistent with California Department of Forestry and Fire Protection (Cal Fire) and other related requirements.
- 4.5.2.1.3. PIR agrees that all grade crossings and grade crossing protection devices will be given a high priority in PIR's maintenance program.
- 4.5.2.1.4. PIR is expressly prohibited from adding, removing, or modifying any grade crossings (either public or private) or grade crossing protection devices on the Desert Line without prior written consent from SD&AE.

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

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

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

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

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

5.1.2. Periodic Reports to SD&AE. Copies of unaudited financial reports pertaining to PIR and the Desert Line prepared in the normal course of PIR's business shall be provided to SD&AE on a quarterly basis, submitted to SD&AE no later than 45 days after the end of each quarter, commencing with the first quarter report following commencement of Limited Operations as defined in Section 1.2.4 above. Copies of reviewed annual financial statements, reviewed by an independent accounting firm, shall be submitted to SD&AE no later than 90 days after the end of each year end, commencing with the first year end after commencement of Limited Operations as defined in Section 1.2.4 above. SD&AE shall take the same precautions to protect the confidentiality of non-public financial information provided under this Section that it uses to protect its own confidential non-public financial information. Failure to provide these periodic reports to SD&AE will constitute default or breach under the Lease Agreement in addition to financial penalties under state and federal law.

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

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

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

- 6.4. Regulatory STB/SD&AE Approval. Except in the case of a termination of this Lease, an emergency, or a lawful embargo, PIR agrees not to suspend or discontinue any operations provided in this Lease, and, if such operations are subject to Surface Transportation Board ("STB") jurisdiction, such operations shall not be discontinued, over all or any part of the Desert Line without first applying for and obtaining from the STB, SD&AE, and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and necessity or other approvals or exemptions from regulation for such discontinuance of operations over the Desert Line. PIR shall obtain all necessary regulatory approvals required to operate the Desert Line as a common carrier and shall solely be responsible for compliance with all federal, state, and local regulations, including, without limitation, those of the Federal Railroad Administration, Surface Transportation Board, and, as applicable, the State of California.
- 6.4.1. Six Months' Notice Prior to Suspension or Discontinuance. Except in the case of a termination of this Lease or an emergency, PIR shall not suspend, discontinue or otherwise terminate operations on the Desert Line or take any action to obtain regulatory authority to discontinue operations on the Desert Line, without first giving SD&AE six (6) months advance written notice of PIR's intent to do so. Notwithstanding PIR's failure to obtain such approvals and provide such advance notice, PIR will remove itself from the premises and will discontinue operations under this Agreement immediately upon termination or expiration of this Agreement by SD&AE.
- 6.5. Environmental Laws. PIR shall comply with all applicable ordinances, regulations, statutes, rules, decisions and orders (including, but not limited to, those relating to safety, rail operations, air and water quality, noise, hazardous substances and hazardous wastes) issued by any court or federal, state or local governmental entity, including without limitation, the federal Department of Transportation, the Federal Railroad Administration, the federal Environmental Protection Agency, the California Environmental Quality Act (CEQA), and the National Environmental Policy Act (NEPA), ("Laws").

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

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

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

- 7.3. Right of Inspection. SD&AE and its agents or its authorized representatives, after three (3) days written prior notice to the PIR (except in an emergency, which for purposes of this Section 7.3 shall mean an immediate risk to human life or of bodily injury or of material damage to the Desert Line), shall have the right to enter at all times the premises, workings or operations of PIR in order to inspect and examine the same for the purpose of ascertaining the conditions of the operation, the methods of operation practiced or any other lawful purpose; provided, however, that such inspections shall not unreasonably interfere with PIR's operations. Additionally, responsible officers of the PIR shall be available to consult with SD&AE from time to time as may be necessary or required by SD&AE in order to advise SD&AE of ongoing activities and services performed by PIR on the Desert Line. It is mutually understood and agreed that SD&AE's agents or authorized representatives, when in or on the Desert Line or any of PIR's operations for any purpose, shall not be regarded under the law or otherwise as employees of the PIR. During any such inspection, PIR shall have the right to have appropriate personnel available to accompany the inspection party. In the event of a dispute between SD&AE and PIR with respect to PIR's fulfillment of its duties under Section 4.5.2 "Maintenance" it is agreed between the parties that an inspection by a qualified third party inspector agreed upon between the parties shall be arranged by the parties and such third party inspector shall inspect those segments or portions of track in dispute and his findings in this regard shall be binding upon the parties. If the parties are unable to agree on a third party inspector, then the parties will engage an FRA inspector to resolve such dispute and his findings in this regard shall be binding upon the parties.
- 7.4. Joint Inspection. The parties shall, at least once annually, jointly inspect the Desert Line to determine whether the Desert Line has been maintained in accordance with Section 4.5.2 of this Agreement. SD&AE and its agents or its authorized representatives shall have the right to inspect, at other times determined by SD&AE and after three (3) days written prior notice to PIR (except in an emergency, which for purposes of this Section 5.4 shall mean an immediate risk to human life or of bodily injury or of material damage to the Desert Line), the Desert Line to ascertain whether it has been properly maintained by the PIR, provided, however, that such inspections shall not unreasonably interfere with the PIR's operations. To assist SD&AE in its inspections, the PIR shall provide SD&AE with copies of all FRA inspection reports within sixty (60) days of receipt. If SD&AE and PIR disagree concerning the condition of the Desert Line or any determination by PIR of the appropriate level of maintenance, it is agreed by the parties that an inspection by a qualified representative of the FRA shall be arranged and such representative shall inspect those segments or portions of track in dispute. The representative's findings in this regard shall be binding upon the parties.

- 7.5. Federal Assistance. If PIR makes application for federal grant funding, federal loan assistance, or any other federal, state or local financial aid, redevelopment or other assistance program for rehabilitation of the Desert Line, SD&AE shall, upon the request of PIR, provide reasonable assistance to PIR in PIR's application for purposes of improving freight operations. To the extent that obtaining such funds requires matching funds, any local share of such matching funds shall be the sole obligation of PIR, if it desires to participate. To the extent legally permissible, PIR funds shall be allocated to specific buildings and structures and PIR shall be considered to be the owner of such buildings and structures, provided that upon termination of its contract with SD&AE, for whatever reason, SD&AE shall become the sole owner of all such improvements. In the event PIR has the right and ability to claim, sell or otherwise benefit from section 45G or other federal or state tax credit programs associated with track or maintenance or rail line improvements, and PIR obtains such benefits related to the Desert Line, PIR shall advise SD&AE of its pursuit of such benefits, and shall also inform SD&AE of any financial benefits that PIR expects to secure or has previously secured through any such programs. Unless otherwise directed by SD&AE, any and all such rebates, credits, or the proceeds of the sale of such rebates or credits shall be used for tasks listed in the DLRP, or Maintenance of Way work, other track maintenance, or other capital improvements to the Desert Line as SD&AE may direct. The proceeds of such rebates, credits, or the proceeds of the sale of such rebates or credits may also, at SD&AE's discretion, be used as an offset toward prospective PIR obligations under this agreement.
- 7.6. Grant of Access. Notwithstanding any other provision of this Agreement, SD&AE reserves the right to grant access for the installation of telecommunications or other utility facilities along, across, over, in, or on, the real property portion of the Desert Line, and to authorize a grantee to enter upon the Desert Line for purposes of installation, adjustment, relocation, and maintenance of those facilities, provided that such installation, adjustment, relocation, and maintenance does not unreasonably interfere with PIR's operations.
- 7.6.1. Pacific Southwest Railway Museum. PIR takes this Lease subject to the rights of the Pacific Southwest Railway Museum (PSRM) to operate passenger excursion trains on a portion of the Desert Line, and to maintain such portions of the Desert Line, as set forth in MTS Doc. No. S200-08-341 dated December 13, 2007. MTS desires for the PSRM use to continue. The current PSRM operating agreement expired on December 12, 2012 and therefore is continuing in a hold-over status. MTS and PIR desire to extend the PSRM operating agreement, subject to certain changes necessary to acknowledge PIR's freight operating role and the extinguishment of the rights and obligations of San Diego & Imperial Valley Railroad. PIR similarly acknowledges and takes this Lease subject to PSRM's rights to the Campo Depot property, as set forth in the PSRM Campo Depot Lease identified as MTS Doc No. S200-04.235. MTS shall have the right, in its sole discretion, to the extend or modify the PSRM Campo Depot Lease during the term of this Lease.
- 7.6.2. San Diego Gas & Electric (SDGE) East County Substation TL 13844 Project. At the time of execution of this Lease, SD&AE is in the process of transferring three (3) separate easements to SDGE for its East County Substation TL 13844 Project. The

three easements consist of overhead lines at property identified as the “Jacumba Crossing” and the “Head Crossing” and underground lines under Jewel Valley Road at the location identified as the “Lansing Crossing.” SD&AE and SDGE have agreed to easement language that protects the railroad uses on the Desert Line and prevents the SDGE from conflicting with that use. Notwithstanding the fact that the SDGE easements will be executed and recorded after the Effective Date of this Lease, PIR expressly agrees that they take the Desert Line subject to these SDGE easements.

7.6.3. Continuation of Pre-existing Agreements with SD&AE and/or MTS. There are currently various existing agreements executed by SD&AE and/or MTS for utility crossings, easements, private road crossings, spur track usage, property leases and permits, rights of entry, and trackage rights, including the agreement for the sale and donation of SD&AE to MTS dated February 12, 1979. It is the intent of the parties that all such and similar agreements, by whatever name, relating to the real property and property rights and track usage rights of SD&AE and MTS shall remain in force and effect upon this Lease becoming operative.

7.7. Future Passenger Service. SD&AE reserves the right to provide passenger and/or commuter rail services on the rail line. Any passenger or commuter services implemented on the line shall have priority over any freight services existing or implemented on the line. Any passenger or commuter services implemented on the Desert Line shall be coordinated with PIR to provide for the safe and efficient operation of services on the line. SD&AE shall have the right at its expense to erect, construct or install any structures, guards, devices, rails, ties, ballast, tracks, sidings, bridges, buildings, stations, communication facilities or other improvements upon the Desert Line for passenger or commuter services. To the extent that passenger and/or commuter rail services have material, adverse impacts on the revenue being generated by PIR, SD&AE agrees to modify the consideration owed to SD&AE under Section 2 to offset the loss of revenues.

7.8. Joint Facilities. As to the joint use facilities, SD&AE through San Diego Trolley, Inc. (“SDTI”) shall have exclusive dispatching control, provided that reasonable provisions shall be made for orderly, scheduled freight service during a nighttime “window” or such other times acceptable to SDTI so as not to unreasonably interfere with PIR’s obligation to maintain common carrier freight service. As to non joint use facilities, PIR shall have exclusive dispatching control, until such time as SD&AE through San Diego Trolley, Inc. require utilization of the Desert Line for passenger or commuter services. At the time of execution of this Lease, the Parties acknowledge that there is no SDTI use of the Desert Line. Therefore, there are no “joint use facilities” that trigger this provision at the current time.

7.9. Cooperation with PIR. SD&AE agrees within their resources and without subsidy to:

7.9.1. Cooperate with and assist PIR to maintain and obtain all necessary permits, clearances, agreements and other requirements for operations and maintenance.

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

## **8. TERMINATION**

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

- 8.3. If the default (other than the payment of money) of PIR cannot be cured within 30 days, then provided PIR commences such cure within the 30-day period, and diligently in good faith proceeds to complete such cure, then the time within which such default must be cured shall be extended for a time which is reasonable under all the circumstances.
- 8.4. In addition, the parties agree that in the event of termination, a final accounting shall be rendered by an independent certified public accountant experienced in railroad accounting, mutually agreeable to the parties, the cost of which shall be equally shared between the parties, and that the indicated final settlements shall be paid by the appropriate party within 30 days' notice, or may be withheld from funds, which would otherwise be payable, as such accountant shall deem appropriate.
- 8.5. PIR may, at any time after the initial term of this Agreement, terminate this Agreement by providing six (6) months' advance notice. In the event of such termination, the parties agree that a final accounting shall be rendered by an independent certified public accountant under the same terms and conditions outlined above.
- 8.6. Upon termination of this Agreement, PIR will not assert any continuing contractual or common carrier right to continue to operate over the Desert Line except as necessary to fulfill any common carrier obligations during the pendency of any STB discontinuance proceeding, and shall, at PIR's sole cost and expense, expeditiously prepare and submit all necessary applications, petitions, notices, or other ancillary submissions to the STB or any successor agency as necessary to effectuate a termination of this Lease and a discontinuance of PIR's operations over the Desert Line. In the event that PIR fails to make such filings on an expedited basis, SD&AE may make such filings on PIR's behalf and act as PIR's agent with respect to such filings to effectuate discontinuance of PIR's operations on the Desert Line, with PIR being responsible for all costs (including but not limited to filing fees and attorney fees) incurred by SD&AE in making such filings on PIR's behalf. In the event SD&AE is required to make such filings, PIR will not oppose the relief requested in SD&AE's filings. Furthermore, upon termination and during the pendency of any discontinuance proceeding, PIR will not interfere with any efforts by SD&AE to allow another rail carrier to operate on the Desert Line and shall coordinate as required to allow such other rail carrier full operating rights on the Desert Line.

## **9. INSURANCE AND INDEMNIFICATION**

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

therefore, including claims by reason of alleged defects in service, changes in services, or any other work or services done or provided by PIR pursuant to this Agreement.

- 9.2. PIR, its agents, directors, officers and employees shall not be held liable for damage to any goods, properties or effects of any person whatsoever, nor for personal injuries to or deaths of them, or any of them, caused by or resulting from any acts or omissions of MTS, SD&AE or their respective agents, employees, independent contractors, joint ventures, partners or representatives (including but not limited to failure to comply with any obligation under Section 3); MTS further agrees to indemnify and save free and harmless PIR and its authorized agents, directors, officers and employees against any of the foregoing liabilities and any cost and expense, including reasonable attorney's fees incurred by PIR on account of any claim therefore, including claims by reason of alleged defects in services, changes in services, or any other work or services done or provided pursuant to this Agreement.
- 9.3. Insurance Required. During the performance of services hereunder PIR shall maintain policies of insurance as described below. Prior to beginning work, PIR shall furnish evidence of insurance satisfactory to the Chief Executive Officer of MTS as to contents and insurance carriers which will contain a provision for 30 days prior written notice to the Chief Executive Officer of any cancellation, reduction, or any material change in coverage. The insurance required shall be as follows:
  - 9.3.1. Comprehensive Railroad Liability insurance for bodily injury (including death) to persons, and property damage including damage to the environment, which provides total limits of not less than \$100 million per occurrence, subject to a self-insured retention of a dollar amount acceptable to MTS. Coverage included shall be:
    - 9.3.1.1. Premises and operations;
    - 9.3.1.2. Products/completed operations;
    - 9.3.1.3. Contractual liability expressly including liability assumed under this Agreement, with deletion of the exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, underpass and crossway;
    - 9.3.1.4. Explosion, collapse, and underground hazards;
    - 9.3.1.5. Personal injury liability with standard exclusions a) liability assumed under contract and b) suits brought by employees deleted;
    - 9.3.1.6. Independent contractors;
    - 9.3.1.7. Deletion of any exclusion applicable to MTS/SD&AE/SDTI property in Contractor's care, custody, and control.

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

- 9.9.1. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to MTS.
- 9.9.2. Claims Made Policies: If any of the required policies provide claims-made coverage:
- 9.9.2.1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
- 9.9.2.2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
- 9.9.2.3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
- 9.9.3. Verification of Coverage. PIR shall furnish MTS with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by MTS before work commences, and annually thereafter. However, failure to obtain the required documents prior to the work beginning shall not waive the PIR's obligation to provide them. MTS reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- 9.9.4. Special Risks or Circumstances. MTS reserves the right to modify these requirements, including limits and type of insurance required, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## **10. GENERAL PROVISIONS.**

- 10.1. Status of PIR. PIR is an independent contractor, and in no way shall it be deemed to be an affiliate, partner, subsidiary, joint venturer, or associated in any manner whatsoever with SD&AE or MTS.
- 10.2. Conflict of Interest. No employee, officer, or Board member of SD&AE or MTS shall have a financial or other personal interest in this Agreement, or any contract or subcontract, or with PIR, in any way directly or indirectly.
- 10.3. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. PIR's rights hereunder shall not be assignable whether by way of assignment, sublease, license or otherwise, directly or indirectly, without SD&AE's prior written consent, except that an assignment to a wholly owned subsidiary may be accomplished upon notice to SD&AE, and provided that such assignment shall not relieve PIR of any of its obligations hereunder except as agreed

upon by SD&AE. This Agreement is not intended, nor shall it be construed to be for the benefit of any person or entity not a party to this Agreement.

10.4. Warranties and Representations.

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

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

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

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

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

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

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

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

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

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

10.5. Notice.

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

10.5.1.1. SD&AE

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

10.5.1.2. PIR

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

### 10.5.1.3 MTS

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

- 10.6. Attorneys' Fees and Costs. In the event any party to this Agreement brings legal action or requests arbitration to enforce its rights hereunder, the court or arbitrator shall have discretion to award the prevailing party reasonable attorney's fees and costs.
- 10.7. Choice of Law. This Agreement shall be interpreted in accordance with the statutes and laws of the United States of America and the State of California.
- 10.8. Severability. If any term, covenant, condition or provision (or part thereof) of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision (or remainder thereof) to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.
- 10.9. Force Majeure. The parties hereto will be excused from performance of any of their respective obligations hereunder, during the existence of and occasioned by any event beyond their respective control (not due to their own fault or actions inconsistent with good faith operations under this Lease), which shall include without limitation, actions of Mexican, federal, state or local agencies; acts of God; strikes or other labor troubles beyond the reasonable anticipation or control of the parties; temporary interruption of service caused by explosions, fires, vandalism, malicious mischief, and unavoidable interruption or cessation of service by a connecting railroad. However, nothing herein shall relieve the parties of their respective obligations to undertake all reasonably available actions necessary and all possible reasonable corrective measures to resume the provision of freight services to customers of the railroad and specifically the obligations of PIR as set forth in Section 4 of this Lease.
- 10.10. Dispute Resolution. The parties acknowledge and agree that this Agreement and any dispute hereunder shall be subject to and governed by the dispute resolution provisions set forth in this section 10.10.
  - 10.10.1. Informal Resolution. SD&AE and PIR recognize that disputes as to certain matters may from time to time arise during the effectiveness of this Agreement which relate to either party's rights and/or obligations hereunder or thereunder. It is the objective of the parties to establish procedures to facilitate the resolution of disputes arising under any of the Agreements in an expedient manner by mutual

cooperation and without resort to litigation. To accomplish this objective, the parties agree to follow the procedures set forth in this Article if and when a dispute arises under any of the Agreements. In the event of a dispute between the Parties, any party may, by written notice to the other, have such dispute referred to their respective chief executive officers for attempted resolution by good faith negotiations within fourteen (14) days after such notice is received. In the event the chief executive officers are not able to resolve such dispute, either party may at any time after the fourteen (14) day period seek to resolve the dispute through the other means provided in Section 10.10.2.

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

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

[Signature Page to Follow]

In Witness Whereof, each of the parties has caused this ~~Agreement~~ Amendment 1 to be duly executed on its behalf as of the day and year first above written.

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

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

**Pacific Imperial Railroad**  
a Delaware corporation

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

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

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

**Approved as to Form:**

By: \_\_\_\_\_  
Karen F. Landers  
General Counsel, MTS and SD&AE

***Pacific Imperial Railroad (PIR)  
Desert Line Agreement***

***July 9, 2015***

**Executive Committee Meeting**

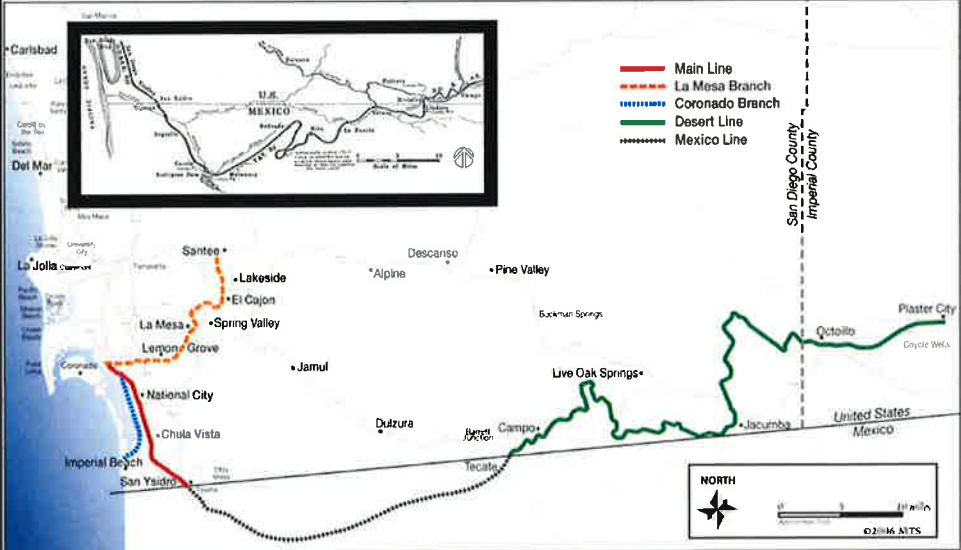
***Agenda Item No. C1***



1



***SD&AE Property***



2



## PIR Desert Line Agreement - Current Milestones

- Agreement executed on December 20, 2012
- Up to 99 year term
- Performance Milestones for first 5 years:
  - Business Plan (30 days) - **January 2013**
  - Reconstruction Plan (90 days) - **March 2013**
  - Initial Repairs (**September 2015**)/Test Train Op (**October 2015**)
  - Limited Operations (36 months) - **December 2015**
  - Full Scale Repairs (60 months)/Full Scale Op (61 months) - **December 2017 & January 2018**



3



## PIR Desert Line Agreement

- Agreement provides detailed specifications for repairs and maintenance, with MTS review and approval rights
- Compensation:
  - Minimum \$1,000,000 per year or
  - Upto 15% of gross freight revenues
- Right of First Refusal but no option to purchase; onerous MTS-financing of purchase, etc. deleted



4



## PIR Milestones Achieved

- Business Plan submitted - January 21, 2013
- Desert Line Reconstruction Plan submitted March 20, 2013; Supplement June 24, 2014
  - Conditionally approved August 28, 2014
  - JL Patterson field work July -Dec 2013; additional work April to present
  - American Pacific Constructors - general contractor
- \$2,500,000 in lease revenue received to date



5



## Delays Caused by Mexico Negotiations

- Ongoing negotiations with Baja California Railroad since January 2013
- Connection needed for highest and best use of the Desert Line - direct access for shippers in Tijuana/Tecate manufacturing facilities
- March 2015 - turning point in negotiations
  - MTS meeting with Fernando Beltran and new PIR investor Chuck Fletcher, et al.
  - Negotiations ongoing as to what specific agreements needed between PIR and BJRR to jointly operate freight on binational railroad



6



## **BJRR/PIR Memorandum of Understanding**

- June 22, 2015 signing ceremony
- Commitment to work together to reach definitive agreement on outstanding issues within 6 months
- BJRR reiterated to MTS that they are working cooperatively with PIR and that they want the project to work



7



## **Proposal to Modify Milestones**

- PIR will still meet 5 year Full Scale Repairs/Operations milestone
- Propose dividing initial repairs/test train/limited operations milestones into 2 segments:
  - Coyote Wells to Plaster City
  - Division (US Border) to Coyote Wells



8



## Proposed Milestones

- Phase I - Coyote Wells to Plaster City
  - Repair to Class III standards (instead of Class II)
  - Complete work by March 1, 2016 (6 month extension)
  - Limited Operations by December 31, 2016 (12 month extension)
  - Full Scale Repairs by December 21, 2017 (no change)



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## Proposed Milestones

- Phase II - Division to Coyote Wells
  - Repair to Class I standard (instead of Class II)
  - Work to take place between March 1, 2016 and April 15, 2017 (19.5 month extension)
  - Limited Operations by August 15, 2017 (19.5 month extension)
  - Full Scale Repairs by December 21, 2017 (no change)



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## Revenue Protections

- Revenue owed to MTS does not change
- Built in protection including trucking revenue associated with PIR or PIR shareholders in “freight operating revenues” subject to percentage rent
- Goal is to use trucking only as interim measure until full repairs complete, as a stop gap for repairs during normal operations, and for limited in-county shipping



11



## Recommendation

- That the Executive Committee forward a recommendation to the Board of Directors to authorize the CEO to execute an Amendment to the Desert Line Lease and Operating Agreement (MTS Doc. No. S200-13-560.1) substantially in conformance with Attachment A.



12





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

## Agenda Item No. C2

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

July 9, 2015

#### SUBJECT:

COMIC-CON 2015 (WAYNE TERRY AND ROB SCHUPP)

#### INFORMATIONAL ONLY

##### Budget Impact

None.

#### DISCUSSION:

Staff will provide a report regarding MTS activities related to Comic-Con 2015.



Paul C. Jablonski  
Chief Executive Officer

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

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

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



## Comic-Con 2015



1



## Comic-Con Service Plan

- 7.5-minute Green Line service operated between Qualcomm Stadium and the Imperial Transit Center throughout the event
- Early morning and late night 15-minute service on all lines
- Service day extended until after 1am Thursday - Saturday
- Blue Line weekday PM Peak 7.5-minute service extended
- 7.5-minute Blue Line service on weekends
- Ridership 240,000 in 2014
- Additional service expenses will approach \$300,000



2



## Comic-Con Advertising

### 34 Trolley Wraps

- 15 Fox, 9 ABC, 9 TBS, 1 eset

### 2 Station Activations

- Gaslamp Square
  - NBC Domination
    - Major "Heroes" Interactive Center
    - Pole Banners
    - Advertising Kiosks
- Convention Center
  - HBO Domination
    - Pole Banners
    - Fence Banners

Amazon High Castle Tickets







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# REVISED DRAFT

## Agenda

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

July 16, 2015

9:00 a.m.

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

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

#### ACTION RECOMMENDED

1. Roll Call
2. Approval of Minutes - June 18, 2015 Approve
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.

Please **SILENCE** electronics  
during the meeting

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

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



## CONSENT ITEMS

- |     |   |             |
|-----|---|-------------|
| 6.  | <u>Increased Authorization for Legal Service Contracts to Pay Projected Expenses in Fiscal Year 2016</u><br>Action would approve increasing the dollar amount of nine (9) legal services contracts to cover anticipated fiscal year 16 (FY16) expenses.   | Approve     |
| 7.  | <u>Investment Report - May 2015</u>   | Information |
| 8.  | <u>San Diego Metropolitan Transit System (MTS) Task Order Contract Approval for Old Town Transit Center (OTTC) West Improvements</u><br>Action would authorize the Chief Executive Officer (CEO) to execute Work Order 13.18 for MTS Doc. No. G1493.0-13 with Kimley-Horn & Associates Inc. to perform Design-Engineering Services for Old Town Transit Center West (OTTC West) Improvements. | Approve     |
| 9.  | <u>San Ysidro Radio Tower Installation - Contract Award</u><br>Action would authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. PWB174.0-15 with Day Wireless Systems, Inc., for the installation of the San Ysidro Radio Tower, as an expansion site of the Regional Transit Management System (RTMS) radio system.  | Approve     |
| 10. | <u>Disadvantaged Business Enterprise (DBE) Overall Goal</u><br>Action would adopt a 3.75% goal for DBE-participation in federally funded contracts over the Federal Fiscal Year (FFY) 2016 to FFY 2018 triennial period.  | Approve     |
| 11. | <u>Revisions to Board Policy No. 26, Disadvantaged Business Enterprise Program</u><br>Action would approve revisions to Board Policy No. 26, Disadvantaged Business Enterprise Program.   | Approve     |
| 12. | <u>Variable Message Signs for Green Line Communications System Upgrade Project - Sole Source Purchase Order</u><br>Action would authorize the Chief Executive Officer (CEO) to issue a purchase order to Daktronics, on a sole-source basis, for the procurement of eighty three (83) Variable Message Signs (VMS) for the Green Line Communications System Upgrade Project.                  | Approve     |
| 13. | <u>Radio Communication Support Services - Contract Award</u><br>Action would authorize the Chief Executive Officer (CEO) to execute MTS Document No. L1246.0-15 with Day Wireless Systems for the provision of radio communication support services for five years beginning on August 1, 2015 and ending on July 31, 2020.   | Approve     |
| 14. | <u>September 2015 Service Changes</u>   | Information |
| 15. | <u>MTS Taxicab Administration Administrative Penalty Guidelines</u><br>Action would approve the proposed revisions to the MTS Taxicab Administrative Penalty Guidelines.  | Approve     |
| 16. | <u>SD-100 Light Rail Vehicle Gate Turn Off Firing Boards - Sole Source Purchase Order</u><br>Action would authorize the Chief Executive Officer (CEO) to issue a purchase order to Siemens Transportation Systems Corporation (Siemens), on a sole source basis, for the purchase of thirty (30) Gate Turn-Off (GTO) Firing Boards for MTS's fleet of SD-100 Light Rail Vehicles (LRVs).      | Approve     |

## CLOSED SESSION

24. a. CLOSED SESSION - CONFERENCE WITH REAL PROPERTY NEGOTIATORS Pursuant to California Government Code Section 54956.8  
Property: APN 451-590-79-00 (Northeast side of Pacific Highway frontage road, north of Washington Street)  
Agency Negotiators: Paul Jablonski, Chief Executive Officer; Karen Landers, General Counsel; and Tim Allison, Manager of Real Estate Assets  
Negotiating Parties: Kennebec Properties II LLC  
Under Negotiation: Price and Terms of Payment Possible Action
- b. CLOSED SESSION - CONFERENCE WITH LABOR NEGOTIATORS Pursuant To California Government Code Section 54957.6  
Agency: San Diego Trolley, Inc. (SDTI)  
Employee Organization: International Brotherhood of Electrical Workers, Local 465 (Representing SDTI Train Operators, Electromechanics, Servicers and Clerical)  
Agency-Designated Representative: Jeff Stumbo Possible Action
- Oral Report of Final Actions Taken in Closed Session

## NOTICED PUBLIC HEARINGS

25. None.

## DISCUSSION ITEMS

30. MTS Blue Line Naming Rights (Rob Schupp) Approve  
Action would authorize the Chief Executive Officer (CEO) to execute an agreement with the University of California San Diego for the exclusive naming rights of the Blue Line for a period of 30 years.
31. Pacific Imperial Railroad (PIR) Desert Line Agreement (Karen Landers) Possible Action  
Action would authorize the Chief Executive Officer (CEO) to execute an Amendment to the Desert Line Lease and Operating Agreement (MTS Doc. No. S200-13-560.1) substantially in conformance with Attachment A.

## REPORT ITEMS

45. Trolley Renewal Project Update (Wayne Terry) Information
46. Annual Security Report (January 1, 2014 through December 31, 2014) (Manny Guaderrama) Information
60. Chairman's Report Information
61. Chief Executive Officer's Report Information
62. Board Member Communications
63. 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.

64. Next Meeting Date: August 27, 2015

65. Adjournment



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## Agenda Item No. 6

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

July 16, 2015

**Draft for  
Executive Committee  
Review Date: 7/9/15**

#### SUBJECT:

INCREASED AUTHORIZATION FOR LEGAL SERVICE CONTRACTS TO PAY  
PROJECTED EXPENSES IN FISCAL YEAR 2016

#### RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors approve increasing the dollar amount of nine (9) legal services contracts to cover anticipated fiscal year 16 (FY16) expenses.

#### Budget Impact

Sufficient funding has been programmed to pay these expenses in the current operating and capital budgets. The departments from which these expenses are drawn include: Risk & Claims, Real Estate, General Counsel, and Human Resources with the exception of Duane Morris legal firm, which is drawn from the San Diego Transit Corporation (SDTC) Employee Retirement Plan.

#### DISCUSSION:

Pursuant to Board Policy No. 52 (Procurement of Goods and Services), the Chief Executive Officer (CEO) may enter into contracts with service providers for up to \$100,000. The Board must approve all agreements in excess of \$100,000.

On December 8, 2011, the Board established a panel of qualified law firms to assist MTS, SDTC and San Diego Trolley, Inc. (SDTI) with various legal matters on an as-needed basis. Thereafter, MTS began contracting with eighteen of the approved firms for designated amounts. The firms provide different specialties of law, such as tort liability, workers' compensation, employment practices, real estate, environmental, etc. Nine of these firms will require contract increases to pay current and anticipated legal expenses in FY16. Rather than coming to the Board individually with each firm when the



contract allowance runs low, staff now requests Board approval on an annual basis at the start of each fiscal year.

The contract increases are based upon each firm's current caseload, the likelihood that a particular case may go to trial, and anticipated future litigation assigned to these firms in the current fiscal year. The following table includes the contracts needing Board approval to increase the dollar amount for legal services contracts for fiscal year 2016:

#	Firm Name	Contract/ Amendment No.	Current Contract Amount	Proposed Increase Amount	Total Contract Amount *	Attachment
1	Best Best & Krieger	G1422.4-12	\$400,000	\$50,000	\$450,000	A
2	David C. Skyer, APC	G1423.4-12	\$610,000	\$150,000	\$760,000	B
3	Mark H. Barber (Law Offices of)	G1426.4-12	\$375,000	\$80,000	\$455,000	C
4	Ryan Carvalho & White	G1432.5-12	\$460,000	\$225,000	\$685,000	D
5	Trovillion, Inveiss & Demakis, APC	G1433.5-12	\$305,000	\$90,000	\$395,000	E
6	Laughlin, Falbo, Levy & Moresi, LLP	G1455.4-12	\$220,000	\$90,000	\$310,000	F
7	Liedle, Lounsbery, Larson & Lidl, LLP	G1490.3-13	\$260,000	\$220,000	\$480,000	G
8	Manning & Kass, Ellrod, Ramirez, Trester, LLP	G1491.3-13	\$115,000	\$50,000	\$165,000	H
9	Duane Morris	G1716.2-14	\$75,000	\$25,000	\$100,000	I
<b>Totals</b>			<b>\$2,820,000</b>	<b>\$980,000</b>	<b>\$3,800,000</b>	

\* Reflects the total contract value, including FY16 increases described in the chart above.

#### CONCLUSION:

Staff is requesting that the Board of Directors approve increasing the dollar amount of nine (9) legal services contracts to cover anticipated FY16 expenses.

  
Paul C. Jablonski  
Chief Executive Officer

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

Attachments: A. Draft MTS Doc. No. G1422.4-12  
B. Draft MTS Doc. No. G1423.4-12  
C. Draft MTS Doc. No. G1426.4-12

- D. Draft MTS Doc. No. G1432.5-12
- E. Draft MTS Doc. No. G1433.5-12
- F. Draft MTS Doc. No. G1455.4-12
- G. Draft MTS Doc. No. G1490.3-13
- H. Draft MTS Doc. No. G1491.3-13
- I. Draft MTS Doc. No. G1716.2-14

DRAFT

July xx, 2014

MTS Doc. No. G1422.4-12  
LEG 491 (PC 50633)

Best Best & Krieger, LLP  
Mr. Bruce W. Beach  
Equity Partner  
655 West Broadway, 15<sup>th</sup> Floor  
San Diego, CA 92101

Dear Mr. Beach:

Subject: AMENDMENT NO. 4 TO MTS DOC. NO. G1422.0-12; LEGAL SERVICES – ALL AREAS  
OF MTS OPERATION

This shall serve as Amendment No. 4 to our agreement for the legal services as further described below.

#### SCOPE

Continue to provide general legal advice and services for all areas of MTS operation in accordance with the terms and conditions of the original agreement, MTS Doc. No. G1422.0-12.

#### SCHEDULE

There shall be no change to the schedule of this contract.

#### PAYMENT

This contract amendment shall authorize additional costs not to exceed \$50,000 for legal services. The total value of this contract including this amendment shall be in the amount of \$450,000. This amount shall not be exceeded without written approval from MTS.

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

Sincerely,

Agreed:

Paul C. Jablonski  
Chief Executive Officer

\_\_\_\_\_  
Bruce W. Beach  
Best Best & Krieger, LLP

JULY2015.G1422.4-12.BBK.doc

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

Cc: K. Landers, S. Lockwood, C. Aquino, Procurement File

DRAFT

July xx, 2015

MTS Doc. No. G1423.4-12  
LEG 491 (PC 50633)

David C. Skyer, APC  
Mr. David C. Skyer  
Attorney  
401 West A Street, Suite 1740  
San Diego, CA 92101-7994

Dear Mr. Skyer:

Subject: AMENDMENT NO. 4 TO MTS DOC. NO. G1423.0-12; LEGAL SERVICES – GENERAL  
AND TORT LIABILITY

This shall serve as Amendment No. 4 to our agreement for the legal services as further described below.

#### STATEMENT OF WORK

Continue to represent and defend MTS, SDTC, and SDTI in tort liability matters in accordance with the terms and conditions as stated on MTS Doc No. G1423.0-12.

#### SCHEDULE

There is no change to the term of this agreement.

#### PAYMENT

This contract amendment shall authorize additional costs not to exceed \$150,000 for legal services. The total value of this contract including this amendment shall be in the amount of \$760,000. This amount shall not be exceeded without written approval from MTS.

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

Sincerely,

Agreed:

Paul C. Jablonski  
Chief Executive Officer

\_\_\_\_\_  
David C. Skyer, Attorney  
David C. Skyer, APC

JULY2015.G1423.4-12.DAVIDSKYER.LEGAL.doc

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

Cc: S. Lockwood, K. Landers, C. Aquino, Procurement File

DRAFT

July xx, 2015

MTS Doc. No. G1426.4-12  
LEG 491 (PC 50633)

Law Offices of Mark H. Barber  
Mr. Mark H. Barber  
Managing Attorney/Owner  
2727 Camino del Rio South, Suite 220  
San Diego, CA 92108

Dear Mr. Barber:

Subject: AMENDMENT NO. 4 TO MTS DOC. NO. G1426.0-12; LEGAL SERVICES – WORKER'S  
COMPENSATION

This shall serve as Amendment No. 4 to our agreement for the legal services as further described below.

#### SCOPE

Continue to provide legal services – worker's compensation in accordance with the terms and conditions of the original agreement, MTS Doc. No. G1426.0-12.

#### SCHEDULE

There shall be no change to the schedule of this contract.

#### PAYMENT

This contract amendment shall authorize additional costs not to exceed \$80,000 for legal services. The total value of this contract including this amendment shall be in the amount of \$455,000. This amount shall not be exceeded without written approval from MTS.

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

Sincerely,

Agreed:

Paul C. Jablonski  
Chief Executive Officer

\_\_\_\_\_  
Mark H. Barber  
Law Offices of Mark H. Barber

JULY2015.G1426.4-12.MARK H. BARBER.doc

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

Cc: K. Landers, S. Lockwood, A. Liebengood, C. Aquino, Procurement File

DRAFT

July xx, 2015

MTS Doc. No. G1432.5-12  
LEG 491 (PC 50633)

Ryan Carvalho & White LLP  
Mr. Norman Ryan  
Attorney  
3636 Nobel Dr., Suite 200  
San Diego, CA 92122-1063

Dear Mr. Ryan:

Subject: AMENDMENT NO. 5 TO MTS DOC. NO. G1432.0-12; LEGAL SERVICES – GENERAL  
LIABILITY, LABOR EMPLOYMENT, CONSTRUCTION AND INSURANCE LAW

This shall serve as Amendment No. 5 to our agreement for the legal services as further described below.

#### STATEMENT OF WORK

Continue to provide legal services – general liability, labor and employment law, construction and insurance law in accordance with the terms and conditions of the original agreement, MTS Doc. No. G1432.0-12.

#### SCHEDULE

There is no change to the term of this agreement.

#### PAYMENT

This contract amendment shall authorize additional costs not to exceed \$225,000 for legal services. The total value of this contract including this amendment shall be in the amount of \$685,000. This amount shall not be exceeded without written approval from MTS.

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

Sincerely,

Agreed:

Paul C. Jablonski  
Chief Executive Officer

\_\_\_\_\_  
Norman Ryan, Attorney  
Ryan Mercaldo LLP

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

Cc: K. Landers, S. Lockwood, C. Aquino, Procurement File

DRAFT

July xx, 2015

MTS Doc. No. G1433.5-12  
LEG 490 (PC 50633)

Trovillion, Inveiss and Demakis, APC  
Ms. Nicole Demakis  
Partner  
1010 Second Ave., Suite 1600  
San Diego, CA 92101

Dear Ms. Demakis:

Subject: AMENDMENT NO. 5 TO MTS DOC. NO. G1433.0-12; LEGAL SERVICES – WORKER’S  
COMPENSATION

This shall serve as Amendment No. 5 to our agreement for the legal services as further described below.

#### SCOPE

Continue to provide legal services – worker’s compensation in accordance with the terms and conditions of the original agreement, MTS Doc. No. G1433.0-12.

#### SCHEDULE

There shall be no change to the schedule of this contract.

#### PAYMENT

This contract amendment shall authorize additional costs not to exceed \$90,000 for legal services. The total value of this contract including this amendment shall be in the amount of \$395,000. This amount shall not be exceeded without written approval from MTS.

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

Sincerely,

Agreed:

Paul C. Jablonski  
Chief Executive Officer

\_\_\_\_\_  
Nicole Demakis  
Trovillion, Inveiss and Demakis, APC

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

Cc: K. Landers, S. Lockwood, A. Liebengood, C. Aquino, Procurement File

DRAFT

July xx, 2015

MTS Doc. No. G1455.4-12  
LEG 491 (PC 50633)

Laughlin, Falbo, Levy & Moresi LLP  
Ms. Marijo Kuperman, Esq.  
Managing Partner  
600 B Street, Suite 2300  
San Diego, CA 92101

Dear Ms. Kuperman:

Subject: AMENDMENT NO. 4 TO MTS DOC. NO. G1455.0-12; LEGAL SERVICES – WORKER'S  
COMPENSATION

This shall serve as Amendment No. 4 to our agreement for the legal services as further described below.

#### SCOPE

Continue to provide legal services – worker's compensation in accordance with the terms and conditions of the original agreement, MTS Doc. No. G1455.0-12.

#### SCHEDULE

There shall be no change to the schedule of this contract.

#### PAYMENT

This contract amendment shall authorize additional costs not to exceed \$90,000 for legal services. The total value of this contract including this amendment shall be in the amount of \$310,000. This amount shall not be exceeded without written approval from MTS.

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

Sincerely,

Agreed:

Paul C. Jablonski  
Chief Executive Officer

\_\_\_\_\_  
Marijo Kuperman  
Laughlin, Falbo, Levy & Moresi LLP

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

Cc: K. Landers, S. Lockwood, C. Aquino, Procurement File

DRAFT

July xx, 2015

MTS Doc. No. G1490.3-13  
LEG 491 (PC 50633)

Liedle, Lounsbery, Larson & Lidl, LLP  
Mr. Matthew J. Liedle  
Managing Partner  
12520 High Bluff Dr., Suite 200  
San Diego, CA 92130

Dear Mr. Liedle:

Subject: AMENDMENT NO. 3 TO MTS DOC. NO. G1490.0-13; LEGAL SERVICES – GENERAL LIABILITY, LABOR AND EMPLOYMENT LAW, CONSTRUCTION CONTRACTS AND CLAIMS, AMERICANS WITH DISABILITIES ACT (ADA), AND CIVIL RIGHTS

This shall serve as Amendment No. 3 to our agreement for the legal services as further described below.

#### SCOPE

Continue to provide legal services – general liability, labor and employment law, construction contracts and claims, Americans with Disabilities Act (ADA), and civil rights in accordance with the terms and conditions of the original agreement, MTS Doc. No. G1490.0-13.

#### SCHEDULE

There shall be no change to the schedule of this contract.

#### PAYMENT

This contract amendment shall authorize additional costs not to exceed \$220,000 for legal services. The total value of this contract including this amendment shall be in the amount of \$480,000. This amount shall not be exceeded without written approval from MTS.

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

Sincerely,

Agreed:

Paul C. Jablonski  
Chief Executive Officer

\_\_\_\_\_  
Matthew J. Liedle, Managing Partner  
Liedle, Lounsbery, Larson & Lidl, LLP

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

Cc: K. Landers, S. Lockwood, C. Aquino, Procurement File

DRAFT

July xx, 2015

MTS Doc. No. G1491.3-13  
LEG 491 (PC 50633)

Manning & Kass, Ellrod, Ramirez, Trester, LLP  
Ms. Marguerite Lieu Jonak  
Partner  
550 West C Street, Suite 900  
San Diego, CA 92101

Dear Ms. Jonak:

Subject: AMENDMENT NO. 3 TO MTS DOC. NO. G1491.0-13; LEGAL SERVICES – GENERAL LIABILITY, WORKER’S COMPENSATION, LABOR AND EMPLOYMENT LAW, CONSTRUCTION CONTRACTS AND CLAIMS, AMERICANS WITH DISABILITIES ACT (ADA), CIVIL RIGHTS, CRIMINAL LAW, AND REAL ESTATE

This shall serve as Amendment No. 3 to our agreement for the legal services as further described below.

#### SCOPE

Continue to provide legal services – general liability, worker’s compensation, labor and employment law, construction contracts and claims, Americans with Disabilities Act (ADA), civil rights, criminal law, and real estate in accordance with the terms and conditions of the original agreement, MTS Doc. No. G1491.0-13.

#### SCHEDULE

There shall be no change to the schedule of this contract.

#### PAYMENT

This contract amendment shall authorize additional costs not to exceed \$50,000 for legal services. The total value of this contract including this amendment shall be in the amount of \$165,000. This amount shall not be exceeded without written approval from MTS.

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

Sincerely,

Agreed:

Paul C. Jablonski  
Chief Executive Officer

\_\_\_\_\_  
Marguerite Lieu Jonak  
Manning & Kass, Ellrod, Ramirez, Trester, LLP

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

Cc: K. Landers, S. Lockwood, C. Aquino, Procurement File

DRAFT

July xx, 2015

MTS Doc. No. G1716.2-14  
LEG 491 (PC 50633)

Duane Morris, LLP  
Ms. Lisa Merrill  
Attorney  
750 B Street, Suite 2900  
San Diego, CA 92101

Dear Ms. Merrill:

Subject: AMENDMENT NO. 2 TO MTS DOC. NO. G1716.0-14; LEGAL SERVICES – “OTHER”  
(FINANCE LAW RELATED TO THE SDTC PENSION PLAN)

This shall serve as Amendment No. 2 to our agreement for the legal services as further described below.

#### STATEMENT OF WORK

Continue to provide legal services – “other” (finance law related to the SDTC Pension Plan) in accordance with the terms and conditions of the original agreement, MTS Doc. No. G1716.0-14.

#### SCHEDULE

There is no change to the term of this agreement.

#### PAYMENT

This contract amendment shall authorize additional costs not to exceed \$25,000 for legal services. The total value of this contract including this amendment shall be in the amount of \$100,000. This amount shall not be exceeded without written approval from MTS.

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

Sincerely,

Agreed:

Paul C. Jablonski  
Chief Executive Officer

\_\_\_\_\_  
Lisa Merrill, Attorney  
Duane Morris, LLP

JULY2015.G1716.2-14.DUANEMORRIS.LEGAL.doc

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

Cc: L. Marinesi, J. Sansone, K. Landers, S. Lockwood, C. Aquino, Procurement File



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

JULY 16, 2015

**SUBJECT:**

INVESTMENT REPORT – MAY 2015

INFORMATIONAL ONLY

Budget Impact

None.

**DISCUSSION:**

Attachment A comprises a report of the San Diego Metropolitan Transit System (MTS) investments as of May 31, 2015. The combined total of all investments has decreased month to month from \$96.8 million to \$86.1 million. This \$10.7 million decrease is attributable to \$9.1 million liquidated to satisfy part of the debt obligation related to the 1995 lease and leaseback transactions described in the paragraph below, and expenditures of \$1.1 million in 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. The debt service investments totaling \$18.1 million 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. These restricted funds will be liquidated to satisfy the outstanding debt obligation in full by the end of calendar year 2015.

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, appearing to read 'Paul C. Jablonski', is written over a horizontal line.

Paul C. Jablonski  
Chief Executive Officer

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

Attachment: A. Investment Report for May 2015



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

**San Diego Metropolitan Transit System  
Investment Report  
May 31, 2015**

	<u>Restricted</u>	<u>Unrestricted</u>	<u>Total</u>	<b>Average rate of return</b>
Cash and Cash Equivalents				
JP Morgan Chase - concentration account	-	20,563,931	20,563,931	0.00%
Total Cash and Cash Equivalents	-	20,563,931	20,563,931	
Cash - Restricted for Capital Support				
US Bank - retention trust account	4,758,582	-	4,758,582	N/A *
San Diego County Investment Pool Proposition 1B TSGP grant funds	5,041,015	272,659	5,313,674	
Total Cash - Restricted for Capital Support	9,799,597	272,659	10,072,256	
Investments - Working Capital				
Local Agency Investment Fund (LAIF)	18,745,588	18,593,218	37,338,806	0.290%
Total Investments - Working Capital	18,745,588	18,593,218	37,338,806	
Investments - Restricted for Debt Service				
US Bank - Treasury Strips - market value (Par value \$27,165,000)	18,106,634	-	18,106,634	
Total Investments Restricted for Debt Service	18,106,634	-	18,106,634	
Total cash and investments	<u>\$ 46,651,819</u>	<u>\$ 39,429,808</u>	<u>\$ 86,081,627</u>	

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



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## Agenda Item No. 8

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

July 16, 2015

**Draft for  
Executive Committee  
Review Date: 7/9/15**

#### SUBJECT:

SAN DIEGO METROPOLITAN TRANSIT SYSTEM (MTS) TASK ORDER CONTRACT  
APPROVAL FOR OLD TOWN TRANSIT CENTER (OTTC) WEST IMPROVEMENTS

#### RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to execute Work Order 13.18 for MTS Doc. No. G1493.0-13 with Kimley-Horn & Associates Inc. to perform Design-Engineering Services for Old Town Transit Center West (OTTC West) Improvements.

#### Budget Impact

The funding for Work Order 13.18 (\$139,000) is allocated under MTS Capital Improvement Project (CIP) for MTS Fiscal Year 2016, Capital Improvement Project Budget No. 11561-0600.

#### DISCUSSION:

The bus facilities on the west side of the OTTC West are constrained by limited capacity, and in need of refurbishment after nearly 20 years of service. The ability to add service on some of our highest ridership routes is limited by a lack of bus bays. Multiple routes share bays, and standby buses for west side routes are inefficiently staging on the east side. During peak times, buses are circling through the center while waiting for an available bay. Additionally, many of the amenities, equipment, and furnishings, first installed in 1996, are beyond their useful life after nearly twenty years of very heavy passenger use.

MTS has initiated a capital improvement project to upgrade certain elements of the entire transit center, with an added focus on OTTC West towards improving capacity and operational efficiency. The first phase of the project is underway and will refurbish and replace the amenities most in need. Phase 2 of the project will design and construct



improvements to amenities and capacity, specifically at OTTC West. These upgrades are anticipated to include increasing bus bay capacity, improving pedestrian access, repairing or replacing the remaining facilities which are beyond their useful life (not already covered in Phase I). The upgrades will also update pavement markings and traffic signage, station lighting, shelters and passenger waiting areas, next-arrival signage, and wayfinding signage and station maps.

The Scope of Work for Phase 2 consists of the following tasks:

- Task 1 – Project Management
- Task 2 – Site Walk and Data Collection
- Task 3 – Site Survey and Mapping
- Task 4 – Concept Development
- Task 5 – Preliminary Cost Estimates based on Concept Development
- Task 6 – Final Design
- Task 7 – Final Design Cost Estimate
- Task 8 – Geotechnical Pavement Evaluation and Environmental Sampling

The anticipated schedule for the project is for the Phase 2 design and engineering work to occur while Phase 1 is being constructed in FY2016. Improvements designed under this Scope of Work would be constructed in FY2017 as part of that year's Capital Improvement Program.



Paul C. Jablonski  
Chief Executive Officer

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

Attachments: (To be provided with Board meeting materials)



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## Agenda Item No. 9

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

July 16, 2015

**Draft for  
Executive Committee  
Review Date: 7/9/15**

#### SUBJECT:

SAN YSIDRO RADIO TOWER INSTALLATION - CONTRACT AWARD

#### RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. PWB174.0-15 (in substantially the same format as Attachment A) with Day Wireless Systems, Inc., for the installation of the San Ysidro Radio Tower, as an expansion site of the Regional Transit Management System (RTMS) radio system.

#### Budget Impact

The value of this contract will not exceed \$106,757.54. The project will be funded through the MTS Capital Improvement Program Project 11290 (RTMS Expansion).

#### DISCUSSION:

MTS is currently using the RTMS radio system to manage its buses in daily transit operations. Part of the RTMS system is a radio network which handles data and voice communications for the buses of MTS and the North County Transit District (NCTD).

In December 2013, MTS contracted with Xerox Transport Solutions, Inc., to upgrade the RTMS back office systems and expand the on-vehicle equipment to vehicles located at the East County and South Bay maintenance facilities. As part of this expansion, it was determined that the RTMS system radio coverage is not reliable enough in the areas south of CA-54, where most of the South Bay routes operate, and that a new tower in San Ysidro would provide sufficient coverage for vehicles operating in this area.

MTS has already obtained a lease to operate its radio antennas on the tower from the City of San Diego which owns the site. MTS has obtained radio equipment for the site



from NCTD. Day Wireless, Inc. will configure and install the equipment on the radio tower and connect it to the RTMS back end system.

MTS Policy No. 52 (Procurement of Goods and Services) requires a formal competitive process for procurements of goods and services exceeding \$100,000. In May 2015, MTS issued an Invitation for Bid (IFB). A single responsive and responsible bid was received on June 17, 2015 from Day Wireless Systems, Inc. After conducting a detailed price analysis, staff determined that the price bid was fair and reasonable.

Therefore, staff recommends that the Board of Directors authorize the CEO to execute MTS Doc. No. PWB174.0-15 with Day Wireless Systems, Inc. for the installation of the San Ysidro Radio Tower.

  
\_\_\_\_\_  
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 PWB174.0-15

## STANDARD SERVICES AGREEMENT

PWB174.0-15  
 CONTRACT NUMBER  
 CIP11290  
 FILE NUMBER(S)

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2015, 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. 8300 Juniper Creek Lane, Suite 100  
 dba Day Wireless Systems Address: San Diego, CA 92126

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

Telephone: 503-659-1240

Authorized person to sign contracts: Brent McGraw VP of Operations  
 Name Title

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

San Ysidro radio tower installation services, as specified in the Scope of Work (attached as Exhibit A), the Bid/Proposal (attached as Exhibit B), and in accordance with the Standard Conditions Services Agreement, including the Standard Conditions Services (attached as Exhibit C), and the Federal Requirements (attached as Exhibits D).

Total contract amount shall not exceed \$ \$106,757.54

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
\$106,757.54	11290	FY16

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

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

SA-SERVICES REVISED (REV 6-15)  
 DATE



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## Agenda Item No. 10

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

July 16, 2015

**Draft for  
Executive Committee  
Review Date: 7/9/15**

#### SUBJECT:

DISADVANTAGED BUSINESS ENTERPRISE (DBE) OVERALL GOAL

#### RECOMMENDATION:

That the Board of Directors adopt a 3.75% goal for DBE-participation in federally funded contracts over the Federal Fiscal Year (FFY) 2016 to FFY 2018 triennial period.

#### Budget Impact

None.

#### DISCUSSION:

As a Federal Transit Administration (FTA) grantee, MTS complies with the federal regulations set forth in Title 49 of the Code of Federal Regulations Part 26 regarding participation by DBEs in the U.S. Department of Transportation (DOT) Program. The DBE regulations requires MTS to prepare DBE goals based upon the number of ready, willing, and able DBE-certified contractors available to bid on certain categories of MTS procurements.

The goals of the DBE program are:

1. to ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. to ensure that the DBE program is narrowly tailored in accordance with applicable law;



4. to ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. to help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. to assist the development of firms that can compete successfully in the marketplace outside of the DBE program; and
7. to provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs.

MTS has a race-neutral program with an aspirational goal for DBE participation. This means that no special quotas or advantages are provided to DBE contractors. Successful bidders are chosen using race-neutral means—generally through a low-bid or best-value procurement process. MTS conducts various forms of outreach to DBEs and other contractors in an effort to inform them of upcoming MTS procurements. This includes, but is not limited to: advertising in multiple forums for our formal procurements, such as local publications, Planet Bid, and email blasts to small business organizations; ensuring for our informal procurements we seek out a bid from a DBE contractor; and participating in small business conferences that provides DBEs a place to network with large prime contractors and to learn of potential contracting opportunities with local public agencies.

For purposes of reporting DBE participation rates to the FTA, MTS may only count participation by certified DBE contractors. A DBE must be certified by the California Unified Certification Program. Certified DBE contractors must (1) have a woman or minority as a majority owner, and (2) meet specified income limits for both the business and the majority owner. Thus, contractors with only a woman, disabled veteran, or minority-owned certification do not qualify for DBE reporting.

MTS is required to calculate its goal on a triennial basis. The upcoming triennial period is FFY 2016 to FFY 2018 (October 1, 2015, through September 30, 2018). The DBE regulations establish the required goal methodology, which includes 2 steps: (1) determination of a base figure of the relative availability of DBEs to all comparable firms (DBE and non-DBE) available to bid or propose on MTS's FTA-assisted contracts within MTS's geographic market area; and (2) adjusting the base figure to reflect any circumstances that may impact the relative availability of DBE firms in MTS's geographic market area. This goal methodology requires MTS to forecast the specific federal contracts that it expects to award during the triennial period and identify if there are qualified DBE contractors in its geographic market area who may successfully bid on such contracts.

To calculate the MTS DBE goal for the FFY 2016 to FFY 2018 triennial period, MTS hired DBE Consultant, GCAP Services, to review MTS procurement information, identify DBE and non-DBE contractors available to bid on each procurement, and calculate MTS's potential DBE participation on such contracts. An 11-page "FTA Overall DBE Goal-Setting Methodology" document was prepared establishing a proposed goal of 3.75% (Attachment A).

The 3.75% proposed goal takes into consideration an estimated \$66 million in federally assisted contract dollars that MTS expects to award in the triennial period. This figure includes certain contracts with no qualified DBE firms available to bid on such work (e.g., Light Rail Equipment Manufacturing, Railroad Ties, Motor Vehicle Brake Manufacturing, Septic Tank and Related Services, Security Systems Services). In such contracts, there is no reasonable opportunity for MTS to award the associated federal dollars to a DBE contractor which reduces MTS's base figure. In addition, there are several contracts with very few DBE firms available, compared to the many available non-DBE firms (e.g. Security Guards and Patrol Services, Exterminating and Pest Control Services, Motor Vehicle Towing). This also reduces MTS's base figure. Lastly, there are only two construction related projects (Parking Lot Resurfacing and Paver Construction). Since these two projects are of a small monetary value compared to the total dollar value anticipated to be awarded, it does not significantly increase MTS's base figure. As a result, the Step One base figure of DBE firms available to bid on anticipated MTS federally assisted contracts is 2.59%.

In Step Two, the base figure of 2.59% was compared to MTS's median DBE attainment for the previous triennial period (4.9%). Using past DBE goal attainments provides demonstrable evidence of DBE availability and capacity to perform. The average of these two figures is 3.75%. It is therefore recommended that the 2.59% base figure be adjusted upward to 3.75%.

MTS reports its DBE-participation to the FTA in semiannual reports. The specific participation rate for each 6-month reporting period will depend heavily on the type and dollar value of contracts that were awarded during a given period. During periods when MTS awards a large, multiyear service contract such as paratransit services or contract service bus operations, the large dollar value of these non-DBE contracts will dilute the percentage of DBE participation for other contracts in the reporting period. Therefore, while the specific DBE participation rate for each 6-month reporting period may fluctuate, the goal of the MTS DBE-outreach program will be to achieve the 3.75% DBE goal as an average for the FFY 2016-2018 triennial period.

Per the DBE Regulations, MTS must publish its proposed overall goal methodology. MTS posted the proposed goal and associated goal-setting methodology document on its Website and at its Executive Offices on June 11, 2015 with a request for comments. On June 29, 2015, MTS posted notice of MTS's proposed overall goal in the San Diego Daily Transcript. On July 2, 2015, MTS posted notice of MTS's proposed overall goal in the San Diego Voice & Viewpoint Newspaper.

In addition, before MTS submits its proposed goal to the FTA, MTS must arrange consultations with minority, women's and general contractor groups and other community organizations that have information concerning: the availability of DBEs and non-DBEs; the effects of discrimination on opportunities for DBEs; and MTS's efforts to establish a level playing field for the participation of DBEs. Our DBE Consultant GCAP Services requested meetings with various local organizations to receive their input. This included: Black Contractors Association of San Diego, Filipino American Chamber of Commerce of San Diego, National Latina Women's Business Association of San Diego, Mexican American Business & Professional Association, National Association of Women Business Owners of San Diego, National Association of Women in Construction of San Diego, Engineering & General Contractors Association, Association of General

Contractors, Associated Subcontractors Alliance and San Diego Contracting Opportunities Center. Upon completion of the consultations, MTS's Draft Goal-Setting Methodology will be updated to include which organizations were consulted with and the comments that were received.



---

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 Goal-Setting Methodology Document  
B. Summary of Public Comments Received from Consultations

# **SAN DIEGO METROPOLITAN TRANSIT SYSTEM**



Federal Transit Administration (FTA)  
Overall DBE  
Goal-Setting Methodology

FFY 2016-FFY 2018

Submitted in fulfillment of:  
Title 49 Code of Federal Regulations Part 26

*This analysis is prepared exclusively for MTS; it is non-transferable and is not to be duplicated.*



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## I. INTRODUCTION

The San Diego Metropolitan Transit System (MTS) herein sets forth its Overall Disadvantaged Business Enterprise (DBE) Goal and corresponding federally prescribed goal-setting methodology for the three-year Federal Fiscal Year (FFY) goal period of 2016-2018 (October 1, 2015 through September 30, 2018), pursuant to Title 49 Code of Federal Regulations (CFR) Part 26 "Participation by Disadvantaged Business Enterprises in U.S. Department of Transportation Programs." The purpose of the DBE goal-setting process is to level the playing field so that DBEs can compete fairly for Department of Transportation-assisted contracts, however, the program must be narrowly tailored in accordance with applicable law.

## II. BACKGROUND

MTS is a recipient of U.S. Department of Transportation (USDOT), Federal Transit Administration (FTA), funding. As a condition of receiving this assistance, MTS signed an assurance that it will comply with FTA's DBE requirements. In accordance with Title 49 CFR Part 26 provisions: Participation by DBEs in USDOT Programs, MTS is required to develop and submit a Triennial Overall DBE Goal for its FTA-assisted projects.

MTS herein presents its Overall DBE Goal Methodology for FFY 2016-18.

## III. FTA-ASSISTED CONTRACTING PROGRAM FOR FFY 2016-2018

Table 1 represents MTS's FTA-assisted contracting program, which consists of projects considered in preparing this goal methodology. The projects, which include Construction, Professional Services and Materials/Supplies contracting opportunities, are anticipated to be awarded during the triennial period:

**TABLE 1**

PROJECT NAME/DESCRIPTION	EST. TOTAL PROJECT COST
ALLISON TRANSMISSION REBUILDS - BUS ENGINES	557,086
ANTI-GRAFFITI WINDOW FILM	600,000
BATTERIES FOR BUSES AND AUTOS	28,549
BENDIX AIR BRAKE PARTS GROUP B	119,341
BRAKE AND PLANETARY KITS GROUP A	265,412
BRAKE DRUMS AND ROTORS GROUP C	230,927
BRAKE OVERHAUL KITS	4,000,000
CCTV - SOUTHBAY BRT - PROCUREMENT AND INSTALL	200,000



PROJECT NAME/DESCRIPTION	EST. TOTAL PROJECT COST
CNG ENGINE IN-FRAME OVERHAULS	5,182,478
E-PROCUREMENT SVCS	250,000
FIRE ALARM TESTING AND MAINTENANCE	57,078
FIRE ALARM TESTING AND MAINTENANCE - ONLY FOR IAD AND KMD	25,589
HAZ MAT DISPOSAL SERVICES IAD-KMD-SDTI	153,160
JANITORIAL SERVICES	4,143,431
LRV TIRE KITS FOR U2'S SD100'S AND S70'S - TROLLEY RAIL WHEEL (KIT)	3,000,000
SHELTER REPLACEMENT- AMAYA, ARNELE, GILESPI	800,000
PARKING LOT RESURFACING- ORANGE LINE	1,000,000
LANDSCAPING, ASPHALT, CONCRETE (PAVERS ON PLATFORMS)	3,000,000
ON-CALL ENGINEERING SERVICES	300,000
PANTOGRAPH CARBON STRIPS	500,000
PEST CONTROL SERVICES SDTI/SDTC	59,143
PORTABLE TOILET SERVICES	220,000
PRINTING/DELIVERY SVCS FOR TAKE ONE	441,398
PROVIDE AIR SUSPENSIONS GROUP F	129,888
PROVIDE SHOCKS GROUP E	185,514
RAILROAD TIES	500,000
REBUILT TRANSMISSIONS/OVERHAULS	525,786
SUPPLY BRAKE LININGS AND PADS	84,856
SECURITY SERVICES	38,534,749
TOWING SERVICES	66,075
TRAUMA SCENE CLEAN-UP SERVICES	32,137
TROLLEY OIL ANALYSIS	250,000
UNIFORM SERVICES	1,004,147
<b>TOTAL</b>	<b>\$66,446,743</b>

Table 2 provides a summary of the categories of work with estimated cost breakdown for each. Categories of work are groups utilizing comparable North American Industry Classification System (NAICS) codes for purposes of weighting the categories of work based on the engineer's estimates.

**TABLE 2**

CATEGORY OF WORK	NAICS CODES	ESTIMATED \$ BY NAICS	ESTIMATED NAICS %
Commercial and Institutional Building Construction	236220	800,000	1.20%
Highway, Street, and Bridge Construction	237310	1,000,000	1.50%
Poured Concrete Foundation and Structure Contractors	238110	3,000,000	4.51%
Electrical Contractors and Other Wiring Installation Contractors	238210	200,000	0.30%
Ties, railroad, made from logs or bolts	321113	500,000	0.75%



CATEGORY OF WORK	NAICS CODES	ESTIMATED \$ BY NAICS	ESTIMATED NAICS %
Motor Vehicle Brake System Manufacturing	336340	5,015,938	7.55%
Light rail cars and equipment manufacturing	336510	3,500,000	5.27%
Motor Vehicle Supplies and New Parts Merchant Wholesalers	423120	28,549	0.04%
Motor Vehicle Towing	488410	66,075	0.10%
Engineering Services	541330	300,000	0.45%
Testing Laboratories	541380	250,000	0.38%
Administrative Management and General Management Consulting Services	541611	250,000	0.38%
Other Business Service Centers (including Copy Shops)	561439	441,398	0.66%
Security Guards and Patrol Services	561612	38,534,749	57.99%
Security Systems Services (except Locksmiths)	561621	82,666	0.12%
Exterminating and Pest Control Services	561710	59,143	0.09%
Janitorial Services	561720	4,775,568	7.19%
Hazardous Waste Treatment and Disposal	562211	153,160	0.23%
Septic Tank and Related Services	562991	220,000	0.33%
Automotive Transmission Repair	811113	6,265,349	9.43%
Linen Supply	812331	1,004,147	1.51%
<b>TOTAL</b>		<b>66,446,743</b>	<b>100.00%</b>

#### IV. GOAL METHODOLOGY

##### *Step 1: Determination of a Base Figure (26.45)<sup>1</sup>*

To establish MTS's Base Figure of the relative availability of DBEs to all comparable firms (DBE and Non-DBE) available to bid or propose on MTS's FTA-assisted contracting opportunities projected to be solicited during the triennial goal period, MTS followed the prescribed federal methodology to determine relative availability. This was accomplished by assessing the *California Unified Certification Program (CUCP) DBE Database of Certified Firms* and the 2013 *U.S. Census Bureau County Business Patterns Database* within MTS's market area (defined as San Diego County) for each of the categories of work defined in Table 2.

MTS's local market area consists of the geographic area where a substantial majority of contracting dollars are expended and/or where the substantial majority of contractor and

<sup>1</sup> 26.45 represents Title 49 CFR Part 26 regulatory goal setting methodology reference.



subcontractor bids or quotes are located. MTS's bidder's list was reviewed and it confirms this market area.

In accordance with the formula below, the Base Figure is derived by dividing the number of ready, willing and able DBE firms identified for each work category by the number of all firms identified for each corresponding work category (relative availability), weighting the relative availability for each work category by the corresponding work category weight from Table 2 (weighted ratio), and adding the weighted ratio figures together.

$$\text{Base Figure} = \sum \frac{(\text{Number of Ready, Willing and Able DBEs})}{\text{Number of All Ready, Willing and Able Firms}} \times \text{weight} \times 100$$

⇒ For the numerator: CUCP DBE Database of Certified Firms

⇒ For the denominator: 2013 U.S. Census Bureau's Business Patterns Database

A concerted effort was made to ensure that the scope of businesses included in the numerator was as close as possible to the scope included in the denominator.

The result of the Base Figure calculation is shown in Table 3 as follows:

**TABLE 3**

CATEGORY OF WORK	CATEGORY WEIGHT	DBES	ALL FIRMS	WEIGHTED RATIO
Commercial and Institutional Building Construction	1.20%	34	437	0.09%
Highway, Street, and Bridge Construction	1.50%	26	77	0.51%
Poured Concrete Foundation and Structure Contractors	4.51%	14	161	0.39%
Electrical Contractors and Other Wiring Installation Contractors	0.30%	19	658	0.01%
Ties, railroad, made from logs or bolts	0.75%	0	0	0.00%
Motor Vehicle Brake System Manufacturing	7.55%	0	2	0.00%
Light rail cars and equipment manufacturing	5.27%	0	0	0.00%
Motor Vehicle Supplies and New Parts Merchant Wholesalers	0.04%	0	131	0.00%
Motor Vehicle Towing	0.10%	1	84	0.00%
Engineering Services	0.45%	45	1,009	0.02%
Testing Laboratories	0.38%	7	85	0.03%
Administrative Management and General Management Consulting Services	0.38%	73	1,048	0.03%
Other Business Service Centers (including Copy Shops)	0.66%	5	84	0.04%
Security Guards and Patrol Services	57.99%	3	148	1.18%
Security Systems Services (except Locksmiths)	0.12%	0	51	0.00%
Exterminating and Pest Control Services	0.09%	3	147	0.00%
Janitorial Services	7.19%	18	495	0.26%
Hazardous Waste Treatment and Disposal	0.23%	1	8	0.03%



CATEGORY OF WORK	CATEGORY WEIGHT	DBES	ALL FIRMS	WEIGHTED RATIO
Septic Tank and Related Services	0.33%	0	19	0.00%
Automotive Transmission Repair	9.43%	0	43	0.00%
Linen Supply	1.51%	0	6	0.00%
Base Figure (i.e., Sum of Weighted Ratios for all Work Categories)				2.59%

### Step 2: Adjusting the Base Figure

Upon establishing the Base Figure, MTS reviewed and assessed other known evidence potentially impacting the relative availability of DBEs within the market area, in accordance with prescribed narrow tailoring provisions set forth under 49 CFR Part 26.45: Step 2; DBE Goal Adjustment guidelines.

Evidence considered in making an adjustment to the Base Figure included Past DBE Goal Attainments and Other Evidence, as follows:

#### A. Past DBE Goal Attainments

As historical DBE participation attainments provide demonstrable evidence of DBE availability and capacity to perform, MTS proceeded to calculate past DBE participation attainments for the three (3) federal fiscal years, for which DBE attainment data is available. The table below reflects the demonstrated capacity of DBEs (measured by actual historical DBE participation attainments) on FTA-assisted contracts awarded by MTS within the last three (3) federal fiscal years.

TABLE 4

FEDERAL FISCAL YEAR	FTA DBE PARTICIPATION %
2012/2013	4.90%
2013/2014 <sup>2</sup>	7.99%
2014/2015 <sup>3</sup>	0.0%
Median DBE Participation for the Last Three (3) Years	4.90%

<sup>2</sup> DBE participation for 2013/14 was significantly higher than previous years. On September 23, 2014, MTS elected to exercise two option years with a DBE contractor, NMS Management, Inc. (NMS), for a total of \$2,683,546.88. NMS provides a substantial amount of MTS's janitorial services, which includes MTS Buildings and its Light Rail Vehicles. For previous fiscal years, DBE participation generally consisted of several DBE contractors being awarded contracts of smaller dollar amounts.

<sup>3</sup> Through March 31, 2015.



The median established for the past three years is higher than the Base Figure derived from Step 1; therefore, an adjustment to the Base Figure based on MTS's past DBE goal attainments has been made. The adjustment is calculated by averaging the Base Figure with the median DBE Past Attainment, as shown below.

Base Figure (A)	2.59%
Median DBE Attainment (B)	4.90%
<b>Adjusted Base Figure <math>[(A+B)/2]</math></b>	<b>3.75%</b>

### **B. Disparity Study**

MTS uses a strictly race-neutral DBE program since the Western States decision. Currently, MTS has met its overall goals using only race-neutral means for the last two completed federal fiscal years.

If MTS fails to reach its goal for one complete federal fiscal year, MTS will re-evaluate its DBE program to determine whether contract goals are necessary to achieve the overall goal. If after re-evaluation MTS believes a race-conscious program is necessary, as required by Western States, MTS will gather evidence to determine if discrimination in the transportation contracting industry is present. MTS will make a determination at that time what type of evidence gathering is appropriate, based on DOT regulations and case law.

### **C. Other Available Evidence**

MTS is not in possession of other information that would have an impact on the DBE goal assessment.

## **V. PROPOSED OVERALL DBE GOAL**

**The Final Proposed Overall DBE Goal for FFY 2016-2018 for MTS's FTA-assisted contracts is 3.75%.** As a part of the prescribed goal-setting methodology, MTS must project the percentage of its Proposed Overall DBE Goal that can be met utilizing race-neutral and race-conscious measures.

### **Race-Conscious & Race-Neutral Projection**

The MTS DBE goal attainment data, which equals a 4.3% mean for the past three years, demonstrates that MTS is able to meet the DBE goal through race neutral means. MTS intends to continue to use race-neutral methods to meet the overall DBE goal of 3.75% for FFY 2016-2018 in accordance with Title 49 CFR Part 26.51.



<b>RACE-CONSCIOUS &amp; RACE-NEUTRAL PROJECTIONS</b>	
DBE Adjusted Base Figure	<b>3.75%</b>
Race-Conscious Component	<b>0.0%</b>
Race-Neutral Component	<b>3.75%</b>

## **VI. RACE-NEUTRAL IMPLEMENTATION MEASURES**

MTS is currently implementing a number of race- and gender-neutral remedies to outreach and promote the participation of DBEs and small businesses in MTS's FTA-assisted contracting program. MTS plans to continue or implement the following race-neutral measures for FFY 2016-2018 and will continue to explore other options for consideration based on MTS's success in meeting its overall DBE goals based on these efforts:

- MTS will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation. MTS will also hold conferences, which include a networking component to promote teaming opportunities between prospective prime contractors and the DBE and Small Business contracting community.
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing). Specifically, MTS will, through its website, refer the DBE and Small Business contracting community to the SBA Bonding Assistance Program.
- MTS will solicit DBEs and other small businesses participation by carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate).
- As a supportive service to help develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses, MTS will actively promote the Small Business conferences, programs, and support services offered by other agencies that have established DBE and Small Business Programs.
- MTS will advise its contracting community of the online directory of certified DBEs, found at the California Unified Certification Program website: [www.CaliforniaUCP.com](http://www.CaliforniaUCP.com). MTS will also



advise the contracting community of the available small businesses certified by the California Department of General Services (DGS) and found at the following url: [www.bidsync.com/DPXBisCASB](http://www.bidsync.com/DPXBisCASB).

- MTS will advise the DBE and small business community to participate in Caltrans' DBE Supportive Services Program, which offers free training classes and one-on-one technical assistance.
- MTS will provide outreach to current MTS contractors or past MTS contractors who may qualify for DBE-certification by encouraging them to seek and obtain DBE-certification.
- MTS will monitor prime contractors' use of subcontractors to identify potential payments to DBE subcontractors that have not previously been captured in MTS DBE reporting.

### ***Fostering Small Business Participation***

MTS has implemented several strategies to foster small business participation in its contracting process. These include the following:

- In multi-year design-build contracts or other large contracts (e.g., for "megaprojects") requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- On larger prime contracts encouraging the prime contractor to consider subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- Ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
- Provide outreach to current MTS contractors or past MTS contractors who may qualify for DBE-certification by encouraging them to seek and obtain DBE-certification.

## **VII. PUBLIC PARTICIPATION AND FACILITATION**

In accordance with Public Participation Regulatory Requirements of Title 49 CFR Part 26, minority, women, local business associations, and community organizations within the market area will be consulted and provided an opportunity to review the triennial goal analysis and provide input.



MTS plans to issue a Public Notice on MTS's website publishing the Draft Proposed FTA Overall DBE Goal-Setting Methodology for FFY 2016-2018. The notice would inform the public that the proposed goal and rationale are available for inspection at MTS's principal office during normal business hours for 30 days following the date of the Public Notice, and that MTS would accept comments on the goal analysis for 30 days from the date of the Public Notice. MTS will give full consideration to all comments and input received as a part of this process and will assess its impact on the goal-setting methodology.

DRAFT

## MTS FTA Overall DBE Goal Setting Methodology for Fiscal Years 2016-2018

**SUMMARY OF PUBLIC COMMENTS & RESPONSES**

No.	Date	Source	Comment Summary	Response Summary
1.	6/5/15 at 9:00 a.m. @ 7675 Dagget St., Suite 340, San Diego	Asian Business Association (ABA)	<p>The Asian Business Association (ABA) stated that the requirements for certification are too hard and there are many other minority and women owned firms available to do this work that have not been certified.</p> <p>ABA asked about the schedule and what type of work would be available for DBEs and small businesses.</p> <p>ABA believes that the requirements and availability of work are miniscule and that there are not enough firms in the program. The goal was reasonable and good for small businesses, but many firms don't bother to participate because they don't believe there are adequate opportunities for them.</p> <p>They believe that coming out to the community and working with the ABA was a good outreach approach to increase DBE certifications.</p>	<p>The CUCP provides certification services to businesses seeking to participate in the U.S. DOT DBE Program. The eligibility requirements to become a DBE are mandated by the U.S. DOT. The program is subject to strict scrutiny analysis and requires that participants are thoroughly reviewed before being certified. If a firm requires more in-depth assistance to become a DBE, a firm may contact its Local Small Business Development Centers (SBDCs). Additional information about SBDCs may be found at <a href="http://www.sba.gov">www.sba.gov</a>.</p> <p>MTS has limited opportunities for DBE construction firms as SANDAG conducts most large construction projects. However, all of MTS's formal procurements are advertised on Planet Bid and MTS encourages all DBEs and small businesses to register on Planet Bid to get notice of MTS contracting opportunities.</p> <p>Although MTS does not have many construction projects, MTS has in the past awarded the following types of contracts to DBE firms: janitorial, engineering, marketing, drafting, legal services, staffing services, fencing and heating and air services. Please review this Overall Goal Methodology for a list of opportunities available for DBEs in the next three years. In addition, MTS will continue participating at local business organizations events to share information about MTS contracting opportunities and explain the DBE Program requirements.</p> <p>MTS does not certify DBEs but will always refer interested businesses to the CUCP website for DBE certification information and materials. MTS currently refers interested businesses to the CUCP through its contract language, posting notice on its Website and when participating at local business organization events.</p>

## MTS FTA Overall DBE Goal Setting Methodology for Fiscal Years 2016-2018

**SUMMARY OF PUBLIC COMMENTS & RESPONSES**

No.	Date	Source	Comment Summary	Response Summary
2.	6/8/15 at 12 pm @ 3462 Malito Bonita, CA 91902	Mexican American Business Association (MABA)	<p>The Mexican American Business Association (MABA) is dissatisfied with MTS's outreach efforts in minority communities and believes that many San Diego based small businesses have given up being certified. A limited number of firms are getting work, but there is not enough outreach to all available firms. MABA believes that MTS is arrogant when it comes to community outreach.</p> <p>MABA never received anything regarding outreach. MTS needs targeted outreach.</p> <p>Leadership is made up of minority community but there are no opportunities given to DBE firms.</p> <p>Evaluation criteria should remove language that incentivizes prime contractors to use the same DBE businesses over and over.</p>	<p>MTS participates in several local business organization events including: Caltrans Small Business Exchange, Meet the Buyers, the Construction Expo and Women in Business. In addition, MTS meets with the following groups to learn of successful strategies to increase DBE participation: Caltrans Small Business Council, the Public Agency Consortium and the Regional Construction Procurement Committee. MTS will continue to participate at these events and meetings in the future.</p> <p>MTS encourages the MABA and its members to register on Planet Bid to receive direct notice of MTS's formal procurements. MTS will also consider sending email blasts directly to local business organizations, if interested, of upcoming procurements.</p> <p>MTS has awarded several contracts to DBEs. Although MTS does not have many construction projects, MTS has in the past has awarded the following types of contracts to DBE firms: janitorial, engineering, marketing, drafting, legal services, staffing services, fencing and heating and air services.</p> <p>MTS does not have bid or contract language that incentivizes prime contractors to use the same DBE subcontractor used in past contracts. MTS encourages the use of any and all DBE subcontractors.</p>

## MTS FTA Overall DBE Goal Setting Methodology for Fiscal Years 2016-2018

**SUMMARY OF PUBLIC COMMENTS & RESPONSES**

No.	Date	Source	Comment Summary	Response Summary
3.	6/8/15 at 1:00 p.m. @ 6125 Imperial Ave., San Diego	Black Contractors Association, Inc. (BCA)	<p>The Black Contractors Association (BCA) believes there is a need for more labor force training, including apprenticeship and mentoring of workers. Black business owners are not being developed to replace existing owners.</p> <p>DBE contractors are ill-prepared, MTS is not helping with technical assistance, and DBE contractors need help with estimating and other contracting-related areas. There needs to be more done with helping DBE contractors get work by providing technical assistance.</p> <p>Smaller contractors do not have working capital and are not getting enough work.</p> <p>The work DBEs get is menial and workers are paid low wages.</p> <p>Funds should be invested in a program to provide technical assistance to small minority businesses.</p>	<p>MTS has limited construction related work for its FTA-funded projects; however, this work is allocated to SANDAG, which will start tracking workforce utilization.</p> <p>MTS supports and refers interested firms to SBDCs and the San Diego Contracting Opportunity Center (SDCOC) to gain technical assistance. MTS also participates in networking events that focus on DBEs being provided the chance to meet and learn from prime contractors. These events also provide a chance for DBEs to build relationships with prime contractors that can potentially lead to teaming opportunities on future contracts.</p> <p>Upon request and available on MTS's website, MTS provides a list of identified DBE financial institutions that may provide financing to DBE contractors and small businesses. In addition, upon request and available on MTS's website, MTS refers interested firms to contact SBDCs and the U.S. Small Business Administration (SBA) to learn about available financing programs.</p> <p>All federal and state public works contracts require the payment of prevailing wages for construction workers.</p> <p>MTS supports and refers interested firms to existing technical assistance providers, which includes the SDCOC, SBDCs, and the SBA.</p>

## MTS FTA Overall DBE Goal Setting Methodology for Fiscal Years 2016-2018

**SUMMARY OF PUBLIC COMMENTS & RESPONSES**

No.	Date	Source	Comment Summary	Response Summary
4.	Wed. 6/9/15 at 11:00 a.m. @ 6212 Ferris Square, San Diego	Associated General Contractors of America San Diego Chapter, Inc.	<p>The Associated General Contractors of America (AGC) asked if MTS can revisit the overall goal if MTS finds it cannot meet the goal.</p> <p>AGC suggested having DBE set aside contracts would alleviate pressure from contractors and place the responsibility on MTS.</p> <p>AGC suggested that MTS consider contracting directly with DBEs similar to what the City of San Diego does.</p>	<p>MTS is required to analyze the DBE attainments after each year during the triennial period. If it appears that the overall goal cannot be met, MTS is able to submit a revised overall goal to FTA for approval.</p> <p>MTS uses a race-neutral DBE program. Successful bidders are chosen generally through a low-bid or best-value procurement process. MTS is prohibited from implementing a set aside program for DBE firms per the US DOT DBE Regulations.</p> <p>The majority of DBE participation on MTS contracts comes from contracting directly with DBE prime contractors. MTS has limited opportunities for DBE subcontractors as MTS does not perform many large construction projects.</p>

## MTS FTA Overall DBE Goal Setting Methodology for Fiscal Years 2016-2018

**SUMMARY OF PUBLIC COMMENTS & RESPONSES**

No.	Date	Source	Comment Summary	Response Summary
5.	6/9/15 at 9:00 a.m. @ 4007 Camino Del Rio South, Suite 210, San Diego	San Diego Contracting Opportunities Center (SDCOC)	Why was a partial year used for the past performance analysis?	MTS reported a partial year for FFY 2015 (October 1, 2014 to March 31, 2015) participation data in the Triennial Goal Setting Methodology document to identify the most recent utilization of DBE firms in MTS's FTA-funded contracts. The period of April 1, 2015 to September 30, 2015 is ongoing and data will not be available for this period until after September 30, 2015.
			How was the goal calculated?	As required by U.S. DOT DBE Regulations and Guidance, MTS used the census and DBE directory data to develop a base figure of the relative availability of DBEs compared to all firms (non-DBEs and DBEs) within MTS's geographic market area that were able to bid on MTS's federally assisted contracts within the next three years. MTS then adjusted its base figure by averaging in MTS's past DBE goal attainments. This calculation resulted in MTS's proposed overall DBE goal for DBE participation in federally assisted contracts.
			MTS should spend more time getting firms certified.	Although MTS is not a certifying agency, it will continue to work with the CUCP, Caltrans (a certifying agency) and the SDCOC to assist potential DBEs to get certified. MTS will also consider reaching out to small businesses who participate on MTS contracts to provide information about DBE certification, including eligibility requirements and how to apply to become a DBE.



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## Agenda Item No. 11

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

July 16, 2015

**Draft for  
Executive Committee  
Review Date: 7/9/15**

#### SUBJECT:

REVISIONS TO BOARD POLICY NO. 26, DISADVANTAGED BUSINESS  
ENTERPRISE PROGRAM

#### RECOMMENDATION:

That the Board of Directors approve revisions to Board Policy No. 26, Disadvantaged Business Enterprise Program.

#### Budget Impact

None.

#### DISCUSSION:

As a recipient of Federal Transit Administration (FTA) funds, MTS must comply with the Department of Transportation's (DOT's) Disadvantaged Business Enterprise (DBE) Regulations. One such requirement is to maintain a DBE Program, which outlines how MTS intends to implement the DOT's DBE Regulations. MTS's DBE Program includes: MTS's objectives towards DBEs and other small businesses; the staff person responsible for the DBE Program implementation; how MTS aims to increase DBE and other small businesses participation on its DOT-assisted contracts; and how MTS ensures its prime contractors and subcontractors are complying with MTS's DBE Program.

Currently, Karen Landers, General Counsel, is the DBE Liaison Officer responsible for implementing MTS's DBE Program. The proposed revisions will designate Samantha Leslie, Staff Attorney – Regulatory Compliance, as the new DBE Liaison Officer. The Staff Attorney – Regulatory Compliance position was created and authorized by the Board of Directors on September 18, 2014. The purpose of the position was to provide additional in-house legal advice on federal, state and local compliance matters. Of particular focus for this position was MTS's DBE Program. Due to expanded federal regulations and increased oversight by the FTA in recent years, a Staff Attorney -



Regulatory Compliance position was necessary to stay abreast of new and changing requirements, create recommendations on how to comply with the DOT's DBE Regulations, increase and promote DBE and small business participation on MTS contracts and provide additional support in advance of possible state and federal reviews. Other proposed revisions within Board Policy No. 26 are minor and non-substantive.

  
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. Redline Version of Proposed Board Policy No. 26  
B. Clean Version of Proposed Board Policy No. 26



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## Policies and Procedures

No. 26

Board Approval:

02/16/1207/16/15

SUBJECT:

### DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

#### PURPOSE:

To provide a program to ensure nondiscrimination in the award and administration of federally-assisted contracts and create a level playing field on which disadvantaged business enterprises (DBEs) can compete fairly for those contracts.

#### POLICY:

#### 26.1 POLICY STATEMENT AND PROGRAM OBJECTIVES

##### Policy Statement/Objectives (CFR § 26.3, § 26.7, § 26.21, § 26.23)

San Diego Metropolitan Transit System (MTS) has established and adopted a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), Title 49, Code of Federal Regulations (CFR), Part 26 "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs (49 CFR Part 26)." MTS has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, MTS has signed an assurance that it will comply with Title 49 CFR Part 26.

It is the policy of MTS to ensure that DBEs as defined in 49 CFR Part 26 have an equal opportunity to receive and participate in MTS's DOT-assisted contracts. It is also our policy to:

1. Ensure nondiscrimination in the award and administration of all MTS contracts and subcontracts;
2. Create a level playing field by which DBEs can compete for and perform in MTS's DOT-assisted contracts;



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

3. Ensure that the MTS DBE Program is narrowly tailored in accordance with applicable law and current legal standards, including the Ninth Circuit Ruling in *Western States Paving vs. Washington State Department of Transportation*;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove procurement and contracting barriers, which impede DBE participation in MTS DOT-assisted contracts;
6. Monitor and enforce contractors' compliance in meeting established goal objectives and program requirements;
7. Assist in the development of DBEs and Small Businesses to increase their ability to compete successfully in the market place outside the DBE Program; and
8. Ensure MTS contractors and subcontractors take all necessary and reasonable steps to comply with these policy objectives.

As evidence of MTS's commitment to pursue these policy objectives, the Chief Executive Officer has designated ~~General Counsel~~Staff Attorney – Regulatory Compliance as the DBE Liaison Officer (DBELO). In this capacity, ~~General Counsel~~the DBELO is responsible for implementing all aspects of the DBE program. The DBELO has direct access to the Chief Executive Officer for DBE-related matters. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by MTS in its financial assistance agreements with DOT. MTS will disseminate this policy statement to all of the departments of our organization. Additionally, MTS will distribute this policy to DBE and non-DBE business communities that perform or are interested in performing work on MTS projects. Through such efforts, MTS will ensure DOT-assisted contracting and procurement related processes promote equity in access, consideration and opportunity for DBEs and other small businesses in response to requirements set forth under 49 CFR Part 26, ~~"Participation of Disadvantaged Business Enterprises in U.S. Department of Transportation Programs," effective March 4, 1999, and subsequently issued DOT Directives and Final Rules.~~

## 26.2 APPLICABILITY (CFR § 26.3, § 26.21)

MTS, as a direct recipient of federal funds from the DOT, and as a condition of Federal financial assistance, is required to submit for approval to the DOT Operating Administration from which it receives the majority of its funding, a DBE Program developed in accordance with federal regulations published under Title 49 CFR Part 26 and subsequent guidance. This DBE Program sets forth the policies and procedures to be implemented by MTS to ensure that DBEs have an equitable opportunity to participate in DOT-assisted contracting opportunities.

In direct response to these regulatory requirements, MTS hereby establishes a DBE Program, which will:

1. Comply with federal regulations and financial assistance agreements;
2. Meet legal standards for narrow-tailoring requirements;
3. Ensure nondiscrimination in the award of DOT-assisted contracts; and
4. Reaffirm MTS's commitment to fairness and the principles of equal opportunity.

In conformance with 49 CFR Part 26, MTS will continue to carry out its DBE Program until all DOT funds have been expended.

MTS additionally complies with the California Department of Transportation's (Caltrans') DBE Program on projects on which it is a sub-recipient of federal funds through Caltrans.

MTS will advise all applicable DOT Operating Administrations of any significant updates and/or changes to this DBE Program.

### 26.3 DEFINITION OF TERMS (CFR § 26.5)

Race-Conscious Measure or Program: A program or portion thereof that focuses specifically on assisting only DBEs, including minority and women-owned DBEs, by the development and inclusion of participation goals or Good-Faith Effort activities.

Race-Neutral Measure or Program: A program or portion thereof that assists all small businesses, including DBEs, regardless of ownership status, in successfully participating in MTS's procurement program. For the purposes of the DBE Program, "race-neutral" includes gender-neutrality.

Any other term used in this DBE Program shall have the meaning set forth in 49 CFR Part 26, ~~(See DBE Program Regulations, 49 CFR Part 26 in Exhibit A, § 26.5).~~

### 26.4 RESPONSIBILITIES FOR DBE PROGRAM IMPLEMENTATION

#### A. DBE Liaison Officer (CFR § 26.25)

MTS has designated the following individual as the Disadvantaged Business Enterprise Liaison Officer (DBELO):

~~Karen Landers~~Samantha Leslie  
~~Staff Attorney – Regulatory Compliance General Counsel~~  
San Diego Metropolitan Transit System  
1255 Imperial Avenue, ~~suite Suite~~ 1000  
San Diego, CA 921-01-~~7490~~  
Telephone: (61-9) 557-~~451-24539~~; Fax: (61-9) ~~234-3172814-1559~~  
E-mail: ~~Karen.Landers@sdmts.com~~Samantha.Leslie@sdmts.com

In this capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that MTS complies with all provisions of 49 CFR Part 26 and subsequent DOT-issued directives and final rules. The DBELO has direct, independent access to the MTS Chief Executive Officer concerning DBE Program matters. The DBELO has sufficient

support personnel who devote a portion of their time to implement the Program. The DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with other appropriate officials.

The DBELO's and/or designee's duties include, but are not limited to, the following activities:

1. Gathers and reports statistical data and other information as required by the DBE Program, including preparation of semiannual DBE reports ~~and overall Project DBE goals~~ and related analysis for submission to the applicable DOT Operating Administration ~~and management ad hoc reporting~~.
2. Reviews applicable contracts, purchase requisitions, advertisements, boilerplate language specifications and other related documentation specific to implementing applicable DBE requirements.
3. Consults with all affected departments in developing overall DBE goals ~~and project goals~~.
4. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Reviews DOT-assisted contracts and procurements for purposes of applying contract-specific DBE goals, when appropriate, and ~~for~~ applicable race-neutral ~~methods~~ measures.
6. Analyzes MTS's progress towards meeting overall ~~Project~~ DBE goals ~~commitments~~ by monitoring individual contract DBE attainments (~~"Monthly Subcontractor Paid Report"~~).
7. ~~Participates~~ Assists in pre-bid meetings for purposes of reviewing DBE solicitation and contract requirements with potential bidders and ~~for~~ offerors.
8. Advises the Chief Executive Officer and ~~for~~ the MTS Board on DBE matters and achievements.
9. Determines contractor compliance with race-conscious DBE Good Faith Effort provisions, as applicable, in a race-conscious environment and conducts contract DBE responsiveness reviews, including assessing DBE participation eligibility towards MTS's overall DBE goal, as applicable, to both race-conscious and race-neutral ~~methods~~ measures.

Additionally, the DBELO and/or designee is charged with implementing the race-neutral measures ~~defined listed~~ in ~~Section VI of~~ this DBE Program document.

B. Reconsideration Official (CFR § 26.53)

Should MTS implement a race-conscious component to this DBE Program, the DBE Program will be amended to provide the procedures for the administrative reconsideration process and to specify MTS's Reconsideration Official.

## 26.5 ADMINISTRATIVE REQUIREMENTS

### A. Non-Discrimination Requirements (CFR § 26.7)

MTS will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, MTS will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

### B. Federal Financial Assistance Agreement Assurance (CFR § 26.13 {a})

MTS will sign the following assurance as a condition of financial assistance agreements with the DOT, and which is hereby made applicable to all of MTS's DOT-assisted contracts:

"MTS shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. MTS shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts. MTS's DBE Program, as required by 49 CFR Part 26 and as approved by U.S. DOT, is incorporated by reference in this agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to MTS of its failure to carry out its approved program, the Department may impose sanctions as provided under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)."

### C. DBE Financial Institutions (CFR § 26.27)

It is the policy of MTS to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to utilize these institutions, as available, and to encourage prime contractors on MTS's DOT-assisted contracts to make use of these institutions.

The Federal Reserve Board compiles data on financial institutions that participate in the Department of the Treasury's Minority Bank Deposit Program.

MTS will review the listing bi-annually to determine whether any such financial institutions are available in MTS's service area. At this time, MTS has not identified DBE-owned-such financial institutions in MTS's service area. However, MTS encourages contractors to use the services of minority and women-owned financial institutions identified from the listings. posted at the Web site of the Financial Management Service, US Department of the Treasury, Minority Bank Deposit Program. The Internet address of this Web site listing is <http://www.federalreserve.gov/releases/mob/>. <http://www.frns.treas.gov/mbdp>.

D. DBE Directory (CFR § 26.31)

MTS refers interested parties to the California Unified Certification Program (CUCP) Database of Certified DBE Firms (DBE Directory) to assist in identifying certified DBEs. The DBE Directory is published at [www.CaliforniaUCP.com](http://www.CaliforniaUCP.com).

E. Overconcentration (CFR § 26.33)

MTS has not identified any types of work that have a burdensome overconcentration of DBE participation. However, should MTS determine that overconcentration exists in a work classification, MTS will obtain the approval of the concerned DOT Operating Administration of its determination and the measures devised to address it. Once these measures are approved, they will become part of MTS's DBE Program.

F. Business Development Programs (CFR § 26.35)

MTS has not established a business development program. The DBELO will continually evaluate the need and assess whether MTS should establish a Business Development Program and/or a Mentor Protege Program. If MTS establishes either program, the program will be guided by the applicable Appendix of 49 CFR Part 26 and approved by the cognizant DOT Operating Administration before being implemented.

G. Fostering Small Business Participation (CFR § 26.39)

MTS will structure contracting requirements to facilitate competition by small businesses by requiring-encouraging prime contractors to specify elements of work that small businesses can perform and to provide subcontract opportunities for those elements to DBEs and other small businesses.

26.6 DETERMINING, MEETING, AND COUNTING DBE PARTICIPATION TOWARDS THE OVERALL DBE GOAL (CFR § 26.45; § 26.51; § 26.55)

MTS is currently operating a strictly race-neutral DBE Program in accordance with DOT guidance following the *Western States Paving* decision of the 9th

Circuit Court of Appeals. Should MTS incorporate a race-conscious DBE Program in the future, the breakout of estimated race-neutral and race-conscious participation in MTS's DBE goal will be updated. ~~This section of the program will be updated triennially when the goal calculation is updated.~~

As MTS is currently operating a strictly race-neutral DBE Program, contract goals are not applicable to MTS procurements. Should MTS, at a future date, incorporate a race-conscious component to its DBE Program, it will then use contract goals to meet any portion of the overall goal MTS does not project being able to meet using race-neutral means. As required by Western States Paving, if MTS incorporates a race-conscious DBE Program, MTS will gather evidence to determine if discrimination in the transportation contracting industry is present. MTS will make a determination at that time what type of evidence gathering is appropriate, based on DBE regulations and case law.

A. Methodology for Setting Overall DBE Goals (CFR § 26.45; 5 26.49)

In accordance with § 26.45(e)(3), and with FTA approval, MTS will establish an overall program goal on a triennial basis ~~beginning with Federal fiscal year 2012.~~ The overall program goal will represent the amount of DOT-assisted funds MTS anticipates expending on DBE firms over three years, and will be presented as a percentage of the total DOT assistance received.

The overall program goal will be developed in accordance with the 2-step process specified in § 26.45 (c) & (d). The first step is to determine the goal "base figure" based on the relative availability of DBEs in MTS's market area. The second step is to adjust the goal "base figure" from Step 1 so that it reflects as accurately as possible the DBE participation MTS would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to DBE participation. Annual projections on DBE participation during each fiscal year will be developed as specified by § 26.45 (e)(3)(iii). Additionally, MTS will provide for public participation in establishing an overall program goal. MTS will publish a notice of the proposed overall program goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at MTS for 30 days following the date of the notice, and informing the public that MTS ~~and DOT~~ will accept comments on the goals for 4530 days from the date of the notice. ~~Notice will be issued in general circulation media and available minority focus media, minority-focused trade publications.~~

Additionally, MTS will ~~issue the notice to consult with~~ minority, women's and general contractor groups, community organizations, and other officials or organizations to solicit information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and MTS's efforts to establish a level playing field for the participation of DBEs.

MTS will submit the overall program goal to DOT in accordance with

§ 26.45 (f)(2). The overall goal submission to DOT will include a summary of information and comments received during this public comment/participation process and any MTS responses.

MTS will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

B. Transit Vehicle Manufacturers (TVM) Certifications (CFR § 26.49)

MTS will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on DOT-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, MTS may, at its discretion and with DOT approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

E.C. Race-Neutral Measures (CFR § 26.51)

MTS will implement the following race-neutral measures which are aimed at increasing DBE and other small business participation.

1. MTS will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation. MTS will also hold and/or participate in conferences, which include a networking component to promote teaming opportunities between prospective prime contractors and the DBE and Small Business contracting community.
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing). Specifically, MTS will, through its website, refer the DBE and Small Business contracting community to the U.S. Small Business Administration SBA Bonding Assistance Program.
3. MTS will solicit DBEs and other small businesses participation by carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate).
4. As a supportive service to help develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses, MTS will actively promote the Small Business conferences, programs, and support services offered by other agencies that have established DBE and Small Business Programs.
5. MTS will advise its contracting community of the online directory of certified DBEs, found at the California Unified Certification ProgramCUCP website: www.CaliforniaUCP.com.

MTS will also advise the contracting community of the available small businesses certified by the California Department of General Services (DGS) ~~and~~ found at the following url: www.bidsync.com/DPXBisCASB.

- ~~6. MTS will advise the DBE and small business community to participate and attend Caltrans' sponsored free courses~~

~~specifically offered through the CSCP, specifically the "Navigating the Caltrans Procurement Website" course to assess bid opportunities as this course includes tips on accessing local agencies websites as well. [SS1]~~

F.D. Use of Set-Asides or Quotas (CFR § 26.43)

MTS shall not permit the use of quotas for DBEs on DOT-assisted contracts in accordance with 49 CFR Part 26. Further, MTS shall not set aside contracts for DBEs on DOT-assisted contracts subject to the regulatory provisions, except in limited and extreme circumstances where no other method could be reasonably expected to redress egregious instances of discrimination.

G.E. Counting DBE Participation and Commercially Useful Function (CFR § 26.55)

MTS will count DBE participation toward overall and contract specific goals as provided in 49 CFR Part 26.55. MTS will not count the participation of a DBE subcontract toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

26.7 REQUIRED CONTRACT PROVISIONS AND ENFORCEMENT

A. Contractor's Assurance Clause Regarding Non-Discrimination (CFR § 26.13)

MTS will ensure that the following clause is placed in all DOT-assisted contracts and subcontracts: *"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49, CFR, Part 26 in the award and administration of MTS's U.S. DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as MTS deems appropriate."*

B. Prompt Payment Provisions (CFR § 26.29)

The DBE Program found at Title 49 CFR Part 26 requires that any delay or postponement of payment over 30 days from the prime contractor to any subcontractor may take place only for good cause and with MTS's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 71-08.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

~~Any delay or postponement of payment from the above-referenced timeframes may occur only for good cause following written approval from MTS.~~ Failure to comply with this provision without prior approval from MTS will constitute noncompliance, which may result in the application of appropriate administrative sanctions, including, but not limited to, a penalty of two percent (2%) of the invoice amount due per month, for every month that full payment is not made.

1. Prompt Progress Payments to Subcontractors

MTS will include a contract clause that will require the prime contractor to pay each subcontractor participating on the contract for satisfactory performance of its contract no later than ~~10-7~~ days from the receipt of each payment the prime contractor receives from MTS. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of MTS. This clause applies to both DBE and non-DBE subcontractors.

2. Payment of Retention Withheld from Subcontractor

~~When~~ MTS elects to hold retainage from the prime contractor, MTS will provide prompt and regular incremental acceptances of portions of the work on each contract and pay retainage to the prime contractor based on these acceptances.

MTS will include a contract clause that will require the prime contractor to make prompt and full payment of any retainage owed to subcontractors for satisfactory completion of the subcontractors work within ~~30-7~~ days after subcontractor's work has been satisfactorily completed.

26.8 DBE CERTIFICATION STANDARDS (CFR § 26.61-3 26.73; § 26.81; § 26.83a)

As a non-certifying member of the CUCP, MTS will accept DBE certifications from certifying member agencies of the CUCP. The CUCP DBE Certification application is presented in Exhibit E.

For more information about the certification process or to apply for certification, firms should visit the CUCP website at [www.californiaucp.com](http://www.californiaucp.com).

~~26.9 — CERTIFICATION PROCEDURES (SUBPART E)~~

~~A. — Unified Certification Program (UCP) (CFR § 26.81) & Procedures for Certification Decisions (CFR § 26.81)~~

~~MTS is a member of the CUCP administered by the state of California Certifying Members. The CUCP will meet all of the requirements of Subpart E of 49 CFR Part 26. [ss2]~~

26.~~10-9~~ RECORD KEEPING AND MONITORING (CFR § 26.11, § 26.37)

~~MTS has developed a detailed record-keeping system as a mechanism for monitoring and tracking DBE commitments/attainments. The system includes procedures adopted by MTS to comply with DOT regulations and maintenance of support documentation including subcontractor commitments, contract documents for all subcontractors, and monthly Subcontractors Paid Reports from prime contractors.~~

~~MTS will also develop and maintain a hard copy of the contract-specific project management file which thoroughly includes all DBE Program related compliance monitoring and enforcement activities.~~ [SS3]

A. Bidders List (CFR § 26.11)

MTS will develop and maintain a Bidders List consisting of all firms bidding on prime contracts, and bidding or quoting subcontracts on MTS's DOT-assisted projects/contracts. The following information will be included in the bidders list:

1. Firm Name;
2. Address;
3. Years in Business;
4. Status as a DBE or non-DBE;
5. Type of Work; and
6. Annual Range of Gross Receipts.

B. Reporting to DOT (CFR § 26.11)

MTS will submit to the applicable DOT Operating Administration the "Uniform Report of DBE Awards or Commitments and Payments" semiannually on June 1 and December 1 of each year, as required. The June 1 report will include DBE activity from October 1 through March 31. The December 1 report will include DBE activity from April 1 through September 30. This report presents a summary of ~~U.S.~~ DOT-assisted prime contracts and subcontracts that are awarded or committed to; open; and completed ~~as well as actual payments for contracts completed and the associated dollar value~~ during the applicable reporting period.

Upon request, MTS will compile and submit ad-hoc DBE contract award and progress reports for ~~U.S.~~ DOT-assisted projects. Furthermore, MTS will continue to provide reports relative to MTS's DBE Program, as directed. These reports will provide DBE participation information on MTS's race-neutral and gender-neutral contracts on all ~~U.S.~~ DOT assisted procurement activities.

C. Information, Confidentiality, Cooperation (CFR § 26.109)

MTS will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), California Public Records Act (Government Code § 6250) state, and local law. Notwithstanding the preceding provision, MTS will not release any information that may reasonably be construed as confidential

business information to any third party (other than DOT) without the written consent of the firm that submitted the information. ~~This includes applications for DBE certification and supporting information.~~

D. Monitoring and Enforcement Mechanisms (CFR § 26.37)

MTS will implement appropriate mechanisms to ensure compliance with 49 CFR Part 26 requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). MTS's DBE Program will include a monitoring and enforcement mechanism to ensure that work committed to DBEs is actually performed by DBEs. This will include a written certification by MTS that contract records have been reviewed and work sites have been monitored to ensure work is actually performed by the DBE. In addition, MTS Such mechanism will provide maintain a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), ~~including to compare against means of comparing these attainments to the prime contractor's commitments to use a DBE, when applicable.~~

MTS may perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts committed. MTS will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps provided in § 26.107 (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules). Additionally, MTS will consider similar action under its own legal authorities, including responsibility determinations in future contracts.

Additional DBE Documents (Available on MTS's Web Site or from DBELO)

- A. DBE Program Regulations
- B. DBE Program Organizational Chart
- C. Listing of DBE Financial Institutions located within California
- D. MTS Goal Setting Methodology
- E. CUCP DBE Certification Application
- F. Uniform Report of DBE Awards or Commitments and Payments
- ~~G. Monthly Subcontractors Paid Report~~

Original Policy approved on 12/6/84.

Policy revised on 4/28/88.

Policy revised on 4/25/91.

Policy revised on 1/26/95.

Policy revised on 10/16/97.

Policy revised on 8/12/99.

Policy revised on 8/10/00.

Policy revised on 9/27/01.

Policy revised on 7/25/02.

Policy revised on 3/11/04.

Policy revised on 7/22/04.

~~Policy revised on 8/10/00.~~

~~Policy revised on 9/27/01.~~

~~Policy revised on 7/25/02.~~

~~Policy revised on 3/11/04.~~

~~Policy revised on 7/22/04.~~

~~Policy revised on 2/16/12.~~

Policy revised on 2/16/12.  
Policy revised on 7/16/15



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## Policies and Procedures

No. 26

Board Approval: 07/16/15

### SUBJECT:

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

### PURPOSE:

To provide a program to ensure nondiscrimination in the award and administration of federally-assisted contracts and create a level playing field on which disadvantaged business enterprises (DBEs) can compete fairly for those contracts.

### POLICY:

#### 26.1 POLICY STATEMENT AND PROGRAM OBJECTIVES

##### Policy Statement/Objectives (CFR § 26.3, § 26.7, § 26.21, § 26.23)

San Diego Metropolitan Transit System (MTS) has established and adopted a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), Title 49, Code of Federal Regulations, Part 26 "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs (49 CFR Part 26)." MTS has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, MTS has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of MTS to ensure that DBEs as defined in 49 CFR Part 26 have an equal opportunity to receive and participate in MTS's DOT-assisted contracts. It is also our policy to:

1. Ensure nondiscrimination in the award and administration of all MTS contracts and subcontracts;
2. Create a level playing field by which DBEs can compete for and perform in MTS's DOT-assisted contracts;
3. Ensure that the MTS DBE Program is narrowly tailored in accordance with applicable law and current legal standards, including the Ninth Circuit



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

*Ruling in Western States Paving vs. Washington State Department of Transportation;*

4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove procurement and contracting barriers, which impede DBE participation in MTS DOT-assisted contracts;
6. Monitor and enforce contractors' compliance in meeting established goal objectives and program requirements;
7. Assist in the development of DBEs and Small Businesses to increase their ability to compete successfully in the market place outside the DBE Program; and
8. Ensure MTS contractors and subcontractors take all necessary and reasonable steps to comply with these policy objectives.

As evidence of MTS's commitment to pursue these policy objectives, the Chief Executive Officer has designated Staff Attorney – Regulatory Compliance as the DBE Liaison Officer (DBELO). In this capacity, the DBELO is responsible for implementing all aspects of the DBE program. The DBELO has direct access to the Chief Executive Officer for DBE-related matters. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by MTS in its financial assistance agreements with DOT. MTS will disseminate this policy statement to all of the departments of our organization. Additionally, MTS will distribute this policy to DBE and non-DBE business communities that perform or are interested in performing work on MTS projects. Through such efforts, MTS will ensure DOT-assisted contracting and procurement related processes promote equity in access, consideration and opportunity for DBEs and other small businesses in response to requirements set forth under 49 CFR Part 26, DOT Directives and Final Rules.

26.2 APPLICABILITY (CFR § 26.3, § 26.21)

MTS, as a direct recipient of federal funds from the DOT, and as a condition of Federal financial assistance, is required to submit for approval to the DOT Operating Administration from which it receives the majority of its funding, a DBE Program developed in accordance with federal regulations published under Title 49 CFR Part 26 and subsequent guidance. This DBE Program sets forth the policies and procedures to be implemented by MTS to ensure that DBEs have an equitable opportunity to participate in DOT-assisted contracting opportunities.

In direct response to these regulatory requirements, MTS hereby establishes a DBE Program, which will:

1. Comply with federal regulations and financial assistance agreements;
2. Meet legal standards for narrow-tailoring requirements;
3. Ensure nondiscrimination in the award of DOT-assisted contracts; and
4. Reaffirm MTS's commitment to fairness and the principles of equal opportunity.

In conformance with 49 CFR Part 26, MTS will continue to carry out its DBE Program until all DOT funds have been expended.

MTS additionally complies with the California Department of Transportation's (Caltrans') DBE Program on projects on which it is a sub-recipient of federal funds through Caltrans.

MTS will advise all applicable DOT Operating Administrations of any significant updates and/or changes to this DBE Program.

#### 26.3 DEFINITION OF TERMS (CFR § 26.5)

Race-Conscious Measure or Program: A program or portion thereof that focuses specifically on assisting only DBEs, including minority and women-owned DBEs, by the development and inclusion of participation goals or Good-Faith Effort activities.

Race-Neutral Measure or Program: A program or portion thereof that assists all small businesses, including DBEs, regardless of ownership status, in successfully participating in MTS's procurement program. For the purposes of the DBE Program, "race-neutral" includes gender-neutrality.

Any other term used in this DBE Program shall have the meaning set forth in 49 CFR Part 26.

#### 26.4 RESPONSIBILITIES FOR DBE PROGRAM IMPLEMENTATION

##### A. DBE Liaison Officer (CFR § 26.25)

MTS has designated the following individual as the Disadvantaged Business Enterprise Liaison Officer (DBELO):

Samantha Leslie  
Staff Attorney – Regulatory Compliance  
San Diego Metropolitan Transit System  
1255 Imperial Avenue, Suite 1000  
San Diego, CA 92101  
Telephone: (619) 557-4539; Fax: (619) 814-1559  
E-mail: [Samantha.Leslie@sdmts.com](mailto:Samantha.Leslie@sdmts.com)

In this capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that MTS complies with all provisions of 49 CFR Part 26 and subsequent DOT-issued directives and final rules. The DBELO has direct, independent access to the MTS Chief Executive Officer concerning DBE Program matters. The DBELO has sufficient support personnel who devote a portion of their time to implement the Program. The DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with other appropriate officials.

The DBELO's and/or designee's duties include, but are not limited to, the following activities:

1. Gathers and reports statistical data and other information as required by the DBE Program, including preparation of semiannual DBE reports and related analysis for submission to the applicable DOT Operating Administration.
2. Reviews applicable contracts, purchase requisitions, advertisements, boilerplate language specifications and other related documentation specific to implementing applicable DBE requirements.
3. Consults with all affected departments in developing overall DBE goals.
4. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Reviews DOT-assisted contracts and procurements for purposes of applying contract-specific DBE goals, when appropriate, and/or applicable race-neutral measures.
6. Analyzes MTS's progress towards meeting overall DBE goals by monitoring individual contract DBE attainments .
7. Assists in pre-bid meetings for purposes of reviewing DBE solicitation and contract requirements with potential bidders and/or offerors.
8. Advises the Chief Executive Officer and/or the MTS Board on DBE matters and achievements.
9. Determines contractor compliance with race-conscious DBE Good Faith Effort provisions, as applicable, in a race-conscious environment and conducts contract DBE responsiveness reviews, including assessing DBE participation eligibility towards MTS's overall DBE goal, as applicable, to both race-conscious and race-neutral measures.

Additionally, the DBELO and/or designee is charged with implementing the race-neutral measures listed in this DBE Program document.

B. Reconsideration Official (CFR § 26.53)

Should MTS implement a race-conscious component to this DBE Program, the DBE Program will be amended to provide the procedures for the administrative reconsideration process and to specify MTS's Reconsideration Official.

## 26.5 ADMINISTRATIVE REQUIREMENTS

### A. Non-Discrimination Requirements (CFR § 26.7)

MTS will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, MTS will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

### B. Federal Financial Assistance Agreement Assurance (CFR § 26.13 {a})

MTS will sign the following assurance as a condition of financial assistance agreements with the DOT, and which is hereby made applicable to all of MTS's DOT-assisted contracts:

"MTS shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. MTS shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts. MTS's DBE Program, as required by 49 CFR Part 26 and as approved by U.S. DOT, is incorporated by reference in this agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to MTS of its failure to carry out its approved program, the Department may impose sanctions as provided under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)."

### C. DBE Financial Institutions (CFR § 26.27)

It is the policy of MTS to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to utilize these institutions, as available, and to encourage prime contractors on MTS's DOT-assisted contracts to make use of these institutions.

The Federal Reserve Board compiles data on financial institutions that participate in the Department of the Treasury's Minority Bank Deposit Program. MTS will review the listing bi-annually to determine whether any such financial institutions are available in MTS's service area. At this time, MTS has not identified such financial institutions in MTS's service area. However, MTS encourages contractors to use the services of minority and women-owned financial institutions identified from the

listings. The Internet address of this listing is <http://www.federalreserve.gov/releases/mob/>.

D. DBE Directory (CFR § 26.31)

MTS refers interested parties to the California Unified Certification Program (CUCP) Database of Certified DBE Firms (DBE Directory) to assist in identifying certified DBEs. The DBE Directory is published at [www.CaliforniaUCP.com](http://www.CaliforniaUCP.com).

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MTS will submit the overall program goal to DOT in accordance with § 26.45 (f)(2). The overall goal submission to DOT will include a summary of information and comments received during this public comment/participation process and any MTS responses.

MTS will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

B. Transit Vehicle Manufacturers (TVM) Certifications (CFR § 26.49)

MTS will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on DOT-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, MTS may, at its discretion and with DOT approval, establish project-specific goals for DBE participation in the procurement

of transit vehicles in lieu of the TVM complying with this element of the program.

C. Race-Neutral Measures (CFR § 26.51)

MTS will implement the following race-neutral measures which are aimed at increasing DBE and other small business participation.

1. MTS will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation. MTS will also hold and/or participate in conferences, which include a networking component to promote teaming opportunities between prospective prime contractors and the DBE and Small Business contracting community.
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing). Specifically, MTS will, through its website, refer the DBE and Small Business contracting community to the U.S. Small Business Administration Bonding Assistance Program.
3. MTS will solicit DBEs and other small businesses participation by carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate).
4. As a supportive service to help develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses, MTS will actively promote the Small Business conferences, programs, and support services offered by other agencies that have established DBE and Small Business Programs.
5. MTS will advise its contracting community of the online directory of certified DBEs, found at the CUCP website:  
[www.CaliforniaUCP.com](http://www.CaliforniaUCP.com).

MTS will also advise the contracting community of the available small businesses certified by the California Department of General Services (DGS) found at the following url:  
[www.bidsync.com/DPXBisCASB](http://www.bidsync.com/DPXBisCASB).

D. Use of Set-Asides or Quotas (CFR § 26.43)

MTS shall not permit the use of quotas for DBEs on DOT-assisted contracts in accordance with 49 CFR Part 26. Further, MTS shall not set aside contracts for DBEs on DOT-assisted contracts subject to the regulatory provisions, except in limited and extreme circumstances where no other method could be reasonably expected to redress egregious instances of discrimination.

E. Counting DBE Participation and Commercially Useful Function (CFR § 26.55)

MTS will count DBE participation toward overall and contract specific goals as provided in 49 CFR Part 26.55. MTS will not count the participation of a DBE subcontract toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

26.7 REQUIRED CONTRACT PROVISIONS AND ENFORCEMENT

A. Contractor's Assurance Clause Regarding Non-Discrimination (CFR § 26.13)

MTS will ensure that the following clause is placed in all DOT-assisted contracts and subcontracts: *"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49, CFR, Part 26 in the award and administration of MTS's U.S. DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as MTS deems appropriate."*

B. Prompt Payment Provisions (CFR § 26.29)

The DBE Program found at Title 49 CFR Part 26 requires that any delay or postponement of payment over 30 days from the prime contractor to any subcontractor may take place only for good cause and with MTS's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

Failure to comply with this provision without prior approval from MTS will constitute noncompliance, which may result in the application of appropriate administrative sanctions, including, but not limited to, a penalty of two percent (2%) of the invoice amount due per month, for every month that full payment is not made.

1. Prompt Progress Payments to Subcontractors

MTS will include a contract clause that will require the prime contractor to pay each subcontractor participating on the contract for satisfactory performance of its contract no later than 7 days from the receipt of each payment the prime contractor receives from MTS. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of MTS. This clause applies to both DBE and non-DBE subcontractors.

2. Payment of Retention Withheld from Subcontractor

When MTS elects to hold retainage from the prime contractor, MTS will provide prompt and regular incremental acceptances of portions of the work on each contract and pay retainage to the prime contractor based on these acceptances.

MTS will include a contract clause that will require the prime contractor to make prompt and full payment of any retainage owed to subcontractors for satisfactory completion of the subcontractors work within 7 days after subcontractor's work has been satisfactorily completed.

26.8 DBE CERTIFICATION STANDARDS (CFR § 26.61-3 26.73; § 26.81; § 26.83a)

As a non-certifying member of the CUCP, MTS will accept DBE certifications from certifying member agencies of the CUCP. The CUCP DBE Certification application is presented in Exhibit E.

For more information about the certification process or to apply for certification, firms should visit the CUCP website at [www.californiaucp.com](http://www.californiaucp.com).

26.9 RECORD KEEPING AND MONITORING (CFR § 26.11, § 26.37)

A. Bidders List (CFR § 26.11)

MTS will develop and maintain a Bidders List consisting of all firms bidding on prime contracts, and bidding or quoting subcontracts on MTS's DOT-assisted projects/contracts. The following information will be included in the bidders list:

1. Firm Name;
2. Address;
3. Years in Business;
4. Status as a DBE or non-DBE;
5. Type of Work; and
6. Annual Range of Gross Receipts.

B. Reporting to DOT (CFR § 26.11)

MTS will submit to the applicable DOT Operating Administration the "Uniform Report of DBE Awards or Commitments and Payments" semiannually on June 1 and December 1 of each year, as required. The June 1 report will include DBE activity from October 1 through March 31. The December 1 report will include DBE activity from April 1 through September 30. This report presents a summary of DOT-assisted prime contracts and subcontracts that are: awarded or committed to; open; and completed during the applicable reporting period.

Upon request, MTS will compile and submit ad-hoc DBE contract award and progress reports for DOT-assisted projects. Furthermore, MTS will continue to provide reports relative to MTS's DBE Program, as directed. These reports will provide DBE participation information on MTS's race-neutral and gender-neutral contracts on all DOT assisted procurement activities.

C. Information, Confidentiality, Cooperation (CFR § 26.109)

MTS will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), California Public Records Act (Government Code § 6250) state, and local law. Notwithstanding the preceding provision, MTS will not release any information that may reasonably be construed as confidential business information to any third party (other than DOT) without the written consent of the firm that submitted the information.

D. Monitoring and Enforcement Mechanisms (CFR § 26.37)

MTS will implement appropriate mechanisms to ensure compliance with 49 CFR Part 26 requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). MTS's DBE Program will include a monitoring and enforcement mechanism to ensure that work committed to DBEs is actually performed by DBEs. This will include a written certification by MTS that contract records have been reviewed and work sites have been monitored to ensure work is actually performed by the DBE. In addition, MTS will maintain a running tally of actual DBE attainments (e.g., payments actually made to DBE firms) to compare against the prime contractor's commitments to use a DBE, when applicable.

MTS may perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts committed. MTS will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps provided in § 26.107 (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program

Fraud and Civil Penalties rules). Additionally, MTS will consider similar action under its own legal authorities, including responsibility determinations in future contracts.

Additional DBE Documents (Available on MTS's Web Site or from DBELO)

- A. DBE Program Regulations
- B. DBE Program Organizational Chart
- C. Listing of DBE Financial Institutions located within California
- D. MTS Goal Setting Methodology
- E. CUCP DBE Certification Application
- F. Uniform Report of DBE Awards or Commitments and Payments

Original Policy approved on 12/6/84.

Policy revised on 4/28/88.

Policy revised on 4/25/91.

Policy revised on 1/26/95.

Policy revised on 10/16/97.

Policy revised on 8/12/99.

Policy revised on 8/10/00.

Policy revised on 9/27/01.

Policy revised on 7/25/02.

Policy revised on 3/11/04.

Policy revised on 7/22/04.

Policy revised on 2/16/12.

Policy revised on 7/16/15



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## Agenda Item No. 12

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

July 16, 2015

**Draft for  
Executive Committee  
Review Date: 7/9/15**

#### SUBJECT:

VARIABLE MESSAGE SIGNS FOR GREEN LINE COMMUNICATIONS SYSTEM  
UPGRADE PROJECT – SOLE SOURCE PURCHASE ORDER

#### RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors authorize the Chief Executive Officer (CEO) to issue a purchase order to Daktronics, on a sole-source basis, for the procurement of eighty three (83) Variable Message Signs (VMS) for the Green Line Communications System Upgrade Project.

#### Budget Impact

The total value of this agreement will not exceed \$879,518.49, inclusive of freight charges and California sales tax. Funding will be from MTS Capital Improvement Program (CIP) project number 11368-0200.

#### DISCUSSION:

Passenger information systems are a key communications link between transit operators and the traveling public. VMS signs are content-dynamic electronic signs installed at MTS's Trolley stations. They principally offer travelers real-time information on train destinations, arrival and departure times, and service disruption announcements through changeable visual displays using LED technology. They also provide a platform through which MTS can readily broadcast emergency announcements to the public when necessary.

In 2014, the MTS Blue Line went through a major renovation during which a VMS system was first installed at MTS stations. This VMS system was acquired through a competitive procurement held by SANDAG who managed the project on MTS's behalf. In 2015, the rehabilitation and enhancement project for the Green Line was launched.



Similarly to the Blue Line project, VMS signs will also be purchased and installed on Green Line stations.

Because of the need for system-wide operational continuity, equipment compatibility and integration, MTS adopted Daktronics equipment and software as its VMS standard for the entire trolley system. Standardizing to a single system will also ensure costs of ownership remains sustainable through the life of the VMS system.

Daktronics is the original manufacturer of the needed equipment and does not offer its products through third party resellers. Similarly, Daktronics owns all copyright and intellectual rights to the software used to operate, manage, and support its hardware. Thus, staff recommends that a sole-source award be made to Daktronics. A competitive procurement, if held, will very likely result in a dissimilar product line requiring software that is incompatible with that which is in place. The end result will be two separate and distinct systems that will require two different and costly, modes of operation, support, and management.

To ensure current costs and prices are fair and reasonable for this procurement, MTS staff developed an Independent Cost Estimate (ICE) prior to obtaining Daktronics' proposal. The Daktronics' proposal resulted in a lower unit price as compared to the ICE, and is over 12% lower than the agreement with Daktronics two years ago.

Therefore, staff recommends that the San Diego Metropolitan Transit System (MTS) Board of Directors authorize the Chief Executive Officer (CEO) to issue a purchase order to Daktronics, on a sole-source basis, for the procurement of eighty three (83) VMS signs for the Green Line Communications System Upgrade Project.

  
\_\_\_\_\_  
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. 13

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

July 16, 2015

**Draft for  
Executive Committee  
Review Date: 7/9/15**

#### SUBJECT:

RADIO COMMUNICATION SUPPORT SERVICES - CONTRACT AWARD

#### RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors authorize the Chief Executive Officer (CEO) to execute MTS Document No. L1246.0-15 (in substantially the same format as Attachment A), with Day Wireless Systems for the provision of radio communication support services for five years beginning on August 1, 2015 and ending on July 31, 2020.

#### Budget Impact

The value of this Agreement will not exceed \$322,350 and will be funded through the San Diego Trolley Inc. (SDTI) Transportation department's annual operating budget for each fiscal year as follows:

Year	Period	Budget Account	Budget Amount
Year 1	August 1, 2015- July 31, 2016	270-53650	\$62,034
Year 2	August 1, 2016- July 31, 2017	270-53650	\$62,034
Year 3	August 1, 2017- July 31, 2018	270-53650	\$62,034
Year 4	August 1, 2018- July 31, 2019	270-53650	\$68,124
Year 5	August 1, 2019- July 31, 2020	270-53650	\$68,124
Grand Total:			\$322,350

#### DISCUSSION:

SDTI uses two-way radios for real time communications between its multiple operating units. In addition to daily operational use, these two-way radios also act as a tool by which management staff can exercise command and control, as well as issue directives in the event of line failures. These radios may be affixed to trolleys and support vehicles or may be portable hand-held devices commonly used by field staff. The system is



centrally managed at the MTS Central Control facility through six Motorola Gold Elite consoles. To keep this system continuously functional and in a constant state of good repair requires an ongoing and reliable maintenance, repair, and support program. This procurement will replace the current multi-year maintenance agreement.

MTS Policy No. 52 (Procurement of Goods and Services) requires a formal competitive process for procurements exceeding \$100,000. On April 27, 2015 staff issued MTS Doc. No. L1246.0-15 to solicit bids. A single responsive bid was received from Day Wireless Systems on the due date of June 6, 2015. As prescribed by the FTA Circular 4220.1F a detailed price analysis was held. Day Wireless Systems' price was determined to be fair and reasonable based on a comparison with MTS's Independent Cost Estimate (ICE) and previous procurement history for similar services.

Therefore, MTS staff recommends that the San Diego Metropolitan Transit System (MTS) Board of Directors authorize the Chief Executive Officer (CEO) to execute MTS Document No. L1246.0-15 (in substantially the same format as Attachment A), with Day Wireless Systems for the provision of radio communication support services for five years beginning on August 1, 2015 and ending on July 31, 2020.

  
\_\_\_\_\_  
Paul G. 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.L1246.0-15

## ATTACHMENT A

**DRAFT**

**STANDARD SERVICES AGREEMENT  
FOR  
RADIO COMMUNICATION AND SUPPORT SERVICES**

**L1246.0-15  
CONTRACT NUMBER**

**OPS 970.4  
FILE/PO NUMBER(S)**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2015, 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: Day Wireless System Address: 8300 Juniper Creek

Form of Business: Corporation San Diego CA 92126

(Corporation, Partnership, Sole Proprietor, etc.)

Telephone: 858 537-0709

Authorized person to sign contracts: Gordon D. Day President  
Name Title

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

Provide Radio Communication Support Services for a five year period as specified in the Technical Specifications (attached as Exhibit A), the Bid Summary (attached as Exhibit B), and the Standard Services Conditions (attached as Exhibit C),.

The contract period of performance shall be from August 1, 2015 through July 31, 2020. The total amount of this contract shall not exceed \$322,350.00 including California sales tax and freight without prior written approval from MTS.

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
\$ 322,350.00	270 - 53650	FY 2016 – FY 2020

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

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



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## Agenda Item No. 14

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

July 16, 2015

**Draft for  
Executive Committee  
Review Date: 7/9/15**

SUBJECT:

SEPTEMBER 2015 SERVICE CHANGES

INFORMATIONAL ONLY

#### Budget Impact

Routine and seasonal schedule adjustments are already included within MTS's annual budgeting process. Net operating subsidies for TransNet-funded services are reimbursed by SANDAG. The remaining changes for September 2015 are anticipated to have an annual net budget impact of \$440,000-\$480,000. That increased subsidy is offset with funds from the universal pass program, which support added service that directly benefits UC San Diego students.

DISCUSSION:

The changes planned for implementation on September 6, 2015 are primarily routine seasonal modifications, capacity adjustments to accommodate ridership loads, and tuning of the new Rapid and related services implemented in 2014. A summary of these changes is listed below:

***Seasonal and Other Minor Schedule Adjustments:*** These are regular schedule changes made to enhance reliability, increase efficiency, and/or adjust for seasonal demand fluctuations (in summer, mostly reduced school trips, and increased ridership and added traffic in the beach areas). *Routes impacted: 7, 8, 9, 30, 41, 44, 50, 709, 854, 904, and 992.*

***Trial Route Discontinuations:*** The MTS Board approved a trial of pilot Routes 170 and 270, implemented in October and September 2014, respectively. The Federal Transit Administration allows for the operation of a trial route for up to 12 months before a route is made permanent (and a Title VI analysis conducted). MTS' Board Policy 42 also allows for a trial of up to a year, with a built-in minimum productivity requirement.



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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.

- Route 170 was implemented with the Rapid 215 (Mid-City Rapid) route in October 2014. It's an express route with the primary purpose of replacing the University Heights/Hillcrest portion of Rapid 215's predecessor route (Route 15) that is not be served by the new route. It operates during weekday peak hours between City College Trolley Station and the City Heights Transit Plaza. The route also connects Adams Avenue and Normal Heights directly to Downtown and to bus transfers on both ends. Most Route 170 stops are shared with other local and/or Rapid routes.
- Route 270 is a Rapid Express route between Rancho Bernardo and Sorrento Mesa, also operated only during weekday peaks. It was implemented in September 2014 to replace the most productive segments and trips of former Route 880. Route 270 is largely duplicated by new Rapid 237, which operates with a better frequency and wider span than Route 270.

In February 2014, the MTS Board adopted productivity targets more lenient for these routes than the goals in Policy 42. Both Route 170 and 270 failed to meet their productivity goals as approved by the MTS Board. Ridership has stabilized on both routes at a point too low to meet their targets.

Route	Passengers/Revenue Hour			% Below Goal	Average Weekday Boardings (May 2015)
	Category Average (FY14)	12-mo. Trial Goal	Current Actual (May 2015)		
Route 170	28.1	25.0	10.1	- 60%	154.3
Route 270	25.2	21.0	9.4	- 55%	43.6

With Board direction to make these routes permanent only if they met or exceeded the prescribed goals, both routes will be discontinued with the September service changes. It is notable that there are alternative service options for riders on both routes, and most stops will retain service on other routes.

### ***Other Changes***

Route 7: This route serves the University Avenue and Park Boulevard corridors between Downtown and La Mesa; it is MTS's busiest route. Its routing in Downtown was shortened on Sundays during the major budget reductions of 2010, eliminating Broadway service. This change in September will restore Route 7 service along Broadway, west to First Avenue, reconnecting the route to transfers and points of interest in central downtown.

Route 150: This express route serves the north Interstate 5 corridor between Downtown San Diego, Old Town Transit Center, UC San Diego, the V.A. Medical Center, and the UTC Transit Center. Its ridership has steadily grown over the past few years, and we recently added Saturday service funded by the UC San Diego universal pass program. That same program will fund more weekday service starting in September, including

added midday frequencies and later evening service. Additionally, the Downtown terminal will be shifted to First Avenue to reduce costs and improve reliability.

Route 201/202 (SuperLoop): Additional frequencies during selected times and larger buses will be scheduled to accommodate growing UC San Diego ridership.

Rapid 237: This Rapid route was implemented in October 2014 and offers weekday, peak service between Rancho Bernardo and UC San Diego, via the Interstate 15 and Mira Mesa Blvd. corridors. In order to help achieve its ridership goals, MTS and SANDAG have agreed on adjustments that will add to the span of service while leveraging Rapid 235 service along Interstate 15. Service between UCSD and Mira Mesa will remain at its current frequency, but every other trip will now end at the Miramar College Transit Station. Through service to Rancho Bernardo will remain on Route 237 at a 30 minute frequency, in addition to the 15-minute peak frequency already offered on Route 235. That resource will be reinvested into expanded afternoon peak service for earlier and later access to UC San Diego, a frequent request since the route began.

Routes 709 and 712: These routes offer connections between the Blue Line Trolley and Southwestern College, one of MTS' largest ridership generators in the South Bay. Adjustments to the academic calendar at Southwestern College require that we adjust our schedules by adding later evening service and additional morning peak frequencies to accommodate student travel needs.

Route 961: This route operates between the 24<sup>th</sup> Street Transit Center on the Blue Line in National City and the Encanto/62<sup>nd</sup> Street Trolley Station on the Orange Line, via Plaza Bonita, Paradise Hills, and Skyline. Its service was reduced during the major budget reductions of 2010, and MTS has received many requests for later span and restored weekend services. In September, the added trips will increase the weekday span until after 10 p.m., and Sunday service will be restored to operate beyond Plaza Bonita to Encanto.



Paul C. Jablonski  
Chief Executive Officer

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## Agenda Item No. 15

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

July 16, 2015

**Draft for  
Executive Committee  
Review Date: 7/9/15**

Subject:

#### MTS TAXICAB ADMINISTRATION ADMINISTRATIVE PENALTY GUIDELINES

#### RECOMMENDATION:

Action would approve the proposed revisions to the MTS Taxicab Administrative Penalty Guidelines.

#### Budget Impact

None at this time.

#### DISCUSSION:

On February 12, 2015, the MTS Board of Directors approved amendments to Ordinance 11 that included changes to Sections 1.8(q) and 2.3(g). These sections now read as follows:

#### Equipment and Operating Regulations

*1.8(q) The driver **shall** offer each passenger a receipt upon payment of the fare. The receipt shall accurately show the date, the amount of the fare, the medallion number, the trade name, and the name and signature of the driver.*

#### Equipment and Specifications:

*2.3(g) Each permit holder shall equip each permitted taxicab with a device capable of electronically processing credit card transactions. The device must be visible to all passengers and must allow the passenger to operate the payment device independently of the driver, without having to hand the credit card to the driver. The device must be electronically linked to the taxicab fare meter.*



On July 2, 2015, the Taxicab Advisory Committee voted unanimously to forward staff's recommendations to the MTS Board of Directors. Staff is proposing a change in the penalty guidelines to reflect recent amendments to Ordinance 11 that became effective April 1, 2015. The recommended penalties for each section are reflected in the attached Administrative Penalty Guidelines draft.

  
Paul G. Jablonski  
Chief Executive Officer

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

Attachment: A. Draft Administrative Penalty Guidelines

## DRAFT

## ADMINISTRATIVE PENALTY GUIDELINES

In accordance with MTDB Ordinance No. 11, Section 1.19, the Chief Executive Officer has adopted this schedule to implement the provisions of Ordinance No. 11 concerning taxicab and other for-hire vehicles and drivers.

In accordance with Sections 1.13 (a) and 1.14 (a), permit holders' permits and drivers' identification cards may be suspended or revoked by the Chief Executive Officer. As provided for in Sections 1.13 (a) and 1.13 (d), penalties may be applied to a driver independently of, or in conjunction with, a penalty applied to a permit holder.

**Drivers:** As the San Diego County Sheriff's Licensing Division is responsible for the issuance of private-hire driver identification cards, the penalties outlined in this document will not preclude the Sheriff's Licensing Division from issuing additional penalties.

\*RTC – Removed until corrected: This penalty shall require the temporary removal of the medallion(s) of vehicle(s) specified in the penalty, or the temporary suspension of a driver's identification card until the violation is corrected. Vehicles under the effect of this penalty may not be placed in service until they have been re-inspected by MTS. Driver identification cards may not be reinstated until the driver has provided proof to MTS that the violation has been corrected. The "temporary" nature of this penalty shall normally be construed to mean a 72-hour period. Extensions may be granted on a case-by-case basis. All re-inspections or reinstatements may be subject to applicable administrative fees.

\*\*In addition to other penalties, may be assessed 150 percent of the assigned risk cost per day.

<u>Section No.</u>	<u>Item Description</u>	<u>First Offense/Second Offense</u>
1.2 a	No vehicle operating permit	Driver Ineligible to Apply for MTS Permit for 5 Years, Plus 5-Day Suspension/Revocation
1.5 a, b	Failure to request approval from MTS to transfer permit	Permit Revocation
1.8 c	Failure to notify MTS within 48 hrs. of change of business address/phone	*RTC/3-Day Permit Suspension
1.8 d	Failure to have vehicle inspected as instructed per field request/Field Report	*RTC/5-Day Permit Suspension
1.8 f (1-12)	Unsafe vehicle	*RTC/5-Day Permit Suspension
1.8 f (1-12)	<u>Intentional</u> unsafe vehicle	*RTC, Plus 5-Day Permit Suspension/10-Day Permit Suspension
1.8 h (1-14)	Unsuitable vehicle not repaired and passed inspection within 72 hours	*RTC*/5-Day Permit Suspension
1.8 j	Failure to immediately notify MTS when a spare vehicle is in use	*RTC, Plus 5-Day Permit Suspension/Permit Revocation
1.8 l	Lost and found card not displayed	Field Report (Warning)/*RTC

<u>Section No.</u>	<u>Item Description</u>	<u>First Offense/Second Offense</u>
1.8 m	Map not current	Field Report (Warning)/3-Day Driver I.D. Suspension
1.8 q	Driver did not offer passenger a receipt, or did not provide a printed receipt containing all required elements	1-Day Driver I.D. Suspension/3-Day Driver I.D. Suspension
1.8 t	Driver failure to comply with lawful order	10-Day Driver I.D. Suspension/Driver I.D. Revocation
1.8 t	Owner/operator failure to comply with lawful order	10-Day Driver I.D. & Permit Suspension/Driver I.D. & Permit Revocation
1.8 u	More passengers than manufacturer rating	Field Report (Warning)/5-Day Driver I.D. Suspension
1.8 v	Driver pay or accept compensation for trip referral	3-Day Driver I.D. Suspension/Driver I.D. Revocation
1.8 v	Owner/operator pay or accept compensation for trip referral	3-Day Driver I.D. & Permit Suspension/Driver I.D. & Permit Revocation
1.8 w	Not wearing name tag	Field Report (Warning)/3-Day Driver I.D. Suspension
1.8 x	Improper driver dress/appearance	Field Report (Warning)/3-Day Driver I.D. Suspension
1.8 z	Noncompliance w/Calif. Vehicle Code, e.g., red zones	Field Report (Warning)/3-Day Driver I.D. Suspension
1.9 a	Lapse of insurance coverage	*RTC(**)/Permit Revocation
1.9 b	Proof of insurance not timely	*RTC, Plus 3-Day Permit Suspension/10-Day Permit Suspension
1.9 b	Inadequate proof of insurance	RTC, Plus 3-Day Permit Suspension/10-Day Permit Suspension
1.10 b, c, d	Failure to provide records	10-Day Permit Suspension/Permit Revocation
1.10 b, c, d	Incomplete records	*RTC, Plus 3-Day Permit Suspension/10-Day Permit Suspension
1.10 e	Late filing of Annual Statement	*RTC/Permit Revocation
1.10 e	Failure to file Annual Statement	Permit Revocation

<u>Section No.</u>	<u>Item Description</u>	<u>First Offense/Second Offense</u>
1.11 c	Markings not removed prior to disposal of vehicle	*RTC, Plus 3-Day Permit Suspension/5-Day Permit Suspension
1.12 a	No Taxicab Driver/Paratransit I.D. card issued	*RTC/5-Day Permit Suspension
1.12 a	Driver I.D. not displayed	Field Report (Warning)/*RTC
1.12 b	Permit holder employing driver without approved I.D. card	*RTC/5-Day Permit Suspension
1.12 d	Incorrect company name, or company name not on driver I.D. Card	*RTC/3-Day Suspension
1.20	Noncompliance with Americans with Disabilities Act	Field Report (Warning)/Permit Revocation
2.2 e (7)	Tire size and pressure not posted	Field Report (Warning)/*RTC
2.2 e (7)	Tires are not proper size	*RTC/5-Day Permit Suspension
2.2 f	Meter not engaged	5-Day Driver I.D. Suspension/Driver I.D. Revocation
2.2 h, i	Overcharge of filed rate	5-Day Driver I.D. Suspension, Plus Restitution/Driver I.D. Revocation
2.3 b	For-hire lights not operating (both)	*RTC/3-Day Permit Suspension
2.3 f	Scanner in vehicle	5-Day Driver I.D. Suspension/Driver I.D. Revocation
2.3 g	Credit card machine cannot process transactions electronically, is not linked to the fare meter, is not visible to all passengers, or requires passenger to hand credit card to driver	*RTC/3 Day Suspension
2.4 b	Long hauling	5-Day Driver I.D. Suspension, Plus Restitution/Driver I.D. Revocation
2.4 c, d	Refusal to transport	5-Day Driver I.D. Suspension/Driver I.D. Revocation
2.4 c, d	Discourage passenger	3-Day Driver I.D. Suspension/5-Day Driver I.D. Suspension
2.4 e	Taxicab stopped, parked, or left standing on same side of street in same block	Field Report (Warning)/3-Day Driver I.D. Suspension
2.4 f	Taxicab stopped, parked, or left standing within 100 ft. of another taxicab	Field Report (Warning)/3-Day Driver I.D. Suspension
2.4 g	Taxicab stopped, parked, or left standing within 15 ft. of fire hydrant	Field Report (Warning)/3-Day Driver I.D. Suspension

<u>Section No.</u>	<u>Item Description</u>	<u>First Offense/Second Offense</u>
2.4 h	Out of service sign not posted	Field Report (Warning)/5-Day Driver I.D. Suspension
2.4 i, j	Interfering with or impeding traffic	Field Report (Warning)/3-Day Driver I.D. Suspension
2.4 k	Driver solicited passengers	3-Day Driver I.D. Suspension/Driver I.D. Revocation
2.4 m	Driver more than 12 feet from vehicle	Field Report (Warning)/3-Day Driver I.D. Suspension
2.4 p	No trip sheet	Field Report (Warning)/3-Day Driver I.D. Suspension
2.4 p	Incomplete trip sheet	Field Report (Warning)/3-Day Driver I.D. Suspension
2.5 d	Non-taxicab MTS-regulated vehicle occupying a taxi zone	Field Report (Warning)/3-Day Driver I.D. Suspension
2.7 a	Missing, improper, or malfunctioning safety equipment	*RTC, Plus 3-Day Permit Suspension/5-Day Permit Suspension
2.7 b	Window tinting, shades or markings that interfere with view into vehicle	*RTC/3-Day Permit Suspension
3.1 d	Charter not prearranged in writing	*RTC, Plus 3-Day Permit Suspension/Permit Revocation
3.2 b	(Charter) Soliciting passengers	3-Day Driver I.D. Suspension/Driver I.D. Revocation
4.2 b	(Sightseeing) Soliciting passengers	3-Day Driver I.D. Suspension/Driver I.D. Revocation
6.2 c	Operating without jitney route sign	Field Report (Warning)/3-Day Driver I.D. Suspension
6.2 c	Operating with unapproved jitney route sign	Field Report (Warning)/3-Day Driver I.D. Suspension
6.2 c	Operating with wrong route sign	Field Report (Warning)/3-Day Driver I.D. Suspension
6.3 b	(Jitney) Soliciting passengers	3-Day Driver I.D. Suspension/Driver I.D. Revocation
6.3 d	(Jitney) Driver more than 12 feet from vehicle	Field Report (Warning)/3-Day Driver I.D. Suspension
6.3 e	Operating unauthorized jitney route	3-Day Driver I.D. Suspension/Driver I.D. Revocation

<u>Section No.</u>	<u>Item Description</u>	<u>First Offense/Second Offense</u>
6.4 g	MTS-regulated non-jitney vehicle occupying jitney stop or zone	Field Report (Warning)/3-Day Driver I.D. Suspension
Other	Items not listed	Penalties to be evaluated on case-by-case basis.
All	Accumulated various items	Penalties to be evaluated on case-by-case basis.
All	Repeated or various driver items	Permit holder to be penalized for pattern(s) of driver violations. Penalties to be evaluated on a case-by-case basis.
Various	Driver operating requirements	May be referred to MTS-approved training class in lieu of a penalty, on case-by-case basis and at driver's expense.

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Paul C. Jablonski  
Chief Executive Officer

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

DSundh/G:\GLOBAL\SUPPORT STAFF\GENFORM\TAXICAB ADMIN  
F- PENALTY GUIDELINES.15.BKELLERMAN  
Rev. 5.12.15



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## Agenda Item No. 16

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

July 16, 2015

**Draft for  
Executive Committee  
Review Date: 7/9/15**

#### SUBJECT:

SD-100 LIGHT RAIL VEHICLE GATE TURN OFF FIRING BOARDS – SOLE  
SOURCE PURCHASE ORDER

#### RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors authorize the Chief Executive Officer (CEO) to issue a purchase order to Siemens Transportation Systems Corporation (Siemens), on a sole source basis, for the purchase of thirty (30) Gate Turn-Off (GTO) Firing Boards for MTS's fleet of SD-100 Light Rail Vehicles (LRVs).

#### Budget Impact

The total value of this agreement will not exceed \$443,000, inclusive of freight charges and California sales tax. Funding will be from the Fiscal Year 2016 inventory replenishment account 352-54510.

#### DISCUSSION:

MTS's fleet of SD-100 LRVs use Siemens GTO Firing Boards, Siemens Part Number R422901908024, to monitor and regulate the LRVs speed during operations. The GTO Firing Boards are a critical and integral part of the propulsion system as they direct and control the electrical current supplied to the traction motors and as such determine the acceleration and deceleration rates and speed of the vehicles during operations.

MTS has recently experienced a higher than normal failure rate on its SD-100 GTO Firing Boards, resulting in accelerated usage of stock.

As MTS has neither the qualified personnel nor the facilities to make repairs to these highly technical and complicated electronic components, staff recommends



the purchase of rebuilt boards under an existing core exchange program to allow MTS to meet the existing need, as well as, to provide a buffer to cover unanticipated needs in case the current period of increased demand continues.

This is a recommended sole-source procurement. Siemens designed and manufactured MTS's LRVs to exact specifications. As such, it is the only known source of these GTO Firing Boards and all of their related after-market services in North America. MTS has previously made attempts to competitively procure the boards or to secure refurbishment services, however the components of these boards are designed and manufactured exclusively by Siemens and all drawings and specifications are proprietary.

Therefore, staff recommends that the MTS Board of Directors authorize the CEO to issue a purchase order to Siemens, on a sole source basis, for the purchase of thirty (30) GTO Firing Boards for the MTS fleet of SD-100 trolleys.



Paul C. Jablonski  
Chief Executive Officer

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