



1255 Imperial Avenue, #1000
San Diego, CA 92101-7490
619.231.1466 FAX 619.234.3407

Revised Agenda

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM EXECUTIVE COMMITTEE

April 6, 2017

Executive Conference Room

9:00 a.m.

ACTION RECOMMENDED

- A. ROLL CALL
- B. APPROVAL OF MINUTES - February 2, 2017 Approve
- C. COMMITTEE DISCUSSION ITEMS
1. Assembly Bill 805 (Sharon Cooney) Possible
Action
Action would receive a report on amendments to Assembly Bill 805 (Gonzalez Fletcher) and discuss a potential position on the bill for Board recommendation.
2. Joint Development Properties Inventory Update (Tim Allison) Possible
Action
Action would receive a report on available properties owned by MTS suitable for joint development and give direction to staff regarding future projects.
3. CLOSED SESSION - CONFERENCE WITH REAL PROPERTY Possible
Action
NEGOTIATORS Pursuant to California Government Code Section 54956.8
Property: Assessors Parcel Number (APN) 451-690-55-00 (Southeasterly of Vine Street and California Street, San Diego)
Agency Negotiators: Paul Jablonski, Chief Executive Officer; Karen Landers, General Counsel; and Tim Allison, Manager of Real Estate Assets
Negotiating Parties: San Diego Gas and Electric Company
Under Negotiation: Price and Terms of Payment
- D. REVIEW OF DRAFT April 13, 2017 BOARD AGENDA
- E. REVIEW OF SANDAG TRANSPORTATION COMMITTEE AGENDA Possible
Action
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.

Please SILENCE electronics
during the meeting

1255 Imperial Avenue, Suite 1000, San Diego, CA 92101-7490 • (619) 231-1466 • www.sdmtns.com

Metropolitan Transit System (MTS) is a California public agency comprised of San Diego Transit Corp., San Diego Trolley, Inc. and San Diego and Arizona Eastern Railway Company (nonprofit public benefit corporations). 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.



- F. COMMITTEE MEMBER COMMUNICATIONS AND OTHER BUSINESS
- G. PUBLIC COMMENTS
- H. NEXT MEETING DATE: May 4, 2017
- I. ADJOURNMENT

DRAFT

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

February 2, 2017

MINUTES

NOTE: Due to technical problems with the recording device, the recording ended approximately 30 minutes into the meeting. The following minutes for the Executive Committee meeting have been composed using staff notes taken during the meeting. If any important items have been omitted and should be included in the minutes, please contact MTS staff at 619.557.4515 *prior to* the next meeting.

A. ROLL CALL

Chairman Mathis called the Executive Committee meeting to order at 9:07 a.m. A roll call sheet listing Executive Committee member attendance is attached.

B. APPROVAL OF MINUTES

Mr. Roberts moved for approval of the minutes of the January 12, 2017, MTS Executive Committee meeting. Ms. Rios seconded the motion, and the vote was 5 to 0 in favor.

C. COMMITTEE DISCUSSION ITEMS

1. Mid-Coast Corridor Transit Project Update (John Haggerty of SANDAG)

John Haggerty, with SANDAG, provided an update on the Mid-Coast Corridor Transit Project. Mr. Haggerty gave a brief description of the project and discussed the Construction Manager/General Contractor (CM/GC) method and construction supplements. He discussed the Elvira to Morena Double Track project, San Diego River Bridge project, and Voigt and Gilman Drive bridge construction. Mr. Haggerty reviewed the Mid-Coast project timeline and risks. He also presented pictures of work that was done the previous weekend including track work north of SR52, thermite welding, and installing a new drainage system. Lastly, Mr. Haggerty reviewed future update topics.

Action Taken

Informational item only. No action taken.

2. Transit Optimization Plan (TOP) Update (Denis Desmond)

Denis Desmond, Manager of Planning, provided an update on the Transit Optimization Plan (TOP). He briefly reviewed the background of the TOP and project schedule. Mr. Desmond discussed the market analysis findings and results of the TOP community survey. He reviewed the population and employment numbers, service analysis, service implementation plan and next steps going forward.

Action Taken

Informational item only. No action taken.

D. REVIEW OF DRAFT February 16, 2017 BOARD AGENDA (TAKEN BEFORE CLOSED SESSION)

Recommended Consent Items

6. Excess Insurance Renewals for Liability and Workers' Compensation Program
7. Semiannual Uniform Report of Disadvantaged Business Enterprise (DBE) Awards and Payments
8. San Diego and Arizona Eastern (SD&AE) Railway Company Quarterly Reports and Ratification of Action Taken by the SD&AE Board of Directors at its Meeting on January 17, 2017
Action would receive the San Diego and Imperial Valley Railroad (SD&IV), Pacific Southwest Railway Museum Association (Museum), and Pacific Imperial Railroad, Inc. (PIR) quarterly reports for information.
9. Operations and Maintenance Services for Compressed Natural Gas Fueling Facilities - Contract Amendment
Action would authorize the Chief Executive Officer (CEO) to execute Amendment No. 2 to MTS Doc. B0522.0-09 with Trillium USA LLC to upgrade compressed natural gas (CNG) dispensers.
10. Investment Report - December 2016
11. Orange Line Track Improvements - Change Order Amendments 1 – 5
Action would: (1) Ratify Construction Change Order Amendments 1 - 4 to MTS Doc. No. PWL211.0-16, with Herzog Contracting Corp. (Herzog), for \$89,669.42, which was previously issued under the Chief Executive Officer's (CEO) authority, for Orange Line Track Improvements on MTS's Orange Line Light Rail Vehicle (LRV) service route; and (2) Authorize the CEO to execute MTS Doc. No. PWL211.5-16 - Change Order 5, with Herzog, for \$98,850.97.
12. SDSU Tunnel Ventilation Jet Fans and Dampers Service - Award Work Order Under a Job Order Contract
Action would authorize the Chief Executive Officer (CEO) to execute Work Order No. MTSJOC7504-25 (in substantially the same format as Attachment A), under MTS Doc. No. PWL204.0-16 with ABC Construction, Inc., for the provision of labor, materials, equipment, and supplies for the repair, installation, and testing of eight jet fans and dampers at the SDSU underground station tunnel.

COMMENTS

Karen Landers reminded the Executive Committee that the next Board meeting will be Thursday, February 16, 2017, due to the SANDAG Board Retreat next week.

E. REVIEW OF SANDAG TRANSPORTATION COMMITTEE AGENDA_(TAKEN BEFORE CLOSED SESSION)

There was no SANDAG Transportation Committee agenda discussion.

F. COMMITTEE MEMBER COMMUNICATIONS AND OTHER BUSINESS (TAKEN BEFORE CLOSED SESSION)

Mr. McClellan commented on an article he read regarding funding going to Mexico City.

G. PUBLIC COMMENTS (TAKEN BEFORE CLOSED SESSION)

There were no Public Comments.

The Executive Committee convened for Closed Session at 10:17 a.m.

- C3. CLOSED SESSION - PUBLIC EMPLOYEE PERFORMANCE EVALUATION/CONFERENCE WITH LABOR NEGOTIATORS - CHIEF EXECUTIVE OFFICER Pursuant to California Government Code Sections 54957 and 54957.6;
Agency-Designated Representative: Harry Mathis
Employee: Paul C. Jablonski
- C4. CLOSED SESSION - CONFERENCE WITH REAL PROPERTY NEGOTIATORS Pursuant to California Government Code Section 54956.8
Property: Lots 1 and 2 of Map 14930 (aka 5175 Linda Vista Rd.; 5375 Napa St.; 5395 Napa St.)
Agency Negotiators: Paul Jablonski, Chief Executive Officer; Karen Landers, General Counsel; and Tim Allison, Manager of Real Estate Assets
Negotiating Parties: Morena Vista LLC
Under Negotiation: Price and Terms of Payment

The Executive Committee reconvened from Closed Session at 11:34 a.m.

Oral Report on Final Actions Taken in Closed Session

- C3. The Executive Committee conducted a performance evaluation and gave instructions to the negotiators.
- C4. The Executive Committee received a report.

H. NEXT MEETING DATE

The next Executive Committee meeting is scheduled for March 2, 2017, at 9:00 a.m. in the Executive Committee Conference Room.

I. ADJOURNMENT

Chairman Mathis adjourned the meeting at 11:34 a.m.

Chairman

Attachment: A. Roll Call Sheet



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

Agenda Item No. C1

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM EXECUTIVE COMMITTEE

April 6, 2017

SUBJECT:

ASSEMBLY BILL 805 (SHARON COONEY)

RECOMMENDATION:

That the Executive Committee receive a report on amendments to Assembly Bill 805 (Gonzalez Fletcher) (Attachment A) and discuss a potential position on the bill for Board recommendation.

Budget Impact

None.

DISCUSSION:

On February 15, 2017, Assembly Member Gonzalez Fletcher introduced Assembly Bill 805: San Diego Consolidated Transportation Agency: governance. AB 805 made minor, non-substantive changes to San Diego Association of Governments' (SANDAG's) enabling legislation and was considered a placeholder for future substantive legislation. On March 23, 2017, AB 805 was amended to include substantive changes to SANDAG, MTS and North County Transit District (NCTD) governance and voting. The bill also includes authorization for MTS to levy up to a half cent sales tax for transit purposes serving the MTS jurisdiction.

AB 805 is presently residing in the Assembly Local Government Committee and has been referred to the Assembly Transportation Committee. The new amendments are keyed as fiscal, so the bill will also need to go through the Appropriations Committee.

The Board has directed staff to seek authorization to levy a sales tax and therefore staff is prepared to support this aspect of AB 805. However, the Board-adopted 2017 State Legislative Program would require an amendment to direct staff to take a position on the



governance and voting aspects of AB 805. The Executive Committee is asked to discuss the bill's proposed changes and provide direction to staff regarding a recommendation to the Board. A recommendation to the Board for a position on the bill could include any of the following:

- support in its entirety;
- support only the tax levy authorization and remain neutral on the rest of the bill;
- oppose unless amended;
- watch and report back to the Board;
- seek clarification on intent of language in the bill;
- seek specific amendments.

Staff will provide a detailed explanation of the bill and highlight areas recommended for clarification.

/s/Paul C. Jablonski

Paul C. Jablonski
Chief Executive Officer

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

Attachment: A. AB 805, as amended (Gonzalez Fletcher)

AMENDED IN ASSEMBLY MARCH 23, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 805

Introduced by Assembly Member Gonzalez Fletcher

February 15, 2017

An act to amend ~~Section 132351.1~~ of Sections 120050.2, 120051.6, 120102.5, 125050, 125102, 132351.1, 132351.2, 132351.4, 132352.3, 132354.1, and 132360.1 of, to add Article 11 (commencing with Section 120480) to Chapter 4 of Division 11 of, to add Article 9 (commencing with Section 125480) to Chapter 4 of Division 11.5 of, and to repeal Sections 120050.5 and 120051.1 of, the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 805, as amended, Gonzalez Fletcher. ~~San Diego Consolidated Transportation Agency: governance. County of San Diego: transportation agencies.~~

~~Existing~~

(1) *Existing* law provides for the consolidation of certain regional transportation planning, programming, and related functions in San Diego County from various existing agencies including the San Diego Association of Governments (SANDAG), the San Diego Metropolitan Transit Development Board (MTDB), *Board, also known as the San Diego Metropolitan Transit System (MTS)*, and the North County Transit District (NCTD). ~~Existing law provides for a board of directors of 21 members to govern the consolidated agency, as specified.~~

~~This bill would make nonsubstantive changes to these provisions.~~

Existing law provides for the consolidated agency, commonly known as SANDAG, to be governed by a board of directors of 21 city and county members selected by the governing body of each member agency.

This bill would require the mayor of each city to serve on the board of directors, except in the case of the City of San Diego, where the mayor and the president of the city council would serve. The bill would require the chairperson of the County of San Diego board of supervisors to serve on the board. The bill would also revise the selection of alternate members of the board.

Existing law, in order for the SANDAG board to act on any item, generally requires a majority vote of the members present on the basis of one vote per agency as well as a weighted vote pursuant to a specified process, except in the case of consent items.

This bill would instead require a majority of the weighted vote of the board members present in order for the board to act on any item. The bill would also modify the weighted vote process.

Existing law provides for SANDAG to have 4 standing policy advisory committees named the executive, transportation, regional planning, and borders committees.

This bill would additionally provide for an audit committee with specified responsibilities, including the selection of an independent auditor. The bill would require SANDAG to submit an annual report to the Legislature, developed by its transportation committee, that outlines various matters related to public transit.

Existing law provides for the consolidated agency to prepare a regional comprehensive plan containing various elements, as specified.

This bill would require the regional comprehensive plan to address greenhouse gas emissions reduction rules and regulations adopted by the State Air Resources Board and associated emissions limits. The bill would also require the plan to identify disadvantaged communities. The bill would require the plan to include strategies relative to those matters.

(2) Existing law creates MTS and NCTD, with various public transit responsibilities in the southern and northern parts of the County of San Diego, respectively. Existing law provides for MTS to be governed by a board of 15 members, while NCTD is governed by a board of 9 members, with each board generally consisting of city and county representatives selected by member agencies. Existing law provides that the chairperson of the MTS board is a resident of the County of San Diego selected by the board, as specified.

This bill would generally require the city representatives on each board to be the mayor of the city, except in the case of the City of San Diego, where 3 of the 4 members other than the mayor would be selected by the city council. The bill would provide for the city council of the City of Chula Vista to appoint a 2nd member. The bill would provide for the chairperson of the MTS board to be the mayor of the City of San Diego. The bill would also revise the process for selecting alternate members of the MTS board.

Existing law generally provides that official acts of the MTS or NCTD board require the affirmative vote of the majority of the members of the board, except that a weighted vote of the MTS board may be requested pursuant to a specified process.

This bill would create a similar weighted voting process for NCTD. The bill would require all official acts of the MTS or NCTD boards to require the affirmative vote of the majority of the weighted vote of the board members present.

Existing law authorizes various transportation agencies, including SANDAG, to impose a transactions and use tax for transportation purposes within its jurisdiction, subject to approval of $\frac{2}{3}$ of the voters and various other requirements. Existing law provides for issuance of bonds backed by these tax revenues, as specified.

This bill would additionally authorize MTS and NCTD to individually impose a transactions and use tax within their respective portions of the County of San Diego, with revenues to be used for public transit purposes serving their jurisdictions, and to issue bonds backed by these tax revenues, subject to similar requirements.

(3) By imposing additional requirements on local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 120050.2 of the Public Utilities Code is*
 2 *amended to read:*

3 120050.2. The board consists of 15 members selected as
 4 follows:

5 (a) One member of the County of San Diego Board of
 6 Supervisors, appointed by the board of supervisors.

7 ~~(b) Four members of the City Council of the City of San Diego,~~
 8 ~~one of whom may be the mayor, appointed by the city council.~~

9 ~~(c) One member of each city council appointed individually by~~
 10 ~~the City Councils~~

11 (b) *The mayors of the Cities of Chula Vista, Coronado, El Cajon,*
 12 *Imperial Beach, La Mesa, Lemon Grove, National City, Poway,*
 13 *San Diego, and Santee.*

14 ~~(d) One person, a resident of San Diego County, elected by a~~
 15 ~~two-thirds vote of the board, a quorum being present, who shall~~
 16 ~~serve as chairperson of the board. The chairperson shall serve for~~
 17 ~~a term of four years, except that he or she is subject to removal at~~
 18 ~~any time by a two-thirds vote of the board, a quorum being present.~~
 19 ~~If the person elected chairperson is also a member of the board,~~
 20 ~~the appointing power may not fill the vacancy created by the~~
 21 ~~election of that member as chairperson as long as that member~~
 22 ~~remains chairperson and, if removed as chairperson, that person~~
 23 ~~shall resume the position on the board he or she vacated upon~~
 24 ~~election as chairperson. Section 120102.5 does not apply to any~~
 25 ~~vote taken under this subdivision. Further, in the event that the~~
 26 ~~chairperson is elected from the membership of the board, the~~
 27 ~~County of San Diego shall then have two members appointed by~~
 28 ~~the board of supervisors and the board membership shall remain~~
 29 ~~at 15. In the event the subsequently elected chairperson is not a~~
 30 ~~member, the membership on the board of the second appointee of~~
 31 ~~the County of San Diego shall be suspended and the board~~
 32 ~~membership shall remain at 15.~~

33 (c) *Three members of the City Council of the City of San Diego*
 34 *and one member of the City Council of the City of Chula Vista,*
 35 *each appointed by their respective city council.*

36 (d) *The chairperson of the board shall be the mayor of the city*
 37 *with the largest population.*

1 *SEC. 2. Section 120050.5 of the Public Utilities Code is*
 2 *repealed.*

3 ~~120050.5. Any person who is a member of the board may be~~
 4 ~~appointed by his or her appointing authority to continue to serve~~
 5 ~~as a member of the board after the termination of his or her term~~
 6 ~~of office for a period not to exceed four years after the date of~~
 7 ~~termination of his or her term of elected office.~~

8 *SEC. 3. Section 120051.1 of the Public Utilities Code is*
 9 *repealed.*

10 ~~120051.1. The member of the board of supervisors appointed~~
 11 ~~pursuant to subdivision (d) of Section 120050.2 shall represent the~~
 12 ~~supervisory district with the greatest percentage of its area within~~
 13 ~~the unincorporated area of the County of San Diego under the~~
 14 ~~jurisdiction of the transit development board as defined in Section~~
 15 ~~120054.~~

16 *SEC. 4. Section 120051.6 of the Public Utilities Code is*
 17 *amended to read:*

18 120051.6. The alternate members of the board shall be
 19 appointed as follows:

20 (a) The County of San Diego Board of Supervisors shall appoint
 21 any other county supervisor who qualifies for appointment pursuant
 22 to Section 120051 to serve as an alternate member of the transit
 23 development board.

24 ~~(b) The City Council of the City of San Diego shall appoint a~~
 25 ~~member of the city council not already appointed pursuant to~~
 26 ~~subdivision (b) of Section 120050.2 to serve as an alternate member~~
 27 ~~of the transit development board for each of the members appointed~~
 28 ~~by the city council to the transit development board.~~

29 (e)

30 (b) The city councils *of the cities* specified in subdivision (e)
 31 (b) of Section 120050.2 shall each individually appoint a member
 32 of their respective city councils not already appointed pursuant to
 33 ~~that subdivision~~ *subdivision (b) or (c) of Section 120050.2* to serve
 34 as an alternate member of the transit development *board for each*
 35 *member of the city on the board.*

36 (d)

37 (c) At its discretion, a city council or the county board of
 38 supervisors may appoint a second alternate member, in the same
 39 manner as ~~members~~ *first alternates* are appointed, to serve on the

board in the event that neither a member nor the alternate member is able to attend a meeting of the board.

(e)

(d) An alternate member and second alternate member shall be subject to the same restrictions and shall have the same powers, when serving on the board, as a member.

(f) ~~If the board elects a person other than a member of the board to serve as chairperson, the board may, upon a two-thirds vote, a quorum being present, appoint a San Diego County resident as an alternate member of the board for that person elected chairperson. If the board elects a person who is a member of the board to serve as chairperson, the County of San Diego shall appoint an alternate supervisor for the supervisor appointed pursuant to subdivision (d) of Section 120050.2.~~

SEC. 5. Section 120102.5 of the Public Utilities Code is amended to read:

120102.5. (a) A majority of the members of the board constitutes a quorum for the transaction of business. All official acts of the board require the affirmative vote of the majority of the ~~weighted vote of the members of the board. However, after a vote of the members is taken, a weighted vote may be called by any two members, at least one of whom is not a City of San Diego representative. present. However, any reference in this division to a two-thirds vote of the members of the board shall be deemed to mean the affirmative vote of two-thirds of the weighted vote of the members present.~~

(b) In the case of a weighted vote, ~~each of the four representatives of the City of San Diego shall exercise 12½ weighted votes, for a total of 50 votes. The County of San Diego and each city, other than the City of San Diego, shall, in total, exercise 49 weighted votes to be apportioned annually by population. The chairperson, if not chosen from the membership of the board, shall exercise one weighted vote. there shall be a total of 100 votes. Each member agency shall have that number of votes annually determined by the following apportionment formula, provided that each agency shall have at least one vote, and that there shall be no fractional votes:~~

(c) ~~Approval under the weighted vote procedure requires the vote of the representatives of not less than three jurisdictions~~

1 representing not less than 51 percent of the total weighted vote to
 2 supersede the original action of the board.

3 ~~(d) The weighted vote procedure shall not be used on any matter~~
 4 ~~of purely intracity local service, unless it is the desire of the~~
 5 ~~affected city or jurisdiction.~~

6 ~~(e) The weighted vote procedure shall not be used for purposes~~
 7 ~~of subdivision (e) of Section 120265.~~

8 *(1) Compute, consistent with subdivision (d), the total population*
 9 *of the cities and the county, and compute the percentage of this*
 10 *total for each agency.*

11 *(2) Boost percentage fractions in the case of each agency where*
 12 *the total is less than one, to one, and then add to that number only*
 13 *the whole numbers, excluding fractions, for all other agencies.*

14 *(3) If the total cumulative number under paragraph (2) is less*
 15 *than 100, add one vote each to the agencies that, prior to exclusion*
 16 *under paragraph (2), had the highest fractional amounts, but*
 17 *exclude from this allocation any agency whose fraction was*
 18 *boosted under paragraph (2), until a total of 100 votes is reached.*

19 *(4) If the total cumulative number under paragraph (2) is more*
 20 *than 100, subtract one vote each from the agencies that, prior to*
 21 *exclusion under paragraph (2), had the lowest fractional amounts,*
 22 *until a total of 100 votes is reached, but in no case shall an agency*
 23 *have less than one vote.*

24 *(c) The City of San Diego shall allocate half of its weighted vote*
 25 *to the mayor of the City of San Diego, and the other half shall be*
 26 *divided equally between the three city council members. The City*
 27 *of Chula Vista shall allocate its weighted vote evenly between its*
 28 *two members.*

29 ~~(f)~~

30 *(d) For purposes of subdivision ~~(e)~~, (b), the population of the*
 31 *County of San Diego is the population in the unincorporated area*
 32 *of the county within the area of jurisdiction of the transit*
 33 *development board. board pursuant to Section 120054.*

34 ~~(g)~~

35 *(e) The board shall adopt a policy and procedure to implement*
 36 *this section.*

37 *SEC. 6. Article 11 (commencing with Section 120480) is added*
 38 *to Chapter 4 of Division 11 of the Public Utilities Code, to read:*

Article 11. Transactions and Use Tax

120480. (a) A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory within the area of the board pursuant to Section 120054 shall be imposed by the board in accordance with Section 120485 and Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, if two-thirds of the voters voting on the measure vote to approve its imposition at a special election called for that purpose by the board. The tax ordinance shall take effect at the close of the polls on the day of election at which the proposition is adopted. The initial collection of the transactions and use tax shall take place in accordance with Section 120483.

(b) If, at any time, the voters do not approve the imposition of the transactions and use tax, this chapter remains in full force and effect. The board may, at any time thereafter, submit the same, or a different, measure to the voters in accordance with this chapter.

120481. The board, in the ordinance, shall state the nature of the tax to be imposed, the tax rate or the maximum tax rate, the purposes for which the revenue derived from the tax will be used, and may set a term during which the tax will be imposed. The purposes for which the tax revenues may be used shall be limited to public transit purposes serving the area of jurisdiction of the board, as determined by the board, including the administration of this division and legal actions related thereto. These purposes include expenditures for the planning, environmental reviews, engineering and design costs, and related right-of-way acquisition. The ordinance shall contain an expenditure plan that shall include the allocation of revenues for the purposes authorized by this section.

120482. (a) The county shall conduct an election called by the board pursuant to Section 120480.

(b) The election shall be called and conducted in the same manner as provided by law for the conduct of elections by a county.

120483. (a) Any transactions and use tax ordinance adopted pursuant to this article shall be operative on the first day of the first calendar quarter commencing more than 110 days after adoption of the ordinance.

1 (b) Prior to the operative date of the ordinance, the board shall
2 contract with the State Board of Equalization to perform all
3 functions incident to the administration and operation of the
4 ordinance. The costs to be covered by the contract may also include
5 services of the types described in Section 7272 of the Revenue and
6 Taxation Code for preparatory work up to the operative date of
7 the ordinance. Any disputes as to the amount of the costs shall be
8 resolved in the same manner as provided in that section.

9 120484. The revenues from the taxes imposed pursuant to this
10 article may be allocated by the board for public transit purposes
11 consistent with the applicable regional transportation improvement
12 program and the applicable regional transportation plan.

13 120485. The board, subject to the approval of the voters, may
14 impose a maximum tax rate of one-half of 1 percent under this
15 article and Part 1.6 (commencing with Section 7251) of Division
16 2 of the Revenue and Taxation Code. The board shall not levy the
17 tax at a rate other than one-half or one-fourth of 1 percent unless
18 specifically authorized by the Legislature.

19 120486. The board, as part of the ballot proposition to approve
20 the imposition of a retail transactions and use tax, may seek
21 authorization to issue bonds payable from the proceeds of the tax.

22 120487. Any action or proceeding wherein the validity of the
23 adoption of the retail transactions and use tax ordinance provided
24 for in this article or the issuance of any bonds thereunder or any
25 of the proceedings in relation thereto is contested, questioned, or
26 denied, shall be commenced within six months from the date of the
27 election at which the ordinance is approved; otherwise, the bonds
28 and all proceedings in relation thereto, including the adoption
29 and approval of the ordinance, shall be held to be valid and in
30 every respect legal and incontestable.

31 120488. The board has no power to impose any tax other than
32 the transactions and use tax imposed upon approval of the voters
33 in accordance with this article.

34 SEC. 7. Section 125050 of the Public Utilities Code is amended
35 to read:

36 125050. There is hereby created, in that portion of the County
37 of San Diego as described in Section 125052, the North County
38 Transit District. The district shall be governed by a board of
39 directors. As used in this division, "board" means the board of

1 directors of the district. The board shall consist of members
2 selected as follows:

3 (a) One member of the San Diego County Board of Supervisors
4 appointed by the board of supervisors, which member shall
5 represent, on the board of supervisors, the largest portion of the
6 area under the jurisdiction of the district.

7 ~~(b) One member of each of the City Councils—The mayors of~~
8 ~~the Cities of Carlsbad, Del Mar, Encinitas, Escondido, Oceanside,~~
9 ~~San Marcos, Solana Beach, and Vista, and each new city that~~
10 ~~incorporates within the district boundaries, appointed by the~~
11 ~~respective city council. boundaries.~~

12 *SEC. 8. Section 125102 of the Public Utilities Code is amended*
13 *to read:*

14 125102. (a) A majority of the members of the board ~~shall~~
15 ~~constitute~~ *constitutes* a quorum for the transaction of ~~business, and~~
16 ~~all business.~~ All official acts of the board ~~shall~~ require the
17 affirmative vote of ~~a~~ *the* majority of the *weighted vote of the*
18 ~~members of the board.~~ *board present. However, any reference in*
19 *this division to a two-thirds vote of the members of the board shall*
20 *be deemed to mean the affirmative vote of two-thirds of the*
21 *weighted vote of the members present.*

22 (b) *In the case of a weighted vote, there shall be a total of 100*
23 *votes. Each member agency shall have that number of votes*
24 *annually determined by the following apportionment formula,*
25 *provided that each agency shall have at least one vote, and that*
26 *there shall be no fractional votes:*

27 (1) *Compute, consistent with subdivision (c), the total population*
28 *of the cities and the county, and compute the percentage of this*
29 *total for each agency.*

30 (2) *Boost percentage fractions in the case of each agency where*
31 *the total is less than one, to one, and then add to that number only*
32 *the whole numbers, excluding fractions, for all other agencies.*

33 (3) *If the total cumulative number under paragraph (2) is less*
34 *than 100, add one vote each to the agencies that, prior to exclusion*
35 *under paragraph (2), had the highest fractional amounts, but*
36 *exclude from this allocation any agency whose fraction was*
37 *boosted under paragraph (2), until a total of 100 votes is reached.*

38 (4) *If the total cumulative number under paragraph (2) is more*
39 *than 100, subtract one vote each from the agencies that, prior to*
40 *exclusion under paragraph (2), had the lowest fractional amounts,*

1 until a total of 100 votes is reached, but in no case shall an agency
2 have less than one vote.

3 (c) For purposes of subdivision (b), the population of the County
4 of San Diego is the population in the unincorporated area of the
5 county within the area of jurisdiction of the board pursuant to
6 Section 125052.

7 (d) The board shall adopt a policy and procedure to implement
8 this section.

9 SEC. 9. Article 9 (commencing with Section 125480) is added
10 to Chapter 4 of Division 11.5 of the Public Utilities Code, to read:

11
12 Article 9. Transactions and Use Tax
13

14 125480. (a) A retail transactions and use tax ordinance
15 applicable in the incorporated and unincorporated territory within
16 the area of the board pursuant to Section 125052 shall be imposed
17 by the board in accordance with Section 125485 and Part 1.6
18 (commencing with Section 7251) of Division 2 of the Revenue and
19 Taxation Code, if two-thirds of the voters voting on the measure
20 vote to approve its imposition at a special election called for that
21 purpose by the board. The tax ordinance shall take effect at the
22 close of the polls on the day of election at which the proposition
23 is adopted. The initial collection of the transactions and use tax
24 shall take place in accordance with Section 125483.

25 (b) If, at any time, the voters do not approve the imposition of
26 the transactions and use tax, this chapter remains in full force and
27 effect. The board may, at any time thereafter, submit the same, or
28 a different, measure to the voters in accordance with this chapter.

29 125481. The board, in the ordinance, shall state the nature of
30 the tax to be imposed, the tax rate or the maximum tax rate, the
31 purposes for which the revenue derived from the tax will be used,
32 and may set a term during which the tax will be imposed. The
33 purposes for which the tax revenues may be used shall be limited
34 to public transit purposes serving the area of jurisdiction of the
35 board, as determined by the board, including the administration
36 of this division and legal actions related thereto. These purposes
37 include expenditures for the planning, environmental reviews,
38 engineering and design costs, and related right-of-way acquisition.
39 The ordinance shall contain an expenditure plan that shall include

1 *the allocation of revenues for the purposes authorized by this*
2 *section.*

3 *125482. (a) The county shall conduct an election called by*
4 *the board pursuant to Section 125480.*

5 *(b) The election shall be called and conducted in the same*
6 *manner as provided by law for the conduct of elections by a county.*

7 *125483. (a) Any transactions and use tax ordinance adopted*
8 *pursuant to this article shall be operative on the first day of the*
9 *first calendar quarter commencing more than 110 days after*
10 *adoption of the ordinance.*

11 *(b) Prior to the operative date of the ordinance, the board shall*
12 *contract with the State Board of Equalization to perform all*
13 *functions incident to the administration and operation of the*
14 *ordinance. The costs to be covered by the contract may also include*
15 *services of the types described in Section 7272 of the Revenue and*
16 *Taxation Code for preparatory work up to the operative date of*
17 *the ordinance. Any disputes as to the amount of the costs shall be*
18 *resolved in the same manner as provided in that section.*

19 *125484. The revenues from the taxes imposed pursuant to this*
20 *article may be allocated by the board for public transit purposes*
21 *consistent with the applicable regional transportation improvement*
22 *program and the applicable regional transportation plan.*

23 *125485. The board, subject to the approval of the voters, may*
24 *impose a maximum tax rate of one-half of 1 percent under this*
25 *article and Part 1.6 (commencing with Section 7251) of Division*
26 *2 of the Revenue and Taxation Code. The board shall not levy the*
27 *tax at a rate other than one-half or one-fourth of 1 percent unless*
28 *specifically authorized by the Legislature.*

29 *125486. The board, as part of the ballot proposition to approve*
30 *the imposition of a retail transactions and use tax, may seek*
31 *authorization to issue bonds payable from the proceeds of the tax.*

32 *125487. Any action or proceeding wherein the validity of the*
33 *adoption of the retail transactions and use tax ordinance provided*
34 *for in this article or the issuance of any bonds thereunder or any*
35 *of the proceedings in relation thereto is contested, questioned, or*
36 *denied, shall be commenced within six months from the date of the*
37 *election at which the ordinance is approved; otherwise, the bonds*
38 *and all proceedings in relation thereto, including the adoption*
39 *and approval of the ordinance, shall be held to be valid and in*
40 *every respect legal and incontestable.*

1 125488. *The board has no power to impose any tax other than*
 2 *the transactions and use tax imposed upon approval of the voters*
 3 *in accordance with this article.*

4 **SECTION 1.**

5 *SEC. 10.* Section 132351.1 of the Public Utilities Code is
 6 amended to read:

7 132351.1. (a) A board of directors consisting of 21 members
 8 shall govern the consolidated agency.

9 (b) For purposes of this chapter, “governing body” means the
 10 board of supervisors, council, council and mayor where the mayor
 11 is not a member of the council, authority, trustees, director,
 12 commission, committee, or other policymaking body, as
 13 appropriate, that exercises authority over an entity represented on
 14 the board of the consolidated agency.

15 (c) All powers, privileges, and duties vested in or imposed upon
 16 the consolidated agency shall be exercised and performed by and
 17 through a board of directors provided, however, that the exercise
 18 of all executive, administrative, and ministerial power may be
 19 delegated and redelegated by the board, to any of the offices,
 20 officers, or committees created pursuant to this chapter or created
 21 by the board acting pursuant to this chapter.

22 (d) The board shall be composed of one primary representative
 23 ~~selected by the governing body of each city in the county and a~~
 24 ~~member the chair of the San Diego County Board of Supervisors~~
 25 ~~to serve until recalled by the governing body of the city or county.~~
 26 ~~The Supervisors. However, the City of San Diego and the County~~
 27 ~~of San Diego shall each have a primary and secondary~~
 28 ~~representative. Each representative, which shall be the mayor of~~
 29 ~~the City of San Diego and the president of the city council. Except~~
 30 ~~in the case of the City of San Diego and the County of San Diego,~~
 31 ~~each director shall be a mayor, councilperson, or supervisor the~~
 32 ~~mayor of the governing body which selected him or her. Vacancies~~
 33 ~~shall be filled in the same manner as originally selected. of his or~~
 34 ~~her city. Each city or county shall also select in the same manner~~
 35 ~~as the primary or secondary representative, if applicable, one~~
 36 ~~alternate to serve on the board when the primary or secondary~~
 37 ~~representative, if applicable, is not available. The alternate shall~~
 38 ~~be subject to the same restrictions and have the same powers, when~~
 39 ~~serving on the board, as the representative for whom he or she is~~

1 substituting. *The alternate shall be a councilperson or supervisor,*
 2 *as applicable, of his or her governing body.*

3 ~~(e) Notwithstanding subdivision (d), in those years when the~~
 4 ~~chair of the San Diego County Board of Supervisors is from a~~
 5 ~~district that is substantially an incorporated area and is appointed~~
 6 ~~the primary representative to the board, a supervisor who represents~~
 7 ~~a district that is substantially an unincorporated area shall be~~
 8 ~~appointed to the board as the secondary representative.~~
 9 ~~Alternatively, in those years when the chair of the San Diego~~
 10 ~~County Board of Supervisors is from a district that is substantially~~
 11 ~~an unincorporated area and is appointed the primary representative~~
 12 ~~to the board, a supervisor who represents a district that is~~
 13 ~~substantially an incorporated area shall be appointed to the board~~
 14 ~~as the secondary representative.~~

15 ~~(f)~~

16 *(e) At its discretion, each city and or county may select a second*
 17 *alternate, in the same manner as the primary representative, first*
 18 *alternate, to serve on the board in the event that neither the primary*
 19 *representative nor the regular first alternate is able to attend a*
 20 *meeting of the board. This alternate shall be subject to the same*
 21 *restrictions and have the same powers, when serving on the board,*
 22 *as the primary representative.*

23 ~~(g)~~

24 *(f) The board may allow for the appointment of advisory*
 25 *representatives to sit with the board but in no event shall those*
 26 *representatives be allowed a vote. The current advisory*
 27 *representatives to the San Diego Association of Governments may*
 28 *continue their advisory representation on the consolidated agency*
 29 *at the discretion of their governing body. The governing bodies of*
 30 *the County of Imperial and the cities in that county may*
 31 *collectively designate an advisory representative to sit with the*
 32 *board.*

33 *SEC. 11. Section 132351.2 of the Public Utilities Code is*
 34 *amended to read:*

35 132351.2. (a) A majority of the member agencies constitute
 36 a quorum for the transaction of business. In order to act on any
 37 item, ~~except consent items which only require the vote specified~~
 38 ~~in paragraph (1), the following voting formula in both paragraphs~~
 39 ~~(1) and (2) shall apply:~~

1 ~~(1) A majority vote of the members present on the basis of one~~
 2 ~~vote per agency.~~

3 ~~(2) A the affirmative vote of the majority of the weighted vote~~
 4 ~~of the member agencies present. members present is required.~~

5 (b) The governing body of the City of San Diego and the County
 6 of San Diego, as appropriate, shall determine how to allocate their
 7 single agency votes and *its* weighted votes *equally* between their
 8 *its* primary and secondary members.

9 (c) For the weighted vote, there shall be a total of 100 votes,
 10 except additional votes shall be allowed pursuant to subdivision
 11 (f). Each representative *member agency* shall have that number of
 12 votes determined by the following apportionment formula, provided
 13 that each agency shall have at least one vote, no agency shall have
 14 more than 40 votes, *vote* and there shall be no fractional votes:

15 (1) If any agency has 40 percent or more of the total population
 16 of the San Diego County region, allocate 40 votes to that agency
 17 and follow paragraph (2), if not, follow paragraph (3).

18 (2) Total the population of the remaining agencies determined
 19 in paragraph (1) and compute the percentage of this total that each
 20 agency has:

21 (A) Multiply each percentage derived above by 60 to determine
 22 fractional shares.

23 (B) Boost fractions that are less than one, to one and add the
 24 whole numbers.

25 (C) If the answer to subparagraph (B) is 60, drop all fractions
 26 and the whole numbers are the votes for each agency.

27 (D) If the answer to subparagraph (B) is less than 60, the
 28 remaining vote(s) is allocated one each to that agency(s) having
 29 the highest fraction(s) excepting those whose vote was increased
 30 to one in subparagraph (B) above.

31 (E) If the answer to subparagraph (B) is more than 60, the excess
 32 vote(s) is taken one each from the agency(s) with the lowest
 33 fraction(s). In no case shall a vote be reduced to less than one.

34 (3) Total the population determined in paragraph (1) and
 35 compute the percentage of this total that each agency has:

36 (A) Boost fractions that are less than one, to one and add the
 37 whole numbers.

38 (B) If the answer to subparagraph (A) is 100, drop all fractions
 39 and the whole numbers are the votes for each agency.

~~(C) If the answer to subparagraph (A) is less than 100, the remaining vote(s) is allocated one each to that agency(s) having the highest fraction(s) excepting those whose vote was increased to one in subparagraph (A) above.~~

~~(D) If the answer to subparagraph (A) is more than 100, the excess vote(s) is taken one each from that agency(s) with the lowest fraction(s). In no case shall a vote be reduced to less than one.~~

~~(d) When a weighted vote is taken on any item that requires more than a majority vote of the board, it shall also require the supermajority percentage of the weighted vote.~~

(1) Compute the total population of the San Diego region and compute the percentage of this total for each agency.

(2) Boost percentage fractions in the case of each agency where the total is less than one, to one, and then add to that number only the whole numbers, excluding fractions, for all other agencies.

(3) If the total cumulative number under paragraph (2) is less than 100, add one vote each to the agencies that, prior to exclusion under paragraph (2), had the highest fractional amounts, but exclude from this allocation any agency whose fraction was boosted under paragraph (2), until a total of 100 votes is reached.

(4) If the total cumulative number under paragraph (2) is more than 100, subtract one vote each from the agencies that, prior to exclusion under paragraph (2), had the lowest fractional amounts, until a total of 100 votes is reached, but in no case shall an agency have less than one vote.

~~(e)~~

(d) The weighted vote formula under subdivision (c) shall be recomputed in the above manner every July 1.

~~(f)~~

(e) Any other newly incorporated city shall receive one vote under the single vote procedure and one vote under the weighted vote procedure specified above until the next recomputation of the weighted vote, vote formula under subdivision (c), at which time the new agency shall receive votes in accordance with the formula specified in subdivision (b): recomputed formula. Until this recomputation, the total weighted vote may exceed 100.

SEC. 12. Section 132351.4 of the Public Utilities Code is amended to read:

132351.4. (a) The consolidated agency shall have four five standing policy advisory committees named the executive,

1 transportation, regional planning, ~~and borders~~ *borders, and audit*
 2 committees. The responsibilities of the committees shall be
 3 established by the board. Committee membership may be expanded
 4 by the consolidated agency, and shall be selected in accordance
 5 with a process established by the consolidated agency. The
 6 membership shall be as follows:

7 (1) The executive committee shall consist of six voting members
 8 with board members representing east county, north county coastal,
 9 north county inland, south county, and the representative, or the
 10 representative's alternate in their absence, from the City of San
 11 Diego and the county. The chairperson *and the vice chairperson*
 12 of the consolidated agency shall *each* be one of the six voting
 13 members. ~~The vice chairperson of the consolidated agency shall~~
 14 ~~be one of the six voting members if the vice chairperson represents~~
 15 ~~an area of the region that is different from the area of the region~~
 16 ~~represented by the chairperson, as those areas are described in~~
 17 ~~subdivisions (d) to (g), inclusive, of Section 132350.2.~~

18 (2) (A) The transportation committee shall consist of nine voting
 19 members with board members or alternates representing east
 20 county, north county coastal, north county inland, south county
 21 and the mayor or a council member from the City of San Diego,
 22 a supervisor from the County of San Diego, a member of the board
 23 of the MTDB appointed by the board of the MTDB, a member of
 24 the board of the NCTD appointed by the board of the NCTD, and
 25 a member of the San Diego County Regional Airport Authority
 26 appointed by the airport authority.

27 (B) Among its transportation responsibilities, the transportation
 28 committee shall provide a strong focus and commitment to meeting
 29 the public transit needs of the San Diego region, set transit funding
 30 criteria and recommend transit funding levels, and undertake transit
 31 responsibilities resulting from consolidation, as delegated by the
 32 board.

33 (C) *The board shall provide a report, developed by the*
 34 *transportation committee, to the Legislature on or before July 1*
 35 *of each year that outlines the public transit needs, transit funding*
 36 *criteria, recommended transit funding levels, and additional work*
 37 *on public transit, as delegated to the transportation committee by*
 38 *the board. The report shall specify the funds spent explicitly on*
 39 *public transportation. The report shall be submitted consistent*
 40 *with Section 9795 of the Government Code.*

(3) The regional planning committee shall consist of six voting members with board members or alternates representing east county, north county coastal, north county inland, south county, and the mayor or a council member from the City of San Diego, and a supervisor from the County of San Diego.

(4) The borders committee shall consist of seven voting members with board members or alternates representing east county, north county coastal, north county inland, south county, the mayor or a council member from the City of San Diego, a supervisor from the County of San Diego, and a mayor, council member, or supervisor from the County of Imperial.

(5) *The audit committee shall consist of five voting members with two board members and three members of the public to be appointed by the board. The audit committee shall oversee and direct the work of the independent auditor pursuant to subdivision (b) of Section 132354.1.*

(b) The board may appoint other standing and ad hoc working groups to advise it in carrying out its responsibilities.

(c) No board member may serve as a member of more than two standing policy advisory committees at any one ~~time~~ *time*, except those board members serving on the audit committee.

SEC. 13. *Section 132352.3 of the Public Utilities Code is amended to read:*

132352.3. The officers of the board are the chairperson and the vice chairperson. *The mayors of the largest city and the second-largest city shall alternate between serving as chairperson and vice chairperson for four-year terms.* The board may create additional officers and elect members to those positions. However, no member may hold more than one office. The term of office for ~~the~~ any officers of the board *other than the chairperson and the vice chairperson* shall be established by the board.

SEC. 14. *Section 132354.1 of the Public Utilities Code is amended to read:*

132354.1. (a) The board shall arrange for a post audit of the financial transactions and records of the consolidated agency to be made at least annually by a certified public accountant.

(b) *The audit committee shall appoint an independent auditor, subject to approval by the board, to perform audits of the consolidated agency, which shall include, but not be limited to, all of the following:*

1 (1) *Financial transactions report.*

2 (2) *Expenditure plan.*

3 (3) *Annual budget.*

4 (4) *Revenue forecasts.*

5 (c) *The independent auditor shall serve a term of five years,*
6 *and may only be removed for cause.*

7 (d) *The board shall develop and adopt internal control*
8 *guidelines to prevent and detect financial errors and fraud based*
9 *on the internal control guidelines developed by the Controller*
10 *pursuant to Section 12422.5 of the Government Code and the*
11 *standards adopted by the American Institute of Certified Public*
12 *Accountants.*

13 (e) *The board shall develop and adopt an administration policy*
14 *that includes a process to conduct staff performance evaluations*
15 *on a regular basis to determine if the knowledge, skills, and*
16 *abilities of staff members are sufficient to perform their respective*
17 *functions, and shall monitor the evaluation process on a regular*
18 *basis.*

19 SEC. 15. *Section 132360.1 of the Public Utilities Code is*
20 *amended to read:*

21 132360.1. ~~If the consolidated agency prepares a~~ *In preparing*
22 *and updating the regional comprehensive plan, it is the intent of*
23 *the Legislature that:*

24 (a) *The regional comprehensive plan preserve and improve the*
25 *quality of life in the San Diego region, maximize mobility and*
26 *transportation choices, and conserve and protect natural resources.*

27 (b) *The regional comprehensive plan shall address the*
28 *greenhouse gas emissions reduction rules and regulations adopted*
29 *by the State Air Resources Board pursuant to Section 38560 of the*
30 *Health and Safety Code and the statewide greenhouse gas*
31 *emissions limit set forth in Section 38566 of the Health and Safety*
32 *Code and include strategies in that regard, including the*
33 *establishment of aggressive nonautomobile modal share targets*
34 *for the region.*

35 (c) *The regional comprehensive plan shall identify*
36 *disadvantaged communities as designated pursuant to Section*
37 *39711 of the Health and Safety Code and include transportation*
38 *strategies to reduce pollution exposure in these communities.*

39 ~~(b)~~

1 (d) In formulating and maintaining the regional comprehensive
2 plan, the consolidated agency shall take account of and shall seek
3 to harmonize the needs of the region as a whole, the plans of the
4 county and cities within the region, and the plans and planning
5 activities of organizations that affect or are concerned with planning
6 and development within the region.

7 ~~(e)~~

8 (e) The consolidated agency shall engage in a public
9 collaborative planning process. The recommendations resulting
10 from the public collaborative planning process shall be made
11 available to and considered by the consolidated agency for
12 integration into the draft regional comprehensive plan. The
13 consolidated agency shall adopt a procedure to carry out this
14 process including a method of addressing and responding to
15 recommendations from the public.

16 ~~(d)~~

17 (f) In formulating and maintaining the regional comprehensive
18 plan, the consolidated agency shall seek the cooperation and
19 consider the recommendations of all of the following:

20 (1) Its member agencies and other agencies of local government
21 within the jurisdiction of the consolidated agency.

22 (2) State and federal agencies.

23 (3) Educational institutions.

24 (4) Research organizations, whether public or private.

25 (5) Civic groups.

26 (6) Private individuals.

27 (7) Governmental jurisdictions located outside the region but
28 contiguous to its boundaries.

29 ~~(e)~~

30 (g) The consolidated agency shall make the regional
31 comprehensive plan, policies, and objectives available to all local
32 agencies and facilitate consideration of the regional comprehensive
33 plan in the development, implementation, and update of local
34 general plans. The consolidated agency shall provide assistance
35 and enhance the opportunities for local agencies to develop,
36 implement, and update general plans in a manner that recognizes,
37 at a minimum, land use, transportation compatibility, and a
38 jobs-to-housing balance within the regional comprehensive plan.

39 ~~(f)~~

1 (h) The consolidated agency shall maintain the data, maps, and
2 other information developed in the course of formulating the
3 regional comprehensive plan in a form suitable to assure a
4 consistent view of developmental trends and other relevant
5 information for the availability of and use by other government
6 agencies and private organizations.

7 ~~(g)~~

8 (i) The components of the regional comprehensive plan may
9 include, but are not limited to, transportation, housing, water
10 ~~quality, quality and supply~~, infrastructure, ~~air quality, energy, solid~~
11 ~~waste, economy~~, and open space, including habitat. ~~At some future~~
12 ~~date, components such as water supply, air quality, solid waste,~~
13 ~~economy, and energy should be part of the regional comprehensive~~
14 ~~plan.~~ Performance standards and measurable criteria shall be
15 established through a public process to ensure that the regional
16 comprehensive plan is prepared consistent with these measures as
17 well as in determining achievement of the regional comprehensive
18 plan goals throughout its implementation.

19 ~~(h)~~

20 (j) Any water supply component or provision of the regional
21 infrastructure strategy regarding water supply contained in the
22 regional comprehensive plan shall be consistent with the urban
23 water management plan and other adopted regional water facilities
24 and supply plans of the San Diego County Water Authority.

25 *SEC. 16. If the Commission on State Mandates determines that*
26 *this act contains costs mandated by the state, reimbursement to*
27 *local agencies and school districts for those costs shall be made*
28 *pursuant to Part 7 (commencing with Section 17500) of Division*
29 *4 of Title 2 of the Government Code.*



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

Agenda Item No. C2

MEETING OF SAN DIEGO THE METROPOLITAN TRANSIT SYSTEM EXECUTIVE COMMITTEE

April 6, 2017

SUBJECT:

JOINT DEVELOPMENT PROPERTIES INVENTORY UPDATE (TIM ALLISON)

RECOMMENDATION:

That the Executive Committee receive a report on available properties owned by MTS suitable for joint development and give direction to staff regarding future projects.

Budget Impact

None

DISCUSSION:

MTS Board Policy and Procedure No. 18, "Joint Use and Development of Property", addresses the Board's intention to maximize the potential of its real estate assets consistent with transportation goals and community development objectives. The Board has adopted design criteria for joint development consisting of the following goals:

- integration of transportation facilities into existing and proposed developments to meet community needs;
- promotion and enhancement of the use of public transportation;
- maximization of the recovery of public capital costs and increase of the return on public investments; and
- enhancement and protection of the transportation corridor and its environs.



Joint use and development of MTS property would consider the following criteria:

- Projects shall be considered that do not negatively impact present or future public transportation facilities.
- Projects shall be consistent with regional and local community policies and plans.
- Projects must demonstrate a fiscal benefit to MTS.
- Projects will be selected based on demonstrated maximization of economic development potential to MTS and the community, increased accessibility to transportation, and responsiveness to community needs for housing, employment, services, or recreational facilities.
- Projects are encouraged that incorporate public restrooms for patrons and the public.

The Board policy also discusses that an inventory of available and suitable property for joint use and development be established. Attachment A contains the current list of properties that are available for development and have potential to meet the goals and criteria set by the Board. The majority of the properties on the list are situated along the trolley right-of-way. Properties that were being developed for joint use or are not under MTS's control were not included. For example, the Old Town Transit Center Station parking lot is owned by California State Parks, and the Gillespie Field Station parking lot is owned by the County of San Diego.

MTS has had some success in developing property in the past, including the Creekside Villas at the 47th Street Station in San Diego and the Sweetwater Union High School District Adult Education Extension at the 24th Street Station in National City, The Village at Morena Vista on the Green Line in Mission Valley, and Alterra and Pravada at Grossmont Trolley Apartments in La Mesa.

The Encanto/62nd Street Trolley Station is under construction by AMCAL Multi-Housing, Inc. to build the Villa Encantada Apartments affordable housing project.

Board Policy No. 18 allows staff to consider development proposals through three main avenues: (1) formal request for proposals (RFP) process; (2) marketing of property for sale or lease via common real estate listing and advertising methods; and (3) unsolicited proposals.

There is renewed interest from the development community to seek agreements with MTS for transit-oriented developments. MTS staff has identified a number of primary sites that have strong development potential. Some have active interest. The properties include:

- Grantville Station
- El Cajon Transit Center
- Iris Avenue Trolley Station
- Bayfront/E Street Station
- H Street Station

- Palm Avenue Station
- Massachusetts Avenue Station
- I2th and Imperial Expansion
- Riverwalk Property (portion)

Other sites on the inventory are not excluded from consideration depending upon interest. Staff will provide a report on development opportunities.

- Grantville Station

The Grantville Station is in the City of San Diego on the Green Line constructed as part of the Mission Valley East project. This site has very active interest based on its size, location, and proximity to San Diego State University. Staff will provide a status report and seek direction on the proposed process to solicit competitive proposals.

- El Cajon Transit Center

The El Cajon Transit Center is located in the City of El Cajon. The City of El Cajon is interested in transit-oriented development for this site and is actively working with MTS staff to move a project forward. There is no active developer interest on this site.

- Bayfront/E Street and H Street Stations

Both the Bayfront/E Street and H Street Stations are located in the City of Chula Vista at identified gateways to the city. They are located in the Urban Core Planning Area and are considered by the City of Chula Vista to be excellent transit-oriented development sites. Bayfront/E Street Station is adjacent to a city-owned property being negotiated for development.

- Iris Avenue Trolley Station

The Iris Avenue Trolley Station is located just west of Beyer Blvd at Howard Street in the southern part of the City of San Diego in the Otay Mesa West Neighborhood. MTS has received an unsolicited proposal for development on this property, which will be reviewed with the Executive Committee.

- Palm Avenue Station

The Palm Avenue Station is located at Palm Avenue and Hollister Street in the City of San Diego. This site has approximately four acres of flat and rectangular space. It is served by buses and has similar surrounding land uses. There is no active interest in this site.

- Massachusetts Avenue Station

The Massachusetts Avenue Station is within the City of Lemon Grove. The City of Lemon Grove is interested in this site for transit-oriented development. There is

interest from the development community on this site. The station is not within the current boundaries of Lemon Grove's redevelopment area.

- 12th and Imperial Expansion

MTS purchased several lots in 2010 directly east of the Mills Building as opportunity sites that could be used not only for expansion of transit service, but for its development opportunity.

- Riverwalk Property

This property is currently under a long term lease for part of a golf course (holes 3 and 4 for the Presidio 9). Partners of the Riverwalk Development have begun negotiations to amend the current Levi Cushman Specific Plan and create a potential opportunity for MTS to develop its current ownership in conjunction with future development.

- Euclid Trolley Station

The Euclid Trolley Station Property is surrounded by property currently owned by the Jacobs Center for Neighborhood Innovation (JCNI). JCNI has contracted with the Douglas Wilson Companies to prepare a conceptual development plan for the property within this vicinity, and to seek third party development proposals. Douglas Wilson Companies has received a proposal to jointly develop a JCNI-owned parcel with the Euclid Trolley station property. Staff will provide a report and seek direction from the Executive Committee.

/s/Paul C. Jablonski
Paul C. Jablonski
Chief Executive Officer

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



1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490
619.231.1466 FAX 619.234.3407

DRAFT

Agenda

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

****BOARD OF DIRECTORS MEETING & FINANCE WORKSHOP****

April 13, 2017

▶▶ 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.

FINANCE WORKSHOP - 9:00 a.m.

ACTION
RECOMMENDED

1. Roll Call
2. a. Fiscal Year 2018 Operating Budget Discussion (Mike Thompson)
Action would receive a report regarding Fiscal Year (FY) 2018 operating budget development and provide guidance on budgetary issues. Possible Action
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.
4. Next Finance Workshop: May 11, 2017
5. Adjournment

Please SILENCE electronics
during the meeting

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

Metropolitan Transit System (MTS) is a California public agency comprised of San Diego Transit Corp., San Diego Trolley, Inc. and San Diego and Arizona Eastern Railway Company (nonprofit public benefit corporations). 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.



BOARD MEETING - Meeting will begin when the Finance Workshop ends.

5. a. Roll Call
- b. Approval of Minutes - March 9, 2017 Approve
- c. 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 furnish a copy to the Clerk of the Board.

CONSENT ITEMS

6. Investment Report - February 2017 Informational
7. Lease Agreement with Infinity Investments, LLC at 1695 Main Street, San Diego Approve
Action would authorize the Chief Executive Officer (CEO) to execute a Lease Agreement with Infinite Investments, LLC for a lease at 1695 Main Street, San Diego (MTS Doc. No. G2002.0-17).
8. Amended and Restated Lease Agreement with San Diego Sports Entertainment Center, LLC at 1699 Main Street, San Diego Approve
Action would authorize the Chief Executive Officer (CEO) to execute an amended and restated lease agreement with San Diego Sports Entertainment Center, LLC for a lease at 1699 Main Street, San Diego (MTS Doc. No. L1221.3-15).
9. California Office of Emergency Services (CalOES) Designation of Applicant's Agent Resolution for Non-State Agencies (CalOES Form 130) Approve
Action would adopt the Designation of Applicant's Agent Resolution for Non-State Agencies (CalOES Form 130) to authorize the Chief Executive Officer (CEO), or designated representative, to execute all required documents for the purpose of obtaining certain federal financial assistance under Public Law 93-288 as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, and/or state financial assistance under the California Disaster Assistance Act.
10. Batteries for Buses - Contract Award Approve
Action would: (1) Authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. B0665.0-17 with Battery Systems, Inc., and B0667.0-17 with Battery Power, Inc., for batteries for buses for three (3) base years with two (2) 1-year options; and (2) Authorize the CEO to exercise option years, in his discretion.
11. Americans with Disabilities Act (ADA) Paratransit Service - Contract Amendment No. 3 Approve
Action would authorize the Chief Executive Officer (CEO) to: (1) Execute Amendment No. 3 to MTS Doc. No. G1205.0-10 (in substantially the same format as Attachment A) with First Transit, Inc. (FTI) to exercise option period 2 (contract years 8 and 9); (2) Reallocate \$1,271,139.00 originally encumbered and included under Amendment No. 1 from the Mobile Data Terminal System (MDTS) and OnBoard Vehicle Video Event Recorder (OBVVER) services to the operational budget; and (3) Increase the contract expenditure authority by \$7,777,264.86 to support services needed for increased ridership and demands in ADA/paratransit services.

- | | | |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| 12. | <u>Federal Legislative Representation - SANDAG Partial Assignment</u>
Action would authorize the Chief Executive Officer (CEO) to execute the Partial Assignment 1 of Agreement for San Diego Association of Governments (SANDAG) Federal Representation Services for a fifty (50) month period effective May 1, 2017. | Approve |
| 13. | <u>Contract with the City of National City for Taxicab Administration</u>
Action would authorize the Chief Executive Officer (CEO) to enter into an agreement for Taxicab Administration with the City of National City in substantially the same format as in Attachment A. | Approve |
| 14. | <u>Drug and Alcohol Policy for All San Diego Metropolitan Transit System (MTS) Employees</u>
Action would adopt Resolution No. 17-6, which will implement MTS's updated Drug and Alcohol Policy, in order to comply with Federal Transit Administration regulations and further public safety. | Approve |
| 15. | <u>Text Messaging Services for Go MTS Short Code</u>
Action would: (1) Ratify previous Purchase Order (PO) 4500001379 award of \$79,750.00 with MIS Sciences, Inc. which was previously issued under MTS's Board Policy Section 41.4.2 "Stand-Alone Purchase Orders"; and (2) Authorize the Chief Executive Officer (CEO) to execute a sole source extension to the PO with MIS Sciences, Inc. (MIS Sciences) through July 31, 2017 and increase capacity by \$55,500.00 for a revised total PO value of \$135,250.00. | Approve |

CLOSED SESSION

- | | | |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| 24. | CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION Pursuant to California Government Code Section 54956.9(d)(1) Donald Wood v. San Diego Metropolitan Transit System San Diego Superior Court Case No. 37-2015-00034512-CU-PO-CTL | Possible Action |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|

Oral Report of Final Actions Taken in Closed Session

NOTICED PUBLIC HEARINGS

25. None.

DISCUSSION ITEMS

30.

31.

32.

33.

34.

REPORT ITEMS

- | | | |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| 45. | <u>Fiscal Year 2017 Second Quarter Performance Monitoring Report (Denis Desmond)</u> | Informational |
| 46. | <u>Transit Optimization Plan (TOP) Update (Denis Desmond)</u> | Informational |
| 47. | | |
| 48. | | |
| 49. | | |
| 60. | <u>Chairman's Report</u> | Informational |
| 61. | <u>Chief Executive Officer's Report</u> | Informational |
| 62. | <u>Board Member Communications</u> | |
| 63. | <u>Additional Public Comments Not on the Agenda</u>
If the limit of 5 speakers is exceeded under No. 3 (Public Comments) on this agenda, additional speakers will be taken at this time. If you have a report to present, please furnish a copy to the Clerk of the Board. Subjects of previous hearings or agenda items may not again be addressed under Public Comments. | |
| 64. | <u>Next Meeting Date:</u> May 11, 2017 | |
| 65. | <u>Adjournment</u> | |



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

Agenda Item No. 6

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

April 13, 2017

**Draft for
Executive Committee
Review Date: 4/6/17**

SUBJECT:

INVESTMENT REPORT – FEBRUARY 2017

INFORMATIONAL ONLY

Budget Impact

None.

DISCUSSION:

Attachment A comprises a report of the San Diego Metropolitan Transit System (MTS) investments as of February 28, 2017. The combined total of all investments has decreased month to month from \$124.4 million to \$118.5 million. This \$5.9 million decrease is attributable to \$2.9 million in capital expenditures, as well as normal timing differences in other payments and receipts.

The first column provides details about investments restricted for capital improvement projects.

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

/s/Paul C. Jablonski
Paul C. Jablonski
Chief Executive Officer

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

Attachment: A. Investment Report for February 2017

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

Metropolitan Transit System (MTS) is a California public agency comprised of San Diego Transit Corp., San Diego Trolley, Inc. and San Diego and Arizona Eastern Railway Company (nonprofit public benefit corporations). 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
February 28, 2017**

	Restricted	Unrestricted	Total	Average rate of return
Cash and Cash Equivalents				
JP Morgan Chase - concentration account	-	20,392,940	20,392,940	0.00%
Total Cash and Cash Equivalents	-	20,392,940	20,392,940	
Cash - Restricted for Capital Support				
US Bank - retention trust account	2,303,606	-	2,303,606	N/A*
San Diego County Investment Pool				
Proposition 1B TSGP grant funds	5,653,320	283,780	5,937,100	
Total Cash - Restricted for Capital Support	7,956,926	283,780	8,240,706	
Investments - Working Capital				
Local Agency Investment Fund (LAIF)	12,507,336	77,362,679	89,870,015	0.777%
Total Investments - Working Capital	12,507,336	77,362,679	89,870,015	
 Total cash and investments	 \$ 20,464,262	 \$ 98,039,399	 \$ 118,503,661	



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

April 13, 2017

Draft for Executive Committee Review Date: 4/6/17

SUBJECT:

LEASE AGREEMENT WITH INFINITY INVESTMENTS, LLC AT 1695 MAIN STREET,
SAN DIEGO

RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to execute a Lease Agreement with Infinite Investments, LLC for a lease at 1695 Main Street, San Diego (MTS Doc. No. G2002.0-17).

Budget Impact

The total revenue for the remaining portion of the initial lease term covered by the proposed lease agreement (April 2017 through November 2019) amounts to \$326,105 credited to the Land Management budget.

DISCUSSION:

In 2013, MTS purchased the 90,000 square feet warehouse building located at the corner of Main Street and Sigsbee Street in Barrio Logan. Due to its location directly south of MTS's existing trolley yard tracks, the property is being held by MTS for a future expansion of the MTS rail yard. Until the property is needed for an MTS transit use, MTS has leasing strategy to identify short-term tenancies with low tenant improvement needs. This allows MTS to have the right to terminate the lease with six months' notice. All lease transactions are entered into with the express acknowledgment that the lease is subject to termination if and when MTS needs it for transit use. Tenants are required to waive the right to receive relocation benefits or other compensation if MTS terminates the lease according to its terms. There is currently no active capital project to demolish the warehouse building or expand the trolley yard into this property. Therefore, staff estimates that it would be a minimum of three years before the property is needed for an MTS use.



Today's action would authorize the CEO to execute a lease agreement with a tenant according to this short-term leasing strategy.

Infinite Investments, LLC (Lessee), dba Alliance Training Center, currently is operating a successful martial arts training business in a facility in Chula Vista. The Lessee's lease in Chula Vista with another property owner is expiring. Lessee would be leasing Bay 3 (21,600 square feet) of the warehouse building, identified as 1695 Main Street.

The proposed lease agreement uses MTS's current standard lease agreement form. The lease includes a two year, ten month base term. Once the initial term expires on November 30, 2019, the lease will continue on a six (6) month to six (6) month basis until cancelled by either party. MTS and Lessee shall each have the right to cancel this Lease upon one hundred and eighty (180) days written notice to the other party for any reason or for no reason.

Rent is \$10,800 per month, starting in month 4 of the lease. As is common in commercial leases, Lessee is allowed 3 months of \$0 rent in lieu of a landlord-provided tenant improvement budget. The rent is subject to 3% increase each year. Staff has reviewed comparable leases of industrial space and determined this is a fair market rental deal, given the short-term nature of the lease.

/s/Paul C. Jablonski
Paul C. Jablonski
Chief Executive Officer

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

Attachment: A. Proposed Lease Agreement (MTS Doc No. G2002.0-17)

MTS Doc. No. G2002.0-17

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into effective as of this _____ day of March, 2017 ("Commencement Date"), by and between the SAN DIEGO METROPOLITAN TRANSIT SYSTEM, a California public agency ("MTS") and INFINITE INVESTMENTS LLC ("Lessee"), dba Alliance Training Center.

IN CONSIDERATION OF THE RENTS AND COVENANTS hereinafter set forth, MTS hereby leases to Lessee, and Lessee hereby leases from MTS, the premises described below upon the following terms and conditions:

ARTICLE 1 LEASE OF PREMISES

MTS hereby leases to Lessee and Lessee hereby leases from MTS, for the rent and upon the covenants and conditions hereinafter set forth, the premises ("Premises") consisting of that certain real property described as follows: Bay 3 at 1695 Main Street, San Diego, CA 92113, being a portion of Assessor's Parcel No. 538-210-25-00 and consisting of approximately 21,600 square feet.

All of said leased real property, including the land all improvements therein, is hereinafter called the "Premises", and is outlined on the exhibit marked Exhibit "A" attached hereto and by this reference incorporated herein.

ARTICLE 2 TERM

The term of this Lease shall begin for on the Commencement Date and continue through November 30, 2019, hereinafter called the "Initial Term. Once the Initial Term expires the lease will continue on a six (6) month basis until cancelled by either party. MTS and Lessee shall each have the right to cancel this Lease upon one hundred and eighty (180) days written notice to the other party for any reason or for no reason.

ARTICLE 3 RENT

3.1 Base Monthly Rent. Lessee shall have three (3) months free rent for tenant improvements, commencing on the Commencement Date. Subject to the rental adjustment as provided in Section 3.2, Lessee shall pay as rent for the use and occupancy of the Premises the sum of ten thousand eight hundred Dollars (\$10,800.00) per month. Lessee shall pay said rent in advance, on the first day of each calendar month ("Rent Due Date"), without setoff, deduction, prior notice or demand, commencing on three (3) months after the Commencement Date. Should the Commencement Date be a day other than the first day of a calendar month, then the rent for such first fractional month shall be computed on a daily basis for the period from the Commencement Date to the end of such calendar month and at an amount equal to one thirtieth

(1/30th) of the said monthly rent for each such day, and thereafter shall be computed and paid as aforesaid.

3.2 Rental Adjustment. The monthly rent shall be increased annually beginning on the first anniversary of the Lease Commencement Date, and each year thereafter, the yearly rent will increase by three percent (3%) over the rent paid the previous year.

3.3 Delivery of Rent Payments. All rent due under this Lease shall be made payable to MTS, and shall be considered paid when delivered to:

MTS
Attn: Finance Department
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101

MTS may, at any time, by written notice to Lessee, designate a different address to which Lessee shall deliver the rent payments. MTS may, but is not obligated to, send monthly rent invoices to Lessee.

3.4 Common Area Utility Expenses. In addition to the utilities and services described in Section 5.1 to be paid by Lessee, Lessee shall be responsible for a pro rata share of electricity, water, burglar/fire alarm, and lighting of the Common Area Utilities of the entire warehouse building, parking and grounds where the Lessee's Premises is located. Lessee's pro rata share of said Common Area Utilities shall be 24% based on the square footage leased and will be billed on a monthly basis and payable in the monthly amount of \$261 with the payable base rent. Said Common Area Utility expense is also subject to the COLA of 3% per year over the amount paid the previous lease year.

3.5 Failure to Pay Base Monthly Rent or Additional Rent; Late Charge.

a. If any such monthly rental is not received by MTS within fifteen (15) calendar days following the due date, Lessee shall immediately pay to MTS a late charge equal to five percent (5%) of such overdue amount. Should Lessee pay said late charge but fail to pay contemporaneously therewith all unpaid amounts of rent due hereunder, MTS' acceptance of this late charge shall not constitute a waiver of Lessee's default with respect to such nonpayment by Lessee nor prevent MTS from exercising all other rights and remedies available to MTS under this Lease or under law.

b. In the event of a dispute between the parties as to the correct amount of Base Monthly Rent or Additional Rent owed by Lessee, MTS may accept any sum tendered by Lessee in payment thereof, without prejudice to MTS' claim as to the proper amount of rent

owing. If it is later determined that Lessee has not paid the full amount of rent owing, the late charge specified herein shall apply only to that portion of the rent still due and payable from Lessee. Notwithstanding any provision of this Section to the contrary, however, MTS may waive any delinquency payment or late charge upon written application of Lessee.

ARTICLE 4 POSSESSION AND USE

4.1 Permitted Uses. Lessee shall use the Premises solely as a martial arts training facility. Lessee shall make no other use of the Premises absent the prior written consent of the Lessor. No one other than Lessee, its agents, volunteers and employees, or any sublessee of Lessee approved by MTS as provided in Article 12, "Assignment and Subletting," below, is permitted to use the Premises for the purposes described herein, and Lessee shall be fully responsible for the activities of its agents, volunteers and employees and sublessees, if any, on the Premises.

4.2 Duties and Prohibited Conduct. Where Lessee is reasonably in doubt as to the propriety of any particular use, Lessee may request the written determination of MTS that such use is or is not permitted, and Lessee will not be in breach or default under this Lease if Lessee abides by such determination. Notwithstanding the foregoing, however, Lessee shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance. Lessee shall, at Lessee's expense, comply promptly with all applicable statutes, laws, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the term, regulating the use by Lessee of the Premises. Lessee shall not use, or permit any person or persons to use, the Premises for the sale or display of any goods and/or services, which, in the sole discretion of MTS, are inconsistent with the permitted uses of the Premises pursuant to this Lease. Lessee shall keep the Premises, and every part thereof, in a decent, safe and sanitary condition, free from any objectionable noises or odors, except as may be typically present for the permitted uses specified above.

4.3 Compliance With Stormwater Laws. Lessee's use of the Premises is subject to federal, state and local laws regarding the discharge into the stormwater conveyance system of pollutants. Compliance with these laws may require Lessee to develop, install, implement and maintain pollution prevention measures, source control measures and Best Management Practices ("BMPs"). BMPs can include operational practices; water or pollutant management practices; physical site features; or devices to remove pollutants from stormwater, to affect the flow of stormwater or to infiltrate stormwater to the ground. BMPs applicable to Lessee's use of the Premises may include a requirement that all materials, wastes or equipment with the potential to pollute urban runoff be stored in a manner that either prevents contact with rainfall and stormwater, or contains contaminated runoff for treatment and disposal. Lessee is required and agrees to use, operate, maintain, develop, redevelop and retrofit the Premises, as necessary, in accordance with all applicable federal, state and local laws restricting the discharge of non-

stormwater at or from the Premises; and all such laws, regulations, or local guidance requiring pollution prevention measures, source control measures, or the installation or use of BMPs. Lessee further agrees to develop, install, implement and/or maintain at Lessee's sole cost and expense, any BMPs or similar pollution control devices required by federal, state and/or local law and any implementing regulations or guidance.

Lessee understands and acknowledges that the stormwater and non-stormwater requirements applicable to Lessee's use of the Premises may be changed from time to time by federal, state and/or local authorities, and that additional requirements may become applicable based on changes in Lessee's activities or development or redevelopment by Lessee or MTS. Lessee shall perform and record annual stormwater training, perform and record regular stormwater self-inspections, and maintain and provide all necessary stormwater documentation to stormwater auditors.

Lessee shall develop, install, implement, and maintain such additional BMPs and/or other pollution control practices at the Premises at Lessee's sole cost and expense. To the extent there is a conflict between any federal, state or local law, Lessee shall comply with the more restrictive provision. If MTS receives any fine or fines from any regulatory agency as a result of Lessee's failure to comply with applicable stormwater laws as set forth in this Article, Lessee shall reimburse MTS for the entire fine amount.

ARTICLE 5 UTILITIES

5.1 Utility Services: Lessee agrees to provide and pay for all of the utilities and services necessary for the occupancy and use of the Premises, including, but not limited to, gas, water, electricity, trash, sewage charges or septic service, and telephone. MTS shall have no responsibility either to provide or pay for such services.

5.2 Energy Conservation by Lessee: Lessee shall be responsible for promoting energy conservation measures in the operation of all activities at the Lease premises. Lessee shall cooperate with the Landlord in all forms of energy conservation including energy-efficient lighting, heating and air-conditioning systems, and fixtures and equipment. Lessee shall comply with all existing and newly-enacted laws, by-laws, regulations, etc., relating to the conservation of energy. Lessee shall comply with all reasonable requests and demands of the Landlord pertaining to the installation and maintenance of energy conservation systems, fixtures, and equipment.

ARTICLE 6 MECHANICS' LIENS

Lessee shall pay, or cause to be paid, all costs for work done by it, or caused to be done

by it, on the Premises, and for all materials furnished for or in connection with any such work. If any lien is filed against the Premises, Lessee shall cause the lien to be discharged of record within ten (10) days after it is filed. Lessee shall indemnify, defend and hold MTS harmless from any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for Lessee or persons claiming under Lessee.

ARTICLE 7 SECURITY

Lessee shall be responsible for and shall provide for the security of the Premises, and MTS shall have no responsibility therefor.

ARTICLE 8 TAXES, ASSESSMENTS AND FEES

8.1 Responsibility for Payment of Taxes and Assessments. MTS shall not be obligated to pay any taxes or assessments accruing against Lessee on the Premises or any interest of Lessee therein before, during or after the Term, or any extension thereof; all such payments shall be the sole responsibility of Lessee. In addition, Lessee shall be solely responsible for payment of any taxes or assessments levied upon any Improvements, Fixtures or Personal Property located on the Premises, to the extent that such taxes or assessments result from the business or other activities of Lessee upon, or in connection with, the Premises.

8.2 Definition of "Taxes". As used herein, the term "taxes" means all taxes, governmental bonds, special assessments, Mello-Roos assessments, charges, rent income or transfer taxes, license and transaction fees, including, but not limited to, (i) any state, local, federal, personal or corporate income tax, or any real or personal property tax, (ii) any estate inheritance taxes, (iii) any franchise, succession or transfer taxes, (iv) interest on taxes or penalties resulting from Lessee's failure to pay taxes, (v) any increases in taxes attributable to the sale of Lessee's leasehold interest in the Premises, or (vi) any taxes which are essentially payments to a governmental agency for the right to make improvements to the Premises.

8.3 Creation of Possessory Interest. Pursuant to the provisions of Revenue and Taxation Code section 107.6, Lessee is hereby advised that the terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in Lessee, Lessee may be subjected to the payment of real property taxes levied on such interest. Lessee shall be solely responsible for the payment of any such real property taxes. Lessee shall pay all such taxes when due, and shall not allow any such taxes, assessments or fees to become a lien against the Premises or any improvement thereon; provided, however, that nothing herein shall be deemed to prevent or prohibit Lessee from contesting the validity of any such tax, assessment or fee in a manner authorized by law.

ARTICLE 9
REPAIRS; MAINTENANCE

9.1 Acceptance of Premises. Lessee acknowledges that Lessee has made a thorough inspection of the Premises prior to the Commencement Date of this Lease, and that it accepts the Premises as of the Commencement Date in their condition at that time. Lessee further acknowledges that MTS has made no oral or written representations or warranties to Lessee regarding the condition of the Premises, and that Lessee is relying solely on its inspection of the Premises with respect thereto.

9.2 Lessee's Repair and Maintenance Obligations. Lessee shall at all times from and after the Commencement Date, at its own cost and expense, repair, maintain in good and tenantable condition and replace, as necessary, the Premises and every part thereof, including, without limitation, the following as applicable: the roof; the heating, ventilation and air conditioning system; mechanical and electrical systems; all meters, pipes, conduits, equipment, components and facilities (whether or not within the Premises) that supply the Premises exclusively with utilities (except to the extent the appropriate utility company has assumed these duties); all Fixtures and other equipment installed in the Premises; all exterior and interior glass installed in the Premises; all signs, lock and closing devices; all interior window sashes, casements and frames; doors and door frames (except for the painting of the exterior surfaces thereof); floor coverings; and all such items of repair, maintenance, alteration, improvement or reconstruction as may be required at any time or from time to time by a governmental agency having jurisdiction thereof. Lessee's obligations hereunder shall apply regardless of whether the repairs, restorations and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital, or the fault or not the fault of Lessee, its agents, employees, invitees, visitors, sublessees or contractors. All replacements made by Lessee in accordance with this Section shall be of like size, kind and quality to the items replaced and shall be subject to MTS' approval. Upon surrender of the Premises, Lessee shall deliver the Premises to MTS in good order, condition and state of repair, but shall not be responsible for damages resulting from ordinary wear and tear. Lessee shall provide for trash removal, at its expense, and shall maintain all trash receptacles and trash areas in a clean, orderly and first-class condition.

As part of the initial tenant improvements, Lessee shall be responsible for making any upgrades to the bathroom facilities, and other possible improvements within the Premises that may be necessary. Said improvements shall be in compliance with the Americans with Disabilities Act (ADA) and code requirements.

Lessee shall not, without MTS' prior written consent (which shall not be unreasonably withheld, conditioned, or delayed), make any alterations, improvements or additions to the Premises, whether structural or non-structural. Any such improvements, excepting movable furniture and trade fixtures, shall become part of the realty and belong to MTS; provided,

however, that MTS may require the removal of any such alterations, improvements or additions as a condition to granting MTS' consent. All alterations, improvements or additions shall be accomplished by Lessee in a good and workmanlike manner, in conformity with all applicable laws and regulations.

The exercise of any and all rights provided by this Lease is subject to the requirement that Lessee's contractors and agents first obtain a Right of Entry Permit ("ROE Permit") from MTS prior to entry onto the Premises for the construction any tenant improvements or maintenance of the Premises. The ROE Permit requires that Lessee's contractors and agents procure and maintain in force at all times during the construction contract, the insurance described in the ROE Permit. MTS shall timely process any applications required to obtain the ROE Permit, and shall not unreasonably deny or delay the issuance of such ROE Permit. Lessee's contractors and agents will comply with all MTS policies, rules and regulations as stated in the ROE Permit, and the instructions of MTS' representatives.

9.3 Lessee's Failure to Maintain. If Lessee refuses or neglects to repair, replace, or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to MTS, MTS may, upon giving Lessee reasonable written notice of its election to do so, make such repairs or perform such maintenance on behalf of and for the account of Lessee. If MTS makes or causes any such repairs to be made or performed, as provided for herein, Lessee shall pay the cost thereof to MTS, as additional rent, promptly upon receipt of an invoice therefore.

9.4 Right to Enter. Lessee shall permit MTS, or its authorized representatives, to enter the Premises at all times during usual business hours to inspect the same, and to perform any work therein that (a) may be necessary to comply with any laws, ordinances, rules or regulations of any public authority, (b) MTS may deem necessary to prevent waste or deterioration in connection with the Premises if Lessee does not make, or cause to be made, such repairs or perform, or cause to be performed, such work promptly after receipt of written demand from MTS, and (c) MTS may deem necessary in connection with the expansion, reduction, remodeling, protection or renovation of any MTS constructed or owned facilities on or off of the Premises. Nothing herein shall imply any duty on the part of MTS to do any such work which, under any provision of this Lease, Lessee may be required to do, nor shall MTS' performance of any repairs on behalf of Lessee constitute a waiver of Lessee's default in failing to do the same. If MTS exercises any of its rights under this Section, Lessee shall not be entitled to any compensation, damages or abatement of rent from MTS for any injury or inconvenience occasioned thereby.

9.5 MTS Not Obligated to Repair or Maintain; Lessee's Waiver of California Civil Code Section 1942. To the extent that any remedies specified in this Lease conflict or are inconsistent with any provisions of California Civil Code section 1942, or any successor statute thereto ("CC §1942"), the provisions of this Lease shall control. Lessee specifically waives any right it may have pursuant to CC §1942 to effect maintenance or repairs to the Premises and to

abate the costs thereof from rent due to the MTS under this Lease.

ARTICLE 10 INDEMNITY AND INSURANCE

10.1 Lessee's Indemnity. MTS shall not be liable for, and Lessee shall defend and indemnify MTS and the employees and agents of MTS (collectively "MTS Parties"), against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to this Lease and arising either directly or indirectly from any act, error, omission or negligence of Lessee or its contractors, licensees, agents, volunteers, servants or employees, including, without limitation, Claims caused by the concurrent negligent act, error or omission, whether active or passive, of MTS Parties. Lessee shall have no obligation, however, to defend or indemnify MTS Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of MTS Parties.

10.2 MTS' Indemnity. MTS shall defend and indemnify Lessee and hold it harmless from and against any Claims related to this Lease that arise solely from any act, omission or negligence of MTS Parties.

10.3 Covered Claims. The obligations of Lessee and MTS hereunder to indemnify, defend and hold each other harmless shall not apply to the extent that insurance carried by Lessee or MTS, other than any program of self-insurance covers any Claim.

10.4 Lessee's Insurance Obligations. Without limiting Lessee's indemnification obligations to MTS under this Lease, Lessee shall provide and maintain, during the Term and for such other period as may be required herein, at its sole expense, insurance in the amounts and form specified in Exhibit "B," attached hereto.

10.5 MTS' Insurance Obligations. MTS maintains a policy of All-Risk Insurance covering the MTS' personal property in the Premises, including any fixtures or equipment in the Premises owned by MTS. The MTS utilizes a program of self-funding with regard to any liability it may incur for personal injury or property damage arising out its use or occupancy of the Premises.

ARTICLE 11 HAZARDOUS MATERIALS

11.1 Hazardous Materials Laws-Definition. As used in this section, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including

without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., § 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C., § 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., § 6901 et seq.), and the California Environmental Quality Act of 1970, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, soil and ground water conditions or other similar substances or conditions.

11.2 Hazardous Materials - Definition. As used in this section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:

- a. Is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;
- b. Is controlled, referred to, designated in or governed by any Hazardous Materials Laws;
- c. Gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws; or
- d. Is any other material or substance giving rise to any liability, responsibility or duty upon the MTS or Lessee with respect to any third person under any Hazardous Materials Law.

11.3 Lessee's Representations and Warranties. Lessee represents and warrants that, during the Term or any extension thereof, or for such longer period as may be specified herein, Lessee shall comply with the following provisions unless otherwise specifically approved in writing by MTS:

- a. Lessee shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Premises by Lessee, its agents, employees, sublessees, assigns, contractors or invitees, except as required by Lessee's permitted use of the Premises, as described in Section 4.1, "Permitted Uses."
- b. Any handling, transportation, storage, treatment or usage by Lessee of Hazardous Materials that is to occur on the Premises following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws.
- c. Any leaks, spills, release, discharge, emission or disposal of Hazardous Materials which may occur on the Premises following the Commencement Date shall be promptly and thoroughly cleaned and removed from the Premises by Lessee at its sole expense,

and any such discharge shall be promptly reported in writing to MTS, and to any other appropriate governmental regulatory authorities.

d. No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by Lessee in the Premises.

e. No underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by Lessee on the Premises without MTS' prior written consent.

f. Lessee shall conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from, or affecting the Premises in accordance with all applicable Hazardous Materials' Laws and to the satisfaction of MTS.

g. Activities proposed by Lessee that involve disturbing asbestos materials on site shall only be conducted in accordance with all federal, state and local asbestos rules and regulations including, but not limited to, the California Occupational Safety and Health Administration (Cal/OSHA), Environmental Protection Agency (EPA) and Air Pollution Control District (APCD), with prior written consent of MTS.

Any asbestos related activities shall be performed by a contractor that is registered with Cal/OSHA and certified by the California Contractors State Licensing Board to perform asbestos work. Any asbestos related activities shall be overseen by a California Certified Asbestos Consultant (CAC), or a Certified Site Surveillance Technician under the direction of a CAC.

Replacement products used in tenant improvements or other construction activities shall not contain asbestos. Any replacement products used by Lessee shall be verified as non-asbestos products by using Material Safety Data Sheets (MSDS) and/or having the architect or project engineer verify that ACMs were not used.

h. Lessee shall promptly supply MTS with copies of all notices, reports, correspondence, and submissions made by Lessee to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws.

i. Lessee shall promptly notify MTS of any liens threatened or attached against the Premises pursuant to any Hazardous Materials' Law. If such a lien is filed against the Premises, then within twenty (20) days following such filing or before any governmental authority commences proceedings to sell the Premises pursuant to the lien, whichever occurs

first, Lessee shall either: (a) pay the claim and remove the lien from the Premises; or (b) furnish either (1) a bond or cash deposit reasonably satisfactory to MTS in an amount not less than the claim from which the lien arises, or (2) other security satisfactory to MTS in an amount not less than that which is sufficient to discharge the claim from which the lien arises. At the end of this lease, Lessee shall surrender the Premises to MTS free of any and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Premises.

11.4 Indemnification by Lessee. Lessee (and, if applicable, each of its general partners) and its successors, assigns, and guarantors, if any, jointly and severally agree to protect, indemnify, defend (with counsel selected by MTS), reimburse and hold MTS and its officers, employees and agents harmless from any claims, judgments, damages, penalties, fines, costs or expenses (known or unknown, contingent or otherwise), liabilities (including sums paid in settlement of claims), personal injury (including wrongful death), property damage (real or personal) or loss, including attorneys' fees, consultants' fees, and experts' fees (consultants and experts to be selected by MTS) which arise during or after the Term from or in connection with the presence or suspected presence of Hazardous Materials, including the soil, ground water or soil vapor on or under the Premises. Without limiting the generality of the foregoing, the indemnification provided by this section shall specifically cover costs incurred in connection with investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Hazardous Materials Laws because of the presence of Hazardous Materials in the soil, ground water or soil vapor on the Premises, and the release or discharge of Hazardous Materials by Lessee during the course of Lessee's alteration or improvement of the Premises.

11.5 Remedies Cumulative; Survival. The provisions of this Article shall be in addition to any and all common law obligations and liabilities Lessee may have to MTS, and any remedies and the environmental indemnities provided for herein shall survive the expiration or termination of this Lease and/or any transfer of all or any portion of the Premises, or of any interest in this Lease, and shall be governed by the laws of the State of California.

11.6 Inspection. MTS and MTS' agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by MTS, may (but without the obligation or duty so to do), at any time and from time to time, on not less than ten (10) business days' notice to Lessee (except in the event of an emergency in which case no notice shall be required), inspect the Premises to determine whether Lessee is complying with Lessee's obligations set forth in this Article, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as MTS and Lessee may agree. If Lessee is not in compliance, MTS shall have the right, in addition to MTS' other remedies available at law and in equity, to enter upon the Premises immediately and take such action as MTS in its sole judgment deems appropriate to remediate any actual or threatened contamination caused by Lessee's failure to comply. MTS will use reasonable efforts to minimize interference with Lessee's use of Premises but shall not be liable for any interference caused by MTS' entry and remediation efforts. Upon completion of any

sampling or testing MTS will (at Lessee's expense if MTS' actions are a result of Lessee's default under this section) restore the affected area of the Premises from any damage caused by MTS' sampling and testing.

ARTICLE 12 ASSIGNMENT AND SUBLETTING

Lessee shall not voluntarily or involuntarily assign, sublease, mortgage, encumber, or otherwise transfer (collectively, a "Transfer") all or any portion of the Premises or its interest in this Lease without MTS' prior written consent. MTS may reasonably withhold its consent to any Transfer. Any attempted Transfer without MTS' consent shall be void and shall constitute a material breach of this Lease. As used herein, the term "Transfer" shall include an arrangement (including without limitation management agreements, concessions, and licenses) that allows the use and occupancy of all or part of the Premises by anyone other than Lessee.

ARTICLE 13 MTS' RIGHT OF ACCESS

a. MTS, its agents, employees, and contractors may enter the Premises at any time in response to an emergency, and at reasonable hours to (a) inspect the Premises, (b) exhibit the Premises to prospective purchasers or Lessees, (c) determine whether Lessee is complying with its obligations in this Lease (including its obligations with respect to compliance with Hazardous Materials Laws), (d) supply cleaning service and any other service that this Lease requires MTS to provide, (e) post notices of non-responsibility or similar notices, or (f) make repairs that this Lease requires MTS to make, or make repairs to any adjoining space or utility services, or make repairs, alterations, or improvements to any other portion of the Premises; provided, however, that all work will be done as promptly as reasonably possible and so as to cause as little interference to Lessee as reasonably possible.

b. Lessee waives any claim of injury or inconvenience to Lessee's business, interference with Lessee's business, loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by such entry. If necessary, Lessee shall provide MTS with keys to unlock all of the doors in the Premises (excluding Lessee's vaults, safes, and similar areas designated in writing by Lessee in advance). MTS will have the right to use any means that MTS may deem proper to open doors in the Premises and to the Premises in an emergency. No entry to the Premises by MTS by any means will be a forcible or unlawful entry into the Premises or a detainer of the Premises or an eviction, actual or constructive, of Lessee from the Premises, or any part of the Premises, nor shall the entry entitle Lessee to damages or an abatement of rent or other charges that this Lease requires Lessee to pay.

ARTICLE 14
QUIET ENJOYMENT

If Lessee is not in breach under the covenants made in this Lease, MTS covenants that Lessee shall have peaceful and quiet enjoyment of the Premises without hindrance on the part of MTS. MTS will defend Lessee in the peaceful and quiet enjoyment of the Premises against claims of all persons claiming through or under the MTS.

ARTICLE 15
NOTICES

15.1 Notices. Whenever in this Lease it shall be required or permitted that notice or demand be given or served by either party to this Lease to or on the other, such notice or demand shall be in writing, mailed or delivered to the other party at the following addresses:

To MTS:
San Diego Metropolitan Transit System
Manager of Real Estate Assets
1225 Imperial Avenue, Suite 1000
San Diego, CA 92101

To Lessee:

Alliance Training Center
Attn: Eric Del Fierro
795 Third Ave.
Chula Vista, CA 91910

Mailed notices shall be sent by United States Postal Service, certified or registered mail, postage prepaid and shall be deemed to have been given, delivered and received three (3) business days after the date such notice or other communication is posted by the United States Postal Service. All other such notices or other communications shall be deemed given, delivered and received upon actual receipt. Either party may, by written notice delivered pursuant to this provision, at any time designate a different address to which notices shall be sent.

15.2 Default Notices. Notwithstanding anything to the contrary contained within this Article, any notices MTS is required or authorized to deliver to Lessee in order to advise Lessee of alleged violations of Lessee's covenants under this Lease must be in writing but shall be deemed to have been duly given or served upon Lessee by MTS attempting to deliver at the Premises during normal business hours a copy of such notice to Lessee or its managing employee and by MTS mailing a copy of such notice to Lessee in the manner specified in the preceding Section.

ARTICLE 16
WAIVER OF RELOCATION ASSISTANCE BENEFITS

16.1 Relocation Assistance Benefits. Lessee is hereby informed and acknowledges the following:

a. By entering into this Lease and becoming a tenant of MTS, Lessee will not be entitled to receipt of "relocation assistance benefits" ("Relocation Benefits") pursuant to the Federal Uniform Relocation Assistance Act (42 U.S.C. §§ 4601 et seq.) and/or the California Relocation Assistance Law (Cal. Gov. Code §§ 7270 et seq.) (collectively, the "Relocation Statutes"), should MTS at some time make use of the Premises in such a way as to "displace" Lessee from the Premises. Pursuant to the Relocation Statutes, MTS will not be obligated to make such payments to Lessee even where such displacement of Lessee may otherwise constitute a breach or default by MTS of its obligations pursuant to this Lease.

16.2 Lessee's Waiver and Release of Relocation Benefits. In consideration of MTS' agreement to enter into this Lease, Lessee hereby waives any and all rights it may now have, or may hereafter obtain, to Relocation Benefits arising out of the MTS' assertion or exercise of its contractual rights to terminate this Lease pursuant to its terms, whether or not such rights are contested by Lessee or any other entity, and releases MTS from any liability for payment of such Relocation Benefits; provided, however, that Lessee does not waive its rights to Relocation Benefits to the extent that Lessee's entitlement thereto may arise out of any condemnation or pre-condemnation actions taken by the MTS or any other public agency with respect to the Premises. Lessee shall in the future execute any further documentation of the release and waiver provided hereby as MTS may reasonably require.

ARTICLE 17
GENERAL PROVISIONS

17.1 Authority. Lessee represents and warrants that it has full power and authority to execute and fully perform its obligations under this Lease pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Lease on behalf of Lessee are the duly designated agents of Lessee and are authorized to do so.

17.2 Brokers. Lessee warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation and/or execution of this Lease. In the event any broker other than the brokers acknowledged in writing by MTS make claim for monies owed, Lessee shall indemnify, defend and hold MTS harmless therefrom.

17.3 Captions. The captions, headings and index appearing in this Lease are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Lease.

17.4 Cumulative Remedies. In the event of a default under this Lease, each party's remedies shall be limited to those remedies set forth in this Lease. Any such remedies are cumulative and not exclusive of any other remedies under this Lease to which the non-defaulting party may be entitled.

17.5 Entire Agreement. This Lease, together with all addenda, exhibits and riders attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded.

17.6 Estoppel Certificate. Lessee shall at any time during the term of this Lease, within five (5) business days of written notice from MTS, execute and deliver to MTS a statement in writing certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification. Lessee's statement shall include other details requested by MTS, such as the date on which rent and other charges are paid, the current ownership and name of Lessee, Lessee's knowledge concerning any outstanding defaults with respect to MTS' obligations under this Lease and the nature of any such defaults. Any such statement may be relied upon conclusively by any prospective purchaser or encumbrancer of the Premises. Lessee's failure to deliver such statements within such time shall be conclusively deemed to mean that this Lease is in full force and effect, except to the extent any modification has been represented by MTS, that there are no uncured defaults in the MTS' performance, and that not more than one month's rent has been paid in advance.

17.7 Exhibits. All exhibits referred to herein are attached hereto and incorporated by reference.

17.8 Force Majeure. In the event either party is prevented or delayed from performing any act or discharging any obligation hereunder, except for the payment of rent by Lessee, because of any and all causes beyond either party's reasonable control, including unusual delays in deliveries, abnormal adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, civil commotion and fire or other casualty, legal actions attacking the validity of this Lease or the MTS' occupancy of the Premises, or any other casualties beyond the reasonable control of either party except casualties resulting from Lessee's negligent operation or maintenance of the Premises ("Force Majeure"), performance of such act shall be excused for the period of such delay, and the period for performance of such act shall be extended for a period equivalent to the period of such delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability on the

part of either party hereto.

17.9 Governing Law. This Lease shall be governed, construed and enforced in accordance with the laws of the State of California.

17.10 Interpretation. The language of this Lease shall be construed simply according to its plain meaning and shall not be construed for or against either party.

17.11 Joint and Several Liability. If more than one person or entity executes this Lease as Lessee, each of them is jointly and severally liable for all of the obligations of Lessee hereunder.

17.12 Lease Administration. This Lease shall be administered on behalf of MTS by the Manager of Real Estate Assets, San Diego Metropolitan Transit System or by such person's duly-authorized designee.

17.13 Lessee's Lease Administration. Lessee confirms that Lessee's Lease Administrator has been given full operational responsibility for compliance with the terms of this Lease. Lessee shall provide MTS with a written schedule of its normal hours of business operation on the Premises, and Lessee's Lease Administrator or a representative designated thereby shall be (i) available to MTS on a twenty-four (24) hour a day, seven (7) days a week, basis, and (ii) present on the Premises during Lessee's normal business hours, to resolve problems or answer question pertaining to this Lease and Lessee's operations on the Premises.

17.14 Liquidated Damages. Any payments by Lessee to MTS under this Lease described as liquidated damages represent the parties' reasonable estimate of MTS' actual damages under the described circumstances, such actual damages being uncertain and difficult to ascertain in light of the impossibility of foreseeing the state of the leasing market at the time of the various deadlines set forth herein. MTS may, at its election, take any of the liquidated damages assessed in any portion of this Lease as direct monetary payments from Lessee and/or as an increase of rent due from Lessee under this Lease.

17.15 Modification. The provisions of this Lease may not be modified, except by a written instrument signed by both parties.

17.16 Partial Invalidity. If any provision of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.

17.17 Payments. Except as may otherwise be expressly stated, each payment required to be made by Lessee shall be in addition to, and not a substitute for, other payments to be made

by Lessee.

17.18 Successors & Assigns. This Lease shall be binding on and inure to the benefit of the parties and their successors and assigns, except as may otherwise be provided herein.

17.19 Time of Essence. Time is of the essence of each and every provision of this Lease.

17.20 Waiver. No provision of this Lease or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. The waiver by MTS of any breach of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach thereof, or of any other term, covenant or condition contained in this Lease. MTS' subsequent acceptance of partial rent or performance by Lessee shall not be deemed to be an accord and satisfaction or a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease or of any right of MTS to a forfeiture of the Lease by reason of such breach, regardless of MTS' knowledge of such preceding breach at the time of MTS' acceptance. The failure on the part of MTS to require exact or full and complete compliance with any of the covenants, conditions of agreements of this Lease shall not be construed as in any manner changing or waiving the terms of this Lease or as estopping MTS from enforcing in full the provisions hereof. No custom or practice which may arise between the parties hereto in the course of administering this Lease shall be construed to waive, estop or in any way lessen MTS' right to insist upon Lessee's full performance of, or compliance with, any term, covenant or condition of this Lease or to inhibit or prevent MTS' exercise of its rights with respect to any default, dereliction or breach of this Lease by Lessee.

IN WITNESS WHEREOF, MTS and Lessee have duly executed this Lease as of the day and year first above written.

Lessee:

MTS:

Infinite Investments LLC

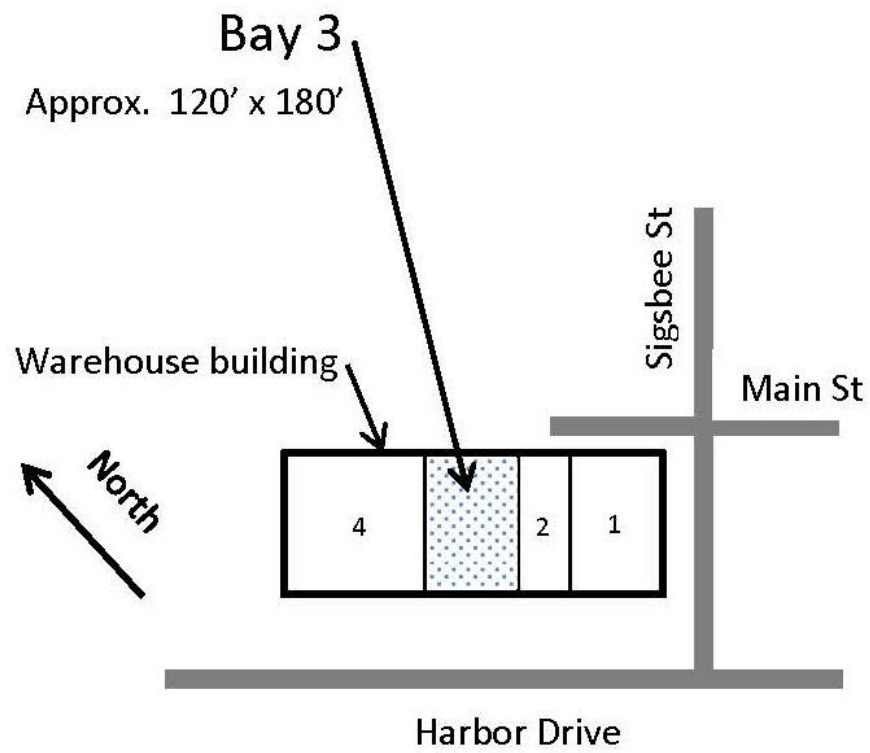
San Diego Metropolitan Transit System

By: _____
Eric Del Fierro, Manager

By: _____
Paul C. Jablonski, Chief Executive Officer

MTS Doc. No. G2002.0-17

EXHIBIT A



MTS Doc. No. G2002.0-17

EXHIBIT B
INSURANCE REQUIREMENTS

1.1. Commercial General Liability At all times during this Lease, Lessee agrees to maintain Commercial General Liability Insurance utilizing Insurance Services Office (ISO) coverage form CG0001, edition date 10/01 or later, or an equivalent form and with insurance companies reasonably acceptable to MTS. The coverage shall contain no restricting or exclusionary endorsements that would limit coverage for events related to Lessee's occupancy and activities on the Premises. All such policies shall name in the endorsement San Diego Metropolitan Transit System (MTS), San Diego Trolley, Inc. (SDTI), San Diego and Arizona Eastern Railway (SD&AE), San Diego and Imperial Valley Railroad (SD&IV), and San Diego Transit Corporation (SDTC), their directors, officers, agents, and employees as additional insureds as their interests may appear. In addition, an endorsement will be required demonstrating that the standard railroad exclusion language has been removed. Minimum policy limits shall be \$2,000,000 per occurrence and \$4,000,000 general aggregate.

1.2. Automobile Liability At all times during this Lease, Lessee agrees to maintain Automobile Liability Insurance for bodily injury and property damage including coverage for all owned, non-owned, and hired vehicles. Minimum policy limits shall be \$1,000,000 combined single limit.

1.3. Workers' Compensation At all times during this Lease, Lessee agrees to maintain Workers' Compensation in compliance with the applicable statutory requirements and shall maintain Employer's Liability Insurance at a minimum policy limit of \$1,000,000.

1.4. Property Insurance At all times during this Lease, Lessee agrees to maintain Property Insurance against all risk or special form perils, including Replacement Cost coverage, without deduction for depreciation, for Lessee's merchandise, fixtures owned by Lessee, any items identified in this Lease as improvements to the Premises constructed and owned by Lessee, and the personal property of Lessee, its agents and employees.

1.5. Primary and Non-Contributory Insurance/Waiver of Subrogation. Lessee agrees that all general liability coverages required under this insurance section are PRIMARY and that any insurance of MTS, SDTI, SD&AE, SD&IV, and SDTC shall be excess and noncontributory (endorsement required). Lessee waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver.

1.6. Policy Provisions Required. All policies and coverages shall contain a provision for 30 days written notice by the Insurer(s) to MTS of any cancellation or material reduction of coverage. A ten-day notice is required for non-payment of premium.

1.7. Evidence Required. Within ten working days following execution of this Lease, Lessee shall have provided the MTS with satisfactory certification by a qualified representative of the Insurer(s) that Lessee's insurance complies with all provisions in this insurance section.

1.8. Special Provisions. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Lessee, and any approval of said insurance by MTS, SDTI, SD&AE, SD&IV, and SDTC, or their insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Lessee pursuant to this Agreement, including but not limited to the provisions concerning indemnification



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

Agenda Item No. 8

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

April 13, 2017

**Draft for
Executive Committee
Review Date: 4/6/17**

SUBJECT:

AMENDED AND RESTATED LEASE AGREEMENT WITH SAN DIEGO SPORTS
ENTERTAINMENT CENTER, LLC AT 1699 MAIN STREET, SAN DIEGO

RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to execute an amended and restated lease agreement with San Diego Sports Entertainment Center, LLC for a lease at 1699 Main Street, San Diego (MTS Doc. No. L1221.3-15).

Budget Impact

The total revenue for the remaining portion of the initial lease term covered by the proposed agreement (April 2017 through November 2019) amounts to \$590,301 credited to the Land Management budget.

DISCUSSION:

In 2013, MTS purchased the 90,000 square feet warehouse building located at the corner of Main Street and Sigsbee Street in Barrio Logan. Due to its location directly south of MTS's existing trolley yard tracks, the property is being held by MTS for a future expansion of the MTS rail yard. Until the property is needed for an MTS transit use, MTS has leasing strategy to identify short-term tenancies with low tenant improvement needs. This allows MTS to have the right to terminate the lease with six months' notice. All lease transactions are entered into with the express acknowledgment that the lease is subject to termination if and when MTS needs it for transit use. Tenants are required to waive the right to receive relocation benefits or other compensation if MTS terminates the lease according to its terms. There is currently no active capital project to demolish the warehouse building or expand the trolley yard into this property. Therefore, staff estimates that it would be a minimum of three years before the property is needed for an MTS use.



Today's action would authorize the CEO to extend an existing lease agreement with a tenant according to this short-term leasing strategy.

MTS entered into a lease with San Diego Sports Entertainment Center, LLC ("Lessee") in October, 2014 for Bay 4 (36,800 square feet) of the warehouse building, identified as 1699 Main Street (MTS Doc No. L1221.0-15). The current initial lease term expires September 30, 2017. MTS and the Lessee each have the right to cancel the existing lease upon one hundred and eighty (180) days written notice to the other party for any reason or for no reason even during the initial term. Once the lease expires the lease will continue on a six (6) month basis until cancelled by either party.

Rent is \$15,921.15 per month. Staff has reviewed comparable leases of industrial space and determined this is a fair market rental deal, given the short-term nature of the lease.

The proposed amended and restated agreement updates the existing lease agreement with MTS's current standard form and, in addition to including the provisions of the first and second lease amendments; the proposed agreement also includes the following new key provisions:

- Lessee's use of the outdoor fenced area adjacent to the lease Premises shall be on a limited use basis for special events, subject to written MTS approval and our standard indemnity/insurance requirements. (Article 1)
- Extension of the base lease term to November 30, 2019. (Article 2)
- A repayment schedule for Lessee's repayment of the total overdue rent, currently \$47,944.40 at the end of March 2017. (Article 3.1)
- The rent is subject to a cost of living adjustment (COLA) of 3% per year over the amount paid the previous lease year. (Article 3.2)
- Clarification of Lessee's "sports facility" use of the lease Premises and indemnity/insurance requirements for two named Lessee "Related Businesses" with Lessee ownership interests that occupy the lease Premises. (Article 4.1)
- Inclusion of key provisions using our current standard form lease agreement, including: compliance with stormwater laws (Article 4.3); waiver of relocation assistance benefits (Article 16); and other issues not addressed in the existing lease.

The Lessee currently desires to continue leasing the leased location and has expressed the desire to agree with the provisions of the proposed Amended and Restated Lease Agreement.

/s/Paul C. Jablonski
Paul C. Jablonski
Chief Executive Officer

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

Attachments: A. Proposed Amended And Restated Lease Agreement (MTS Doc No. L1221.3-15)

AMENDED AND RESTATED LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into effective as of _____, 2017, ("Commencement Date"), by and between the SAN DIEGO METROPOLITAN TRANSIT SYSTEM, a California public agency ("MTS") and HUEY DAO (for barbershop known as HD CUT N SHAVE ("Lessee")).

IN CONSIDERATION OF THE RENTS AND COVENANTS hereinafter set forth, MTS hereby leases to Lessee, and Lessee hereby leases from MTS, the premises described below upon the following terms and conditions:

ARTICLE 1 LEASE OF PREMISES

MTS hereby leases to Lessee and Lessee hereby leases from MTS, for the rent and upon the covenants and conditions hereinafter set forth, the premises ("Premises") consisting of that certain real property described as follows:

That certain real property situated in the City of Santee, County of San Diego, State of California, commonly known as 9805 Prospect Avenue, Suite E, Santee, CA 92071, and is described as a commercial space with an area of approximately 1,278 square feet.

All of said leased real property is outlined on the exhibit marked Exhibit "A" attached hereto and by this reference incorporated herein.

ARTICLE 2 TERM

The term of this Lease shall be FIVE (5) YEARS ("Initial Term") with two five-year options to extend, commencing on the Commencement Date. Lessor and Lessee shall each have the right to cancel this Lease upon ninety (90) days following delivery of written notice of termination by either party for any reason or for no reason even during the Lease.

ARTICLE 3 RENT

3.1 Base Monthly Rent. Subject to adjustment as provided in Section 3.2, "Cost of Living Adjustment," below, Lessee shall pay as rent for the use and occupancy of the Premises the sum of One Thousand Four Hundred Five Dollars (\$1,405.00) per month. Lessee shall pay said rent in advance, on the first day of each calendar month ("Rent Due Date"), without setoff, deduction, prior notice or demand, commencing on the Commencement Date. Should the Commencement Date be a day other than the first day of a calendar month, then the rent for such first fractional month shall be computed on a daily basis for the period from the Commencement Date to the end of such calendar month and at an amount equal to one thirtieth (1/30th) of the said monthly rent for each such day, and thereafter shall be computed and paid as aforesaid.

3.2 Free Rent. Lessee shall be provided with six (6) months from lease execution to obtain all necessary permits. If Tenant proceeds with all due diligence and is unable to obtain

said permits, the Lease shall be terminated. This six-month Free Rent period is to help offset the costs of improvements including but not limited to, remodeling bathroom(s), installing fixtures consistent with a barbershop. Said free rent shall be effective months two (2) through seven (7) of the Lease Term..

3.3 Cost Of Living Adjustments ("COLA") to the Base Monthly Rent. The Base Monthly Rent provided for in Section 3.1 shall be adjusted as of the First (1st) anniversary of the Commencement Date, and thereafter every year on such date for the remainder of the Lease (each such period is referred to herein as a "COLA Period"), to reflect any increase or decrease in the purchasing power of the dollar. The rent adjustment to be effective during each COLA Period shall be Three Percent (3%) over the rent paid during the previous year.

3.4 Delivery of Rent Payments. All rent due under this Lease shall be made payable to MTS, and shall be considered paid when delivered to:

MTS
Attn: Finance Department
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101

MTS may, at any time, by written notice to Lessee, designate a different address to which Lessee shall deliver the rent payments. MTS may, but is not obligated to, send monthly rent invoices to Lessee.

3.4 Failure to Pay Base Monthly Rent or Additional Rent; Late Charge.

a. If any such monthly rental is not received by MTS within fifteen (15) calendar days following the due date, Lessee shall immediately pay to MTS a late charge equal to five percent (5%) of such overdue amount. Should Lessee pay said late charge but fail to pay contemporaneously therewith all unpaid amounts of rent due hereunder, MTS' acceptance of this late charge shall not constitute a waiver of Lessee's default with respect to such nonpayment by Lessee nor prevent MTS from exercising all other rights and remedies available to MTS under this Lease or under law.

b. In the event of a dispute between the parties as to the correct amount of Base Monthly Rent or Additional Rent owed by Lessee, MTS may accept any sum tendered by Lessee in payment thereof, without prejudice to MTS' claim as to the proper amount of rent owing. If it is later determined that Lessee has not paid the full amount of rent owing, the late charge specified herein shall apply only to that portion of the rent still due and payable from Lessee. Notwithstanding any provision of this Section to the contrary, however, MTS may waive any delinquency payment or late charge upon written application of Lessee.

ARTICLE 4
POSSESSION AND USE

4.1 Permitted Uses. Lessee shall use the Premises solely as a barbershop and may sell products in relation to barbershop grooming needs of the customers. No one other than Lessee, its agents, volunteers and employees, or any sublessee of Lessee approved by MTS as provided in Article 12, "Assignment and Subletting," below, is permitted to use the Premises for

the purposes described herein, and Lessee shall be fully responsible for the activities of its agents, volunteers and employees and sublessees, if any, on the Premises.

4.2 Duties and Prohibited Conduct. Where Lessee is reasonably in doubt as to the propriety of any particular use, Lessee may request the written determination of MTS that such use is or is not permitted, and Lessee will not be in breach or default under this Lease if Lessee abides by such determination. Notwithstanding the foregoing, however, Lessee shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance. Lessee shall, at Lessee's expense, comply promptly with all applicable statutes, laws, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the term, regulating the use by Lessee of the Premises. Lessee shall not use, or permit any person or persons to use, the Premises for the sale or display of any goods and/or services, which, in the sole discretion of MTS, are inconsistent with the permitted uses of the Premises pursuant to this Lease. Lessee shall keep the Premises, and every part thereof, in a decent, safe and sanitary condition, free from any objectionable noises or odors, except as may be typically present for the permitted uses specified above.

4.3 Compliance With Stormwater Laws. Lessee's use of the Premises is subject to federal, state and local laws regarding the discharge into the stormwater conveyance system of pollutants. Compliance with these laws may require Lessee to develop, install, implement and maintain pollution prevention measures, source control measures and Best Management Practices ("BMPs"). BMPs can include operational practices; water or pollutant management practices; physical site features; or devices to remove pollutants from stormwater, to affect the flow of stormwater or to infiltrate stormwater to the ground. BMPs applicable to Lessee's use of the Premises may include a requirement that all materials, wastes or equipment with the potential to pollute urban runoff be stored in a manner that either prevents contact with rainfall and stormwater, or contains contaminated runoff for treatment and disposal. Lessee is required and agrees to use, operate, maintain, develop, redevelop and retrofit the Premises, as necessary, in accordance with all applicable federal, state and local laws restricting the discharge of non-stormwater at or from the Premises; and all such laws, regulations, or local guidance requiring pollution prevention measures, source control measures, or the installation or use of BMPs. Lessee further agrees to develop, install, implement and/or maintain at Lessee's sole cost and expense, any BMPs or similar pollution control devices required by federal, state and/or local law and any implementing regulations or guidance.

Lessee understands and acknowledges that the stormwater and non-stormwater requirements applicable to Lessee's use of the Premises may be changed from time to time by federal, state and/or local authorities, and that additional requirements may become applicable based on changes in Lessee's activities or development or redevelopment by Lessee or MTS. Lessee shall perform and record annual stormwater training, perform and record regular stormwater self-inspections, and maintain and provide all necessary stormwater documentation to stormwater auditors.

Lessee shall develop, install, implement, and maintain such additional BMPs and/or other pollution control practices at the Premises at Lessee's sole cost and expense. To the extent there is a conflict between any federal, state or local law, Lessee shall comply with the more restrictive provision. If MTS receives any fine or fines from any regulatory agency as a result of Lessee's failure to comply with applicable stormwater laws as set forth in this Article, Lessee shall reimburse MTS for the entire fine amount.

ARTICLE 5 UTILITIES

5.1 Utility Services: Lessee agrees to provide and pay for all of the utilities and services necessary for the occupancy and use of the Premises, including, but not limited to, gas, water, electricity, trash, sewage charges or septic service, and telephone. In addition to the utilities to be paid by Lessee, Lessee shall pay its share of the cost of maintenance and operation of the Common Area of the Premises (CAM). These include, but are not limited to, outside cleaning, lighting, landscape, and maintenance of parking lot, driveways, and walks. Lessee's pro rata share of such costs shall be based on the footage of the ratio of the square footage of the Premises to the square footage of the building(s) in the center, said percentage is 16%. Said amount of CAM costs shall be \$178.92 and paid monthly in addition to the base monthly rent. CAM costs shall be adjusted yearly based on previous years expenses and will be prorated based on the same percentage for each tenant (Lessee's percentage is 16%). MTS shall have no responsibility either to provide or pay for such services

5.2 Energy Conservation by Lessee: Lessee shall be responsible for promoting energy conservation measures in the operation of all activities at the Lease premises. Lessee shall cooperate with the Landlord in all forms of energy conservation including energy-efficient lighting, heating and air-conditioning systems, and fixtures and equipment. Lessee shall comply with all existing and newly-enacted laws, by-laws, regulations, etc., relating to the conservation of energy. Lessee shall comply with all reasonable requests and demands of the Landlord pertaining to the installation and maintenance of energy conservation systems, fixtures, and equipment.

ARTICLE 6 MECHANICS' LIENS

Lessee shall pay, or cause to be paid, all costs for work done by it, or caused to be done by it, on the Premises, and for all materials furnished for or in connection with any such work. If any lien is filed against the Premises, Lessee shall cause the lien to be discharged of record within ten (10) days after it is filed. Lessee shall indemnify, defend and hold MTS harmless from any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for Lessee or persons claiming under Lessee.

ARTICLE 7 SECURITY

Lessee shall be responsible for and shall provide for the security of the Premises, and MTS shall have no responsibility therefor.

ARTICLE 8 TAXES, ASSESSMENTS AND FEES

8.1 Responsibility for Payment of Taxes and Assessments. MTS shall not be obligated to pay any taxes or assessments accruing against Lessee on the Premises or any interest of Lessee therein before, during or after the Term, or any extension thereof; all such payments

shall be the sole responsibility of Lessee. In addition, Lessee shall be solely responsible for payment of any taxes or assessments levied upon any Improvements, Fixtures or Personal Property located on the Premises, to the extent that such taxes or assessments result from the business or other activities of Lessee upon, or in connection with, the Premises.

8.2 Definition of "Taxes". As used herein, the term "taxes" means all taxes, governmental bonds, special assessments, Mello-Roos assessments, charges, rent income or transfer taxes, license and transaction fees, including, but not limited to, (i) any state, local, federal, personal or corporate income tax, or any real or personal property tax, (ii) any estate inheritance taxes, (iii) any franchise, succession or transfer taxes, (iv) interest on taxes or penalties resulting from Lessee's failure to pay taxes, (v) any increases in taxes attributable to the sale of Lessee's leasehold interest in the Premises, or (vi) any taxes which are essentially payments to a governmental agency for the right to make improvements to the Premises.

8.3 Creation of Possessory Interest. Pursuant to the provisions of Revenue and Taxation Code section 107.6, Lessee is hereby advised that the terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in Lessee, Lessee may be subjected to the payment of real property taxes levied on such interest. Lessee shall be solely responsible for the payment of any such real property taxes. Lessee shall pay all such taxes when due, and shall not allow any such taxes, assessments or fees to become a lien against the Premises or any improvement thereon; provided, however, that nothing herein shall be deemed to prevent or prohibit Lessee from contesting the validity of any such tax, assessment or fee in a manner authorized by law.

ARTICLE 9 REPAIRS; MAINTENANCE

9.1 Acceptance of Premises. Lessee acknowledges that Lessee has made a thorough inspection of the Premises prior to the Commencement Date of this Lease, and that it accepts the Premises as of the Commencement Date in their condition at that time, subject to the following repairs and improvements which are or may be necessary that shall be completed during the six-month Free Rent period.

- a. Remove existing bathroom and provide a new bathroom compliant with ADA (American Disabilities Act) requirements with a wall, door, toilet, sink, and grab rails. Other bathroom improvements such as flooring, wall finishing (such as painting or other finish covering), paper and soap dispensers, bathroom mirror, retrofit if necessary of the existing bathroom ventilation for the new bathroom, electric wall outlet, or any bathroom upgrades shall not be the responsibility of MTS.
- b. Any necessary roofing or HVAC repairs.
- c. Replacement of the double side door with a single steel door.
- d. Replacement of the damaged and worn ceiling tiles and metal support system for the ceiling tiles. Lessee shall be responsible for all the lighting improvements necessary for the leased Premises.
- e. Any necessary repairs of the front door lock or door.

Items a, c, and d in this section shall be completed by Lessee's contractor and Lessee shall receive a reimbursement by MTS for these items in the form of a rent credit starting on month 8, except for those said improvements or upgrades described in these items that are not to be the responsibility of MTS. The MTS rent credit to Lessee for the items that are the responsibility of MTS shall be based on the actual contractor cost. Items b and e in this section are the responsibility of MTS to complete in a timely manner during the six-month Free Rent period.

Other than the repairs and improvements listed above in this section, Lessee further acknowledges that MTS has made no oral or written representations or warranties to Lessee regarding the condition of the Premises, and that Lessee is relying solely on its inspection of the Premises with respect thereto.

9.2 Lessee's Repair and Maintenance Obligations. Lessee shall at all times from and after the Commencement Date, at its own cost and expense, repair, maintain in good and tenantable condition and replace, as necessary, the Premises and every part thereof, including, without limitation, the following as applicable: the initial necessary repairs to be completed by MTS listed above in section 9.1, mechanical and electrical systems; all meters, pipes, conduits, equipment, components and facilities (whether or not within the Premises) that supply the Premises exclusively with utilities (except to the extent the appropriate utility company has assumed these duties); all Fixtures and other equipment installed in the Premises; all exterior and interior glass installed in the Premises; all signs, lock and closing devices; all interior window sashes, casements and frames; doors and door frames (except for the painting of the exterior surfaces thereof); floor coverings; and all such items of repair, maintenance, alteration, improvement or reconstruction as may be required at any time or from time to time by a governmental agency having jurisdiction thereof. Lessee's obligations hereunder shall apply regardless of whether the repairs, restorations and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital, or the fault or not the fault of Lessee, its agents, employees, invitees, visitors, sublessees or contractors. All replacements made by Lessee in accordance with this Section shall be of like size, kind and quality to the items replaced and shall be subject to MTS' approval. Upon surrender of the Premises, Lessee shall deliver the Premises to MTS in good order, condition and state of repair, but shall not be responsible for damages resulting from ordinary wear and tear. Lessee shall provide for trash removal, at its expense, and shall maintain all trash receptacles and trash areas in a clean, orderly and first-class condition.

Lessee shall not, without MTS' prior written consent (which shall not be unreasonably withheld, conditioned, or delayed), make any alterations, improvements or additions to the Premises, whether structural or non-structural. Any such improvements, excepting movable furniture and trade fixtures, shall become part of the realty and belong to MTS; provided, however, that MTS may require the removal of any such alterations, improvements or additions as a condition to granting MTS' consent. All alterations, improvements or additions shall be accomplished by Lessee in a good and workmanlike manner, in conformity with all applicable laws and regulations.

The exercise of any and all rights provided by this Lease is subject to the requirement that Lessee's contractors and agents first obtain a Right of Entry Permit ("ROE Permit") from MTS prior to entry onto the Premises for the construction any tenant improvements or maintenance of the Premises. The ROE Permit requires that Lessee's contractors and agents procure and

maintain in force at all times during the construction contract, the insurance described in the ROE Permit. MTS shall timely process any applications required to obtain the ROE Permit, and shall not unreasonably deny or delay the issuance of such ROE Permit. Lessee's contractors and agents will comply with all MTS policies, rules and regulations as stated in the ROE Permit, and the instructions of MTS' representatives.

9.3 Lessee's Failure to Maintain. If Lessee refuses or neglects to repair, replace, or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to MTS, MTS may, upon giving Lessee reasonable written notice of its election to do so, make such repairs or perform such maintenance on behalf of and for the account of Lessee. If MTS makes or causes any such repairs to be made or performed, as provided for herein, Lessee shall pay the cost thereof to MTS, as additional rent, promptly upon receipt of an invoice therefore.

9.4 Right to Enter. Lessee shall permit MTS, or its authorized representatives, to enter the Premises at all times during usual business hours to inspect the same, and to perform any work therein that (a) may be necessary to comply with any laws, ordinances, rules or regulations of any public authority, (b) MTS may deem necessary to prevent waste or deterioration in connection with the Premises if Lessee does not make, or cause to be made, such repairs or perform, or cause to be performed, such work promptly after receipt of written demand from MTS, and (c) MTS may deem necessary in connection with the expansion, reduction, remodeling, protection or renovation of any MTS constructed or owned facilities on or off of the Premises. Nothing herein shall imply any duty on the part of MTS to do any such work which, under any provision of this Lease, Lessee may be required to do, nor shall MTS' performance of any repairs on behalf of Lessee constitute a waiver of Lessee's default in failing to do the same. If MTS exercises any of its rights under this Section, Lessee shall not be entitled to any compensation, damages or abatement of rent from MTS for any injury or inconvenience occasioned thereby.

9.5 MTS Not Obligated to Repair or Maintain; Lessee's Waiver of California Civil Code Section 1942. To the extent that any remedies specified in this Lease conflict or are inconsistent with any provisions of California Civil Code section 1942, or any successor statute thereto ("CC §1942"), the provisions of this Lease shall control. Lessee specifically waives any right it may have pursuant to CC §1942 to effect maintenance or repairs to the Premises and to abate the costs thereof from rent due to the MTS under this Lease.

ARTICLE 10 INDEMNITY AND INSURANCE

10.1 Lessee's Indemnity. MTS shall not be liable for, and Lessee shall defend and indemnify MTS and the employees and agents of MTS (collectively "MTS Parties"), against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to this Lease and arising either directly or indirectly from any act, error, omission or negligence of Lessee or its contractors, licensees, agents, volunteers, servants or employees, including, without limitation, Claims caused by the concurrent negligent act, error or omission, whether active or passive, of MTS Parties. Lessee shall have no obligation, however, to defend or indemnify MTS Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of MTS Parties.

10.2 MTS' Indemnity. MTS shall defend and indemnify Lessee and hold it harmless from and against any Claims related to this Lease that arise solely from any act, omission or negligence of MTS Parties.

10.3 Covered Claims. The obligations of Lessee and MTS hereunder to indemnify, defend and hold each other harmless shall not apply to the extent that insurance carried by Lessee or MTS, other than any program of self-insurance covers any Claim.

10.4 Lessee's Insurance Obligations. Without limiting Lessee's indemnification obligations to MTS under this Lease, Lessee shall provide and maintain, during the Term and for such other period as may be required herein, at its sole expense, insurance in the amounts and form specified in Exhibit "B," attached hereto.

10.5 MTS' Insurance Obligations. MTS maintains a policy of All-Risk Insurance covering the MTS' personal property in the Premises, including any fixtures or equipment in the Premises owned by MTS. The MTS utilizes a program of self-funding with regard to any liability it may incur for personal injury or property damage arising out its use or occupancy of the Premises.

ARTICLE 11 HAZARDOUS MATERIALS

11.1 Hazardous Materials Laws-Definition. As used in this section, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., § 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C., § 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., § 6901 et seq.), and the California Environmental Quality Act of 1970, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, soil and ground water conditions or other similar substances or conditions.

11.2 Hazardous Materials - Definition. As used in this section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:

- a. Is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;
- b. Is controlled, referred to, designated in or governed by any Hazardous Materials Laws;
- c. Gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws; or
- d. Is any other material or substance giving rise to any liability, responsibility or duty upon the MTS or Lessee with respect to any third person under any Hazardous Materials Law.

11.3 Lessee's Representations and Warranties. Lessee represents and warrants that, during the Term or any extension thereof, or for such longer period as may be specified herein, Lessee shall comply with the following provisions unless otherwise specifically approved in writing by MTS:

a. Lessee shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Premises by Lessee, its agents, employees, sublessees, assigns, contractors or invitees, except as required by Lessee's permitted use of the Premises, as described in Section 4.1, "Permitted Uses."

b. Any handling, transportation, storage, treatment or usage by Lessee of Hazardous Materials that is to occur on the Premises following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws.

c. Any leaks, spills, release, discharge, emission or disposal of Hazardous Materials which may occur on the Premises following the Commencement Date shall be promptly and thoroughly cleaned and removed from the Premises by Lessee at its sole expense, and any such discharge shall be promptly reported in writing to MTS, and to any other appropriate governmental regulatory authorities.

d. No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by Lessee in the Premises.

e. No underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by Lessee on the Premises without MTS' prior written consent.

f. Lessee shall conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from, or affecting the Premises in accordance with all applicable Hazardous Materials' Laws and to the satisfaction of MTS.

g. Activities proposed by Lessee that involve disturbing asbestos materials on site shall only be conducted in accordance with all federal, state and local asbestos rules and regulations including, but not limited to, the California Occupational Safety and Health Administration (Cal/OSHA), Environmental Protection Agency (EPA) and Air Pollution Control District (APCD), with prior written consent of MTS.

Any asbestos related activities shall be performed by a contractor that is registered with Cal/OSHA and certified by the California Contractors State Licensing Board to perform asbestos work. Any asbestos related activities shall be overseen by a California Certified Asbestos Consultant (CAC), or a Certified Site Surveillance Technician under the direction of a CAC.

Replacement products used in tenant improvements or other construction activities shall not contain asbestos. Any replacement products used by Lessee shall be verified as non-asbestos products by using Material Safety Data Sheets (MSDS) and/or having the architect or project engineer verify that ACMs were not used.

h. Lessee shall promptly supply MTS with copies of all notices, reports, correspondence, and submissions made by Lessee to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws.

i. Lessee shall promptly notify MTS of any liens threatened or attached against the Premises pursuant to any Hazardous Materials' Law. If such a lien is filed against the Premises, then within twenty (20) days following such filing or before any governmental authority commences proceedings to sell the Premises pursuant to the lien, whichever occurs first, Lessee shall either: (a) pay the claim and remove the lien from the Premises; or (b) furnish either (1) a bond or cash deposit reasonably satisfactory to MTS in an amount not less than the claim from which the lien arises, or (2) other security satisfactory to MTS in an amount not less than that which is sufficient to discharge the claim from which the lien arises. At the end of this lease, Lessee shall surrender the Premises to MTS free of any and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Premises.

11.4 Indemnification by Lessee. Lessee (and, if applicable, each of its general partners) and its successors, assigns, and guarantors, if any, jointly and severally agree to protect, indemnify, defend (with counsel selected by MTS), reimburse and hold MTS and its officers, employees and agents harmless from any claims, judgments, damages, penalties, fines, costs or expenses (known or unknown, contingent or otherwise), liabilities (including sums paid in settlement of claims), personal injury (including wrongful death), property damage (real or personal) or loss, including attorneys' fees, consultants' fees, and experts' fees (consultants and experts to be selected by MTS) which arise during or after the Term from or in connection with the presence or suspected presence of Hazardous Materials, including the soil, ground water or soil vapor on or under the Premises. Without limiting the generality of the foregoing, the indemnification provided by this section shall specifically cover costs incurred in connection with investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Hazardous Materials Laws because of the presence of Hazardous Materials in the soil, ground water or soil vapor on the Premises, and the release or discharge of Hazardous Materials by Lessee during the course of Lessee's alteration or improvement of the Premises.

11.5 Remedies Cumulative; Survival. The provisions of this Article shall be in addition to any and all common law obligations and liabilities Lessee may have to MTS, and any remedies and the environmental indemnities provided for herein shall survive the expiration or termination of this Lease and/or any transfer of all or any portion of the Premises, or of any interest in this Lease, and shall be governed by the laws of the State of California.

11.6 Inspection. MTS and MTS' agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by MTS, may (but without the obligation or duty so to do), at any time and from time to time, on not less than ten (10) business days' notice to Lessee (except in the event of an emergency in which case no notice shall be required), inspect the Premises to determine whether Lessee is complying with Lessee's obligations set forth in this Article, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as MTS and Lessee may agree. If Lessee is not in compliance, MTS shall have the right, in addition to MTS' other remedies available at law and in equity, to enter upon the Premises

immediately and take such action as MTS in its sole judgment deems appropriate to remediate any actual or threatened contamination caused by Lessee's failure to comply. MTS will use reasonable efforts to minimize interference with Lessee's use of Premises but shall not be liable for any interference caused by MTS' entry and remediation efforts. Upon completion of any sampling or testing MTS will (at Lessee's expense if MTS' actions are a result of Lessee's default under this section) restore the affected area of the Premises from any damage caused by MTS' sampling and testing.

ARTICLE 12 ASSIGNMENT AND SUBLETTING

Lessee shall not voluntarily or involuntarily assign, sublease, mortgage, encumber, or otherwise transfer (collectively, a "Transfer") all or any portion of the Premises or its interest in this Lease without MTS' prior written consent. MTS may reasonably withhold its consent to any Transfer. Any attempted Transfer without MTS' consent shall be void and shall constitute a material breach of this Lease. As used herein, the term "Transfer" shall include an arrangement (including without limitation management agreements, concessions, and licenses) that allows the use and occupancy of all or part of the Premises by anyone other than Lessee.

ARTICLE 13 MTS' RIGHT OF ACCESS

a. MTS, its agents, employees, and contractors may enter the Premises at any time in response to an emergency, and at reasonable hours to (a) inspect the Premises, (b) exhibit the Premises to prospective purchasers or Lessees, (c) determine whether Lessee is complying with its obligations in this Lease (including its obligations with respect to compliance with Hazardous Materials Laws), (d) supply cleaning service and any other service that this Lease requires MTS to provide, (e) post notices of non-responsibility or similar notices, or (f) make repairs that this Lease requires MTS to make, or make repairs to any adjoining space or utility services, or make repairs, alterations, or improvements to any other portion of the Premises; provided, however, that all work will be done as promptly as reasonably possible and so as to cause as little interference to Lessee as reasonably possible.

b. Lessee waives any claim of injury or inconvenience to Lessee's business, interference with Lessee's business, loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by such entry. If necessary, Lessee shall provide MTS with keys to unlock all of the doors in the Premises (excluding Lessee's vaults, safes, and similar areas designated in writing by Lessee in advance). MTS will have the right to use any means that MTS may deem proper to open doors in the Premises and to the Premises in an emergency. No entry to the Premises by MTS by any means will be a forcible or unlawful entry into the Premises or a detainer of the Premises or an eviction, actual or constructive, of Lessee from the Premises, or any part of the Premises, nor shall the entry entitle Lessee to damages or an abatement of rent or other charges that this Lease requires Lessee to pay.

ARTICLE 14 QUIET ENJOYMENT

If Lessee is not in breach under the covenants made in this Lease, MTS covenants that Lessee shall have peaceful and quiet enjoyment of the Premises without hindrance on the part of MTS. MTS will defend Lessee in the peaceful and quiet enjoyment of the Premises against

claims of all persons claiming through or under the MTS.

ARTICLE 15 NOTICES

15.1 Notices. Whenever in this Lease it shall be required or permitted that notice or demand be given or served by either party to this Lease to or on the other, such notice or demand shall be in writing, mailed or delivered to the other party at the following addresses:

To MTS:
Manager of Real Estate Assets
1225 Imperial Avenue, Suite 1000
San Diego, CA 92101

To Lessee:
HUEY DAO
867 Friendly Circle
El Cajon, CA 92021

Mailed notices shall be sent by United States Postal Service, certified or registered mail, postage prepaid and shall be deemed to have been given, delivered and received three (3) business days after the date such notice or other communication is posted by the United States Postal Service. All other such notices or other communications shall be deemed given, delivered and received upon actual receipt. Either party may, by written notice delivered pursuant to this provision, at any time designate a different address to which notices shall be sent.

15.2 Default Notices. Notwithstanding anything to the contrary contained within this Article, any notices MTS is required or authorized to deliver to Lessee in order to advise Lessee of alleged violations of Lessee's covenants under this Lease must be in writing but shall be deemed to have been duly given or served upon Lessee by MTS attempting to deliver at the Premises during normal business hours a copy of such notice to Lessee or its managing employee and by MTS mailing a copy of such notice to Lessee in the manner specified in the preceding Section.

ARTICLE 16 WAIVER OF RELOCATION ASSISTANCE BENEFITS

16.1 Relocation Assistance Benefits. Lessee is hereby informed and acknowledges the following:

a. By entering into this Lease and becoming a tenant of MTS, Lessee will not be entitled to receipt of "relocation assistance benefits" ("Relocation Benefits") pursuant to the Federal Uniform Relocation Assistance Act (42 U.S.C. §§ 4601 et seq.) and/or the California Relocation Assistance Law (Cal. Gov. Code §§ 7270 et seq.) (collectively, the "Relocation Statutes"), should MTS at some time make use of the Premises in such a way as to "displace" Lessee from the Premises. Pursuant to the Relocation Statutes, MTS will not be obligated to make such payments to Lessee even where such displacement of Lessee may otherwise constitute a breach or default by MTS of its obligations pursuant to this Lease.

16.2 Lessee's Waiver and Release of Relocation Benefits. In consideration of MTS'

agreement to enter into this Lease, Lessee hereby waives any and all rights it may now have, or may hereafter obtain, to Relocation Benefits arising out of the MTS' assertion or exercise of its contractual rights to terminate this Lease pursuant to its terms, whether or not such rights are contested by Lessee or any other entity, and releases MTS from any liability for payment of such Relocation Benefits; provided, however, that Lessee does not waive its rights to Relocation Benefits to the extent that Lessee's entitlement thereto may arise out of any condemnation or pre-condemnation actions taken by the MTS or any other public agency with respect to the Premises. Lessee shall in the future execute any further documentation of the release and waiver provided hereby as MTS may reasonably require.

ARTICLE 17 GENERAL PROVISIONS

17.1 Authority. Lessee represents and warrants that it has full power and authority to execute and fully perform its obligations under this Lease pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Lease on behalf of Lessee are the duly designated agents of Lessee and are authorized to do so.

17.2 Brokers. Lessee warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation and/or execution of this Lease. In the event any broker other than the brokers acknowledged in writing by MTS make claim for monies owed, Lessee shall indemnify, defend and hold MTS harmless therefrom.

17.3 Captions. The captions, headings and index appearing in this Lease are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Lease.

17.4 Cumulative Remedies. In the event of a default under this Lease, each party's remedies shall be limited to those remedies set forth in this Lease. Any such remedies are cumulative and not exclusive of any other remedies under this Lease to which the non-defaulting party may be entitled.

17.5 Entire Agreement. This Lease, together with all addenda, exhibits and riders attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded.

17.6 Estoppel Certificate. Lessee shall at any time during the term of this Lease, within five (5) business days of written notice from MTS, execute and deliver to MTS a statement in writing certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification. Lessee's statement shall include other details requested by MTS, such as the date on which rent and other charges are paid, the current ownership and name of Lessee, Lessee's knowledge concerning any outstanding defaults with respect to MTS' obligations under this Lease and the nature of any such defaults. Any such statement may be relied upon conclusively by any prospective purchaser or encumbrancer of the Premises. Lessee's failure to deliver such statements within such time shall be conclusively deemed to mean that this Lease is in full force and effect, except to the extent any modification has been represented by MTS, that there are no uncured defaults in the MTS' performance, and that not more than one month's rent has been paid in advance.

17.7 Exhibits. All exhibits referred to herein are attached hereto and incorporated by reference.

17.8 Force Majeure. In the event either party is prevented or delayed from performing any act or discharging any obligation hereunder, except for the payment of rent by Lessee, because of any and all causes beyond either party's reasonable control, including unusual delays in deliveries, abnormal adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, civil commotion and fire or other casualty, legal actions attacking the validity of this Lease or the MTS' occupancy of the Premises, or any other casualties beyond the reasonable control of either party except casualties resulting from Lessee's negligent operation or maintenance of the Premises ("Force Majeure"), performance of such act shall be excused for the period of such delay, and the period for performance of such act shall be extended for a period equivalent to the period of such delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability on the part of either party hereto.

17.9 Governing Law. This Lease shall be governed, construed and enforced in accordance with the laws of the State of California.

17.10 Interpretation. The language of this Lease shall be construed simply according to its plain meaning and shall not be construed for or against either party.

17.11 Joint and Several Liability. If more than one person or entity executes this Lease as Lessee, each of them is jointly and severally liable for all of the obligations of Lessee hereunder.

17.12 Lease Administration. This Lease shall be administered on behalf of MTS by the Manager of Real Estate Assets, San Diego Metropolitan Transit System or by such person's duly-authorized designee.

17.13 Lessee's Lease Administration. Lessee confirms that Lessee's Lease Administrator has been given full operational responsibility for compliance with the terms of this Lease. Lessee shall provide MTS with a written schedule of its normal hours of business operation on the Premises, and Lessee's Lease Administrator or a representative designated thereby shall be (i) available to MTS on a twenty-four (24) hour a day, seven (7) days a week, basis, and (ii) present on the Premises during Lessee's normal business hours, to resolve problems or answer question pertaining to this Lease and Lessee's operations on the Premises.

17.14 Liquidated Damages. Any payments by Lessee to MTS under this Lease described as liquidated damages represent the parties' reasonable estimate of MTS' actual damages under the described circumstances, such actual damages being uncertain and difficult to ascertain in light of the impossibility of foreseeing the state of the leasing market at the time of the various deadlines set forth herein. MTS may, at its election, take any of the liquidated damages assessed in any portion of this Lease as direct monetary payments from Lessee and/or as an increase of rent due from Lessee under this Lease.

17.15 Modification. The provisions of this Lease may not be modified, except by a written instrument signed by both parties.

17.16 Partial Invalidity. If any provision of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.

17.17 Payments. Except as may otherwise be expressly stated, each payment required to be made by Lessee shall be in addition to, and not a substitute for, other payments to be made by Lessee.

17.18 Successors & Assigns. This Lease shall be binding on and inure to the benefit of the parties and their successors and assigns, except as may otherwise be provided herein.

17.19 Time of Essence. Time is of the essence of each and every provision of this Lease.

17.20 Waiver. No provision of this Lease or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. The waiver by MTS of any breach of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach thereof, or of any other term, covenant or condition contained in this Lease. MTS' subsequent acceptance of partial rent or performance by Lessee shall not be deemed to be an accord and satisfaction or a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease or of any right of MTS to a forfeiture of the Lease by reason of such breach, regardless of MTS' knowledge of such preceding breach at the time of MTS' acceptance. The failure on the part of MTS to require exact or full and complete compliance with any of the covenants, conditions of agreements of this Lease shall not be construed as in any manner changing or waiving the terms of this Lease or as estopping MTS from enforcing in full the provisions hereof. No custom or practice which may arise between the parties hereto in the course of administering this Lease shall be construed to waive, estop or in any way lessen MTS' right to insist upon Lessee's full performance of, or compliance with, any term, covenant or condition of this Lease or to inhibit or prevent MTS' exercise of its rights with respect to any default, dereliction or breach of this Lease by Lessee.

IN WITNESS WHEREOF, MTS and Lessee have duly executed this Lease as of the day and year first above written.

Lessee: HUEY DAO

MTS:

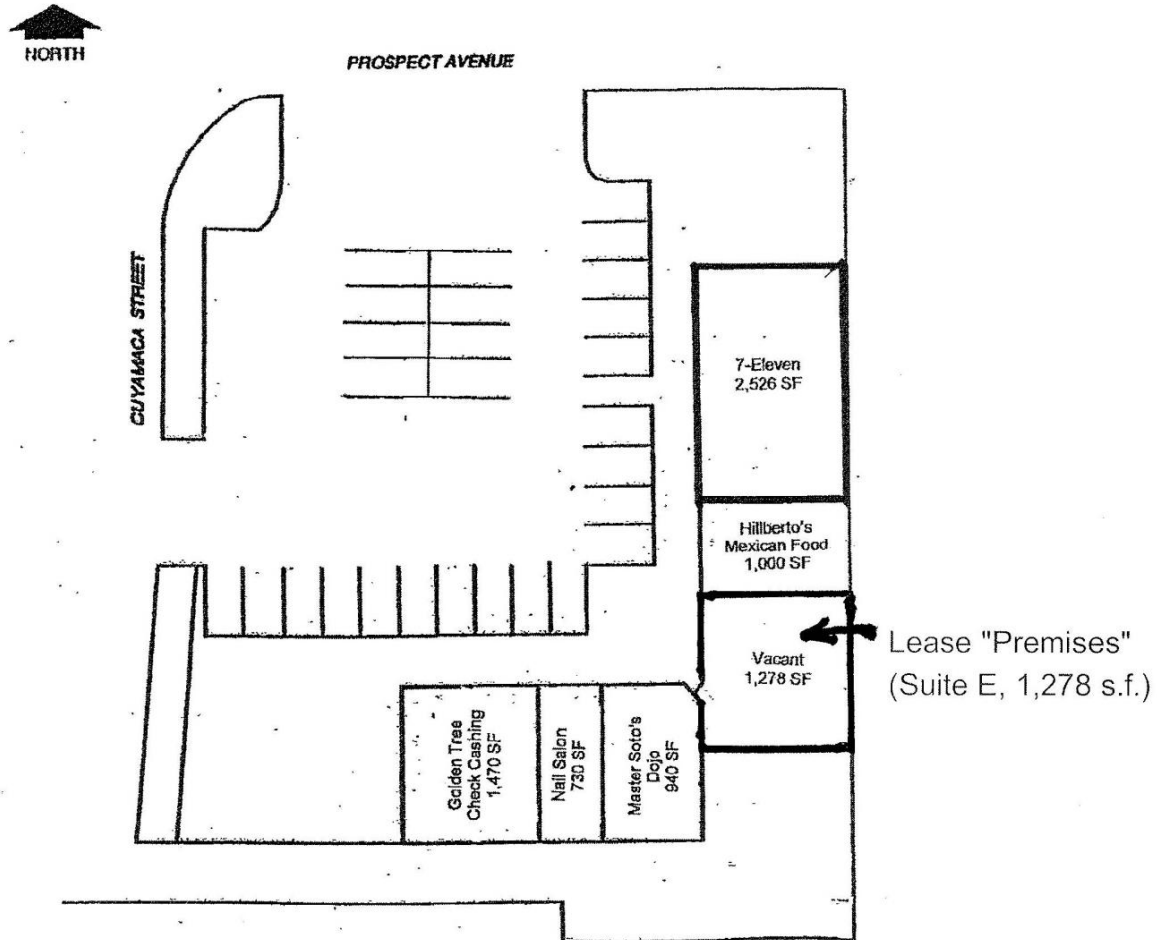
Title: Sole Proprietor

By: _____
Paul C. Jablonski, Chief Executive Officer

Attachments: Exhibit "A" – Description of the Premises
Exhibit "B" – Insurance Requirements

EXHIBIT A
DESCRIPTION OF THE PREMISES

9805 Prospect Avenue, Suite E
Santee, CA 92071



Note: This plan is not to scale

EXHIBIT B
INSURANCE REQUIREMENTS

1.1. Commercial General Liability At all times during this Lease, Lessee agrees to maintain Commercial General Liability Insurance utilizing Insurance Services Office (ISO) coverage form CG0001, edition date 10/01 or later, or an equivalent form and with insurance companies reasonably acceptable to MTS. The coverage shall contain no restricting or exclusionary endorsements that would limit coverage for events related to Lessee's occupancy and activities on the Premises. All such policies shall name in the endorsement San Diego Metropolitan Transit System (MTS), San Diego Trolley, Inc. (SDTI), San Diego and Arizona Eastern Railway (SD&AE), San Diego and Imperial Valley Railroad (SD&IV), and San Diego Transit Corporation (SDTC), their directors, officers, agents, and employees as additional insureds as their interests may appear. Minimum policy limits shall be \$1,000,000 per occurrence and \$2,000,000 general aggregate.

1.2. Automobile Liability At all times during this Lease, Lessee agrees to maintain Automobile Liability Insurance for bodily injury and property damage including coverage for all owned, non-owned, and hired vehicles. Minimum policy limits shall be \$1,000,000 combined single limit.

1.3. Workers' Compensation At all times during this Lease, Lessee agrees to maintain Workers' Compensation in compliance with the applicable statutory requirements and shall maintain Employer's Liability Insurance at a minimum policy limit of \$1,000,000.

1.4. Property Insurance At all times during this Lease, Lessee agrees to maintain Property Insurance against all risk or special form perils, including Replacement Cost coverage, without deduction for depreciation, for Lessee's merchandise, fixtures owned by Lessee, any items identified in this Lease as improvements to the Premises constructed and owned by Lessee, and the personal property of Lessee, its agents and employees.

1.5. Primary and Non-Contributory Insurance/Waiver of Subrogation. Lessee agrees that all general liability coverages required under this insurance section are PRIMARY and that any insurance of MTS, SDTI, SD&AE, SD&IV, and SDTC shall be excess and noncontributory (endorsement required). Lessee waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver.

1.6. Policy Provisions Required. All policies and coverages shall contain a provision for 30 days written notice by the Insurer(s) to MTS of any cancellation or material reduction of coverage. A ten-day notice is required for non-payment of premium.

1.7. Evidence Required. Within ten working days following execution of this Lease, Lessee shall have provided the MTS with satisfactory certification by a qualified representative of the Insurer(s) that Lessee's insurance complies with all provisions in this insurance section.

1.8. Special Provisions. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Lessee, and any approval of said insurance by MTS, SDTI, SD&AE, SD&IV, and SDTC, or their insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Lessee pursuant to this Agreement, including but not limited to the provisions concerning indemnification.



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

Agenda Item No. 9

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

April 13, 2017

**Draft for
Executive Committee
Review Date: 4/6/17**

SUBJECT:

CALIFORNIA OFFICE OF EMERGENCY SERVICES (CALOES) DESIGNATION OF
APPLICANT'S AGENT RESOLUTION FOR NON-STATE AGENCIES (CALOES FORM
130)

RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors adopt the Designation of Applicant's Agent Resolution for Non-State Agencies (CalOES Form 130) to authorize the Chief Executive Officer (CEO), or designated representative, to execute all required documents for the purpose of obtaining certain federal financial assistance under Public Law 93-288 as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, and/or state financial assistance under the California Disaster Assistance Act.

Budget Impact

Projects approved for reimbursement will have a federal share of 75 percent, a state share of 18.75 percent, and a local share of 6.25 percent.

DISCUSSION:

President Donald J. Trump declared two major disasters in California making federal disaster aid available to California Counties based on damages incurred. FEMA DR-4301 was declared on February 14, 2017, and covered storm damages that occurred between January 3, 2017 and January 12, 2017. FEMA DR-4305 was declared on March 16, 2017, and covered storm damages that occurred between January 18, 2017 and January 23, 2017. San Diego County was included as an eligible recipient of public assistance under FEMA DR-4305.



Eligible projects for reimbursement include debris removal, emergency response and protective measures, repair of roads and bridges, repair of water control facilities, repair of buildings and equipment, repair of utilities, as well as repairs to parks, recreational facilities, or other items.

MTS facilities suffered various levels of damage during the two designated storm events. Staff is compiling backup documentation for a potential disaster recovery claim. Eligible reimbursements for both events are anticipated to be less than \$100,000.

In order for an agency to be eligible for public assistance, the agency must have a Designation of Applicant's Agent Resolution for Non-State Agencies (CalOES Form 130) on file with CalOES. The CalOES Form 130 must be updated every three years. MTS does not currently have a valid CalOES Form 130 on file with CalOES.

Therefore, staff recommends that the MTS Board of Directors approve the Designation of Applicant's Agent Resolution for Non-State Agencies in order for MTS to be an eligible recipient of public assistance, and to authorize the CEO, or designated representative, to execute all required documents for the purpose of obtaining certain federal financial assistance under Public Law 93-288 as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, and/or state financial assistance under the California Disaster Assistance Act.

/s/Paul C. Jablonski
Paul C. Jablonski
Chief Executive Officer

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

Attachment: A. CalOES Form 130 Resolution

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

Resolution No. 17-5

Resolution Authorizing the Adoption of the Designation of Applicant's Agent Resolution for Non-State Agencies (CalOES Form 130) which would Authorize the Chief Executive Officer, or Designated Representative, to Execute All Required Documents for the Purpose of Obtaining Certain Federal Financial Assistance Under Public Law 93-288 as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, and/or state financial assistance under the California Disaster Assistance Act.

See attached *Designation of Applicant's Agent Resolution for Non-State Agencies* (CalOES Form 130).

AYES:

NAYS:

ABSENT:

ABSTAINING:

Chairperson
San Diego Metropolitan Transit System

Filed by:

Approved as to form:

Clerk of the Board
San Diego Metropolitan Transit System

Office of the General Counsel
San Diego Metropolitan Transit System

**DESIGNATION OF APPLICANT'S AGENT RESOLUTION
FOR NON-STATE AGENCIES**

BE IT RESOLVED BY THE Board of Directors OF THE San Diego Metropolitan Transit System
(Governing Body) (Name of Applicant)

THAT Chief Executive Officer, OR
(Title of Authorized Agent)

Chief of Staff, OR
(Title of Authorized Agent)

General Counsel
(Title of Authorized Agent)

is hereby authorized to execute for and on behalf of the San Diego Metropolitan Transit System, a public entity
(Name of Applicant)

established under the laws of the State of California, this application and to file it with the California Governor's Office of Emergency Services for the purpose of obtaining certain federal financial assistance under Public Law 93-288 as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, and/or state financial assistance under the California Disaster Assistance Act.

THAT the San Diego Metropolitan Transit System, a public entity established under the laws of the State of California,
(Name of Applicant)

hereby authorizes its agent(s) to provide to the Governor's Office of Emergency Services for all matters pertaining to such state disaster assistance the assurances and agreements required.

Please check the appropriate box below:

☒ This is a universal resolution and is effective for all open and future disasters up to three (3) years following the date of approval below.

☐ This is a disaster specific resolution and is effective for only disaster number(s) _____

Passed and approved this 13th day of April, 2017

Harry Mathis, Chairman, MTS Board of Directors

(Name and Title of Governing Body Representative)

Ron Roberts, Vice Chairman, MTS Board of Directors

(Name and Title of Governing Body Representative)

(Name and Title of Governing Body Representative)

CERTIFICATION

I, Julia Tuer, duly appointed and Clerk of the Board of
(Name) (Title)

San Diego Metropolitan Transit System, do hereby certify that the above is a true and correct copy of a
(Name of Applicant)

Resolution passed and approved by the Board of Directors of the San Diego Metropolitan Transit System
(Governing Body) (Name of Applicant)

on the 13th day of April, 2017.

(Signature)

Clerk of the Board
(Title)

STATE OF CALIFORNIA
GOVERNOR'S OFFICE OF EMERGENCY SERVICES
Cal OES 130 - Instructions

Cal OES Form 130 Instructions

A Designation of Applicant's Agent Resolution for Non-State Agencies is required of all Applicants to be eligible to receive funding. A new resolution must be submitted if a previously submitted Resolution is older than three (3) years from the last date of approval, is invalid or has not been submitted.

When completing the Cal OES Form 130, Applicants should fill in the blanks on page 1. The blanks are to be filled in as follows:

Resolution Section:

Governing Body: This is the group responsible for appointing and approving the Authorized Agents.

Examples include: Board of Directors, City Council, Board of Supervisors, Board of Education, etc.

Name of Applicant: The public entity established under the laws of the State of California. Examples include: School District, Office of Education, City, County or Non-profit agency that has applied for the grant, such as: City of San Diego, Sacramento County, Burbank Unified School District, Napa County Office of Education, University Southern California.

Authorized Agent: These are the individuals that are authorized by the Governing Body to engage with the Federal Emergency Management Agency and the Governor's Office of Emergency Services regarding grants applied for by the Applicant. There are two ways of completing this section:

1. **Titles Only:** If the Governing Body so chooses, the titles of the Authorized Agents would be entered here, not their names. This allows the document to remain valid (for 3 years) if an Authorized Agent leaves the position and is replaced by another individual in the same title. If "Titles Only" is the chosen method, this document must be accompanied by a cover letter naming the Authorized Agents by name and title. This cover letter can be completed by any authorized person within the agency and does not require the Governing Body's signature.
2. **Names and Titles:** If the Governing Body so chooses, the names **and** titles of the Authorized Agents would be listed. A new Cal OES Form 130 will be required if any of the Authorized Agents are replaced, leave the position listed on the document or their title changes.

Governing Body Representative: These are the names and titles of the approving Board Members.

Examples include: Chairman of the Board, Director, Superintendent, etc. The names and titles **cannot** be one of the designated Authorized Agents, and a minimum of two or more approving board members need to be listed.

Certification Section:

Name and Title: This is the individual that was in attendance and recorded the Resolution creation and approval.

Examples include: City Clerk, Secretary to the Board of Directors, County Clerk, etc. This person **cannot** be one of the designated Authorized Agents or Approving Board Member (if a person holds two positions such as City Manager and Secretary to the Board and the City Manager is to be listed as an Authorized Agent, then the same person holding the Secretary position would sign the document as Secretary to the Board (not City Manager) to eliminate "Self Certification."



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

Agenda Item No. 10

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

April 13, 2017

**Draft for
Executive Committee
Review Date: 4/6/17**

SUBJECT:

BATTERIES FOR BUSES – CONTRACT AWARD

RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors:

- 1) Authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. B0665.0-17 with Battery Systems, Inc., and B0667.0-17 with Battery Power, Inc., (in substantially the same format as Attachment A) for batteries for buses for three (3) base years with two (2) 1-year options; and
- 2) Authorize the CEO to exercise option years, in his discretion.

Budget Impact

The total value of these agreements shall be as follows:

B0665.0-17 for Group A	Years 1 – 3	\$110,982.50
	Option years (4 – 5)	\$76,933.50
	Not-to-Exceed-Total	\$187,916.00
B0667.0-17 for Group B	Years 1 – 3	\$241,467.75
	Option years (4 – 5)	\$160,978.50
	Not-to-Exceed-Total	\$402,446.25

The funding for this contract would be allocated under the MTS Bus Maintenance operating budget 311014-545100.



DISCUSSION:

Batteries are an essential item to have on hand for buses, and the current contract for batteries terminates on June 30, 2017. MTS Bus Operations requires a contractor to supply and deliver new, unused batteries to be used by the MTS Fleet Maintenance Department. These batteries are required to properly start and operate MTS buses in regular transit service on a day to day basis. As required by our federal funding and the Buy America Act, the Contractor(s) shall be required to supply only batteries that are manufactured in the United States and meet or exceed all specified conditions.

MTS Policy No. 52 "Procurement of Goods and Services" requires a formal competitive bid process for procurements exceeding \$100,000.

An Invitation for Bids (IFB) to provide batteries for buses was issued on December 15, 2016.

In order to maximize competition, and give small businesses an opportunity to bid on the IFB, MTS divided the IFB into two (2) groups, Group A & B. Bidders had the option of bidding on one or both groups.

The groups are as follows:

- Group A: 12-Volt BCI Group 8D Wet Acid Type Batteries (Used on 2009 and older buses)
- Group B: 12-Volt BCI Group 31 Absorbed Glass Mat Batteries (Used on 2011 and newer buses)

Five bids were received and opened on February 2, 2017.

For Group A, three of the five bidders were determined to be responsive and the other two were nonresponsive. For Group B, two of the five bidders were determined to be responsive and the other three were nonresponsive.

After the evaluation of all bids, Battery Systems, Inc., was found to be the lowest responsive and responsible bidder for Group A and Battery Power, Inc., for Group B.

Based on the comparisons between the Independent Cost Estimate (ICE) and both bidders' amounts, MTS's cost savings are shown below:

GROUP	BIDDER NAME	BID AMOUNT	INDEPENDENT COST ESTIMATE (ICE)	MTS COST SAVINGS
Group A	Battery Systems, Inc.	\$187,916.00	\$217,915.46	\$29,999.46
Group B	Battery Power, Inc.	\$402,446.25	\$560,763.97	\$158,317.72

Therefore, staff recommends that the MTS Board of Directors authorize the CEO to execute MTS Doc. No. B0665.0-17 with Battery Systems, Inc., and B0667.0-17 with Battery Power, Inc., (in substantially the same format as Attachment A) for batteries for

buses for three (3) base years effective July 1, 2017, with two (2) 1-year options, exercisable at MTS's sole discretion.

/s/Paul C. Jablonski
Paul C. Jablonski
Chief Executive Officer

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

Attachments: A. Draft MTS Doc. No. B0665.0-17 with Battery Systems, Inc. (Groups A)
B. Draft MTS Doc. No. B0667.0-17 with Battery Power, Inc. (Group B)

STANDARD PROCUREMENT AGREEMENT

B0665.0-17
CONTRACT NUMBER

DRAFT

FILE NUMBER(S)

THIS AGREEMENT is entered into this ____ day of _____ 2017, 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: Battery Systems, Inc. Address: 12322 Monarch Street

Form of Business: Corporation Garden Grove, CA 92807
(Corporation, partnership, sole proprietor, etc.)

Telephone: 310-667-9320

Authorized person to sign contracts: Chris Tschombor District Manager
Name Title

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

Provide Group A Batteries (12-Volt BCI Group 8D wet acid type), as specified in the Scope of Work (attached as Exhibit A), the Bid (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).

The term of the contract shall be three (3) base years effective July 1, 2017 through June 30, 2020, with two (2) 1-year options effective July 1, 2020 through June 30, 2022, exercisable at MTS' sole discretion, for a total of five (5) years. The total for the base years is \$110,982.50, and option years is \$76,933.50, for a total not to exceed \$187,916.00.

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

AMOUNT ENCUMBERED	BUDGET ITEM	FISCAL YEAR
\$110,982.50	311014-545100	18-20
\$ 76,933.50	311014-545100	21-22

By: _____
Chief Financial Officer Date

STANDARD PROCUREMENT AGREEMENT

B0667.0-17
CONTRACT NUMBER

DRAFT

FILE NUMBER(S)

THIS AGREEMENT is entered into this ____ day of _____ 2017, 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: Battery Power, Inc. Address: 11818 Glen Oaks Boulevard
 Form of Business: Corporation San Fernando, CA 91340
 (Corporation, partnership, sole proprietor, etc.)
 Telephone: 818-365-6455

Authorized person to sign contracts: Steve Argo Manager
 Name Title

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

Provide Group B Batteries (12-Volt BCI Group 31 Absorbed Glass Mat Batteries), as specified in the Scope of Work (attached as Exhibit A), the Bid (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).

The term of the contract shall be three (3) base years effective July 1, 2017 through June 30, 2020, with two (2) 1-year options effective July 1, 2020 through June 30, 2022, exercisable at MTS' sole discretion, for a total of five (5) years. The total for the base years is \$241,467.75, and option years is \$160,978.50, for a total not to exceed \$402,446.25.

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

AMOUNT ENCUMBERED	BUDGET ITEM	FISCAL YEAR
\$241,467.75	311014-545100	18-20
\$160,978.50	311014-545100	21-22

By: _____
Chief Financial Officer Date



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

Agenda Item No. 11

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

April 13, 2017

**Draft for
Executive Committee
Review Date: 4/6/17**

SUBJECT:

AMERICANS WITH DISABILITIES ACT (ADA) PARATRANSIT SERVICE –
CONTRACT AMENDMENT NO. 3

RECOMMENDATION:

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

- 1) Execute Amendment No. 3 to MTS Doc. No. G1205.0-10 (in substantially the same format as Attachment A) with First Transit, Inc. (FTI) to exercise option period 2 (contract years 8 and 9);
- 2) Reallocate \$1,271,139.00 originally encumbered and included under Amendment No. 1 from the Mobile Data Terminal System (MDTS) and OnBoard Vehicle Video Event Recorder (OBVVER) services to the operational budget; and
- 3) Increase the contract expenditure authority by \$7,777,264.86 to support services needed for increased ridership and demands in ADA/paratransit services.

Budget Impact

MTS has determined that \$9,048,403.86 of expenditure authority is required to support an increase in demand for ADA/paratransit services. However, staff has identified \$1,271,139.00 of expenditure authority for the Mobile Data Terminal System (MDTS) and OnBoard Vehicle Video Event Recorders (OBVVER) services, originally approved by the Board under Amendment No. 1, are no longer required under the contract. As such, approval of this contract amendment would reallocate the capacity associated with the aforementioned services totaling \$1,271,139.00 and reducing the requested increase to the FTI contract value from \$9,048,403.86 to \$7,777,264.86.



In total, the contract increase of \$7,777,264.86 would revise the current expenditure authority from \$117,615,433.00 to \$125,392,697.86. The total reallocated projected costs and increase will assist in ensuring that the contract has sufficient expenditure authority through the remainder of the Agreement. All project expenses are funded through the ADA Access operation account number 850012-581100.

	Proposed Contract Increase	Reallocation of \$1,271,139.00	Total New Contract Value
Contract Year 8	\$3,404,828.86	\$572,012.55	\$16,577,013.41
Contract Year 9	\$4,372,436.00	\$699,126.45	\$18,268,943.45
Total	\$7,777,264.86	\$1,271,139.00	\$34,845,956.86

DISCUSSION:

MTS ACCESS is the MTS ADA Paratransit Service Operation that is required to comply with 49CFR, Part 37, Subpart F – Paratransit as a complement to Fixed Route Service. Section 37.121 requires each public entity operating a fixed route system to provide paratransit services to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities. MTS owns the paratransit vehicles and facility, with service operations contracted with FTI.

In July 2010, MTS contracted with FTI to operate ADA paratransit services for a five-year base period with two (2) two-year optional terms (total term of nine years). The total cost of this original agreement was \$106,007,025.00.

In January 2011, MTS purchased and leased two parcels of land in the Kearny Mesa area of San Diego (referred to as Copley Park) for use as the operating base for ADA paratransit service. MTS and FTI collaborated to transfer and begin operations at the new facility in May 2011, which resulted in a reduction of contractual expenses related to the original FTI leased facility in El Cajon. As a result and within the CEO's authority, Amendment No. 1 was executed with FTI, which reduced the overall contract value by \$5,838,476.00, thus reducing original amount of \$106,007,025.00 to \$100,168,549.00 under Amendment No. 1.

Following the execution of Amendment No. 1, MTS experienced increases in demand for paratransit service which necessitated a second Amendment to the FTI Agreement. As such, in December 2014, staff recommended and the Board authorized the CEO's execution of Amendment No. 2, adding an additional \$17,446,884.00 expenditure authority to FTI's contract. This action effectively increased the total contract value from \$100,168,549.00 to \$117,615,433.00 in order to support the demands in paratransit/ADA ridership and corresponding service needs for the five (5) base years and the first option period (option year 1 and 2).

Nonetheless, increases and demands for paratransit service have continued to date and are projected to exceed the authorized expenditure authority under Amendment No. 2. As a result of the continued increases and patron demand for paratransit/ADA services, additional expenditure authority, in an amount of \$9,048,403.86, is required to support

the increases in demand and associated service costs for the remaining second option period (Fiscal Years 18 and 19).

The trend of surging year-over-year increases in paratransit service demands appears to be leveling off. Increases for Fiscal Year 2017 have been trending down from the peak in Fiscal Year 2015, and staff is projecting increases for Fiscal Year 2018 and 2019 at 7% and 5%.

	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19
% increase	1.3%	-0.9%	6.8%	10.1%	13.8%	9.9%	7%	7%	5%

Staff is continuing to evaluate the current ADA paratransit service model to identify potential cost control measures that do not degrade the level of service. The newly implemented in-person eligibility evaluation is showing positive results in confirming that eligibility is granted to individuals who meet the federal standards. Staff is currently exploring options for allowing some ADA paratransit trips to be completed by taxicabs or other service providers.

Staff previously identified two cost avoidance opportunities in regard to Mobile Data Terminal System (MDTS) and OnBoard Vehicle Video Event Recorders (OBVVER) services as identified below:

- The MDTS project was awarded and completed outside of the FTI contract as MTS acquired and utilized a
- “New Freedom” grant for said services in lieu of FTI’s approved funding capacity, resulting in cost avoidance of \$889,059.00 under the FTI contract.
- When the OBVVER project was started in FY16, additional funding was identified under Capital Improvement Project (CIP) No. 11343 which could be utilized to support OBVVER related services. As such, MTS directly performed this work through its system-wide OBVVER capital project, further avoiding associated costs under the FTI contract, in an amount of \$382,080.00.

As a result, \$1,271,139.00 authorized by the Board under FTI’s contract Amendment No. 2 for MDTS and OBVVER services can be reallocated to FTI’s operating contract capacity, thus reducing the requested expenditure authority of Amendment No. 3 from \$9,048,403.86 to \$7,777,264.86.

Staff recommends that the Board of Directors authorize the CEO to:

- 1) Execute Amendment No. 3 to MTS Doc. No. G1205.0-10 (in substantially the same format as Attachment A) with First Transit, Inc. (FTI) to exercise option period 2 (contract years 8 and 9);
- 2) Reallocate \$1,271,139.00 originally encumbered and included under Amendment No. 1 from the Mobile Data Terminal System (MDTS) and OnBoard Vehicle Video Event Recorder (OBVVER) services to the operational budget; and

- 3) Increase the contract expenditure authority by \$7,777,264.86 to support services needed for increased ridership and demands in ADA/paratransit services.

/s/Paul C. Jablonski
Paul C. Jablonski
Chief Executive Officer

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

Attachment: A. Draft Amendment No. 3 - MTS Doc. No. G1205.3-10.

April 13, 2017

MTS Doc. No. G1205.3-10

First Transit, Inc.
 Nick Promponas, Senior V.P.
 7581 Willow Drive, Suite 103
 Tempe, AZ 85283

Subject: AMENDMENT NO. 3 TO MTS DOC. NO. G1205.0-10 ADA PARATRANSIT SERVICES

Mr. Promponas:

MTS amends the Agreement G1205.0-10 to incorporate the following changes:

Period of Performance:

This is your formal notification that MTS has elected to exercise the second option period (contract years 8 and 9) under the contract award. The period of performance completion date is revised from June 30, 2017 to June 30, 2019.

Scope of Work:

Due to the increased demand of MTS Paratransit services, MTS has added additional funding to adjust the current estimated expenses through the contracts performance period ending June 30, 2019. Revised estimated revenue hours for the second option period (contract years 8 and 9) are as follows:

Performance Period	Original Hourly Estimate	Revised Hourly Estimate
Contract Year 8 (option year 3)	183,060	286,721
Contract Year 9 (option year 4)	186,722	290,456

Contract Value:

As a result of this Amendment the contract value has increased by \$7,777,263.86 from a not to exceed value of \$117,615,433.00 to \$125,392,697.86 for the base contract and all option years. The contract value shall not be exceeded without prior written approval from MTS.

Additional Funding for Contract Year 8	\$3,404,828.86
Additional Funding for Contract Year 9	\$4,372,436.00
Total Increase to Current Contract Value	\$7,777,264.86

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

Sincerely,

Agreed:

Paul C. Jablonski
Chief Executive Officer

Nick Promponas,
Senior Vice President

Date: _____

DRAFT



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

Agenda Item No. 12

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

April 13, 2017

**Draft for
Executive Committee
Review Date: 4/6/17**

SUBJECT:

FEDERAL LEGISLATIVE REPRESENTATION – SANDAG PARTIAL ASSIGNMENT

RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to execute the Partial Assignment 1 (Attachment A) of Agreement for San Diego Association of Governments (SANDAG) Federal Representation Services for a fifty (50) month period effective May 1, 2017.

Budget Impact

The total estimated cost of this agreement would not exceed \$212,000, which is funded under 902010-571150. MTS's monthly cost for services from May 1, 2017 through June 30, 2019 will be \$4,000, a reduction of \$500 from current costs for federal representation services. The monthly cost will increase to \$4,500 from July 1, 2019 through June 30, 2021.

5/1/17 through 6/30/19 -- \$104,000
7/1/19 through 6/30/21 -- \$108,000
Total = **\$212,000**

DISCUSSION:

As part of the consolidation of the region's transportation agencies, SANDAG initiated a joint procurement for federal legislative services in 2005. The purpose of the joint procurement was to enhance the federal advocacy efforts of North County Transit District (NCTD), SANDAG, and MTS. The MTS Board approved funding for a contract with the chosen firm, Blank Rome Government Relations, LLP, on October 27, 2005.

The original contract with Blank Rome included a one-year base contract with four option years, all of which were exercised. Subsequently, SANDAG, with the concurrence of MTS



and NCTD, amended the contract to add two more years to the contract. In 2012, SANDAG amended the contract to extend it by 30 months and assigned the remainder of the contract to Peyser Associates, LLC (Peyser) when Peter Peyser, the principal on SANDAG's account since 2005, left Blank Rome to start his own firm. In 2015, SANDAG again contracted with Peyser for 24 months in order to maintain continuity as they worked through the New Starts process for the MidCoast Trolley Extension. At that time, NCTD declined to participate in the contract, and SANDAG assigned MTS a \$108,000 portion of its interest in its contract with Peyser.

Peyser has provided assistance in a number of areas, including reauthorization of the Surface Transportation Act, the region's navigation of the New Starts process for its proposed extension of the Trolley, the award of a Full Funding Grant Agreement (FFGA) in September 2016, renewal of alternative fuel tax credits, and various regulatory matters.

SANDAG has retained Peyser for an additional 50-month period, and has offered to assign 36% of the contract to MTS. The federal New Starts process is complex and lengthy, and local agencies benefit from having strong representation in Washington to advocate on their behalf. The FFGA requires continuous coordination with the Federal Transit Administration. In addition, Peyser is assisting SANDAG in its effort to secure innovative financing through the Transportation Infrastructure Finance and Innovation Act (TIFIA) program. MTS staff agrees that retention of Peyser is in the best interest of advancing the Mid-Coast Trolley Extension Project as well as furthering MTS's own legislative program. Retention of Peyser Associates will provide MTS with strong advocacy support in Washington at a favorable fixed price.

/s/Paul C. Jablonski
Paul C. Jablonski
Chief Executive Officer

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

Attachment: A. Partial Assignment 1, MTS Doc. No.G0980.7-06 (Ref: SANDAG Contract No. 5004975)

**PARTIAL ASSIGNMENT 1 OF AGREEMENT FOR
SAN DIEGO ASSOCIATION OF GOVERNMENTS
FEDERAL REPRESENTATION SERVICES**

**Peyser Associates, LLC
Agreement No. 5004975**

THIS PARTIAL ASSIGNMENT 1 AND ASSUMPTION OF AGREEMENT FOR Federal Representation Services (herein after "Assignment") is made and entered into, between the San Diego Association of Governments (SANDAG), a public agency (hereinafter "Assignor"), Metropolitan Transit System (MTS), a public agency (hereinafter "Assignee"), and Peyser Associates, LLC (hereinafter Consultant).

WHEREAS, Assignor entered into a Federal Representation Services Agreement with Consultant with an effective date of May 1, 2017, SANDAG Agreement No. 5004975 ("Agreement") a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

WHEREAS, when Assignor procured the Federal Representation Services that are the subject of this Assignment, the Agreement included language permitting assignment to Assignee of a portion of the Agreement;

NOW THEREFORE, the parties agree as follows:

1. Assignor hereby assigns, transfers, and sets over unto Assignee a \$212,000 portion of Assignor's interest in the Agreement, which shall include performing all aspects of the Scope of Work of the Agreement that are relevant to MTS according to the MTS Fee Schedule attached hereto as Exhibit "B" and incorporated herein by reference.
2. Assignee hereby: (i) accepts the partial assignment of Assignor's interest in the Agreement as described above; (ii) assumes the relevant portion of Assignor's obligations under the assigned portion of the Agreement, and (iii) agrees to fully and faithfully perform each and every term and condition of Assignor under the assigned portion of the Agreement.
3. Should any suit be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions of this Assignment, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney fees and costs of suit.
4. This Assignment may be executed and delivered by facsimile signature and a facsimile signature shall be treated as an original. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Assignment.

THE EFFECTIVE DATE OF THIS ASSIGNMENT IS May 1, 2017.

IN WITNESS WHEREOF, Assignor, Assignee, and Consultant have caused this Assignment to be executed and delivered as of the date of the Contractors signature.

Assignor:

San Diego Association of Governments

Assignee:

Metropolitan Transit System

GARY L. GALLEGOS
Executive Director or designee

PAUL C. JABLONSKI
Chief Executive Officer

Approved as to form:

Approved as to form:

Office of the General Counsel

Office of the General Counsel

Contractor hereby consents to the assignment from SANDAG to MTS as described herein and releases SANDAG from any and all liability associated with performing any work for MTS as a result of this Assignment. Consent granted on this _____ of _____ 2017.

Peyser Associates, LLC

PETER A. PEYSER
Principal

EXHIBIT A
SANDAG AGREEMENT NO. 5004975 WITH PEYSER ASSOCIATES, LLC

See next pages.



STANDARD SERVICES AGREEMENT

 5004975
 CONTRACT NO.

 7300400
 PROJECT
 NUMBER(S)

THIS AGREEMENT is effective as of this 1 of May 2017, in the State of California by and between San Diego Association of Governments (SANDAG), and the following contractor, hereinafter referred to as "Consultant." This Agreement will terminate on June 30, 2021 unless an amendment is executed by the parties.

Name: Peyser Associates, LLC Address: 140 West 40th Street
Fifth Floor
 Form of Business: Limited Liability Corporation City: New York
 State: NY ZIP: 10018
 Tax ID Number: 61-1682054 Email: peter@peyser.com
 Phone: (646) 688-2720
 Fax: (202) 558-2145 RFP DBE Goal% NA
 Is Consultant a DBE? ☐ YES ☒ NO

Authorized person to sign contracts: Peter A. Peyser Principal
 Name Title

The attached Standard Conditions are part of this Agreement. The Consultant agrees to furnish to SANDAG services and materials, summarized as follows (the "Project"):

Federal Representation Services

THE TOTAL AGREEMENT VALUE SHALL NOT EXCEED \$587,000 U.S. DOLLARS UNLESS AMENDED.

SAN DIEGO ASSOCIATION OF
GOVERNMENTS

By: [Signature]
Executive Director (or designee)

Approved as to form:

By: [Signature]
Office of General Counsel

CONTRACTOR AUTHORIZATION

Firm: Peyser Associates

By: [Signature]
Signature

Title: Principal

AMOUNT ENCUMBERED
\$ 587,000

BUDGET ITEM
7300400

FISCAL YEAR(S)
FY 17 -21

By: Director of Finance

Date

PART 1 - *DEFINITIONS*

A&E: Architecture and Engineering.

BAFO: Best and Final Offer, which can be requested from one or more proposers by SANDAG during the negotiations process for a contract document.

Bench: Small Business and/or Disadvantaged Business Enterprises that have provided SANDAG with their rates and requested that prime contractors be notified of their interest in working as subcontractors on SANDAG projects in stated areas of specific expertise.

Business Day: Monday through Friday except for the following holidays as they are observed per the California Government Code: New Year's Day, Martin Luther King Day, Presidents' Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and the day after, and Christmas Day.

Caltrans: The California Department of Transportation.

Contractor or Consultant: Interchangeable terms that when started with an uppercase "C" refer to the prime consultant or prime contractor.

CFR: Code of Federal Regulations.

CGL: Commercial General Liability.

CIS: Compliance Information Systems.

CM: Construction Management.

COI: Certificate of Insurance.

CPR: Certified Payroll Records.

CUCP: California Unified Certification Program; a State-run program that certifies firms as DBEs, eliminating the need for firms to obtain certifications from multiple agencies.

DBE: Disadvantaged Business Enterprise; a for-profit small business concern owned and controlled by a socially and economically disadvantaged person as defined in 49 CFR 26.5 and as certified by the CUCP.

DGS: Department of General Services

DIR: The State of California's Department of Industrial Relations

DISCO: Diversity in Small Contractor Opportunities

DOL: Department of Labor

DOT: The federal Department of Transportation.

DVBE: Disabled Veteran Business Enterprise

ECI: Employment Cost Index

EEO: Equal Employment Opportunity

Engineer: The person designated by SANDAG to have responsibility for planning and supervising all technical aspects of the work under this Agreement, including development of specifications, acceptance of goods, and approval of payment. Notice to Proceed: a

document from SANDAG instructing a Contractor that the Agreement has been executed and to commence delivery of the goods and services to be provided.

EPA: Environmental Protection Agency.

FPR: Final Proposal Revisions.

FHWA: Federal Highway Administration.

FRA: Federal Railroad Administration.

FTA: Federal Transit Administration.

FUR: Final Utilization Report – Utilization of All Subconsultants/Subcontractors, Underutilized/Disadvantaged Business Enterprises and Small Businesses

GFE: Good Faith Effort - the effort that must be made by a Proposer to utilize a sufficient number of DBEs. GFE documentation must be submitted by a Proposer when it is unable to meet the DBE goal on federally-funded work.

LCMS: Labor Compliance Monitoring System.

MTS: Metropolitan Transit System.

NAICS: North American Industry Classification.

NCTD: North County Transit District.

NEPA: National Environmental Policy Act.

Notice to Proceed: A document from SANDAG instructing a Contractor that the Agreement has been executed and that work under the Agreement is to commence

PCI: Personal Credit Information.

PII: Personally Identifiable Information.

Project Manager: The individual identified by SANDAG as SANDAG's primary contact for the receipt and management of the goods and services required under the Agreement.

Repair Work: Tasks required to return a facility or infrastructure to proper operating condition.

SANDAG: San Diego Association of Governments.

SAM: System for Award Management.

SB: A Small Business or Small Business Enterprise as defined in 13 CFR 121.

SIP: State Implementation Plan.

Subcontractor or Subconsultant: Interchangeable terms that refer to the firms contracted by the prime consultant to perform work pursuant to the Agreement.

Task Order: A contract document from SANDAG authorizing Contractor to provide goods and/or services that is issued under the terms and conditions of an established Agreement.

U.S.C.: United States Code

PART 2 - *STANDARD SERVICES AGREEMENT*

I. AUTHORIZATION TO PROCEED**A. Notice to Proceed**

Specific authorization to proceed with all or a portion of the work described in the Scope of Work (an Exhibit to the Standard Services Agreement) shall be granted in writing by SANDAG via or a Notice to Proceed. Consultant shall not proceed with the work unless it is authorized. No expenditures are authorized on a Project, and work shall not commence, until a Notice to Proceed for those tasks has been executed by SANDAG.

B. Performance Period

1. This Agreement shall go into effect on the date shown on the first page of the Agreement, contingent upon approval by SANDAG, and Consultant shall commence work after notification to proceed by SANDAG. The Agreement shall end on the date shown on the first page of the Agreement, unless extended by Agreement amendment.
2. Consultant is advised that any recommendation for Agreement award is not binding on SANDAG until the Agreement is fully executed and approved by SANDAG. Any Agreement amendment issued under this Agreement also is of no force or effect until returned to SANDAG and signed by an authorized representative of SANDAG.

II. CONSIDERATION**A. Compensation**

1. SANDAG agrees to pay invoices within 30 days after receipt of invoice or approval of all goods or services, whichever occurs last, and payment shall be deemed made upon mailing by SANDAG.
2. Whether or not a DBE goal is set for the procurement or a DBE commitment is made for the Agreement, Consultant shall submit a document entitled "Final Report – Utilization of All Subconsultants, Underutilized/Disadvantaged Business Enterprises and Small Businesses" ("the FUR") within 90 days after the date of completion of the Scope of Work for the Agreement. SANDAG is required to track use of DBE and SB firms on procurements, whether or not federal funding is used.
3. The Consultant agrees to complete, to the full satisfaction of SANDAG, all of the services described on the Project Schedule set forth in the attached Agreement Exhibit. Consultant will be compensated for hours worked at the hourly rates specified in the attached Fee Schedule (an Exhibit to the Standard Services Agreement), up to the maximum amount of the Agreement. The Maximum Amount of this Agreement, shall be \$587,000, unless a written amendment is executed by SANDAG. It is understood and agreed that the actual amount of work requested by SANDAG may be less than the Maximum Amount. There is no guarantee, either expressed or implied, as to the actual dollar amount that will be authorized under this Agreement. The specified hourly rates must include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee, unless otherwise specified in the Fee Schedule.

B. Travel Reimbursement

Transportation and subsistence costs to be reimbursed shall be the actual costs incurred, but shall not exceed the rates stipulated in the Caltrans Travel and Expense Guide for Non-Represented Employees at: www.dot.ca.gov/hq/asc/travel/ch12.htm.

C. Limitations

Premium time or overtime is not allowed without the express written approval of SANDAG. If Consultant uses staff that are on the payroll of a temporary agency, whether such staff are treated by Consultant as temporary employees or subconsultants, SANDAG shall not be charged more than the amount invoiced by the temporary firm or subconsultant to Consultant unless the arrangement is fully disclosed to SANDAG and expressly agreed to in this Agreement or an executed amendment.

D. Promotions

Any promotions of Consultant or subconsultant staff from one contract classification to another must be submitted to SANDAG in advance of invoicing SANDAG for such promotion by written request via a PRF with a copy of the letter from the Consultant firm to the affected Consultant staff person announcing the promotion. Any such promotion shall be subject to SANDAG approval based on the determined value of the employee to SANDAG's projects. Merit increase requests will not be considered.

III. SUBCONTRACTOR REIMBURSEMENT AND PAYMENT**A. Allowed Costs**

In determining allowable incurred subcontractor costs that are eligible for reimbursement, in addition to reimbursement for actual costs that are incurred by reason of payment, SANDAG will allow subcontractor costs that are treated by the Consultant as accrued due to such costs having been billed to the Consultant and recognized by the Consultant as valid, undisputed, due, and payable.

B. Time for Payment

By submitting accrued but unpaid subcontractor costs for reimbursement, Consultant agrees that, within ten days of receipt of reimbursement, the full amount submitted as a reimbursable accrued subcontractor cost shall be paid to the subcontractor. All payments hereunder shall be in US dollars and made upon mailing by SANDAG.

C. Payment in the Event of Non-Completion

If Consultant fails to satisfactorily complete a deliverable or portion thereof according to the schedule set forth in the Agreement, no payment will be made until the relevant deliverable or portion thereof has been satisfactorily completed or the parties have agreed to amend the scope of work.

D. Change of Address

Payments shall be made to the address or account specified in the Standard Services Agreement or such other address or account as is specified by Consultant in writing from time to time, provided that Consultant shall give SANDAG at least 90 days' prior notice of any account, address or other change in payment instructions. SANDAG will not be liable for any late or misdirected payment caused by Consultant's failure to provide timely notice of any such change.

IV. INVOICE REQUIREMENTS

A. Information Required

Consultant shall submit invoices that reference the Agreement number, and Project title. Invoices shall be submitted no later than 45 calendar days after completion of each billing period or upon completion of the Agreement.

B. Final Invoice

Upon completion of all deliverables and work tasks to the satisfaction of SANDAG, submit a final invoice showing the cumulative costs incurred by Consultant, not to exceed maximum amount of the Agreement. Final payment of any retained amounts will be made following Consultant's submittal of all required documentation and completion of the Project, including the FUR. Notwithstanding the foregoing, all payments are subject to the conditions set forth elsewhere in this Agreement or which are otherwise required by law. Payments shall be subject to review by SANDAG for compliance with the requirements of this Agreement, and payment may be withheld if Consultant is not in compliance with the Agreement. Payments shall be subject to an audit upon completion of services. No other compensation will be paid except for work done under an amended agreement approved pursuant to the Section in this Agreement entitled, "Changes in Work."

V. COMPLIANCE INFORMATION SYSTEM

Consultant and all subconsultants shall report payment details using the SANDAG web-based CIS by the 15th of each month. CIS allows consultants to manage their own records, maintain accurate contract information, and report payment details online.

CIS is mandatory for Consultant and subcontractors to use unless SANDAG instructs otherwise. A Consultant account will be created after award, which will allow Consultant to enter data into CIS via an internet browser. After award, Consultant will receive instructions on how to set up their account and enter required subconsultant data. Consultant must require each of its subconsultants to enter required payment information into CIS. Failure of Consultant or its subconsultants to enter required information on a timely basis will result in delay of payment by SANDAG.

VI. INDEPENDENT CONTRACTOR

A. Not a SANDAG Employee

Consultant hereby declares that it is engaged in an independent business and agrees that, in the performance of this Agreement, it shall act as an independent contractor and not as an employee of SANDAG. Consultant has and hereby retains full control of all the employment, compensation, and discharge of all employees of Consultant assisting in its performance hereunder. Consultant shall be fully responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding tax, and all other laws and regulations governing such matters. Consultant shall be responsible for its own acts and those of its agents and employees during the term of this Agreement. Except as otherwise specifically provided, as an independent contractor, Consultant will be solely responsible for determining means and methods for performing the services described in the Scope of Work.

B. Withholding and Employment Taxes

The payments made to Consultant pursuant to this Agreement shall be the full and complete compensation to which Consultant is entitled. SANDAG shall not make any federal or state tax withholdings on behalf of Consultant. SANDAG shall not be required to pay any workers' compensation insurance on behalf of Consultant. Consultant agrees to indemnify

SANDAG for any tax, retirement contribution, social security, overtime payment, or workers' compensation payment which SANDAG may be required to make on behalf of Consultant or any employee of Consultant for work done under this Agreement.

C. No Agency

Except as SANDAG may specify in writing in this Agreement or elsewhere, Consultant shall have no authority, express or implied, to act on behalf of SANDAG in any capacity whatsoever, as an agent or otherwise, or to bind SANDAG or its members, agents, or employees to any obligation whatsoever.

VII. INSURANCE

Consultant shall procure and maintain for the duration of this contract, insurance against claims for injuries to persons, or damages to property, which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees.

A. Acceptability of Insurers

All required insurance policies shall be issued by companies who hold a current policyholder's alphabetic and financial-size category rating of not less than A: VII, in accordance with A.M. Best. Carriers must be licensed to do business in California and maintain an agent for service of process within California. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

B. Pass-Through Costs to SANDAG

To the extent Consultant elects to pass through insurance premium costs to SANDAG, Consultant shall not charge SANDAG for any insurance costs that are not directly attributable to the Project. Consultant shall not pass through insurance costs to SANDAG that are attributable to, or overlap with, work performed for Consultant's other projects or clients.

C. Notice of Termination, Cancellation, or Change

Should any of the insurance policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions and sent to SANDAG. Consultant shall notify SANDAG immediately following Consultant's first notice or awareness of any proposed or actual termination, cancellation, or change in its insurance coverage. Notice of cancellation sent by registered mail, postage prepaid, with a return receipt of addresses requested shall be sufficient notice.

D. Failure to Provide Insurance

Failure to provide and continue in force any insurance as described in this Insurance Section shall be deemed a material breach of this Agreement, which SANDAG may deem to constitute cause for immediate termination. SANDAG reserves the right to withhold payments to Consultant in the event of material noncompliance with the insurance requirements set forth in the Agreement.

E. Insurance Certificate Submittal

SANDAG will use myCOI to track and verify insurance coverage. On SANDAG's receipt of the executed Agreement, Consultant will receive an email from Certificaterequest@mycoisolution.com Follow the instructions contained in the email and complete the online registration. Upon completion of registration, myCOI will request proof

of insurance directly from Consultant's insurance agents. Consultant shall not commence work and no payments shall be made to Consultant, unless Consultant is registered with myCOI and compliant COIs have been received. Consultant shall cause its insurance agents to comply with requests for updated information from myCOI on no less than an annual basis. Consultant is responsible for ensuring that its agents send SANDAG updated certificates of insurance throughout the term of the Agreement via myCOI.

Consultant shall include the contract number on all insurance-related correspondence submitted to myCOI (i.e., the insurance certificate itself).

F. No Limitation on Liabilities and Obligations

The requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by SANDAG, or their insurance Consultants are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Consultant pursuant to this Agreement, including, but not limited to, the provisions concerning indemnification.

G. Coverage for Subcontractors

Insurance required of the Consultant shall be provided by or in behalf of all subcontractors to cover their services performed under this Agreement. Consultant shall not require subcontractors to maintain insurance amounts that are disproportionate to the scope and dollar value of work subcontracted. Consultant shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors.

H. No Waiver of Requirements

Acceptance by SANDAG of a certificate or endorsement that varies from the requirements in this section shall not constitute a waiver by SANDAG of strict compliance with the provisions herein.

I. Minimum Policy Limits Required

Consultant shall maintain limits no less than the following coverages.

1. CGL

Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including premises operations, products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability

ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation and Employers' Liability

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.

Not required for sole proprietors or companies with no employees.

4. Professional Liability (Errors and Omissions)

Insurance appropriate to the Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

J. Endorsements

Consultant shall furnish SANDAG with certificates of insurance and any required endorsements effecting coverage required by this section. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Endorsements must specifically state that they modify the policy language. All certificates and endorsements are to be received and approved by SANDAG before work commences.

1. The Commercial General Liability policy shall contain, or be endorsed to contain, the following provisions:
 - a. SANDAG, its directors, officers, agents and employees are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance, or as a separate owner's policy. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).
 - b. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects SANDAG, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
2. The Automobile Liability policy shall contain, or be endorsed to contain, the following provisions:
 - a. SANDAG, its directors, officers, agents and employees are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Consultant.
 - b. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects SANDAG, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by SANDAG, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. The Workers' Compensation and Employers' Liability policy or policies shall contain, or be endorsed to contain, the following provisions:

Consultant hereby grants to SANDAG a waiver of any right to subrogation that any insurer of Consultant may acquire against SANDAG by virtue of the payment of any loss under such insurance. Consultant agrees to obtain an endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SANDAG has received a waiver of subrogation endorsement from the insurer.

K. Deductibles or Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by SANDAG. At the option of SANDAG, either: Consultant shall have its insurer reduce or eliminate such deductibles or self-insured retentions as respects SANDAG, its officers, officials, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to SANDAG guaranteeing payment of losses and related investigations, claim administration and defense expenses.

L. Claims-Made Coverages

If any of Consultant's insurance coverages are written on a claims-made form:

1. The retroactive date must be shown, and must be before the date of the Agreement or the beginning of work performed pursuant to the Agreement.
2. Insurance must be maintained and evidence of insurance must be provided for at least seven years after completion of work under the Agreement.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement effective date, the Consultant must purchase an extended reporting coverage for a minimum of seven years after completion of work under the Agreement.
4. A copy of the claims reporting requirements must be submitted to SANDAG for review.

VIII. ADDITIONAL INSURANCE REQUIREMENTS**A. Other Entities**

Consultant shall also issue an endorsement that names the following additional entity or entities as additional insureds on Consultant's general and automobile liability policies upon request by SANDAG with regard to the entire Agreement as may be specified by SANDAG:

- MTS, its Board of Directors, officers, employees, and agents

IX. TERMINATION OF AGREEMENT**A. General**

1. SANDAG reserves the right to terminate this Agreement upon 30 calendar days' written notice to Consultant with the reasons for termination stated in the notice.
2. SANDAG may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, SANDAG may proceed with the work in any manner deemed proper by SANDAG. If SANDAG terminates this Agreement with Consultant, SANDAG shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to SANDAG exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.
3. The maximum amount for which SANDAG shall be liable if this Agreement is terminated is the capacity amount remaining on the Agreement as of the date of the notice of termination.

4. Consultant shall immediately notify subcontractors and service or supply vendors providing services under this Agreement of the early termination date of this Agreement. Failure to notify any subcontractor and service or supply vendor shall result in the Consultant being liable for the termination costs incurred by any subcontractor and service or supply vendor for work performed under this Agreement, except those specifically agreed to in the termination notice to the Consultant.

B. Termination for Cause

1. In the event SANDAG determines sufficient cause exists, SANDAG will send a notice to cure to the address set forth in this Agreement for Consultant. If Consultant fails to satisfactorily cure the problems within 10 days of receiving written notice from SANDAG specifying the nature of the cause, SANDAG may immediately cancel and/or terminate this Agreement and every right of the Consultant and any person claiming any right by or through the Consultant under this Agreement.
2. Termination for cause also shall be merited in the event of a material breach of this Agreement. Events of material breach shall include, but not be limited to, failure to adhere to the Project time schedule, failure to maintain required insurance; bankruptcy; failure to pay any subcontractor or other company or person retained by Consultant in connection with this Agreement; documentation or lack thereof establishing that Consultant is failing to meet its Disadvantaged Business Enterprise (DBE) commitment; Consultant refuses or negligently fails, except in cases for which extension of time is provided by SANDAG, to supply sufficient properly skilled staff or proper materials to perform as required by this Agreement; or Consultant negligently or intentionally disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction.
3. In the event of such termination, SANDAG may proceed with the work in any manner deemed proper by SANDAG. All actual and reasonable costs to SANDAG in the event of termination for cause ("termination costs") shall be deducted from any sum due the Consultant under this Agreement and the balance, if any, shall be paid to the Consultant upon demand. Termination costs include, but are not limited to, the cost of soliciting a new contractor and any increase in the fees that must be paid to the new contractor.

C. Termination for Convenience

1. General Conditions

SANDAG may terminate this Agreement, in whole or in part, at any time by written notice to the Consultant when it is in the best interest of SANDAG. Consultant shall be paid its costs, including contract closeout costs and profit on work performed up to the time of termination if it is terminating for convenience. Consultant shall promptly submit its termination claim to SANDAG to be paid to Consultant. If Consultant has any property in its possession belonging to SANDAG, Consultant will account for the same and dispose of it in the manner that SANDAG directs. No billable costs will be considered payable after notice of termination is given to Consultant.

D. Consultant's Deliverables under Early Termination

Consultant shall provide all Project-related documents and correspondence required as part of the Scope of Work/Deliverables. Project-related documents shall be described, listed, and identified as part of the final revised cost proposal. Project-related documents shall include

all documents that are in complete and final form and which have been accepted as complete by SANDAG, or documents in draft and/or incomplete form for those deliverables which are in progress by the Consultant and have not been accepted as complete. All documents must be received and accepted before the settlement cost invoice is paid.

E. Invoice Submittal under Early Termination

Separate final invoices for Project-related costs and termination settlement costs, if applicable, shall be submitted no later than 30 calendar days after the date Consultant is notified of acceptance of the final cost proposals by the Executive Director. The invoice for termination settlement costs shall include the following, to the extent they are applicable: Lease termination costs for equipment and facilities approved under the terms of the contract; equipment salvage costs for equipment valued over \$3,000; rental costs for unexpired leases, less the residual value of the lease; cost of alterations and reasonable restorations required by the lease; settlement expenses, e.g., accounting, legal, clerical, storage, transportation, protection, and disposition of property acquired or produced under the contract, indirect costs, such as payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs related to wages and salaries, incurred as settlement costs.

F. Reimbursement under Early Termination

Termination settlement expenses will be reimbursed in accordance with 48 CFR 31, Federal Acquisition Regulations System, except on negotiated contracts procured under a Request for Proposals, which shall instead be governed by 48 CFR 15.

G. Consultant Claims under Early Termination

Consultant agrees to release SANDAG from any and all further claims for services performed arising out of this Agreement or its early termination, upon acceptance by Consultant of payment in the total amount agreed upon as full and final payment of its costs from performance and early termination of this Agreement.

X. INDEMNIFICATION

A. General

With regard to the Consultant's performance in connection with or incidental to this Agreement, the Consultant agrees to defend, indemnify, protect and hold SANDAG and its directors, officers, and employees as well as any additional insured identified in the Special Provisions for Service and/or Equipment Agreements (if attached), harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the Consultant's or its subcontractors' employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the negligent, reckless, or willful acts or omissions of the Consultant and its subcontractors and their agents, officers, or employees, in performing the work or services herein, or the breach of any representation, warranty, covenant or obligation of Contractor and/or its subcontractors associated with the Project under this Agreement, and all expenses of investigating and defending against same, including attorney's fees and costs; provided, however, that the Consultant's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of SANDAG, its directors, agents, officers, or employees.

B. Retention of Funds

In addition to any other remedy authorized by law, so much of the money due Consultant under this Agreement as shall be considered necessary by SANDAG may be retained until disposition has been made of any claim for damages.

C. Survival of Indemnification

This Section of the Agreement shall apply to all liability, regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant. This Section of the Agreement shall survive in perpetuity.

XI. ASSIGNMENT AND SUBCONTRACTING**A. Subcontracting**

1. Nothing contained in this Agreement or otherwise, shall create any contractual relation between SANDAG and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to SANDAG for the acts and omissions of its subconsultant and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant is an independent obligation from SANDAG'S obligation to make payments to the Consultant.
2. Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by SANDAG's Project Manager.
3. Consultant shall pay its subconsultant within ten calendar days from receipt of each payment made to Consultant by SANDAG.
4. Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultant.
5. Any substitution of subconsultant must be approved in writing by SANDAG's Project Manager prior to the start of work by the subconsultant.

B. SANDAG Consent Required

Consultant shall not assign, sublet, or transfer (whether by assignment or novation) this Agreement, or any rights under or interest in this Agreement, without the written consent of SANDAG, which may be withheld for any reason, provided however, that claims for money due to Consultant from SANDAG under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished promptly to SANDAG in writing.

C. Responsibility for Subcontractors

If Consultant subcontracts any of the work to be performed under this Agreement, Consultant shall be as fully responsible to SANDAG for the acts, errors, or omissions of Consultant's subcontractor and of the persons employed by the subcontractor as Consultant is for the acts and omissions of persons directly employed by Consultant.

D. Assignment of Deliverables

All or part of the specified deliverables or Scope of Work in this Agreement may be assigned to the entities affected by California Senate Bill 1703 (Peace, 2002), including MTS and NCTD. When services included in the Scope of Work of the Agreement are required by one of the transportation agencies in the region affected by Senate Bill 1703, and SANDAG determines it has excess capacity, the Agreement could be assigned in whole or in part to

that agency upon mutual written agreement between SANDAG, the respective parties (assignee), and Consultant, which will result in reduced capacity under the procurement for SANDAG use. Notwithstanding the foregoing, SANDAG contract documents are public records and thus are available to persons requesting copies. Should another agency elect to utilize the terms and conditions negotiated in SANDAG contract documents for their own procurement needs that will not constitute SANDAG approval of assignment of contract value. SANDAG shall not be a direct or indirect party to any resulting transaction, contract, agreement between the Consultant and any other agencies that may reference SANDAG contract documents and assumes no responsibility or liability for any contractual and/or financial obligations of such other public agencies, nor any other liability whatsoever that may result from the use of the terms and conditions in SANDAG contract documents in third party agreements.

XII. STANDARD OF CARE

A. Service Performance

Consultant's services shall be performed in accordance with generally-accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. All services shall be performed to the reasonable satisfaction of SANDAG. Errors or omissions identified in the Consultant's work product and deemed to be negligent shall be corrected upon written notification by the Project Manager, and no additional payment shall be made for said corrections. Corrections of errors or omissions to the Consultant's work product shall not limit enforcement of any other provision of this Agreement.

B. No Waiver

Neither the SANDAG review, approval, or acceptance of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance thereof; and the Consultant shall be, and remain liable to, SANDAG in accordance with applicable law for all damages to SANDAG by Consultant's errors or omissions deemed to be negligent performance of any of the services furnished under this Agreement.

C. Inaccuracy of Data

Consultant acknowledges and understands that the data and/or information it collects and/or provides to SANDAG will be relied upon by SANDAG and other persons or entities that are now or will in the future be under contract with SANDAG. Should information derived and provided by Consultant be inaccurate and cause SANDAG to incur damages or additional expenses, SANDAG shall notify Consultant and Consultant shall immediately place any applicable insurance carrier on notice of a potential claim.

D. Compliance with Safety Regulations

Consultant shall comply with OSHA and California OSHA regulations applicable to the Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by SANDAG or other government representatives. Consultant's personnel shall wear white hard hats and orange safety vests at all times while working on a construction Project site and/or within the vicinity of vehicular traffic.

E. Evaluation of Performance

Consultant's performance will be evaluated by SANDAG. A copy of the final consultant evaluation will be sent to Consultant. The evaluation, together with any responsive

comments that may be sent to SANDAG by Consultant, shall be retained by SANDAG. Interim or yearly evaluations may also be performed by SANDAG.

XIII. NOTICES

All notices or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States Post Office, addressed as follows:

To SANDAG:
San Diego Association of Governments
Attention: Victoria Stackwick
401 B Street, Suite 800
San Diego, CA 92101

To Consultant:
As shown on front page.

XIV. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

A. Equal Opportunity Certificate

Consultants doing business with SANDAG must be equal opportunity employers who achieve or attempt to achieve parity in the representation of women and minorities in their workforce. A signed Equal Employment Opportunity Certificate (Part 6) is a proposal submittal requirement and is a condition for contract award to Consultant.

B. No Discrimination

Consultant shall ensure equal employment opportunity for all persons. Consultant and its subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, sexual orientation, national origin, ancestry, age, medical condition, physical, or mental disability, Vietnam-era veteran or special disabled veteran status, marital status, or citizenship, within the limits imposed by law. These principles are to be applied by the Consultant in all employment practices, including recruiting, hiring, transfers, promotions, training, compensation, benefits, layoffs, and terminations.

C. Compliance with Non-Discrimination Laws

During the performance of this Agreement, Consultant agrees to comply with all the requirements imposed by Title VI and Title VII of the Civil Rights Act of 1964, as amended, and the regulations issued thereunder (Executive Order 11246 [Johnson, 1965]), the California Fair Employment Practices Act, the Americans with Disabilities Act of 1990, and any other applicable federal and state laws and regulations subsequently enacted. In addition, pursuant to Final Rule (RIN 1250-AA06) on pay transparency (effective January 11, 2016) and which implements Executive Order 13665, Consultant and its subconsultants with government contracts in excess of \$10,000 are prohibited from terminating or otherwise discriminating against employees for discussing, disclosing, or inquiring about their own pay or co-workers' pay. The Final Rule also protects pay discussions by job applicants.

D. Workforce Make-up Reports

Consultant shall report information to SANDAG regarding the makeup of the work force working on the Project on a quarterly basis. SANDAG shall either provide a form to Consultant for this purpose or a link to a website for reporting the necessary data. From time to time SANDAG may request that Consultant provide information regarding its

workforce to SANDAG. Within 30 days of such a request from SANDAG, Consultant shall complete and submit the Agreement Exhibit entitled "SANDAG Annual Employment Utilization Report." In addition, pursuant to 23 U.S.C. 140(a) and 23 CFR 230, additional documentation is needed for Federal Highway Administration-funded projects in July of each year. Consultant shall cooperate by providing this EEO report to SANDAG within 30 days of a request by SANDAG.

XV. CONFORMITY TO LEGAL REQUIREMENTS

A. Compliance with Laws

Consultant shall comply with all federal, state, and local laws and ordinances applicable to this Agreement. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code Section 1775 when applicable. Consultant shall cause all completed deliverables to conform to all applicable requirements of law: federal, state, and local and shall pass all of the provisions in this section of the Agreement through to all of its subconsultants.

B. Verification of Employment Eligibility

Consultant shall be aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, consultants, and subcontractors that are included in this Agreement.

C. Licenses and Permits

Consultant represents and warrants to SANDAG that it has all necessary licenses, permits, qualifications and approvals, of whatever nature, that are legally required for Consultant to practice its profession. Consultant further represents and warrants to SANDAG that it, at its sole cost and expense, shall keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are required for Consultant to practice its profession and/or perform services under this Agreement.

D. Rebates, Kickbacks or Other Unlawful Consideration

Consultant warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any SANDAG employee. For breach or violation of this warranty, SANDAG shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the Agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

XVI. NOTICE OF POTENTIAL CLAIM FOR OUT-OF-SCOPE WORK

Consultant shall not be entitled to additional compensation for out-of-scope work, unless it has given SANDAG a written notice of potential claim for any such work. The written notice of potential claim shall set forth the reasons for which the Consultant believes additional compensation will or may be due, the nature of the out-of-scope work involved, and, insofar as possible, the amount of the potential claim. The notice must be given to SANDAG prior to the time Consultant shall have performed the work if based upon an act or failure to act by SANDAG or, in all other cases, within 15 calendar days after the happening of the event, thing, occurrence, or other cause giving rise to the potential claim.

It is the intention of this Section that any claim for out-of-scope work be brought to the attention of SANDAG at the earliest possible time so that matters related to any such work can be settled in a prompt manner. Consultant hereby agrees that it shall have no right to additional compensation for

any claim for out-of-scope work for which no written notice of potential claim as herein required was filed.

XVII. DISPUTES

A. Interpretation of the Agreement

This Agreement shall be interpreted in accordance with the laws of the State of California.

B. Continuation of Work During Dispute

In the event Consultant has a dispute with SANDAG during the performance of this Agreement, Consultant shall continue to perform unless SANDAG informs Consultant in writing to cease performance. Consultant shall submit a statement of the grounds for the dispute, including all pertinent dates, names of persons involved, and supporting documentation to the SANDAG Project Manager. The Project Manager and other appropriate SANDAG staff will review the documentation in a timely manner and reply to Consultant within 20 calendar days. Upon receipt of an adverse decision by SANDAG, Consultant may submit a request for reconsideration to the SANDAG Executive Director. The request for reconsideration must be received within ten calendar days from the postmark date of the SANDAG reply. The Executive Director will respond to the request for reconsideration within ten working days. The decision of the Executive Director will be final and in writing.

C. Request for Mediation

If Consultant is dissatisfied with the results following exhaustion of the above dispute resolution procedures, Consultant shall make a written request to SANDAG for mediation. SANDAG shall respond to a request for mediation within 30 calendar days. If SANDAG agrees mediation is appropriate, a mutually-acceptable mediator shall be selected by the parties, and the parties will proceed to mediation of the dispute.

D. Litigation

If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, litigation and collection expenses, witness fees, and court costs as determined by the court.

XVIII. LIMITATIONS ON USE AND DISCLOSURE

A. Services exclusively for SANDAG

The deliverables hereunder are provided for the exclusive use of SANDAG, and such services, data, recommendations, proposals, reports, design criteria, and similar information provided by Consultant are not to be used or relied upon by other parties except as authorized by SANDAG.

B. Sensitive Information

Consultant shall not use for financial gain, disclose, or make other improper use of privileged information that is acquired in connection with this Agreement. For purposes of this Agreement, "Sensitive Information" includes, but is not limited to, trade secret information; documents marked as confidential; medical records; personnel records, home addresses and phone numbers of any person, social security numbers, credit card numbers, bank account numbers or any other PII; and knowledge of selections of contractors or

subcontractors in advance of an official announcement by SANDAG. All financial, statistical, personal, technical, or other data and information relative to a party's or another entity's operations, which are designated confidential by a party and made available to the other party in order to carry out this Agreement, shall be protected by the receiving party from unauthorized use and disclosure. Additional terms concerning sensitive, privileged or confidential information or data, including, but not limited PII, PCI, or data covered by confidentiality or privacy laws, may be set forth in the Special Provisions.

C. Limitation on Disclosure

Permission to disclose Sensitive Information on one occasion or public hearing relating to the Agreement shall not authorize the Consultant to further disclose such information or disseminate the same on any other occasion.

D. Permission for Public Comment

Consultant shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by SANDAG and receipt of written permission from SANDAG.

E. Subcontract Disclosure Requirements

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Section.

F. Disclosure Required by Law

Consultant is allowed to disclose Sensitive Information when required by law, rule, regulation, or court order upon notice to SANDAG sufficient to allow SANDAG to challenge such required disclosure.

G. Access to Procurement Information

All information related to a construction estimate, an independent cost estimate for non-construction work, evaluation of proposals or bids submitted to SANDAG, or scope of work for a future SANDAG procurement that may be prepared in whole or in part by Consultant for use by SANDAG for a third party procurement is confidential, and shall not be disclosed by Consultant to any entity other than SANDAG.

H. SANDAG Data

In the event Consultant or its subconsultants will have access to a SANDAG database, server or other SANDAG technology or data, Consultant and all applicable subconsultants, and applicable employees thereof, shall take adequate precautions to ensure SANDAG information is not leaked, hacked or otherwise lost, disclosed or misused. All Consultant or subconsultant employees with access to SANDAG data by electronic means shall be required to sign the acknowledgement included in the Policy on Use of Technology and Electronic Resources by SANDAG "Non-Employees" and Policy Acknowledgement Regarding Policy on Use of Technology and Electronic Resources by SANDAG "Non-Employees".

In the event of a data breach caused by Consultant, subconsultants, or any of their employees, the indemnification provisions of this Agreement shall apply and all costs for remedying the breach shall be reimbursed to SANDAG by the relevant Consultant and/or subconsultants.

XIX. RETENTION AND PROMPT PAYMENT**A. Payment of Subcontractors**

Consultant shall pay its subconsultants within ten calendar days from receipt of each payment made to the Consultant by SANDAG. The ten days is applicable unless a longer period is agreed in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the prior written approval of SANDAG.

B. Retention of Funds

SANDAG shall hold a ten percent retention from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by SANDAG, of the work performed under this Agreement and pay retention to Consultant based on these acceptances. Consultant or subconsultant shall return all monies withheld in retention from all subcontractors within ten days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the work by SANDAG. Any delay or postponement of payment may take place only for good cause and with the prior written approval of SANDAG. Any violation of these provisions shall subject the violating Consultant or subconsultant to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the Consultant or subconsultant; deficient subconsultant performance and/or noncompliance by a subconsultant.

C. Applicability of Retention and Prompt Payment Requirements

This Section applies to both DBE and non-DBE Consultants and subcontractors.

XX. RECORDS RETENTION**A. Accounting Records**

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the Agreement pursuant to Government Code 8546.7; Consultant, subconsultants, and SANDAG shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The state, State Auditor, SANDAG, FHWA, FTA or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its Certified Public Accountants (CPA) work papers that are pertinent to the Agreement and Indirect Cost Rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

B. Work Documentation Records

Consultant shall allow inspection of all work data, documents, proceedings, and activities related to this Agreement for a period of five years from the date of final payment under this Agreement. This Section must be included in any subcontract entered into as a result of this Agreement.

C. Location of Stored Records

Consultant shall ensure that no records relevant to this Agreement are stored at a location or on a server or remote database (cloud) outside of the United States.

XXI. COVENANT AGAINST CONTINGENT FEES**A. Restrictions on Participation**

No elected official(s) of SANDAG or any of its member agencies, the State of California, or the United States Government shall become directly or indirectly interested in or personally benefit from the financial proceeds of this Agreement or in any part of it. No officer or employee of SANDAG shall become directly or indirectly interested in or benefit from the financial proceeds of this Agreement or any part of it.

B. No Gifts or Fees

Consultant affirms that its firm has not employed, retained, paid, or agreed to pay any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, SANDAG shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

XXII. OWNERSHIP OF DOCUMENTS AND OTHER WORK PRODUCTS**A. Ownership of Deliverables**

All deliverables prepared or obtained under the terms of this Agreement shall be delivered to and become the property of SANDAG. The term "deliverables" includes, but is not limited to, all original drawings, reports, and other documents, including detailed calculations, digital/electronic databases, source code, data sets, analyses, maps, and other work products developed for the Project.

B. Intellectual Property Resulting from Creation of Deliverables

Consultant agrees that any and all property rights, including intellectual property rights such as copyrights or patents that arise from creation of deliverables or other work products required by this Agreement shall be vested in SANDAG and hereby agrees to relinquish all claims to such property rights in favor of SANDAG. Additional provisions concerning intellectual property, if applicable, may be included in the Scope of Work or Special Provisions.

C. Information and Data Not to Be Disclosed or Sold by Consultant

Consultant and all of its subconsultants, agents, representatives and employees are prohibited from disclosing or selling data or information provided, collected or obtained pursuant to this Agreement without express, written permission from SANDAG. Additional terms concerning privileged or confidential information or data, including, but not limited to such information or data that may qualify as PII, PC, or data covered by any other privacy laws, may be set forth in the Scope of Work or Special Provisions.

XXIII. TIMELY PERFORMANCE

Consultant acknowledges that timely performance is an important element of this Agreement. Accordingly, the Consultant shall put forth its best efforts to complete its services in accordance with the agreed-upon schedule. It shall be the responsibility of Consultant to advise SANDAG on an **as needed** basis of the progress of its work, expenditures incurred, and information regarding whether the Project is projected to comply with the schedule and budget limits. Consultant shall document the progress and results of work performed under this Agreement to the satisfaction of SANDAG and, if applicable, to the satisfaction of any government agency as directed by SANDAG. This may include progress and final reports, plans, specifications, estimates, or other evidence of attainment of the Agreement objectives.

XXIV. CHANGES IN WORK

If changes in the work seem merited by Consultant or SANDAG, and informal consultations with the other party indicate that a change is warranted, it shall be processed by SANDAG in the following manner: A letter outlining the changes shall be forwarded to SANDAG by Consultant, but no statement of estimated changes in fee or time schedule shall be provided initially. The SANDAG Project Manager will prepare an independent cost estimate if he/she believes the additional work is needed. The SANDAG Project Manager will then request that Consultant provide an estimate of hours and costs for the change. If SANDAG determines the change is merited, is due to an unexpected circumstance, and was caused through no fault of the Consultant, an amendment to the Agreement may be prepared by SANDAG following negotiation with the Consultant. SANDAG will not be required to pay for the changes in work unless the amendment is executed by both parties **before** performance of such services commences. **Consultant is expressly put on notice that no employee of SANDAG has authority to authorize, in writing or otherwise, any additional work that would increase the cost of this Agreement without SANDAG Executive Director approval.** Such an amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

XXV. FORCE MAJEURE

Either party is excused from performance hereunder if such non-performance results from acts of God, war, riots, acts of governmental authorities, or any other cause that could not have been overcome by the exercise of due diligence or planning by the non-performing party. In the event of the occurrence of a force majeure event, the party unable to perform shall promptly notify the other party. It shall further pursue its best efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the force majeure event.

XXVI. ENTIRE AGREEMENT

This Agreement represents the entire understanding of SANDAG and Consultant as to those matters contained in it. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by SANDAG and Consultant.

XXVII. INCORPORATION OF EXHIBITS

The SANDAG RFP and Consultant's proposal concerning the Project are hereby incorporated by reference except to the extent they may conflict with the terms of the Agreement. The following documents (exhibits to this Standard Services Agreement) also are attached and incorporated by reference if the box next to document title is marked:

☒ Scope of Work

- ☒ Fee Schedule
- ☒ Special Provisions for Service and/or Equipment Agreements
- ☒ Final Report - Utilization of All Subconsultants, Underutilized/Disadvantaged Business Enterprises and Small Businesses
- ☒ SANDAG Annual Employment Utilization Report
- ☒ Request to Add Subconsultant Form and/or Bench Firm Form
- ☒ Personnel Request Form

In the event of conflicting provisions, the following order of precedence will apply: 1) Special Provisions for Service and/or Equipment Agreements; 2) Exhibits to the Standard Services Agreement; 3) the Standard Services Agreement; 4) Attachments to the RFP; 5) the RFP; and 6) Consultant's proposal.

Wherever the word "contractor" may appear in the attachments or exhibits to this Agreement, it should be read as the equivalent to the word "consultant." Wherever the words "bid" or "bidder" may appear in the attachments or exhibits to this Agreement, they should be read as the equivalent to the words "proposal" or "Proposer."

XXVIII. ADMINISTRATION OF AGREEMENT

Consultant proposes to assign *Peter Peyser* as its Project Manager to provide supervision and have overall responsibility for this Agreement for Consultant. The Project Manager shall not be removed from the Project or reassigned without prior approval of SANDAG. Consultant must obtain approval from SANDAG in writing before assigning a new Project Manager to the Project. No subcontracting of these professional services shall be made without prior approval of SANDAG.

XXIX. HEADINGS

Section headings in this Agreement shall not be used to alter the plain meaning of the text in this Agreement.

XXX. PRESERVATION OF AGREEMENT

Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall be severable and enforceable.

XXXI. SUCCESSORS OR ASSIGNS

All terms, conditions, and provisions hereof shall inure to and shall bind each of the parties hereto, and each of their respective heirs, executors, administrators, successors, and assigns.

XXXII. SURVIVAL

The rights, obligations and conditions set forth in the Sections of this Agreement entitled Indemnification, Limitations of Liability, Representations and Warranties, Insurance, Limitations on Use and Disclosure, Assignment and Subcontracting, Standard of Care, Notices, Disputes, Records Retention, Ownership of Documents and Other Deliverables, as well as the Special Provisions, and any right, obligation or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Agreement, shall survive any such termination or expiration hereof.

XXXIII. SIGNATURES

The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original but all of which when taken together shall constitute one and the same instrument.

PART 3 - *STANDARD SERVICE AGREEMENT EXHIBITS*

SCOPE OF WORK

To improve SANDAG's and MTS' impact on federal legislation, regulations, and funding decisions by representing their interests and policies at the federal level. SANDAG and MTS have established the following tentative milestones for the Consultant services delivered:

1. Advocacy services as directed by the represented SANDAG and MTS.
2. Provide advice on those bills or issues where advocacy of SANDAG and MTS positions would be in their best interests.
3. Develop strategies to successfully implement SANDAG and MTS legislative programs and acquire funding for their projects.
4. Monitor legislation of interest to SANDAG and MTS from inception to approval or demise.
5. Monitor rule" regulations, and policies of FTA, FHWA, FRA, and other federal agencies' regulating activities affecting SANDAG and MTS or their funding.
6. Prepare reports, during legislative session on a monthly basis that include bill numbers, authors, subject, status, amendments, and evaluations of potential impacts of pending bills that are pertinent to SANDAG and MTS interests.
7. Prepare quarterly, semi-annual reports to SANDAG and MTS on consultant advocacy and representation challenges and accomplishments.
8. Prepare periodic reports on particular areas of significance.
9. Contact and confer with members of legislature and other holders of public office on legislative activities having an impact on SANDAG and MTS interests.
10. Study legislation to determine possible effect on interests of SANDAG and MTS.
11. Contact individuals and groups that have interests similar to SANDAG and MTS for the purpose of sharing views with legislators.
12. Coordinate meetings between SANDAG and MTS representatives and elected officials to discuss legislation and proposals and allow officials to respond to SANDAG and MTS concerns.
13. Contact regulatory agencies and testify at public hearings to enlist support for SANDAG and MTS represented.
14. Utilize expertise with the Federal Transit Administration, the New Starts funding process, Full Funding Grant Agreements, and the Annual Appropriations process to advance implementation of SANDAG and MTS projects
15. Assist with the filing of standard Lobby Disclosure (LLL) Form.
16. Optional special tasks as needed.

FEE SCHEDULE

Monthly Fee (May 1, 2017 – June 30, 2017)	Total Fee (May 1, 2017 – June 30, 2017)
\$11,500	\$23,000

Monthly Fee (July 1, 2017 – June 30, 2019)	Annual Fee (July 1, 2017 – June 30, 2019)
\$11,500	\$138,000

Monthly Fee (July 1, 2019 – June 30, 2021)	Annual Fee (July 1, 2019 – June 30, 2021)
\$12,000	\$144,000

SPECIAL PROVISIONS FOR SERVICE AND/OR EQUIPMENT AGREEMENTS

THE SPECIAL PROVISIONS BELOW ARE INCORPORATED INTO THE AGREEMENT

I. OPTION TO EXTEND

SANDAG shall have the option to extend the term of this Agreement in one or more increments for a total of no less than one and no more than six calendar months at the discretion of SANDAG in order to address unforeseeable circumstances or delays. Each extension shall be effected by written unilateral Agreement amendment delivered to Consultant no less than 15 calendar days prior to expiration of any Agreement term. The rates set forth in the Agreement shall apply to this option clause unless provision for appropriate price adjustment has been made elsewhere in this Agreement or by Agreement amendment. All payments are subject to availability of funds from SANDAG.

II. CONFLICT OF INTEREST

A Conflict of Interest Statement

Consultant's employees shall file a Conflict of Interest Statement with the SANDAG Executive Director if it is required by the SANDAG Conflict of Interest Code. SANDAG shall determine if Consultant's employees must be designated in the SANDAG Conflict of Interest Code for purposes of the Political Reform Act or for compliance with any applicable financial disclosure requirements based on the Scope of Work in the Agreement. Consultant represents that, to its knowledge, entry into this Agreement will not result in a conflict of interest prohibited by California Government Code Section 1090 for the SANDAG employees or Board of Directors. Depending on the work assigned to them, Consultant's employees may be required to sign agreements regarding confidentiality and/or conflicts of interest. An example of the type of document Consultant's employees may be required to sign is attached to the Agreement as an Exhibit entitled "Consultant Employee in Project Management Role – Conflict of Interest and Confidentiality Statement." In addition, a Consultant's employees may be required to meet additional background check requirements depending on the nature of the duties they will perform for SANDAG or fill out forms disclosing financial interests. SANDAG will supply copies of the agreements or documents that the Consultant's employees may need to execute to meet these additional requirements when applicable.

B Attempts to Influence Government Decisions

Consultant shall not make or participate in making or in any way attempt to use Consultant's position to influence a governmental decision in which Consultant knows or has reason to know Consultant has a financial interest other than the compensation promised by this Agreement. Consultant represents that Consultant has diligently conducted a search and inventory of Consultant's economic interests, as defined in the regulations promulgated by the Fair Political Practices Commission, and has determined that Consultant does not, to the best of Consultant's knowledge, have an economic or organizational interest which would conflict with Consultant's duties under this Agreement. Consultant agrees to scrupulously avoid performing services for any person or entity or entering into any contractual or other relationship with any person or entity that might create a conflict with the rendering of services under this Agreement. Consultant will immediately advise the General Counsel of SANDAG if Consultant learns of an economic or organizational conflict of interest or other prohibited conflict of interest on the part of Consultant or any of its subcontractors during the term of this Agreement.

C Ethical Standards of Conduct

All SANDAG business must be conducted within ethical standards approved by the SANDAG Board of Directors. Some of these standards can be found in SANDAG Board Policies Nos. 004 and 016 at sandag.org/legal. SANDAG staff are specifically prohibited from participating in the selection process when those staff have a close personal relationship, family relationship, or past (within the last 12 months), present, or potential business or employment relationship with a person or business entity seeking a contract. It is unlawful for any contract to be made by SANDAG if any individual Board member or staff has a prohibited financial interest in the contract.

D Exchange of Gifts with SANDAG

Consultants, contractors, vendors and agents thereof currently doing business with or planning to seek contract awards from SANDAG are strongly discouraged from giving gifts to SANDAG officers, employees, agents or Board members who have taken or may in the future take part in contracting decisions for SANDAG. The SANDAG officers, employees, agents, and Board members shall not solicit or accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements that could bias their decision-making. This prohibition applies to any gift, gratuity, favor, entertainment, or loan, and includes such items as liquor, lodging, travel, food, and tickets to public functions such as sports events, theater, etc. If a person has any reason to believe a financial or organizational conflict of interest exists with regard to a particular procurement, he/she should notify the SANDAG Office of General Counsel immediately.

E Determination of Conflict

A Proposer is eligible for award of service contracts by SANDAG so long as the contract in question will not create an actual, potential, or apparent financial or organizational conflict of interest. A prohibited organizational conflict of interest exists when a firm is or may be unable to render impartial, objective assistance or advice to SANDAG or where a firm would receive an unfair competitive advantage. Examples of situations that could create such a conflict of interest are listed in Board Policy No. 016. Proposers that have a conflict of interest due to performing work for SANDAG are ineligible to submit a proposal. A process for determining whether a Proposer has a conflict is set forth in Board Policy No. 16. Ineligible firms include the prime Proposer, its subconsultants and affiliates of either. An affiliate is a firm that is subject to the control of the same persons through joint ownership or otherwise.

III. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**A Allowable Costs**

1. Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
2. Consultant also agrees to comply with federal procedures in accordance with 2 CFR 200.
3. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 2 CFR 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to SANDAG.

B Application to Subcontractors

All subcontracts in excess of \$25,000 shall contain the above provisions.

IV. AUDITS

Consultant has already or may in the future undergo a pre-award or post-award audit. Consultant and all of its subconsultants that work on the Project will be subject to audit by SANDAG or its representatives as described in this Section. Therefore, this Section of the Agreement must be passed through in writing to all subconsultants hired by Consultant. All references to "consultant" in this section shall mean Consultant and all of its subconsultants. SANDAG will not pay Consultant at rates or in amounts that exceed the amounts negotiated or required by SANDAG following an audit. An additional audit may need to be carried out if this Agreement is amended, legal requirements change, or circumstances warrant additional auditing. Each consultant agrees to fully cooperate if an additional audit is requested. Consistent with 49 U.S.C. 5325(b)(3)(A)(B), any contract or subcontract awarded under this section must be performed and audited pursuant to Federal Acquisition Regulations. SANDAG will accept a consultant's indirect cost rates, established in accordance with Federal Acquisition Regulations cost principles, for one-year applicable accounting periods by a cognizant federal or state government if those rates are not currently under dispute

A Audit Review Procedures

1. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by the SANDAG, Department Director of Finance.
2. Not later than 30 days after issuance of the final audit report, a consultant may request a review by SANDAG, Department Director of Finance of unresolved audit issues. The request for review will be submitted in writing. Neither the pendency of a dispute nor its consideration by SANDAG will excuse a consultant from full and timely performance, in accordance with the terms of this Agreement. Consultant and subconsultants' contracts, including cost proposals and Indirect Cost Rates (ICR), are subject to audits or review such as, but not limited to, a Contract Audit, and Incurred Cost Audit, and ICR Audit, or a Certified Public Accountant (CPA) ICR Audit Workpaper Review. If selected for audit or review, the contract, cost proposal and ICR and related workpapers if applicable, will be reviewed to verify compliance with 48 CFR 31 and other related laws and regulations. In the instances of a CPA ICR Audit Workpaper Review, it is the consultant responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's workpapers. The contract, cost proposal, and ICR shall be adjusted by the consultant and approved by SANDAG contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by SANDAG at its sole discretion. Refusal by a consultant to incorporate audit or review recommendations, or to ensure that the Federal, State, or local governments have access to CPA workpapers, will be considered a breach of contract terms and cause for termination of this Agreement or other applicable contract and disallowance of prior reimbursed costs.

V. ADDING STAFF OR SUBCONSULTANTS**A General Requirements for Addition or Removal of Subconsultants**

1. Consultant must obtain prior approval for adding new subconsultants or removing existing subconsultants. To add staff or subconsultants, SANDAG must approve the

changes in writing, however, a formal Agreement amendment shall not be required to add staff or new subconsultants. Consultant may substitute a subconsultant if the work SANDAG proposes to assign or has assigned under the Agreement cannot be fulfilled by one of the subconsultants listed in the Consultant's proposal because the subconsultant is unavailable, unwilling or unable to perform the work. In addition, a subconsultant addition may be allowed if the work SANDAG intends to assign is not in any of the work categories listed for subconsultants that SANDAG has already approved for use under the Agreement. It is Consultant's responsibility to select qualified and responsible subcontractors. Consultant may request assistance from SANDAG in identifying subconsultants, but SANDAG may not direct Consultant to hire a particular subconsultant unless a sole source is warranted. The following procedures should be used to add or substitute a subconsultant.

2. SANDAG will require documentation that establishes that the proposed rates for the new subconsultant are reasonable. SANDAG staff may be able to document this by comparing the proposed rates against a) the rates charged in other contracts for similar services; or b) what other public agencies have been charged for similar services. If SANDAG is unable to locate sufficient documentation to compare prices, the Consultant will be required to attempt to locate other firms qualified to perform the services and provide rate data for those firms to SANDAG.
3. Consultant does not have to select the subconsultant with the lowest rates. Selection of a subconsultant should be based on a combination of factors including qualifications, experience and price.
4. Consultant should not substitute key personnel (Project Manager and others listed by name in the cost proposal) or subconsultants without prior written approval from SANDAG. Consultant must request and justify the need for the substitution and obtain approval from SANDAG prior to use of a different subconsultant. The proposed substituted person or firm must be as qualified as the original, and at the same or lower cost. For engineering types of consultant contracts, the consultant's Project Manager must be a registered Engineer in the State of California.
5. Consultant and any new subconsultant may be required to amend previous documents or sign new documents in order to comply with SANDAG procurement and contracting requirements. Consultant and subconsultant shall complete, sign, and return to SANDAG any forms SANDAG may require in order to add the subconsultant.

B Use of Subconsultants Previously Approved

Once a subconsultant has been approved by SANDAG, Consultant may not be required to go through all of the processes above to use the same subconsultant again for work under the Agreement. To use the methodology in this Subsection, Consultant must establish that:

1. The subconsultant's rates and or qualifications were found reasonable based on previous documentation submitted to SANDAG and the rates and or qualifications now proposed by the subconsultant are consistent with the previously approved rates; and
2. If the subconsultant is a DBE whose participation is necessary to meet a DBE goal, the DBE certification is still valid for the subconsultant's commercially useful function for the proposed work; and
3. The subconsultant is qualified for the work that will be assigned; and

4. The subconsultant and Consultant have filled out any applicable procurement or contracting documents.

FINAL REPORT – UTILIZATION OF ALL SUBCONSULTANTS, UNDERUTILIZED/DISADVANTAGED BUSINESS ENTERPRISES AND SMALL BUSINESSES

(Caltrans EXHIBIT 17-F FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND FIRST-TIER SUBCONTRACTORS)

[illegible]

*If Sub is SB, DBE and/or UDBE, enter the total dollar amount in all three fields

***The decision of which column to use for entering the UDBE dollar value is based on which program was applied to the Contract/TO/JO. For procurements advertised after August 1, 2014, only a DBE program applies and DBE payments only need to be entered in the DBE column. For procurements advertised prior to August 1, 2014, a UDBE (FTA) or DBE (FHWAA) program may apply. Under the FTA UDBE program, payments to the Asian-Pacific American (APA) minority group can not be included in the UDBE payment column, only the DBE payment column. Please refer to the instructions for additional details on completing the UDBE payment column.

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT		
CONSULTANT/CONTRACTOR REPRESENTATIVE NAME	BUSINESS PHONE NUMBER	DATE
TO THE BEST OF MY KNOWLEDGE THE ABOVE INFORMATION IS COMPLETE AND CORRECT		
SANDAG PROJECT MANAGER'S NAME	BUSINESS PHONE NUMBER	DATE

ADA NOTICE: For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, Local Assistance Procedures Manual TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS:

SANDAG Contract Number and Task/Job Order boxes - Enter the SANDAG contract and Job/Task Order number if applicable.

Location - Enter project location by city and county.

Project Description - Provide description of project.

Federal-Aid Project Number - Enter the Federal-Aid Project Number.

Local Agency - SANDAG name entered as agency that is funding the contract/Job Order/Task Order.

Contract Start and End Dates - Enter the date the contract/Job Order/Task Order was started or Notice to Proceed was issued and then date project completed.

Prime Contractor/Consultant - Enter the contractor/consultant's firm name.

Business Address - Enter the contractor/consultant's business address.

Final Contract Amount - Enter the total final amount for the contract/Job Order/Task Order as applicable.

Federal Funding Type - Mark box for FTA and/or FHWA if applicable.

DBE/SB Company Name and Business Address - Enter the name, address, and phone number of all subcontracted contractors/consultants. Also, enter the prime contractor/consultant's name and phone number, if the prime is a DBE.

Description of Work, Services, or Materials Supplied - Enter description of work, services, or materials provided. Indicate all work to be performed by DBEs including work performed by the prime contractor/consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE.

DBE Certification Number - Enter the DBE's Certification Identification Number. Leave blank if subcontractor is not a DBE.

Contract Payments - Enter the subcontracted dollar amount of the work performed or service provided. Include the prime contractor/consultant if the prime is a DBE. The Non-DBE column is used to enter the dollar value of work performed by firms that are not certified DBE or for work after a DBE becomes decertified.

Date Work Completed - Enter the date the subcontractor/subconsultant's item work was completed.

Date of Final Payment - Enter the date when the prime contractor/consultant made or will make the final payment to the subcontractor/subconsultant for the portion of work listed as being completed.

Original DBE Commitment Amount - Enter the total DBE participation listed in Bidder DBE Commitment Form (Construction) or Consultant Contract DBE Commitment Form.

Total Payments - Enter the sum of the "Contract Payments" Non-DBE and DBE columns. Report total payments, including unpaid retention, made to ALL subconsultants/subcontractors and ALL certified SB, DBE, and/or UDBE firms regardless of tier or whether the firm was originally listed for goal credit. If actual U/DBE utilization (or item of work) was different than that approved at time of award, provide comments on a separate page. If no subconsultants/subcontractors were utilized, enter "N/A" in the Name field. If retention is being withheld at the time of completing this report, enter the total amount in the "Unpaid Retention" column.

Contractor/Consultant Representative's Signature - The person completing the form on behalf of the contractor/consultant's firm must sign their name.

Contractor/Consultant Representative's Name - Enter the name of the person preparing and signing the form.

Phone - Enter the area code and telephone number of the person signing the form.

Date - Enter the date the form is signed by the contractor/consultant's preparer.

SANDAG Representative's Signature - A SANDAG Representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.

SANDAG Representative's Name - Enter the name of the SANDAG Representative signing the form.

Phone - Enter the area code and telephone number of the SANDAG representative signing the form.

Date - Enter the date the form is signed by the SANDAG Representative.

SANDAG ANNUAL EMPLOYMENT UTILIZATION REPORT

Report Date: March 20_____ Contract No. 500_____ Page _____ of _____

Project Title: _____

Prime Consultant's Name:_____ Work Site Location: _____

Subconsultant's Name (if applicable): _____

Signature of Person Preparing Report: _____

Printed Name and Job Title of Preparer: _____

NAME OF PRIME CONSULTANT'S OR SUBCONSULTANT'S EMPLOYEE	MALE/FEMALE	RACE CODE*	EMPLOYEE'S RESIDENCE ZIP CODE	EMPLOYEE'S CRAFT

*RACE CODES: Black American (BA); Mexican American or Hispanic (MA); Native American or Alaskan (NA); Asian or Pacific Islander (AP); Caucasian (CA)

REQUEST TO ADD SUBCONSULTANT AND/OR BENCH FIRM FORM

SANDAG Contract No. : _____

Prime Consultant Name: _____

This request is to (mark all that apply):

- ☐ Add a new subconsultant – **complete Section 1 below**
- ☐ Remove an existing subconsultant - **complete Section 2 below**

SECTION 1: ADDITION OF NEW SUBCONSULTANT

1. Subconsultant Name: _____
2. Is this subconsultant a DBE? ☐ Yes* ☐ No
 *If subconsultant is a DBE, by signing below you confirm that you have checked the CUCP database to ensure the subconsultant will perform work that is covered by their DBE certification.
3. Services required of subconsultant (must be within scope of contract): _____

4. Dollar amount of work (if known): \$ _____
5. Reason for addition:
 - ☐ Needed to meet U/DBE goal
 - ☐ Service is not available from current team
 - ☐ Other (justification required): _____

6. List three firms Prime Consultant contacted for consideration and attach a summary or copies of responses with cost proposal:

Firm Name:			
Contact:			
Phone:			
Email:			
Date of Contact:			

7. Describe why this subconsultant was selected (e.g.: qualifications, experience, price, availability). Price must be a factor.

8. Attach the following required forms:
 - Bidder's List
 - Commitment Letter from Subconsultant
 - EEO Certification
 - Personnel Request Form (as required per contract)
 - For Federal Funding Only:
 - Statement of Eligibility
 - Cert. of Restrictions on Lobbying (only if subconsultant contract ≥\$100K)
9. If U/DBE goal/commitment applies (federal funds are involved) attach:
 - Local Agency Prime U/DBE Commitment form OR
 - Good Faith Effort documentation

I am satisfied that this subconsultant is qualified and responsible and that its rates are fair and reasonable based on my professional experience. Required federal provisions, if applicable, are included in our contract with this subconsultant and the subconsultant is aware it may be subject to audit.

Print Name_____
Signature_____
Date**SECTION 2: REMOVAL OF EXISTING SUBCONSULTANT***

1. Subconsultant Name: _____
2. Is this subconsultant a DBE? ☐ Yes* ☐ No
 *Removal of a U/DBE subconsultant may affect U/DBE commitment
3. Services provided by subconsultant (as listed in contract): _____

4. Dollar amount of work (as listed in contract): _____
5. Reason for removal:
 - ☐ Unavailable
 - ☐ Unwilling to perform work
 - ☐ Unable to perform work
 - ☐ Other (justification required): _____

I certify that the removal of this subconsultant is consistent with the terms and conditions of the underlying contract.

 Print Name

 Signature

 Date

THIS SECTION FOR SANDAG STAFF ONLY

Contract Manager

I am satisfied that this subconsultant is qualified and responsible and that its rates are fair and reasonable based on my professional experience.

 Print Name

 Signature

 Date

Manager of Contracts & Procurement

I am satisfied that the addition/removal of this subconsultant is consistent with the terms and conditions of the underlying contract and the rates of this subconsultant are fair and reasonable.

 Print Name

 Signature

 Date

Manager of Small Business Development* (Required only if adding or removing a DBE subconsultant)

The addition/removal of this DBE subconsultant is consistent with the requirements of 49 CFR Part 26.

 Print Name

 Signature

 Date

PERSONNEL REQUEST FORM

Prime Consultant:		Contract #:		Submittal Date:	
Sub-Consultant:				Effective Date:	30 Days After Receipt of PRF
(If Applicable)		Fee:	Multiplier:	Escalation Rate:	
Combined OH:			1.0000		

No.	Employee Name		SANDAG Contract Classification	SANDAG Contract Classification (New)	Years Exp.	Effective Date*		Actual Hourly Rates	Loaded Hourly Billing Rates		Promotion Use Only		
	Last	First				From	To		Straight	Overtime (if applicable)	Current Rate	Proposed Rate	% Change
1									\$0.00	\$0.00			#DIV/0!
2									\$0.00				#DIV/0!
3									\$0.00				#DIV/0!
4									\$0.00				#DIV/0!
5									\$0.00				#DIV/0!
6									\$0.00				#DIV/0!
7									\$0.00				#DIV/0!
8									\$0.00				#DIV/0!
9									\$0.00				#DIV/0!
10									\$0.00				#DIV/0!

(1) Subject to Prevailing Wages - if applicable; (2) Contract Classification Change * Effective start/end date of the specified rate

Reason/Additional Notes (Must Select One):

Add Employee: _____ Promotion: _____ New Sub-Consultant: _____

Adding employees to the Contract: I certify with my signature below that the employee's "Actual Hourly Rate" are correct as shown for the first year "Effective Date of Hourly Rate (From/Hire Date)" date listed herein for each appropriate employee. I understand that a registered payroll may be requested to verify rates at any time. All rates herein are subject to the Standard Agreement, Standard Conditions.

CONSULTANT SIGNATURES				AGENCY SIGNATURES			
CERTIFIED BY:	X			Contract Division Review			DATE
	Name		DATE	(Analyst)			
	PRIME CONSULTANT PROJECT MANAGER						
CERTIFIED BY:	X			Project Manager Approval			DATE
	Name		DATE				
	SUB-CONSULTANT TASK MANAGER						
	(If applicable)			Contract Manager Approval			DATE
	Consultant Contact Information for PRF Questions			(If applicable)			
	Name:			Department Director Approval			DATE
	Phone Number:			(If applicable)(Promotions only)			
	Email:						

EXHIBIT B
MTS FEE SCHEDULE

Monthly Fee (May 1, 2017 – June 30, 2017)	Total Fee (May 1, 2017 – June 30, 2017)
\$4,000	\$8,000

Monthly Fee (July 1, 2017 – June 30, 2019)	Annual Fee (July 1, 2017 – June 30, 2019)
\$4,000	\$96,000

Monthly Fee (July 1, 2019 – June 30, 2021)	Annual Fee (July 1, 2019 – June 30, 2021)
\$4,500	\$108,000



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

Agenda Item No. 13

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

April 13, 2017

**Draft for
Executive Committee
Review Date: 4/6/17**

SUBJECT:

CONTRACT WITH THE CITY OF NATIONAL CITY FOR TAXICAB ADMINISTRATION

RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to enter into an agreement for Taxicab Administration with the City of National City in substantially the same format as in Attachment A.

Budget Impact

None with this action. All costs to administer taxicabs and other for-hire vehicles for the City would be paid for by permit fees assessed on the permittees.

DISCUSSION:

MTS first contracted to administer and regulate taxicabs and for-hire vehicles with the City of San Diego in 1988, the cities of El Cajon, Imperial Beach, Lemon Grove, and Santee in 1990, the City of Poway in 1991, and the City of La Mesa in 1999. MTS is statutorily prohibited from using transit funds for taxicab regulatory activities and therefore the cost to administer taxicab regulations is covered by fees assessed on the permit holders.

The City of National City (the City) approached staff to enlist MTS's services for administration and regulation of taxicabs and for-hire vehicles operating in the City. A draft agreement with the City (Attachment A) was approved by the City Council on March 21, 2017. The draft agreement substantially conforms to the language that is included in the agreements with the Cities of El Cajon, Lemon Grove, Imperial Beach, Santee, Poway



and La Mesa. Any material changes to the draft agreement requested by the City in the future would be presented to the Board for approval.

/s/Paul C. Jablonski
Paul C. Jablonski
Chief Executive Officer

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

Attachment: A. Draft Agreement for Administration of Taxicab and Other For-Hire Vehicle Regulations
Between San Diego Metropolitan Transit System and the City of National City

**AGREEMENT FOR
ADMINISTRATION OF TAXICAB AND OTHER FOR-HIRE VEHICLE REGULATIONS
BETWEEN
SAN DIEGO METROPOLITAN TRANSIT SYSTEM
AND
CITY OF NATIONAL CITY**

THIS AGREEMENT is entered into by and between the City of National City, a municipal corporation, 1243 National City Boulevard, National City, CA (herein called "CITY"), and the San Diego Metropolitan Transit System, a public agency, 1255 Imperial Avenue, Suite 1000, San Diego, CA (herein called "MTS"), in view of the following recitals, which are a substantive part of this Agreement:

RECITALS

- A. MTS is authorized under Section 120266, Chapter 2, Division 11 of the California Public Utilities Code (PUC), to enter into contracts to regulate transportation services within a city in its area of jurisdiction;
- B. CITY is within MTS's jurisdiction created January 1, 1976, under Section 120050, et seq., Chapter 2, Division 11 of the PUC;
- C. CITY regulated taxicab and other for-hire vehicles in accordance with the National City Municipal Code, Chapter 11.70; and
- D. CITY desires that MTS regulate taxicabs and other for-hire vehicles and services such as charter vehicles, sight-seeing vehicles, nonemergency medical vehicles, and jitney vehicles pursuant to PUC Section 120266 and in accordance with MTS Ordinance No. 11, "An Ordinance Providing for the Licensing and Regulating of Transportation Services Within the City"

NOW THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, CITY and MTS agree as follows:

- 1. MTS will administer and enforce its taxicab and other for-hire vehicles Ordinance policies and regulations as in effect on March 21, 2017, and as thereafter from time to time amended by MTS, and thereby regulate such taxicab and other for-hire vehicles and transportation services rendered wholly within the CITY's corporate limits during the period of March 21, 2017 through June 30, 2019, pursuant to PUC Section 120266.
- 2. MTS will collect and administer all such regulatory fees, fines, and forfeitures as now or hereafter provided by the MTS Taxicab and Other For-Hire Vehicles Ordinance No. 11 policies, and regulations.
- 3. The CITY Manager and MTS Chief Executive Officer may supplement this agreement by executing a Memorandum of Understanding relative to administrative and operating procedures of taxicab and other for-hire vehicles regulation and to provide for reimbursable staff and legal support services.

4. This Agreement shall be effective upon execution by the City and MTS and shall continue until written notice of termination. This Agreement may be terminated at any time by either party upon 180 days' written notice to the other party.

IN WITNESS THEREOF, this agreement is executed by the CITY acting by and through its Mayor pursuant to Council Resolution No. _____, and by MTS acting through its Chief Executive Officer.

Dated this 21st day of March, 2017.

CITY OF NATIONAL CITY

SAN DIEGO METROPOLITAN TRANSIT
SYSTEM

Ron Morrison
Mayor

Paul C. Jablonski
Chief Executive Officer

WE HEREBY APPROVE the form of the foregoing Agreement.

George H. Eiser III
Interim City Attorney

Office of the General Counsel

Date: _____

Date: _____

Attest: _____



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

Agenda Item No. 14

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

April 13, 2017

**Draft for
Executive Committee
Review Date: 4/6/17**

SUBJECT:

DRUG AND ALCOHOL POLICY FOR ALL SAN DIEGO METROPOLITAN TRANSIT
SYSTEM (MTS) EMPLOYEES

RECOMMENDATION:

That the Board of Directors adopt Resolution No. 17-6 (Attachment A), which will implement MTS's updated Drug and Alcohol Policy, in order to comply with Federal Transit Administration regulations and further public safety.

Budget Impact:

None.

DISCUSSION:

The Federal Transit Administration ("FTA") requires that recipients of federal financial assistance, such as San Diego Transit Corporation (SDTC), San Diego Trolley, Inc. (SDTI) and MTS, maintain a drug and alcohol policy that complies with FTA regulations, 49 CFR Parts 40 and 655, on preventing prohibited drug use and alcohol misuse in transit operations.

MTS periodically updates its policy to ensure full compliance with FTA regulations. The attached revised policy incorporates minor changes resulting from a recent FTA review of our policy.

The FTA regulations require that the governing board of the organization approve the drug and alcohol policy. Accordingly, we respectfully request that the Board of Directors



approve of the updated drug and alcohol policy. The updated drug and alcohol policy is attached for your review.

/s/Paul C. Jablonski
Paul C. Jablonski
Chief Executive Officer

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

Attachments: A. Resolution No. 17-6
B. Revised MTS Drug and Alcohol Policy

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

RESOLUTION NO. 17-6

Resolution Approving Updates to the San Diego Metropolitan Transit System (MTS) Drug and Alcohol Policy for All MTS Employees

WHEREAS, The San Diego Metropolitan Transit System ("MTS") provides mass transportation services through its operating entities, San Diego Transit Corporation ("SDTC") and San Diego Trolley Incorporated ("SDTI") which are funded in part by federal financial assistance from the Federal Transit Administration ("FTA"); and

WHEREAS, FTA has implemented regulations set forth at 49 C.F.R. Part 655 requiring operators that provide mass transportation services for a recipient of FTA federal financial assistance must establish and implement a policy concerning drugs and alcohol as set forth in those regulations;

WHEREAS, MTS has updated its drug and alcohol policy in order to further operational efficiency and to ensure full compliance with current regulations;

NOW, THEREFORE, BE IT RESOLVED, that the MTS Board of Directors does hereby adopt the updated drug and alcohol policy for all MTS employees including SDTI and SDTC Employees, effective April 13, 2017, which is attached to this Resolution.

PASSED AND ADOPTED, by the MTS Board of Directors, this 13th day of April, 2017, by the following vote:

AYES:

NAYES:

ABSENT:

ABSTAINING:

Chairman
San Diego Metropolitan Transit System

Filed by:

Approved as to form:

Clerk of the Board
San Diego Metropolitan Transit System

Office of the General Counsel
San Diego Metropolitan Transit System

Effective 4/13/2017

METROPOLITAN TRANSIT SYSTEM DRUG AND ALCOHOL POLICY

I.

PURPOSES

- A. To maintain a safe and efficient public transportation system;
- B. To maintain a safe, healthy working environment for all employees;
- C. To reduce the incidence of accidental injury to person or property;
- D. To reduce absenteeism, tardiness and indifferent job performance;
- E. To maintain a work environment free of alcohol and drug related performance problems, accidents and injuries; and
- F. To comply with the Federal Transit Administration (“FTA”) regulations on prevention of prohibited drug use and alcohol misuse in transit operations, 49 C.F.R. Parts 655 and 40.

II.

APPLICATION OF POLICY

This policy applies to applicants and employees of the San Diego Metropolitan Transit System’s (“MTS”) operating entities, San Diego Trolley, Inc. (“MTS Rail or SDTI”) and San Diego Transit Corporation (“MTS Bus” or “SDTC”) [MTS, SDTI and SDTC are collectively referred to as “the Agency”], and to certain contract personnel who have been notified of the applicability of this policy to their work and contractors who have chosen to incorporate this policy as their own based on contractual agreement with the Agency. The word “employee” as used in this policy includes all such designated personnel including contract employees. This policy also applies to employees of the Metropolitan Transit System who work in the positions listed below and/or perform safety-sensitive functions as defined below.

Some of the drug and alcohol testing and procedures required in this policy are mandated by FTA regulations preventing prohibited drug use and alcohol misuse in transit operations, 49 C.F.R. Parts 655 and 40. The drug testing and alcohol testing mandated by FTA is applicable to “safety-sensitive employees” of the Agency, which includes those who:

- 1. Operate revenue service vehicles, including when such vehicles are not in revenue service;
- 2. Operate a non-revenue service vehicle, when such vehicle is required to be operated by a holder of a Commercial Driver’s License;

3. Control dispatch or movement of a revenue service vehicle;
4. Maintain a revenue service vehicle or equipment used in revenue service;
5. Security personnel who carry firearms;
6. Supervisors of the aforementioned employees since these supervisors may perform safety-sensitive duties.

The Agency has reviewed the actual duties performed by employees and determined that the following jobs functions may require the performance of safety-sensitive duties:

MTS Rail

Train Operator, Electromechanic, Linemen, Assistant Linemen, Track Serviceperson, LRV Maintainers, Wayside Maintainers, Serviceperson, Flagperson, Controller, Superintendent and Assistant Superintendent of Transportation, Central Control Supervisor, Training Coordinator, Transportation Supervisor, Superintendent and Assistant Superintendent of Maintenance, Maintenance Supervisor, Track Supervisor, Facilities Manager and Facilities Supervisor.

MTS Bus

Bus Operators (student and part-time included), Service Operations Supervisors, all hourly Maintenance employees, Maintenance Manager, Assistant Maintenance Managers, Maintenance Foremen, Quality Assurance Manager, Quality Assurance Supervisor, Dispatchers, Dispatch Clerks, Communications/Operations Supervisors, Operations Trainer, Maintenance Instructor, Manager of Transportation, Assistant Transportation Managers, Senior Transportation Supervisor, Director of Transportation and Director of Maintenance, Manager of Training, Part Time Training Instructor, Safety Manager, Facilities Manager, and Facilities Foremen.

MTS Security

Director of Transit System Security, Assistant Director of Transit System Security, Manager of Transit System Security Field Operations, Transit System Security Supervisor, Code Compliance Inspector, and all contract officers or supervisors of contract security officers who carry firearms regardless of title or rank.

The drug and alcohol testing required by this policy for employees who are not safety-sensitive employees as defined above is required by the Agency, not the FTA. This policy specifies which testing is mandated by FTA and which is required by the Agency.

Upon implementation, this policy supersedes all previously issued Drug and Alcohol Policies for SDTC, SDTI and MTS.

III.

ILLEGAL DRUGS, LEGAL DRUGS AND ALCOHOL

A. Illegal Drugs

The sale, offer to sell, purchase, use, manufacture, transfer or possession of illegal drugs while on Agency business or on Agency premises, property or vehicles is prohibited. Further, no employee shall bring drug paraphernalia onto Agency premises or property or into company vehicles. Violation of these rules will result in disciplinary action, up to and including termination; termination is likely for any violation, even a first offense.

Illegal drug means any drug (a) which is not legally obtainable or (b) which is legally obtainable but has not been legally obtained. The term includes marijuana, cocaine, opiates (codeine, morphine, heroin), phencyclidine[“PCP”], and amphetamines (amphetamine, methamphetamine, MDMA, MDA, MDEA [“ecstasy”]). Regardless of any State laws protecting the medicinal or recreational use of Marijuana, federal regulations forbid its use by safety-sensitive employees, and Agency policy forbids its use for all other employees. The term also includes prescribed drugs not legally obtained, prescribed drugs not being used for prescribed purposes and any substance which a person holds out or represents to another as an illegal drug.

B. Legal Drugs

The use of legal drugs at a level, or in a manner, combination or quantity which impedes an employee’s ability to perform his job is prohibited and will lead to disciplinary action, up to and including termination. Agency policy (not FTA regulations) also deems failure to report the use of legal drugs per the procedure described below as a violation of this policy that will result in discipline up to and including termination of employment.

It is the employee’s responsibility to insure that any legal drug(s) they are taking allow them to safely perform their duties. Employees have an affirmative obligation to report any drug or medication which they are taking to their immediate supervisor, using the “Prescription Drug Notification Form”, or in their supervisor’s absence, directly to the Human Resources Manager, so that a determination can be made by the company’s physicians as to the ability of the employee to perform their particular job safely while using that drug or combination of drugs. If, after consulting with its physicians, the Agency has determined that the employee does not pose a threat to his or her own safety, public safety, or the safety of coworkers, and that the employee’s job performance will not be significantly affected by the legal drug, the employee may continue to work while taking that particular legal drug. Any employee using a prescription drug must provide the prescription and the medication itself (if requested) to the designated Agency medical facility as soon as possible (but in any case within 24 hours) after notification by Agency management or its physicians.

C. Alcohol

No employee shall consume alcoholic beverages in Agency vehicles, on Agency premises or property, within four hours before performing safety-sensitive functions,

while on Agency business, or while in uniform. Violation of these rules will result in disciplinary action, up to and including termination, even for a first offense.

No employee who is on call and therefore subject to being called into work shall consume alcohol within four hours of or during those on call hours. In the event such an employee is called and must report for duty, the employee has the opportunity to acknowledge that they have used alcohol and therefore are not able to perform their safety-sensitive function. In such a case, that employee shall not be required to perform work, but may be disciplined for the use of alcohol during on call hours based on Agency policy (not FTA regulations). FTA regulations mandate that employees with a breath-alcohol concentration between 0.02 percent and 0.039 percent not be allowed to perform any safety-sensitive function until the start of the employee's next regularly scheduled duty period that is at least eight hours following the administration of the alcohol test. The Agency's policy is that any employee who is tested for alcohol and has a breath-alcohol content of 0.02 percent or greater will be terminated, even for a first offense.

IV.

PROHIBITION AGAINST EMPLOYEES HAVING ILLEGAL DRUGS OR ALCOHOL IN THEIR BODIES DURING WORKING TIME

All employees must report for work with no illegal drugs or their metabolites or alcohol in their bodies. Employees must not have illegal drugs or their metabolites or alcohol in their bodies at any time while on the job and employees may be tested for the presence of drugs and/or alcohol at any time while on duty or at an Agency facility. Alcohol tests on safety-sensitive employees who are performing, are about to perform or who have just completed performing safety-sensitive duties are FTA mandated tests; all other alcohol tests are required by MTS policy. Drug tests on safety-sensitive employees are FTA-mandated tests except those specifically identified by this Policy as MTS tests; all drug tests on non-safety-sensitive employees are required by MTS policy, not FTA regulations. FTA regulations prohibit safety-sensitive employees from using alcohol within four hours prior to their shift or while on call, and from having a breath-alcohol concentration of 0.04 or higher while performing safety-sensitive duties. Agency policy prohibits employees from having a breath-alcohol concentration while on duty of 0.02 percent or higher; any employee with a breath-alcohol concentration of 0.02 percent or higher will be terminated. Compliance with these rules is considered an essential job qualification for all employees. **Termination of employment will occur for a violation of any of these rules, even for a first offense. This is a zero tolerance policy. No employee who violates this policy will be given a second chance.**

V.

ENFORCEMENT OF RULE PROHIBITING EMPLOYEES FROM HAVING ILLEGAL DRUGS OR ALCOHOL IN THEIR BODIES DURING WORKING TIME

A. Pre-employment Drug Testing.

All Agency applicants are subject to pre-employment drug testing. Those who are applying for safety-sensitive positions are subject to an FTA pre-employment drug test. Those who are not applying for a safety-sensitive position may be subject to an Agency pre-employment drug test. All drug tests will be administered by a medical facility designated by the Agency. If the drug test is cancelled by the Medical Review Officer ("MRO"), the employee must retake and pass the drug test before being hired. The Agency extends conditional offers of employment to successful candidates contingent on their passing a pre-employment drug test; any prospective employee refusing to submit to the drug test will not be hired by the Agency. Any prospective employee with a positive drug test will be rejected from further consideration for employment with the Agency. Further, any applicant or employee who has previously failed or refused a drug test must provide proof to the Agency, prior to being considered for employment, that they have successfully completed a referral, evaluation and substance abuse treatment plan compliant with the requirements in 49 C.F.R. Part 40 and 655. The Agency will provide each applicant or employee who fails a drug test with a list of names, addresses and telephone numbers of locally available Substance Abuse Professionals ("SAP(s)") qualified under 49 C.F.R. Part 40 requirements. Agency policy, not FTA regulations, requires that all fees, other than the cost of the drug test itself, including but not limited to referral, counseling and treatment fees will be paid by the candidate/employee.

B. Reasonable Suspicion Alcohol and Drug Testing

All Agency employees are subject to reasonable suspicion alcohol testing and drug testing. Those who work in safety-sensitive positions are subject to an FTA alcohol test and drug test. Those who do not work in a safety-sensitive position are subject to an Agency alcohol test and drug test. When the Agency has reasonable suspicion to believe that an employee has violated the prohibitions set forth in this policy, the employee will be required to submit to an alcohol test and/or a drug test immediately upon demand by the Agency. Reasonable suspicion testing will be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of an employee. One or more supervisors or company officials trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations. For FTA reasonable suspicion alcohol tests, the alcohol testing authorized in this section (and the observations required by the supervisors or company officials referred to above) must occur during, just before or just after the employee being tested performs a safety-sensitive function. Observations leading to Agency alcohol tests will likewise be made during, just before or just after the workday of the employee being tested. Observations leading to FTA drug tests may occur any time a safety-sensitive employee is on duty. Observations leading to MTS drug tests may occur any time a non-safety-sensitive employee is on duty.

FTA regulations require that any employee with a positive drug test or an alcohol concentration measure of 0.02 percent or higher be immediately removed from service, and that an employee with an alcohol concentration measure of 0.02 to 0.039 percent will, at a minimum, not be allowed to perform a safety-sensitive function until the start of the employee's next regularly scheduled duty period that is at least eight hours following the administration of the alcohol test.

Agency policy, not FTA regulations, requires that all employees who are required to submit to a reasonable suspicion drug and alcohol test (Agency or FTA) be removed from working until the results of both tests are known. Further, any employee with a

positive drug test or having a breath alcohol concentration measure of 0.02 percent or higher will be terminated from employment with the Agency. Any employee who has a positive DOT drug test or an alcohol concentration measure of 0.04 percent or higher on a DOT-mandated alcohol test will be referred to the Substance Abuse Professional (“SAP”) for evaluation in accordance with 49 C.F.R. Part 40. Agency policy, not FTA regulations, requires that all costs, other than the cost of the drug test itself, including but not limited to, referral, counseling and treatment fees will be paid by the candidate/employee.

Refusal to submit to any testing required by this section will be sufficient grounds for termination and will result in the employee being relieved of his or her duties immediately.

C. Post-Accident Alcohol and Drug Testing

FTA regulations require drug and alcohol testing following certain accidents. In addition, the Agency requires post-accident testing for accidents in circumstances when such testing is not required by the FTA. The following guidelines describe when a test is required by the FTA versus when the test is required by Agency policy. Employees will be informed whether the test is an FTA test or an Agency test. Agency tests will not be conducted using FTA testing forms.

1. FTA Definition of “Accident.” An accident, as defined by the FTA, is an occurrence associated with the operation of a vehicle, if as a result:
 - a. An individual dies; or
 - b. An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or
 - c. With respect to an occurrence in which the public transportation vehicle involved is a bus, van or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as a result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or
 - d. With respect to an occurrence in which the public transportation vehicle involved is a trolley car, the public transportation vehicle is removed from operation.
 - e. Disabling damage means damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs. Disabling damage includes damage to a motor vehicle, where the vehicle could have been driven, but would have been further damaged if so driven. Disabling damage does not include damage that can be remedied temporarily at the scene of the accident without special tools or parts, tire disablement without other damage even if no spare tire is available or damage to headlights, tail lights, turn signals, horns, or windshield wipers that makes the vehicle inoperative.
2. Fatal Accidents. As soon as practicable following an accident involving the loss

of human life, each surviving employee operating the public transportation vehicle at the time of the accident shall submit to an alcohol test and a drug test. Further, any other employee whose performance could have contributed to the accident (e.g., a mechanic in the case of brake failure causing the accident), as determined by the Agency using the best information available at the time of the decision, shall also be required to submit to an alcohol test and a drug-screen test.

3. Non-fatal Accidents. As soon as practicable following an accident not involving the loss of human life, each employee operating the public transportation vehicle at the time of the accident shall submit to an alcohol test and a drug-screen test, unless Agency management determines, using the best information available at the time of the decision, that the employee's performance can be completely discounted as a contributing factor to the accident. In addition, any employee whose performance could have contributed to the accident, as determined by the Agency, using the best information available at the time of the decision, will be required to submit to an alcohol test and a drug-screen test.
4. Agency Definition of "Accident". The Agency defines an accident as any incident which is not subject to FTA-mandated post-accident alcohol or drug testing, but involves damage to company property or an injury to any person. Any employee who is involved in an accident may, at Management's discretion, be required to submit to a non-DOT breath alcohol test and drug test. The definition of "involvement" in an accident includes, but is not limited to, an employee who is in a bus, trolley or other Agency vehicle at the time of an accident. Further, any other employee whose performance could have contributed to the accident, as determined by Agency management using the best information available at the time of the decision, shall also be required to submit to a non-DOT alcohol test and a drug test. The procedures and rules outlined in the remainder of this section apply uniformly regardless of whether the test is an Agency test or a FTA test, however, the Agency sets the procedures for its own testing based on its own authority, not FTA authority.
5. Post-Accident Testing Procedures.
 - a. Any employee involved in an accident is prohibited from using alcohol for eight hours following the accident or until he or she undergoes a post-accident alcohol test and drug test. Any employee involved in an accident who fails to remain readily available for the testing required by this section, including notifying company officials of his or her location if he or she leaves the scene of the accident prior to submission to such tests, will be deemed to have refused to submit to testing.
 - b. Post-accident testing will occur after the employee assists in resolution of the accident or receives medical attention following the accident. The Agency will complete the post-accident drug testing as soon as possible, and such testing will occur no later than 32 hours after the accident. The Agency will attempt to complete the post-accident alcohol testing within two hours of the accident. If the testing is not completed within two hours, the Agency will continue to attempt to complete the test and will prepare a report explaining why the breath specimen was not collected within two hours. If the alcohol test is not completed within eight hours of the

accident, the Agency shall cease attempts to complete the test and update the report as to why the test was not completed.

- c. Refusal to submit to a test required by this section will be sufficient grounds for termination and will result in the employee being relieved of his or her duties immediately. Based on FTA regulations, any employee with a positive drug test or having an alcohol concentration measure of 0.02 percent or higher will be immediately removed from service. Based on Agency policy, any employee with a positive drug test and/or an alcohol concentration measure of 0.02 percent or higher will be terminated from employment with the Agency.
- d. Any employee who has a positive DOT drug test or an alcohol concentration measure of 0.04 percent or higher on a DOT-mandated alcohol test will be referred to the Substance Abuse Professional ("SAP") for evaluation in accordance with 49 C.F.R. Part 40. Agency policy, not FTA regulations, requires that all costs, other than the cost of the drug test itself, including but not limited to, referral, counseling and treatment fees will be paid by the employee/former employee.

D. Random Alcohol Testing and Drug Testing

(The testing in this section applies only to safety-sensitive employees as defined above.) All safety-sensitive employees will be subject to unannounced, random alcohol testing and random drug testing in accordance with 49 C.F.R. Part 655. The selection of employees for random alcohol testing and random drug testing shall be made randomly by the Agency. The selection of employees for random alcohol testing and random drug testing shall be by a scientifically valid method, such as a random number table or a computer-based random number generator. Each employee will have an equal chance of being tested each time selections are made. These tests will not be announced in advance and will be administered on all days and at during all work hours throughout the year. The current minimum testing requirement is to annually perform drug tests on 25% and alcohol tests on 10% of the safety-sensitive employees. The Agency's Drug and Alcohol Program Manager ("DAPM") will adjust the number of tests periodically to ensure the Agency conducts no fewer than the FTA-mandated number of tests.

Each employee selected for random alcohol testing and/or random drug testing must proceed to the test site immediately. Refusal to submit to such testing will be sufficient grounds for termination and will result in the employee being relieved of his or her duties immediately. Based on FTA regulations, any employee failing a drug test or having an alcohol concentration measure of 0.02 percent or higher will be immediately removed from service. Based on Agency policy, any employee with a positive drug test and/or an alcohol concentration measure of 0.02 percent or higher will be terminated from employment with the Agency. Any employee who has a positive DOT drug test or a finding of an alcohol concentration measure of 0.04 percent or higher on a DOT-mandated alcohol test will be referred to the Substance Abuse Professional ("SAP") for evaluation in accordance with 49 C.F.R. Part 40. Agency policy, not FTA regulations requires that all costs, other than the cost of the drug test itself, including but not limited to referral, counseling and treatment fees will be paid by the employee/former employee.

E. Drug Testing for Employees Assuming Safety-Sensitive Duties

Any employee who accepts a position with the Agency involving safety-sensitive duties, who has previously been engaged in non-safety-sensitive duties, will be required to submit to and pass a pre-employment drug test prior to assumption of the safety-sensitive duties. In addition, any employee who has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and where that employee has not been in the Agency's random drug testing selection pool during that time, shall be required to take a pre-employment drug test in accordance with Section V(A) above, with a verified negative result before returning to duty.

If the drug test is cancelled by the MRO, the employee must retake and pass the test before assuming safety-sensitive duties. Refusal to submit to such testing will be sufficient grounds for termination of employment. Any employee failing a drug test will be immediately removed from service. Further, failure of a drug test will subject the employee to termination from employment with the Agency. Any employee who has a positive DOT drug test will be referred to the Substance Abuse Professional ("SAP") for evaluation in accordance with 49 C.F.R. Part 40. Agency policy, not FTA regulations, requires that all costs, other than the cost of the drug test itself, including but not limited to, referral, counseling and treatment fees will be paid by the employee/former employee.

F. Return to Duty and Follow-Up Alcohol Testing and Drug Testing

Any safety-sensitive employee who is allowed to return to duty after failing or refusing an alcohol test or a drug test must first provide a negative drug, alcohol (or both) test result. Employees returning to duty after failing or refusing an alcohol test or a drug test will be required to undergo unannounced follow-up alcohol and/or drug testing as directed by a substance abuse professional ("SAP"). The number and frequency of such follow-up testing shall be directed by the SAP. The employee will be subject to follow-up testing for as long as prescribed by the SAP, but such testing shall not continue beyond five years from the date the employee returns to safety-sensitive duties.

Agency policy, not FTA regulations, requires that any employee who is allowed to return to duty following leave for substance abuse rehabilitation must first provide a negative drug, alcohol (or both) test result. Employees returning to duty following leave for substance abuse rehabilitation will be required by Agency policy to undergo unannounced follow-up alcohol and/or drug testing as determined by a counselor who has earned the DOT Substance Abuse Professional ("SAP") qualification. The number and frequency of such follow-up testing, and whether or not the testing will be observed, shall be directed by the SAP-qualified counselor. The employee will be subject to follow-up testing for as long as prescribed by the DAPM, but such testing shall not continue beyond five years from the date the employee returns to their duties. The follow-up testing following a leave of absence specified in this paragraph is required by Agency policy, not FTA regulations.

Based on FTA regulations, any employee with a positive drug test or having an alcohol concentration measure of 0.02 percent or higher will be immediately removed from service. Based on Agency policy, any employee with a positive drug test and/or an alcohol concentration measure of 0.02 percent or higher will be terminated from employment with the Agency. Any employee who has a positive DOT drug test or an

alcohol concentration measure of 0.04 percent or higher on a DOT-mandated test will be referred to the Substance Abuse Professional (“SAP”) for evaluation in accordance with 49 C.F.R. Part 40. Agency policy, not FTA regulations, requires that all costs, other than the cost of the drug test itself, including but not limited to, referral, counseling and treatment fees will be paid by the employee/former employee.

G. Alcohol Testing and Drug Testing Following Injuries

(The alcohol testing and drug testing required in this section is required by the Agency; these are not FTA-mandated tests.) Any employee who sustains an injury on the job will be required to submit to an alcohol test and a drug test as part of the physician’s examination of the employee for the injury. Refusal to submit to such alcohol tests or drug tests will result in the employee being relieved of his or her duties immediately and will subject the employee to termination of employment. Any employee with a positive drug test or an alcohol concentration measure of 0.02 percent or higher will be terminated by the Agency.

VI.

FALSIFICATION, FAILURE TO TIMELY ARRIVE FOR TESTING, AND FAILURE TO NOTIFY

Any employee who provides false information in connection with an alcohol test or drug test administered under this policy, or who attempts to falsify test results through tampering, contamination, adulteration or substitution, shall be terminated by the Agency.

Any employee who fails to appear for a drug test or alcohol test within a reasonable time when required by this policy, or to remain at the testing site until the testing process is completed, or to cooperate fully in the testing process, will be deemed to have refused to be tested, and will be considered to have a positive test.

Under the federal Drug Free Workplace Act, all employees are required to notify the Human Resources department in writing immediately, but in any event within five days, after they have been convicted of violating a criminal drug statute that occurred in the workplace or while working. Any employee who fails to provide such notification shall be subject to termination of employment.

VII.

BEHAVIOR CONSTITUTING A REFUSAL TO SUBMIT TO A TEST

The behaviors outlined in this section apply to all tests administered under this policy regardless of if they are FTA-mandated or required by the Agency’s authority; however, Agency tests will not be conducted on DOT testing forms.

A. Actions considered a refusal to submit to an alcohol test include:

1. Failure to appear for any test within a reasonable time, as determined by the Agency, after being directed to do so by the Agency;

2. Failure to remain at the testing site until the testing process is complete;
3. Failure to cooperate with any part of the testing process;
4. Refusal by an employee to complete and sign the certification at Step 2 of the ATF (Alcohol Testing Form) for an FTA-mandated test (or an Agency form, if it is a non-FTA test);
5. Failure to provide an adequate breath specimen for testing without a valid medical explanation; or
6. Refusal to undergo a medical examination or evaluation as directed by the MRO or as directed by a Designated Employer Representative ("DER").

B. Actions considered a refusal to submit to a drug screen test include:

1. Failure to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, after being directed to do so by the employer;
2. Failure to remain at the testing site until the testing process is complete;
3. Failure to cooperate with any part of the testing process (e.g., refusal to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process);
4. Failure to provide a sufficient urine sample as required without a valid medical cause established in writing by a physician;
5. Refusal to undergo a medical examination or evaluation as directed by the MRO or as directed by a Designated Employer Representative ("DER");
6. Failure or refusal by an employee to take a second drug screen test if a DER or the MRO has directed the employee to do so;
7. Failure to permit the observation or monitoring of the collection of the specimen in the case where a directly observed or monitored collection of a urine specimen is required;
8. For an observed collection, failure to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process, or to possess or wear such a device that could be used to interfere with the collection process; or
9. The MRO reports to the Drug and Alcohol Program Manager that an employee has a verified adulterated, diluted or substituted test result.
10. Admitting to the Collector or MRO that the specimen was substituted or adulterated.

Refusal to submit to a drug screen test constitutes a verified positive drug test result, which will result in termination of employment according to Agency policy.

VIII.

PROCEDURES FOR ALCOHOL AND DRUG TESTING

A. Procedure for Alcohol Tests

All FTA-mandated alcohol testing called for in this policy shall be conducted in accordance with 49 C.F.R. Part 40: Procedures for Transportation Workplace Drug and Alcohol Testing Programs, as amended. All Agency-mandated breath alcohol testing will follow the same procedures but Agency-mandated tests are not required or governed by 49 C.F.R. Part 40. However, the results of FTA-mandated breath alcohol testing will be compiled on a U.S. Department of Transportation ("DOT") Alcohol Testing Form ("ATF"). The results of breath alcohol testing required by the Agency (and not FTA) will be on non-DOT testing forms. Agency management will inform the collection facility whether the test is an FTA or an Agency test. The alcohol testing in this policy applies regardless of whether the alcohol was ingested as beverage alcohol or in a medicinal or other preparation.

The alcohol tests will be administered by a breath alcohol technician ("BAT"), using an evidential breath testing device ("EBT"). The BAT will be trained to proficiency in the operation of the EBT. The EBTs are subject to a quality assurance plan developed by the manufacturers of EBTs. In order to insure that the test results are attributed to the correct employee, the BAT will require the employee to provide photo identification before tests are conducted. If the result of the alcohol screening test is an alcohol concentration of less than 0.02 percent, the employee will be deemed to have passed the FTA and Agency alcohol test. If the initial result of an FTA screening test is a breath alcohol concentration of 0.02 percent or higher, a confirmation test shall be performed under the FTA's authority. If the initial result of an Agency screening test is a breath alcohol concentration of 0.02 percent or higher, a confirmation test shall be performed under the Agency's authority. All alcohol confirmation tests shall be conducted within thirty minutes of the completion of the screening test.

B. Procedure for Drug Tests

All FTA-mandated drug tests called for in this policy shall be conducted in accordance with 49 C.F.R. Part 40: Procedures for Transportation Workplace Drug and Alcohol Testing Programs, as amended. All Agency-mandated drug tests will follow the same procedures but Agency-mandated tests are not required or governed by 49 C.F.R. Part 40. The DOT drug testing custody and control form will be used in connection with all FTA-mandated drug tests administered pursuant to this policy. The results of drug testing required by the Agency (and not FTA) will be on non-DOT testing forms. Agency management will inform the collection facility whether the test is an FTA or an Agency test.

The drugs tested for will be marijuana, cocaine, opiates, phencyclidine, and amphetamines. When an employee arrives at the collection site, the collection site person shall positively identify the employee through the presentation of photo identification. Collection personnel will be trained to ensure employee privacy in providing the urine specimen. Urine specimens collected for drug testing will be split

into two containers at the collection site. Collection site personnel will be trained to maintain the integrity of the specimen collection and transfer process. In order to maintain the integrity of the urine specimen, the specimen shall remain under the direct control of the collection site person from delivery to its being sealed in the mailer to the laboratory conducting the testing on the urine specimen. A tamper-proof sealing system will be utilized to ensure against undetected opening. The specimen bottle shall be identified with a unique identifying number identical to that appearing on the urine custody and control form.

Transfer of urine specimens will be accomplished through appropriate chain of custody procedures. The forms accompanying the specimens will have unique preprinted specimen ID numbers and the employee will sign or initial certifying that the specimen was taken from that employee. All drug tests that are positive will be retested in a confirmation test prior to the laboratory specifying a positive result on a drug test. All drug testing done under this policy will be done by a laboratory that has been certified by the federal Department of Health and Human Services ("DHHS"). The Agency's DHHS certified laboratory is Quest Diagnostics, Inc. All confirmatory tests will be performed using GC/MS techniques. There are federally mandated cut-off limits for the minimum quantity of drug that must be detected in order for a positive test on the initial and confirming test. The current cut-off limits expressed in nanograms per milliliter (ng/ml) are as follows:

<u>Drug</u>	<u>Initial Screen</u>	<u>Confirming Test</u>
Marijuana (THC)	50	15
Cocaine	150	100
Opiates Codeine Morphine Heroin	2000	2000
Phencyclidine (PCP)	25	25
6-Acetylmorphine	10	10
Amphetamines Amphetamine Methamphetamine MDMA MDA MDEA	500	250

In order to protect the Agency's employees and the integrity of the drug screen testing process, the Agency has retained the services of a Medical Review Officer ("MRO"). The Agency's MRO is Randy Barnett, M.D., of University Services. Dr. Barnett's phone number is 800-624-3784. The MRO is a licensed physician with

knowledge of drug abuse disorders. If the laboratory results are confirmed positive, the MRO will interview the employee and review all information provided by the employee to determine whether the results are indicative of illegal or illicit drug use. If the employee provides an adequate explanation, the MRO will verify the test results as negative with the Drug and Alcohol Program Manager and take no further action. If the test result of the primary specimen is positive, the employee may request that the MRO direct that the second split specimen be tested in a different DHHS laboratory. Agency policy requires that employees bear all expenses related to verification tests they request. The MRO shall honor such request if it is made within 72 hours of the employee having been notified of a verified positive test. If an employee has not contacted the MRO within 72 hours, the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the employee from timely contacting the MRO. If the MRO concludes that there is a legitimate explanation for the employee's failure to contact the MRO within 72 hours, the MRO shall direct that analysis of the split specimen be performed. The results of the test at the second DHHS-approved laboratory will be forwarded to the MRO. If the results of the second test fail to confirm the presence of the drugs or drug metabolites found in the primary specimen, the MRO shall cancel the test.

If the MRO advises the Agency that the result of the drug test was negative, but that the test was dilute because the specimen contained a creatinine concentration greater than or equal to 2mg/dL, but less than or equal to 5mg/dL,, the employee will be required to take another drug screen test immediately; the new test will be an observed collection. In this circumstance, the employee will be given as little advance notice as possible that he or she must return to the collection site. The test result from this test will be used to determine if the employee passes the drug test.

If the MRO advises the Agency that the result of the drug test was negative, but that the test was dilute and the specimen contained a creatinine concentration greater than 5mg/dL, the employee will be required to take another drug screen test immediately; the new test will not be an observed collection. In this circumstance, the employee will be given as little advance notice as possible that he or she must return to the collection site. The test result from this test will be used to determine if the employee passes the drug test.

The drug testing laboratory shall report test results to the MRO in writing, identifying the results of the test. The MRO will report to the DAPM whether the test is positive or negative, and will report the drug for which there was a positive test, but shall not disclose the quantitation of the test results (except in the case of a grievance, lawsuit, or other proceeding or inquiry initiated by the employee arising out of the verified positive drug test). All records pertaining to urine specimens shall be retained by the drug testing laboratory for a minimum of two (2) years. The drug testing laboratory shall retain all urine specimens confirmed as positive and place them into properly secured long-term frozen storage for a minimum of one (1) year.

MTS policy, not FTA regulations, require that employees who are waiting to provide a breath or urine sample refrain from using electronic devices such as cell phones, ipods, and PDAs. Employees violating this rule will be suspended for a minimum of one day.

IX.

POLICY REGARDING TREATMENT FOR DRUG OR ALCOHOL ADDICTION

A. (The following policy on treatment for drug and alcohol addiction, follow-up testing and the associated consequences is an Agency policy, not an FTA policy.) Any employee who feels that he or she has developed an addiction to, dependence upon or problem with alcohol or drugs, legal or illegal, is encouraged to seek assistance. No disciplinary action will be issued against any employee who (1) comes forward to management with their problem prior to being requested to submit to an alcohol test or a drug screen test and before the Agency learns of a violation of the drug and alcohol policy, and (2) provided the employee has not violated the policy before coming to management. If an employee comes forward to management regarding a drug or alcohol problem seeking assistance, but management learns that the employee violated this policy before coming forward, the Agency will discipline the employee for violating the policy, up to and including termination of employment. Further, if the company learns of a violation of this policy before the employee comes forward, or if the employee comes forward with the problem only after being requested to submit to an alcohol test or a drug screen test, the employee will be subject to termination.

B. **How to Seek Assistance.** To seek assistance for a problem with drugs or alcohol, you may contact MTS's Human Resources Manager (See "Contact Person" listed below), or you may directly contact MHN, the Agency's Employee Assistance Program ("EAP"), by calling 800-535-4985. Information concerning the EAP is posted on company bulletin boards and is available in the Human Resources offices. All requests for assistance will be kept confidential.

C. The Agency has worked with the EAP to develop a list of resources (hospitals and community organizations) offering alcohol or drug treatment programs. The EAP will refer employees seeking assistance to a facility covered by their healthcare (if applicable) or another appropriate treatment organization. Any employee failing an alcohol test or drug test required under this policy will be provided the above-referenced list of resources. The referral to the EAP is independent of any disciplinary action that the company may impose and the employee is responsible for all costs associated with analysis and treatment.

D. Rehabilitation itself is the responsibility of the employee. However, any employee seeking medical attention for alcoholism or drug addiction will be entitled to benefits available under the company's group medical insurance plan applicable to that employee, subject to the restrictions and limits stated in the applicable plan document and/or Collective Bargaining Agreement. Furthermore, rehabilitation leave will be available only to those employees whose employment is not terminated for misconduct prior to coming forward. Rehabilitation leave requests are subject to the leave of absence provisions of the applicable collective bargaining agreement, the Agency's medical leave policy (or the applicable administrative leave policies, if the employee is an administrative employee or member of management). Rehabilitation leave will be available on a one-time-only basis, subject to the conditions for continuing employment in Paragraph E below. **The Agency will not offer rehabilitation leave on a second occasion. The recurrence of an alcohol or drug problem will result in termination of employment.**

- E. To be eligible for continuation of employment following a rehabilitation leave, the employee must:
 - 1. Undergo evaluation by a SAP, who will recommend a course of rehabilitation. (This is an Agency-mandated evaluation, not an FTA requirement.)
 - 2. Begin a program of rehabilitation, strictly follow the rules and guidelines of that program, and sign a release of all medical information, including that relating to drug and alcohol treatment, so the company can monitor his or her progress.
 - 3. Remain continuously enrolled in a treatment program and actively participate in that program.
 - 4. Not reject treatment or leave the treatment program prior to being properly discharged therefrom.
 - 5. Agree that the SAP will determine whether the employee has successfully completed the program.
 - 6. Not violate the Drug and Alcohol Policy.
- F. Any employee suffering from an alcohol or drug problem who rejects treatment or who leaves a treatment program prior to being properly discharged there from will be terminated from employment.
- G. All employees returning to active employment from rehabilitation will be required to sign a "Return to Work Agreement" requiring:
 - 1. That the employee must pass a non-DOT alcohol test and non-DOT drug screen test before returning to work;
 - 2. That a SAP must determine that the employee has properly followed an appropriate rehabilitation program and is capable of returning to duty;
 - 3. That the employee agrees to unannounced alcohol testing and drug testing. The number and frequency of follow-up testing shall be determined by the SAP (this is required by Agency policy, not FTA regulations). The employee will be subject to follow-up testing for as long as prescribed by the SAP, but such tests shall not continue beyond five years from the date of the employee's return to duty;
 - 4. That failure of any drug test or alcohol test or refusal to immediately submit to such testing during this period shall be grounds for immediate termination based on Agency policy (not FTA regulations);
 - 5. That the employee must maintain an acceptable attendance and performance record, not violate the Drug and Alcohol Policy, and

comply with all other company rules and policies upon their return to work.

X.

**MISCELLANEOUS INFORMATION REGARDING THIS
DRUG AND ALCOHOL POLICY**

A. Contact Person

Any employees having questions about the Agency's Drug and Alcohol Policy should contact Brendan Shannon, MTS's Human Resources Manager, located at 1255 Imperial Avenue, Suite 1000, San Diego, California 92101-7492, telephone number 619-557-4569.

B. Training

The Agency provides training for all of its supervisors in order for them to be able to make a determination of whether reasonable suspicion exists for an employee to be required to submit to reasonable suspicion alcohol testing and drug testing. This training includes a minimum of 60 minutes of supervisor training on the effects of drug use and 60 minutes of supervisor training on the effects alcohol use and this policy. Training of newly promoted or hired supervisors will occur before they assume supervisory duties (unless they are under the direct supervision of a trained supervisor or manager).

C. Notice of Certain Requirements in Addition to FTA-Mandated Requirements

The policy is designed in part to comply with the Federal Transit Administration ("FTA") regulations on prevention of prohibited drug use and alcohol misuse in transit operations, 49 C.F.R. Part 655. However, MTS has added certain additional requirements to this policy, including the following:

1. This policy applies to all employees of MTS and its operating divisions (MTS Bus and MTS Rail), not just safety-sensitive employees as defined by the FTA. As such, Agency employees who are not safety-sensitive employees are subject to pre-employment drug testing and to reasonable suspicion, post-accident and post-injury drug testing and alcohol testing.
2. The Agency requires post-accident alcohol and drug testing in cases where such testing is not required by the FTA. The FTA regulations limit the circumstances under which post-accident alcohol and drug testing will occur, as set forth in Article V(C) above. The Agency requires post-accident alcohol and drug testing using a much broader definition of accident.
3. The Agency requires alcohol testing and drug testing following work injuries, which is not required by FTA regulations.
4. This policy requires employees using prescription drugs to report the prescription to their supervisor or Human Resources, and to provide the medication itself (if requested) to the Agency medical facility.

5. This policy sets forth the disciplinary action for violations of the policy, which is an Agency decision, and is not part of the FTA regulations.
6. This policy requires that all costs of drug treatment and/or SAP evaluation be paid by the employee or former employee. This is an Agency decision, not an FTA requirement.

D. Substance Abuse Professional

The Agency has secured the services of a Substance Abuse Professional ("SAP"). The Agency's Substance Abuse Professional is Grover Warren, who can be reached at 619-840-3230. Mr. Warren is a Certified Employee Assistance professional who specializes in evaluating and treating individuals with substance abuse disorders. Mr. Warren will evaluate employees who come forward with substance abuse problems, employees returning to duty after failing an alcohol or drug test or following leave for substance abuse rehabilitation, and will direct the frequency of follow-up drug testing and alcohol testing for employees.

E. Right to Examine Records

Every employee has the right to review his/her drug and alcohol testing records (except SAP-determined DOT follow-up testing plans), provide information to dispute the results of a drug or alcohol test and, upon written request, to obtain copies of any records pertaining to his or her drug and alcohol tests, including records pertaining to equipment calibration and laboratory certifications.

APPROVAL OF POLICY BY MTS

This policy has been approved by the MTS Board of Directors and Chief Executive Officer.

DATED: _____

Harry Mathis
Chairman, MTS Board of Directors

DATED: _____

Paul C. Jablonski
Chief Executive Officer

**ACKNOWLEDGMENT OF RECEIPT OF
METROPOLITAN TRANSIT SYSTEM DRUG AND ALCOHOL POLICY
(EFFECTIVE 4/13/2017)**

I hereby acknowledge receipt of a copy of the **METROPOLITAN TRANSIT SYSTEM** Drug and Alcohol Policy, effective 4/13/2017. I understand that I am responsible for reading the policy and in consideration of my employment with the Agency (MTS, SDTC or SDTI), I hereby agree to comply with the policy in all respects and consent to the alcohol testing and drug screen testing required by this policy.

DATED: _____

Employee Signature

Employee ID Number

Employee Name (Please Print)



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

Agenda Item No. 15

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

April 13, 2017

**Draft for
Executive Committee
Review Date: 4/6/17**

SUBJECT:

TEXT MESSAGING SERVICES FOR GO MTS SHORT CODE

RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors:

- 1) Ratify previous Purchase Order (PO) 4500001379 award of \$79,750.00 with MIS Sciences, Inc. which was previously issued under MTS's Board Policy Section 41.4.2 "Stand-Alone Purchase Orders"; and
- 2) Authorize the Chief Executive Officer (CEO) to execute a sole source extension to the PO with MIS Sciences, Inc. (MIS Sciences) through July 31, 2017 and increase capacity by \$55,500.00 for a revised total PO value of \$135,250.00.

Budget Impact

MTS PO 4500001379 will not exceed \$135,250.00 through July 31, 2017 and will be paid from the Information Technology department's budget.

DISCUSSION:

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

In December 2015, MTS requested pricing for Text Messaging services from February 1, 2016 through January 31, 2017.



Three (3) bids were received as follows:

1. MIS Sciences, Inc.
2. Twilio
3. Mobile Commons

All were deemed responsive and responsible.

The following pricing was received:

Text Messaging Pricing Comparison	One Year Term	Pricing from December 2015	
Company	MIS Sciences	Twilio	Mobile Commons
Price per message sent	\$ 0.0095	\$ 0.0080	\$ 0.0100
Price per message received	\$ -	\$ 0.0020	\$ -
Other fees	\$ -	\$ -	\$ 6,750.00
Short Code	\$ 12,000.00	\$ 16,500.00	\$ 15,000.00
GRAND TOTAL	\$ 54,750.00	\$ 61,500.00	\$ 66,750.00
Notes*		(1)*	(2)*

(1)* - Twilio has a minimum monthly cost of \$2,000

(2)* - Mobile Commons has an annual total of 6,000,000 messages offered.

Based on the lowest bid, MIS Sciences was awarded a PO for the services in the amount of \$54,750.00.

During the term of the PO with MIS Sciences, mobile carriers instituted additional charges per text message sent and received, raising the prices of texting to \$0.015 per message. Due to the price increase, a higher than estimated usage of SMS texting, and to maintain operational continuity of existing texting service with MIS Sciences, an additional authority in the amount of \$25,000 was added to the PO, bringing the total capacity to \$79,750.00.

MTS intends to retire the SMS short code texting service by July 31, 2017. However, because MTS leases its short code, and due to limitations and timelines in switching a short code from one vendor to another as it takes at least several months to switch the code to a new vendor, it is not possible to switch vendors and maintain operational continuity for MTS SMS texting services. In addition, because MTS plans to retire the SMS short code in approximately 4 months, it would not be of operational or fiscal value to transfer the code to another vendor for a short period of time.

As such, to keep operational continuity until the planned retirement of the short code services, an additional spending authority with MIS Sciences is requested to be authorized by the Board of Directors. The additional costs through July 31, 2017 are calculated to be \$55,500 including \$1,000 per month cost for leasing the short code and approximately \$8,250 in text messaging costs (for 550,000 messages) per month for six months.

MTS Policy No. 52 governing Noncompetitive Procurement: Sole Sources; MTS may utilize a documented Sole Source procurement method when a change to a contract is beyond the contracts original scope.

As such and in accordance with FTA Circular 4220.1F, Chapter IV, Section 2b-(3)(c), "Time Extensions", consistent with the general tone of the circular, contract time extensions will be considered in light of whether they are permissible changes or impermissible cardinal changes. Once the recipient awards the third party contract, an extension of the contract term length that amounts to a cardinal change will require a sole source justification.

Additionally and in accordance with FTA Circular 4220.1F, Chapter VI, Section 3i-1c – "Substantial Duplication of Costs" MTS requires a time extension through July 31, 2017 to ensure operational continuity is maintained until MTS retires the SMS short code texting services later this year.

Therefore, staff recommends that the MTS Board of Directors ratify the previous PO in the amount of \$79,750.00 with MIS Sciences and authorize the CEO to execute a Sole Source PO extension through July 31, 2017 and capacity increase to PO 4500001379, pursuant to MTS Policy 52 and the aforementioned provisions under FTA Circular 4220.1F, with MIS Sciences, Inc. in an amount of \$55,500 for a total not to exceed PO value of \$135,250.00

/s/Paul C. Jablonski

Paul C. Jablonski
Chief Executive Officer

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