



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

Agenda

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM EXECUTIVE COMMITTEE

December 5, 2019

9:00 a.m.

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

To request an agenda in an alternative format or to request accommodations to facilitate meeting participation, please call the Clerk of the Board at least two working days prior to the meeting. Assistive Listening Devices (ALDs) are available from the Clerk of the Board/Assistant Clerk of the Board prior to the meeting and are to be returned at the end of the meeting.

ACTION RECOMMENDED

- | | | |
|----|---|-----------------|
| A. | ROLL CALL | |
| B. | APPROVAL OF MINUTES – November 7, 2019 | Approve |
| C. | COMMITTEE DISCUSSION ITEMS | |
| 1. | Quarterly Mid-Coast Corridor Transit Project Update (Sharon Humphreys of SANDAG) | Informational |
| 2. | Next Generation Fare Collection System Implementation Update (Israel Maldonado and Rob Schupp) | Informational |
| 3. | CLOSED SESSION – CONFERENCE WITH REAL PROPERTY NEGOTIATORS Pursuant to California Government Code Section 54956.8
<u>Property:</u> 5159 Baltimore Drive (Assessor Parcel No. 470-050-16)
<u>Agency Negotiators:</u> Paul Jablonski, Chief Executive Officer; Karen Landers, General Counsel; and Tim Allison, Manager of Real Estate Assets
<u>Negotiating Parties:</u> DJR Companies, LLC
<u>Under Negotiation:</u> Price and Terms of Payment | Possible Action |

Please SILENCE electronics
during the meeting

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Metropolitan Transit System (MTS) is a California public agency comprised of San Diego Transit Corp., San Diego Trolley, Inc. 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.



- | | |
|--|----------------------------|
| <p>4. CLOSED SESSION – CONFERENCE WITH REAL PROPERTY NEGOTIATORS Pursuant to California Government Code Section 54956.8
 <u>Property</u>: Assessor’s Parcel Number (APN) 384-041-07; 8733 Cuyamaca Street, Santee, California
 <u>Agency Negotiators</u>: Paul Jablonski, Chief Executive Officer; Karen Landers, General Counsel; and Tim Allison, Manager of Real Estate Assets
 <u>Negotiating Parties</u>: Another Partnership
 <u>Under Negotiation</u>: Price and Terms of Payment</p> | <p>Possible
Action</p> |
|--|----------------------------|
-
- D. REVIEW OF DRAFT December 12, 2019 MTS BOARD AGENDA
 - E. REVIEW OF SANDAG TRANSPORTATION COMMITTEE AGENDA
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.
 - F. COMMITTEE MEMBER COMMUNICATIONS AND OTHER BUSINESS
 - G. PUBLIC COMMENTS
 - H. NEXT MEETING DATE: January 9, 2020
 - I. ADJOURNMENT

DRAFT

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

November 7, 2019

MINUTES

[Clerk's note: Except where noted, public, staff and board member comments are paraphrased].

A. ROLL CALL

Chair Fletcher called the Executive Committee meeting to order at 9:24 a.m. A roll call sheet listing Executive Committee member attendance is attached.

B. APPROVAL OF MINUTES

Ms. Salas moved for approval of the minutes of the October 3, 2019, MTS Executive Committee meeting. Mr. Arambula seconded the motion, and the vote was 4 to 0 in favor.

The Executive Committee convened for Closed Session at 9:25 a.m.

C. COMMITTEE DISCUSSION ITEMS

1. CLOSED SESSION – CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION Pursuant to California Government Code Section 54956.9(d)(4) (One Potential Case – David S. Smith/El Dorado Properties, Inc.)

The Executive Committee reconvened from Closed Session at 10:07 a.m.

Oral Report on Final Actions Taken in Closed Session

- C1. The Executive Committee received a report and gave instructions to legal staff.

D. PUBLIC COMMENTS

There were no Public Comments.

E. NEXT MEETING DATE

The next Executive Committee meeting is scheduled for December 5, 2019, at 9:00 a.m.

F. ADJOURNMENT

Chair Fletcher adjourned the meeting at 10:07 a.m.

Chairperson

Attachment: Roll Call Sheet

EXECUTIVE COMMITTEE
SAN DIEGO METROPOLITAN TRANSIT SYSTEM

ROLL CALL

MEETING OF (DATE) November 7, 2019

CALL TO ORDER (TIME) 9:24 a.m.

RECESS _____

RECONVENE _____

CLOSED SESSION 9:25 a.m.

RECONVENE 10:07 a.m.

ADJOURN 10:07 a.m.

BOARD MEMBER	(Alternate)	PRESENT (TIME ARRIVED)	ABSENT (TIME LEFT)
ARAPOSTATHIS <input type="checkbox"/>	(Arambula) <input checked="" type="checkbox"/>	9:24 a.m.	10:07 a.m.
FLETCHER (Chair) <input checked="" type="checkbox"/>	(Cox) <input type="checkbox"/>	9:24 a.m.	10:07 a.m.
MONTGOMERY <input checked="" type="checkbox"/>	(Ward) <input type="checkbox"/>	9:24 a.m.	10:07 a.m.
SALAS <input checked="" type="checkbox"/>	(Sandke) <input type="checkbox"/>	9:24 a.m.	10:07 a.m.

SIGNED BY THE CLERK OF THE BOARD:

Julia Turner

CONFIRMED BY THE GENERAL COUNSEL:

Keller Wood



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Agenda Item No. C1

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM EXECUTIVE COMMITTEE

December 5, 2019

SUBJECT:

QUARTERLY MID-COAST CORRIDOR TRANSIT PROJECT UPDATE (SHARON HUMPHREYS OF SANDAG)

INFORMATIONAL ONLY

Budget Impact

None.

DISCUSSION:

The Mid-Coast Corridor Transit Project is being developed by the San Diego Association of Governments (SANDAG) with MTS's assistance. The Mid-Coast Project will extend Trolley service from Old Town Transit Center to the University City community, serving major activity centers such as the Veterans Administration Medical Center, the University of California San Diego, and Westfield UTC. The project is funded by SANDAG and the Federal Transit Administration New Starts Program. SANDAG staff will provide an update on the project.

/s/ Paul C. Jablonski

Paul C. Jablonski
Chief Executive Officer

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





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Agenda Item No. C2

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM EXECUTIVE COMMITTEE

December 5, 2019

SUBJECT:

NEXT GENERATION FARE COLLECTION SYSTEM IMPLEMENTATION UPDATE
(ISRAEL MALDONADO AND ROB SCHUPP)

INFORMATIONAL ONLY

Budget Impact

None.

DISCUSSION:

The San Diego Association of Governments (SANDAG), MTS, and the North County Transit District transitioned from paper fare products to the Compass Card electronic fare collection system in 2009. In December 2018, due to the system's age and lack of modern functionality, the Board of Directors authorized the award of a contract for a next generation fare collection system to INIT Innovations in Transportation, Inc. Full deployment of the new system is scheduled for 2021. Staff will provide the Committee with an update on the project implementation.

/s/ Paul C. Jablonski

Paul C. Jablonski
Chief Executive Officer

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





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DRAFT

Agenda

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 12, 2019

9:00 a.m.

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

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ACTION RECOMMENDED

1. Roll Call
2. Approval of Minutes – November 2, 2019 and November 14, 2019 Approve
3. Public Comments - Limited to five speakers with three minutes per speaker. Others will be heard after Board Discussion items. If you have a report to present, please give your copies to the Clerk of the Board.

Please SILENCE electronics
during the meeting

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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.



CONSENT ITEMS

6. [Fiscal Year \(FY\) 2020 – 2021 Pilot Blue Line Service Increase](#) Approve
Action would approve the pilot Blue Line service increase, and direct the Budget Development Committee (BDC) to identify funding for the service in the Mid-Year Operating Budget Amendment.
7. [Lease Agreement with Brick by Brick, LLC at 675 West G Street, San Diego](#) Approve
Action would authorize the Chief Executive Officer (CEO) to execute a Lease Agreement with Brick By Brick, LLC for a lease at 675 West G Street, San Diego.
8. [Rail Maintenance Program Including Rail Grinding Services – Contract Award](#) Approve
Action would authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. PWL288.0-20, to Advanced Rail Management (ARM) for Rail Maintenance Program including Rail Grinding Services as further described in the scope of work, in the amount of \$3,091,938.01, for a 5-year period from January 1, 2020 to December 31, 2024.
9. [Fiber Optic Communication Network Gap Closures – Fund Transfer](#) Approve
Action would authorize the Chief Executive Officer (CEO) to execute Addendum 17, Scope of Work 88 to the MOU between the San Diego Association of Governments (SANDAG) and MTS for the Fiber Optic Communication Network Gap Closures project in the amount of \$150,000.00.
10. [On-Call Tree Trimming and Removal Services – Contract Award](#) Approve
Action would authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. PWG300.0-20, with Atlas Environmental Services, for On-Call Tree Trimming and Removal Services, in the amount of \$522,000, for a 10-year period from January 1, 2020 to December 31, 2029.
11. [Light Rail Vehicle \(LRV\) Upper Level Work Platforms Combined – Contract Award](#) Approve
Action would authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. PWL287.0-19, with Metro Builders, Inc., for the construction of LRV Upper Level Work Platforms Combined Project in the amount of \$2,084,002.
12. [Zero Emission Bus \(ZEB\) Charger Project Phase II – Contract Award](#) Approve
Action would authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. PWG301.0-20, with Baker Electric, for the installation of electric bus chargers and related underground work at the Kearny Mesa Division, East County Division, and South Bay Division in the amount of \$458,334.09.
13. [San Diego State University \(SDSU\) Trolley Station Fire and Safety Monitoring and Maintenance Services – Sole Source Contract Award](#) Approve
Action would authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. PWL304.0-20, with Johnson Controls Fire Protection, LP (JCI), for fire and safety monitoring and maintenance services at the SDSU trolley station for a period of five years in an amount not to exceed \$299,551.24.
14. [Revisions to San Diego Metropolitan Transit System \(MTS\) Ordinance No. 11](#) Approve
Action would: (1) Adopt the proposed amendments to MTS Ordinance No. 11, "An Ordinance Providing for the Licensing and the Regulating of Transportation

Services Within the City and County by the Adoption of a Uniform Paratransit Ordinance”; (2) Direct publication of a summary of the amendments to MTS Ordinance No. 11; and (3) Upon adoption of the proposed amendments, grant the Chief Executive Officer (CEO) the discretion to enforce MTS Ordinance No. 11 in its amended form.

- | | | |
|-----|---|---------------|
| 15. | <u>Revisions to MTS Board Policy No. 34, “For Hire Vehicle Services”</u>
Action would approve the proposed revisions to MTS Board Policy No. 34 “For Hire Vehicle Services”. | Approve |
| 16. | <u>Fashion Valley Elevator Project – Contract Award</u>
Action would authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. PWL289.0-20, with Conan Construction, Inc., in the amount of \$2,197,187.76 for constructing a second elevator at the Fashion Valley Station (“Project”). | Approve |
| 17. | <u>Extension of Gas Service Provider (GSP) Contract – Contract Amendment</u>
Action would authorize the Chief Executive Officer (CEO) to execute Amendment 9 to MTS Doc. No. G1268.0-09, with BP Energy Company (BP), in the amount of \$55,000 for the extension of GSP services for an additional two and a half year period. | Approve |
| 18. | <u>Account Based Fare Collection System – Contract Amendment</u>
Action would authorize the Chief Executive Officer (CEO) to execute Amendment 2 to MTS Doc. No. G2091.0-18, with Innovations in Transportation, Inc. (INIT), a total contract increase of \$1,093,731.49. | Approve |
| 19. | <u>Semiannual Uniform Report of Disadvantaged Business Enterprise (DBE) Awards and Payments</u> | Informational |
| 20. | <u>Conceptual Cost Estimating and Scheduling Services for Proposed Transportation Infrastructure Projects in San Diego County – Work Order Amendment</u>
Action would: (1) Ratify Amendment No. 1 to Work Order WOA2075-AE-37 under MTS Doc. No. G2075.0-18, with Dokken Engineering (Dokken), in the amount of \$255.17 for the removal of a subconsultant and the addition of a classification; and (2) Authorize the Chief Executive Officer (CEO) to execute Amendment No. 2 to Work Order WOA2075-AE-37 under MTS Doc. No. G2075.0-18 with Dokken in the amount of \$124,024.58 to perform conceptual cost estimating and scheduling services for proposed transportation infrastructure projects in San Diego County. The new total value of the Work order shall not exceed \$472,122.07. | Approve |
| 21. | <u>Operations Budget Status Report for October 2019</u> | Informational |

****ELEVATE SD 2020 BOARD WORKSHOP ITEMS****

- | | | |
|-----|---|---------------|
| ##. | <u>Public Outreach, Focus Groups and Polling Update (Mark Olson, Sharon Cooney, and Dave Metz of FM3)</u> | Informational |
| ##. | <u>Draft Expenditure Plan (Denis Desmond, Heather Furey, and Larry Marinesi)</u> | Informational |

OTHER ITEMS

- | | | |
|-----|---|---------------|
| 60. | <u>Chair Report</u> | Informational |
| 61. | <u>Chief Executive Officer's Report</u> | Informational |
| 62. | <u>Board Member Communications</u> | Informational |
| 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> January 16, 2020 | |
| 65. | <u>Adjournment</u> | |



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Agenda Item No. 6

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 12, 2019

**Draft for
Executive Committee
Review Date: 12/5/19**

SUBJECT:

FISCAL YEAR (FY) 2020 – 2021 PILOT BLUE LINE SERVICE INCREASE

RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors approve the pilot Blue Line service increase, and direct the Budget Development Committee (BDC) to identify funding for the service in the Mid-Year Operating Budget Amendment.

Budget Impact

The subsidy for operating the pilot Blue Line service is estimated at \$5.7 million annually. Initial costs for the pilot would be funded from the SDTI operations budget. At the BDC meeting in February 2020, staff will recommend that State Transit Assistance or Transportation Development Act funding be transferred from the Capital Improvement Program (CIP) to operate the pilot service for the full 12 month pilot period. This adjustment would be included in the FY 2020 Mid-Year Operating Budget Amendment, which will be developed by the BDC for approval by the Board of Directors in Spring 2020.

DISCUSSION:

As the region's economy diversifies away from traditional work hours, staff has identified a need to add midday and shoulder service to many core routes, especially in light of budget-related reductions made over the past ten years. The Blue Line is the highest ridership route in the MTS system, with more than 57,000 boardings each weekday, and nearly 19 million annual riders. The Blue Line currently offers a 7.5-minute frequency during the weekday peaks, for eight trains per hour between San Ysidro and Downtown San Diego in each direction. However, outside the weekday peaks, the frequency is every 15 minutes on all days. In the evenings, the frequency drops to 30 minutes at approximately 9:00 p.m., reducing the ease and flexibility riders have for late return trips.



To improve the service and experience for riders, MTS staff proposes implementation of a pilot program in early 2020 to increase service on the Blue Line as follows:

- On weekdays, add service to operate every 7.5 minutes for the entire base day;
- On all days, extend the 15-minute frequency into the evenings through the end of service day.

(Separately, MTS is in the initial planning stages of a pilot overnight service that would offer parallel bus service along the Blue Line corridor in the hours when freight traffic prohibits light rail operations.)

These changes represent a 29.9% increase in revenue hours on the Blue Line, making it a “major service change” as defined by MTS Board Policy 42. The policy allows major new services to be implemented as a pilot for up to 12 months to determine performance prior to initiating a major service change process (including a public hearing). If the added service implemented in early 2020 is successful, staff will conduct a major service change process and hold a public hearing at a future Board of Directors meeting, requesting Board action to make the change permanent.

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

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



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Agenda Item No. 7

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 12, 2019

**Draft for
Executive Committee
Review Date: 12/5/19**

SUBJECT:

LEASE AGREEMENT WITH BRICK BY BRICK, LLC AT 675 WEST G STREET, SAN DIEGO

RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to execute a Lease Agreement with Brick By Brick, LLC for a lease at 675 West G Street, San Diego.

Budget Impact

The total rent revenue for the initial 10-year lease term covered by the proposed lease agreement (January 2020 through December 2029) amounts to \$255,453 credited to the Land Management budget.

DISCUSSION:

Brick By Brick, LLC (Lessee), seeks approval of a proposed lease agreement to lease approximately 4,426 square feet at the Seaport Village Trolley Station. The Lessee currently leases 1,347 square feet of land that supports their outdoor eating space for the adjoining coffee shop restaurant at a rate of \$6,877.32 per year. The current lease is up for renewal and is on a month to month basis. The Lessee wants to expand its operation over a landscaped area to the east of the outbound platform. By leasing this area, the Lessee would take over its maintenance.

The Lessee's use for the additional space and revised lease terms is to expand their operations along the length of the current outbound trolley platform from its building to India Street. The Lessee will expand its food service and seating space and rebrand the business to Brickyard Place.



The new expanded lease would have an initial term of ten years with the option to extend the lease for five ten-year extensions for a total of sixty years. The lease can be terminated by MTS for transit use by giving one-year notice.

The lease area is broken into 3 spaces, each having a different lease rate. Restaurant space in this area can be around \$2 to \$3 per square foot. However, since this space is raw dirt and not typical restaurant space, the rental rate is discounted. Currently the Lessee pays \$0.43 per square foot. The proposed new rental rates will be \$0.75 per square foot for the primary space of 1,347 square feet (existing courtyard), the secondary space rate will be \$0.50 per square foot for an additional 1,347 square feet, and the entry space will be \$0.25 per square foot for 1,732 square feet to be used as hard scape. After each 5-year period, the lease rates would increase by 10 percent.

Below is a table to show the current versus the new lease rate for the initial term:

Lease Area	Existing Lease Rate (per yr)	New Lease Rate (per yr)
A (Primary Space)	\$6,877	\$12,123
B (Secondary Space)	\$0	\$8,082
C (Entry Space)	\$0	\$5,196
Total	\$6,877	\$25,401

The proposed lease agreement uses MTS's current standard form lease agreement (Attachment A). Lessee will be required to obtain a Right of Entry Permit from MTS to make some tenant improvements for their expansion. The lease Exhibit C shows the Lessee's proposed expansion concepts.

The Lessee met with the Home Owners Association of the adjoining property on November 11, 2019, to discuss the proposed coffee shop expansion, review concepts, and provide concurrence on the project. There was no objections to the project as proposed.

/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

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into, effective as of January 1, 2020 ("Commencement Date"), by and between the SAN DIEGO METROPOLITAN TRANSIT SYSTEM, a California public agency ("MTS") and BRICK BY BRICK, LLC (dba: Brickyard Coffee & Tea, Inc.) ("Lessee"). This Lease supersedes previous Lease Agreement, MTDB Doc. No. G0313.0-96, dated December 1, 1995.

IN CONSIDERATION OF THE RENTS AND COVENANTS hereinafter set forth, MTS ("Lessor") 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:

A portion of the property located at the southeast corner of Kettner Boulevard and G Street, adjacent to the property commonly known as 675 West G Street, abutting the Seaport Village Trolley Station, consisting of approximately 4,426 square feet.

All of said leased real property, including the land and all improvements therein, is outlined on the exhibit marked Exhibit "A" attached hereto.

ARTICLE 2 TERM

The term of this Lease shall be for TEN (10) YEARS commencing on the Commencement Date, ("Initial Term"), and Lessee shall have five ten-year options to extend ("Option to Extend") for a total term of sixty (60) years. Lessor reserves the right to utilize portions of the leased Premises, for the sole and exclusive purpose of necessary MTS Trolley operations, provided Lessee is given at least twelve (12) months advance written notice before the commencement of any such use, and reasonable efforts are made to minimize the impact of such use on Lessee's use of the Premises.

Lessee shall exercise each Option to Extend ("Option") by providing MTS with written notice ninety (90) days prior to the expiration date of Lease. If Lessee exercises Option to Extend, MTS' and Lessee's respective rights, duties and obligations shall be governed by the terms and conditions of this Lease.

ARTICLE 3 RENT

3.1 Base Rent. The Base Rent, beginning January 1, 2020, shall be \$0.75 per square foot per month, which calculates to a Base Annual rent of \$12,123.00, for the original 1,347 square footage "Existing Brickyard Patio" area shown on Exhibit "C". This area is

hereinafter referred to as Area “A”. Semi-annual rent payments shall be due every January 1st and July 1st, beginning in the year 2020. Every January 1st, there will be an annual cost of living adjustment as described in in Section 3.2.

On said Exhibit “C”, the additional area referred to as the “Expanded Brickyard Patio With Primary Pavilion” of 1347 square feet, hereinafter referred to as Area “B”, will be at the rate of \$0.50 per square foot per month which calculates to a Base Annual rent of \$8,082.00. Said rent for Area “B” shall commence on the first (1st) of the month following nine (9) months after the Commencement Date of this Lease, and the first rent that is due at that time will be pro-rated. Thereafter, semi-annual rent payments shall be due every January 1st and July 1st.

The additional “Brickyard Place South Access With Secondary Pavilion” area on Exhibit “C” of 1732 square footage, hereinafter referred to as Area “C”, will be at the rate of \$0.25 per square foot per month which calculates to a Base Annual rent to be \$5,196.00. Said rent for Area C shall commence on the first (1st) of the month following the twelfth (12th) month after the Commencement Date of this Lease Agreement and the first rent that is due at that time will be pro-rated. Thereafter, semi-annual rent payments shall be due every January 1st and July 1st.

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 rent for each such day, and thereafter shall be computed and paid as aforesaid.

3.2 Increases to the Base Rent. The Base Rent for Areas “A”, “B”, and “C” (“Combined Base Rent”) provided for in Section 3.1 shall be adjusted as set forth below on January 1st after the Commencement Date. The Combined Base Rent will increase in the sixth year of the Initial Term by ten percent (10%), over the Combined Base Rent paid the previous year, and remain at that level for the balance of the Initial Term

At the time of the exercise of each of the Ten-Year Options, the Combined Base Rent in the first year of each Option shall increase by ten percent (10%) over the previous year’s Combined Base Rent and then remain at that level for the first five (5) years of the Option. The Combined Base Rent will increase in the sixth year of the Option by ten percent (10%) over the Combined Base Rent paid the previous year, and remain at that level for the remaining five (5) years of the Option. The increase to the Combined Base Rent on January 1st following an extension of a Ten-Year Option period shall be prorated for the remaining portion of the calendar year a Ten-Year Option is extended.

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 rent invoices to Lessee.

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

a. If any such 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 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 in a manner consistent with the Concept Design Plan, a copy of which is attached hereto as Exhibit "C" and by this reference incorporated herein and as long as Lessee complies with the aforementioned sentence, will be entitled to use the Premises for any commercial use, but subject to Paragraph 4.2 below. Lessee may sell alcoholic beverages upon receipt of a valid liquor license, and may utilize portable propane heaters if allowed by local ordinance and regulations. At no time shall any use of portable heaters be a hazard to MTS operations. If determined to be a hazard by MTS, Lessee will be notified in writing to cease use of the portable heaters.

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 suitability 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 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 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 issued by the applicable public agency.

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.

Lessee shall be granted access and control to any and all existing utilities, including but not limited to water, electricity, gas, telephone and sewage, as applicable, on Areas A, B and C. Such utilities shall be metered separately, prior to the Commencement Date of this Lease. Once

severed, MTS shall have no responsibility to pay for said utilities in connection with Areas A, B or C.

Lessee may relocate the three (3) above-ground utility boxes located on the south end of Area C in a manner mutually agreed upon by MTS and Lessee, at the sole cost of Lessee.

Lessee may remove and relocate the two (2) beverage vending machines positioned on Area C, in a manner consistent with MTS' discretion, at the sole cost of Lessee.

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 MTS 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 Lessor 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, its agents, and/or subcontractors.

ARTICLE 7 SECURITY

Lessee shall be responsible for and shall provide for the security of Area A, Area B, and Area C, and MTS shall have no responsibility therefore.

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.

Lessee shall not, without MTS' prior written consent (which shall not be unreasonably withheld, conditioned, or delayed), make any alterations, install or remove any landscaping, including trees, 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 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 not unreasonably 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:
Mark Haack
Mark E Haack
610 India Street
San Diego, CA 92101

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 ten (10) 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.

Brick By Brick, LLC:

MTS:

By: _____
Mark E. Haack, Managing Member

By: _____
Paul C. Jablonski, Chief Executive Officer

Attachments: Exhibits A, B & C:

A. Description of the Premises

B. Insurance Requirements

C. Concept Design Plan

EXHIBIT A
DESCRIPTION OF THE PREMISES

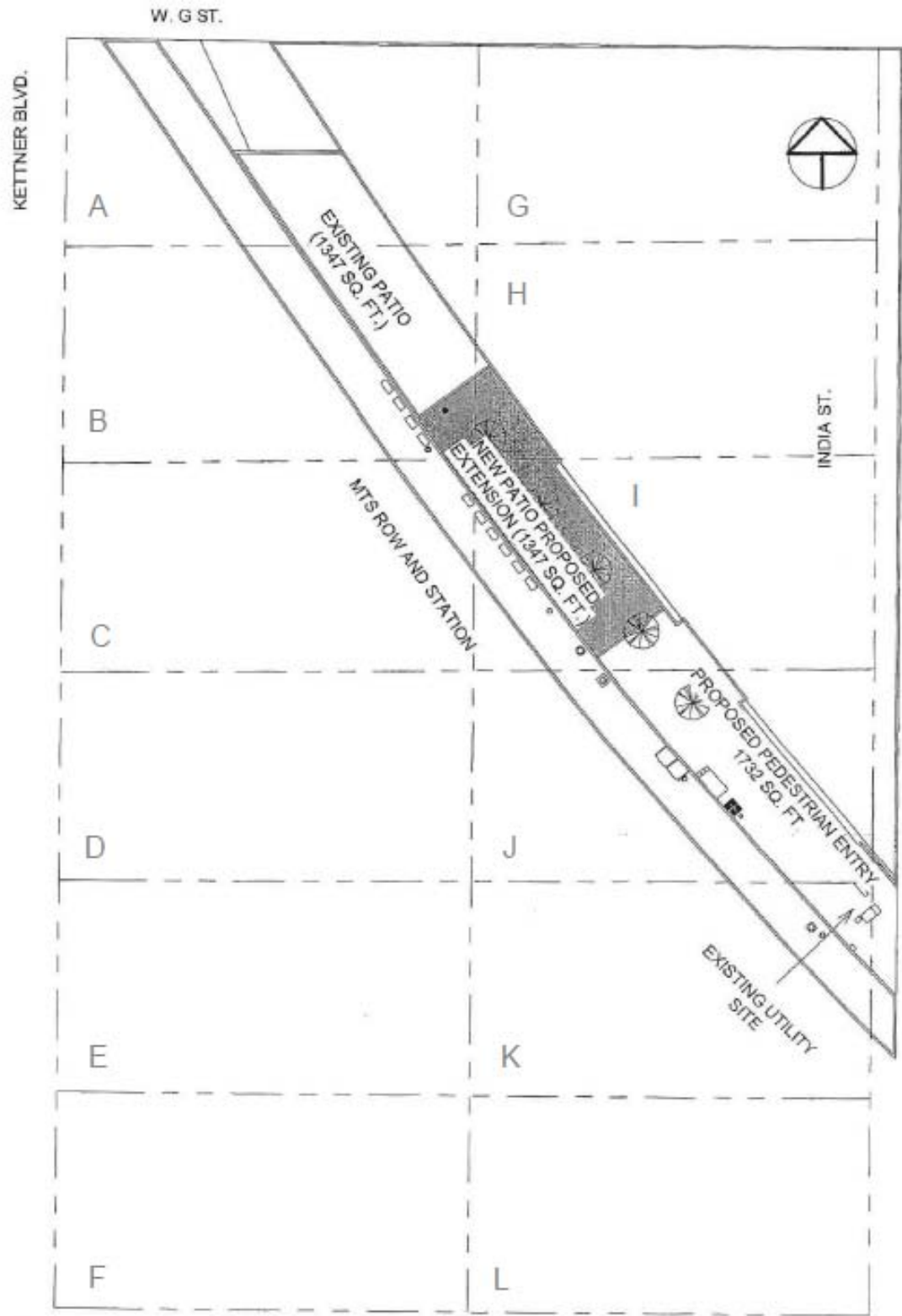


EXHIBIT B INSURANCE REQUIREMENTS

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. An endorsement must accompany the certificate of insurance (COI) provided for general liability insurance to demonstrate that the standard railroad exclusionary language has been removed from the general liability insurance policy. The policy number listed on the COI and on the endorsement must match. 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 \$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.

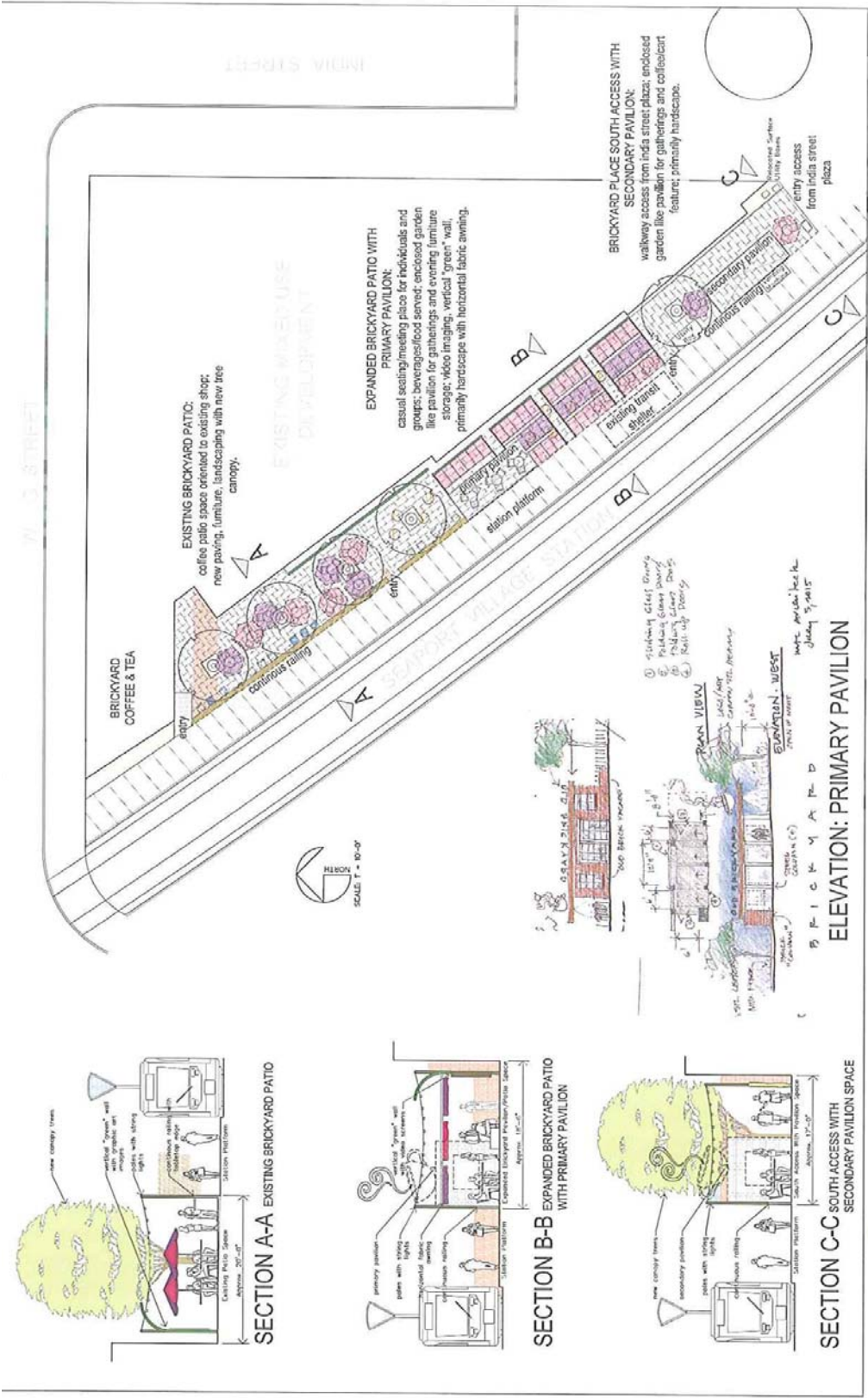
1.6 Policy Provisions Required. All policies and coverages shall contain a provision for 30 days' written notice by the Insurer(s) to MTS of any cancellation or material reduction of coverage. A ten-day notice is required for non-payment of premium.

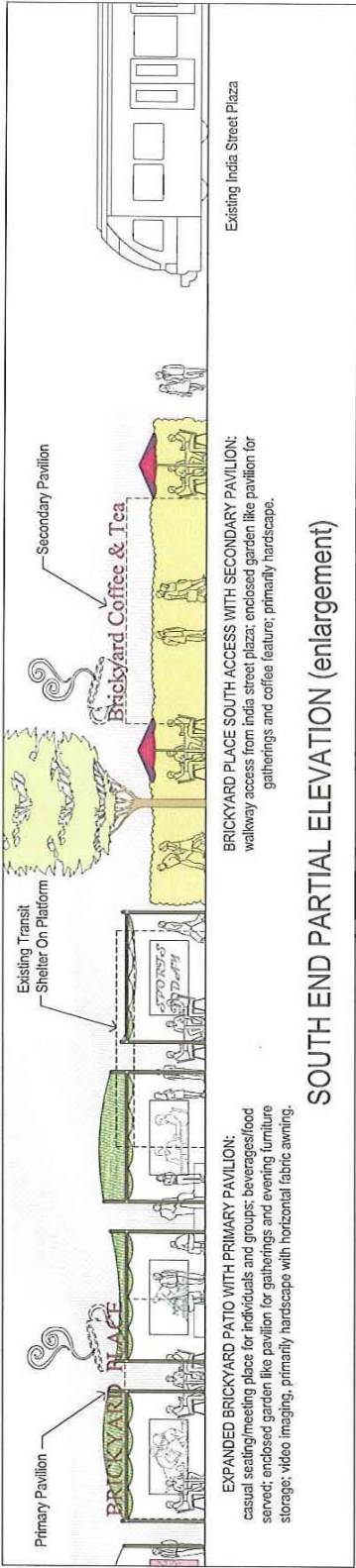
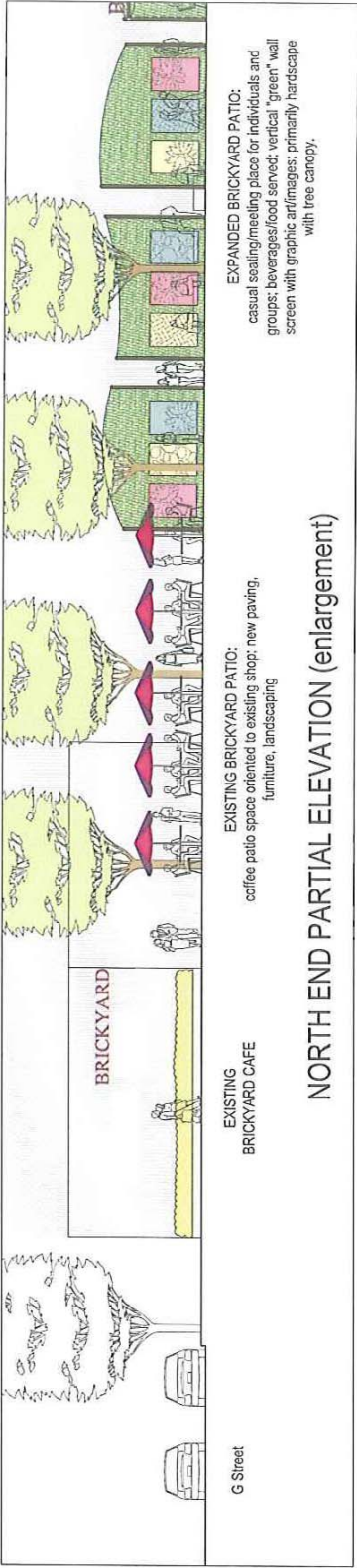
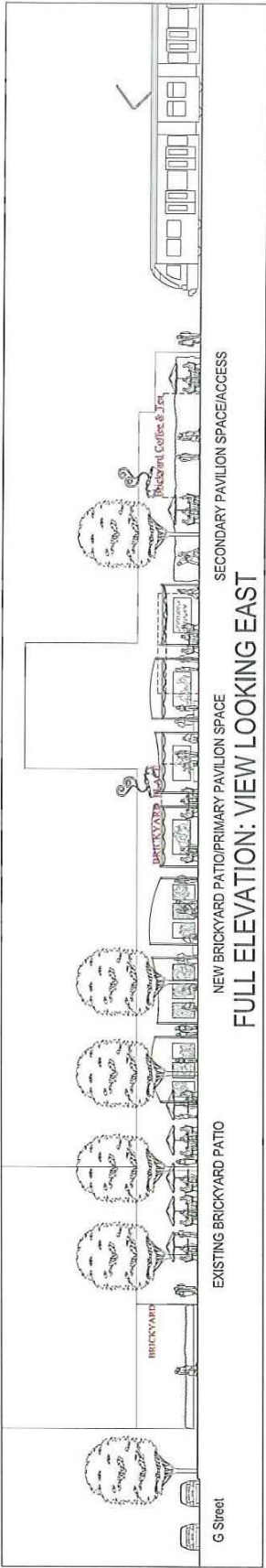
1.7 Evidence Required. Within ten (10) working days following execution of this Lease, Lessee shall have provided the MTS with satisfactory certification by a qualified representative of the Insurer(s) that Lessee's insurance complies with all provisions in this

insurance section. 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.

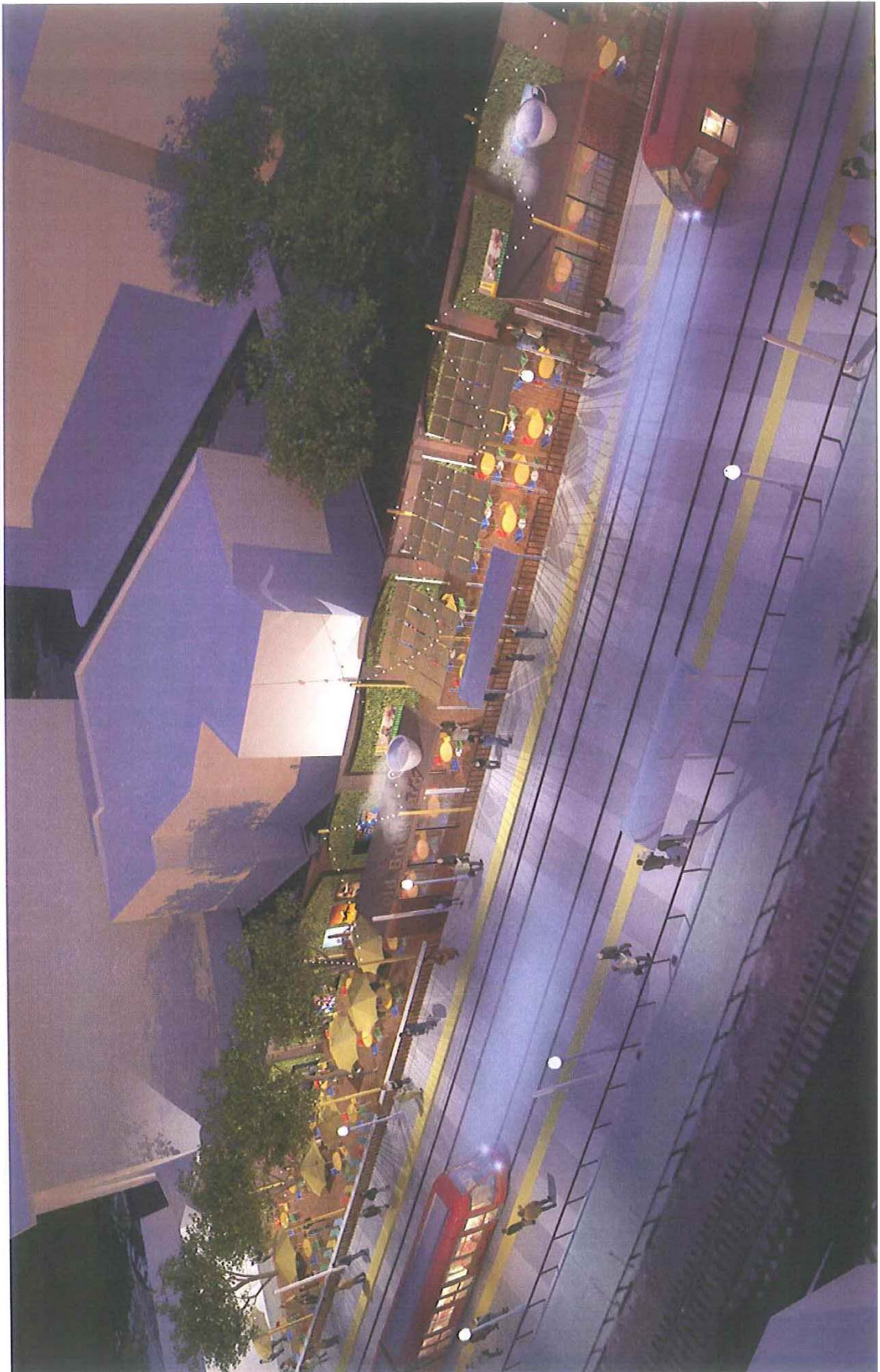
1.8 Special Provisions. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Lessee, and any approval of said insurance by MTS, SDTI, SD&AE, SD&IV, and SDTC, or their insurance consultant(s) are not intended to and shall not in any manner limit or qualify the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

EXHIBIT C
CONCEPT DESIGN PLAN (1 of 5 Pages)













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

December 12, 2019

**Draft for
Executive Committee
Review Date: 12/5/19**

SUBJECT:

RAIL MAINTENANCE PROGRAM INCLUDING RAIL GRINDING SERVICES -
CONTRACT AWARD

RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. PWL288.0-20 (in substantially the same format as Attachment A), to Advanced Rail Management (ARM) for Rail Maintenance Program Including Rail Grinding Services as further described in the scope of work, in the amount of \$3,091,938.01, for a 5-year period from January 1, 2020 to December 31, 2024.

Budget Impact

The total value of this agreement will not exceed \$3,091,938.01. Funding will be from SDTI Maintenance of Way budget 370016-536600.

DISCUSSION:

San Diego Trolley, Inc. (SDTI) is looking to award a five (5) year contract for the development and operation of a rail maintenance program, which includes rail grinding on all open track sections, special track work, road crossings and embedded track sections.

Contractor will provide technical services for rail maintenance analysis, inclusive of program planning and execution, economic analysis for SDTI's rail maintenance program, and rail grinding. The program will include analysis of rail wear and profile conditions, as well as recommendations for the management and execution of rail grinding to produce enhanced steering through profile enhancement and defect removal.



Past rail grinding services yielded improved ride quality and significantly increased the rail life. Proper rail grinding reduces the migration of internal rail defects and reduces wheel wear. The alternative to rail maintenance would be rail replacements.

On September 13, 2019, MTS issued a Request for Proposals (RFP) for Rail Maintenance Program including Rail Grinding Services. MTS staff advertised on a nationwide transit website (Transit Talent), posted the RFP on PlanetBids to alert proposers registered on other transit agencies' websites so as to reach as many firms as possible.

By October 21, 2019, MTS received a single proposal from ARM. To ascertain that the solicitation was not restrictive, staff conducted a single bid analysis. The results indicated that this was not the primary line of work of the proposers queried. Rail maintenance and grinding services are very specialized and only a few companies have the required qualifications and specialized vehicles for rail surveying and grinding. Therefore, MTS determined that competition was adequate.

On October 29, 2019, a selection committee consisting of representatives from MTS Maintenance of Way and Finance evaluated the proposal based on the following criteria:

Evaluation Criteria	Possible Points
Qualifications of the Firm	15
Staffing, Organization, and Management Plan	15
Work Plan	35
Cost/Price	35
Total Score	100%

The selection committee scored ARM's proposal as follows:

	Technical Score	Cost Score	Total Score
Maximum RFP Points	65.00	35.00	100.00%
ARM's Points	60.67	23.26	83.93%

ARM's initial proposal was \$3,141,389.26. On October 29, 2019, MTS asked ARM to provide cost clarifications in order to further evaluate the proposal. After review, on November 12, 2019, MTS asked ARM to provide a Best and Final Offer (BAFO).

On November 14, 2019, the BAFO was received with a price reduction of \$49,451.25. In addition, ARM provided further opportunities for a \$15,000 price reduction each year if the rail grinding equipment could be moved from neighboring projects' rails (such as North County Transit District) using one shift.

After further price analysis, staff determined ARM's cost proposal to be fair and reasonable.

Therefore, staff recommends that the MTS Board of Directors authorize the CEO to execute MTS Doc. No. PWL288.0-20 (in substantially the same format as Attachment A), to ARM for Rail Maintenance Program Including Rail Grinding Services as further described in the scope of work, in the amount of \$3,091,938.01, for a 5-year period from January 1, 2020 to December 31, 2024.

/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 Standard Services Agreement MTS Doc. No. PWL288.0-20
B. Scope of Work
C. Cost Proposal

ATTACHMENT AMTS DOC. No. PWL288.0-20
Contract #**STANDARD SERVICES AGREEMENT
FOR
RAIL MAINTENANCE PROGRAM INCLUDING RAIL GRINDING SERVICES**

THIS AGREEMENT is entered into this _____ day of _____ 2020, in the State of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following, hereinafter referred to as "Contractor":

Name: Advanced Rail Management Address: 507 Latania Palm Drive
Indialantic, FL 32903

Form of Business: Corporation
 (Corporation, Partnership, Sole Proprietor, etc.) Email Address: gbachinsky@arm-corp.com

Telephone: (321) 984-1474

Authorized person to sign contracts Gordon Bachinsky President
 Name Title

The attached Standard Conditions are part of this Agreement. The Contractor agrees to

Provide Rail Maintenance Program Including Rail Grinding Services as specified in the Scope of Work (attached as Exhibit A), Bid Form (attached as Exhibit B), and in accordance with the Standard Conditions (attached as Exhibit C), Federal Requirements (attached as Exhibit D) and Forms (attached as Exhibit E).

The contract term is for up to five (5) years effective 1/1/2020 to 12/31/2024.

Payment terms shall be net 30 days from invoice date. The total cost of this contract shall not exceed \$3,091,938.01 without the express written consent of MTS.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM	CONTRACTOR AUTHORIZATION
By: _____	Firm: _____
Approved as to form:	By: _____
By: _____	Title: _____

RAIL MAINTENANCE PROGRAM INCLUDING RAIL GRINDING SERVICES

1. SCOPE OF WORK/TECHNICAL SPECIFICATIONS

A. General:

MTS, on behalf of San Diego Transit Inc., (SDTI) is seeking to award a five (5) year contract for the development and operation of a long-term rail maintenance program, which includes profile rail grinding on all open track sections, as well as customized grinding on all special track work, road crossings, and embedded track sections.

B. MTS operates three light-rail routes:

i. Blue Line:

The Blue Line runs on a generally north-south direction and entered service in 1981. It consists of approximately 32 track miles of 90-lb and 115-lb rail, double track interspersed with single tracks in certain areas. The service is from the San Ysidro Station adjacent to the international border between Mexico and the United States to America Plaza in downtown San Diego and includes paved segments totaling some 1.25 miles along C Street, from America Plaza to 12th Avenue.

ii. Orange Line:

The Orange Line runs in a general east-west direction and is approximately 36 track miles long, double track, of 115-lb rail from the El Cajon Station to Santa Fe Station. Between Santa Fe Station and the Imperial Avenue Transit Station the Orange Line shares the Blue Line tracks. The Orange Line entered into revenue service in the segments listed below:

- Imperial Avenue Transit Station to Euclid Station: 1989
- Euclid Station to Spring Street Station: 1990
- Spring Street Station to El Cajon Transit Station: 1992
- El Cajon Transit Station to Santee: 1995

iii. Green Line:

The Green Line also runs on an east-west direction with approximately 48 track miles of 115-lb rail from the 12th Imperial Terminal to Santee Station (including 2.25 miles of paved segments on the Bayside Line). From Baltimore Junction (East Line MP 13.00) to El Cajon Transit Center the track is co-shared between the Orange Line and the Green Line.

C. Description of the Property:

i. Track:

Main Lines: Ballasted track on wood ties or concrete ties; track through downtown San Diego is embedded in asphalt and concrete

- Intersections: Track in street crossings is either embedded in asphalt, concrete or ballasted track with concrete paneling
- Special: Various system of direct fixation are used in selected locations
- Curves: Minimum horizontal radius: 82 ft.
Minimum vertical radius: 1,660 ft.
- Super elevation: 6 inch maximum
- Grade: 4.2% maximum
- ii. Rail:
 - Main Line: 90 RA 115 RE

Single or double restraining rail is used in curves with a radius of less than 900 ft. and other restricted areas.
 - Switches: No. 6 through No. 20
 - Main Line: Timber ties 7 inch x 9 inches x 8 feet

Concrete ties 6 inch x 10 inches x 9 feet

Longer timber ties in other specific areas such as switches and cross-overs.
- iii. Electrification:
 - The entire system is electrified with an overhead system, either single contact wire, or catenary. Power return is through the running rails.
 - Voltage: 650 VDC nominal, up to 900 VDC maximum
 - Wire Height: 12 ft. minimum above top of rail

22 ft. maximum above top of rail

NOTE: The overhead system is to be considered energized at all times

D. Availability of the Property for Grinding:

MTS Trolley operates revenue service for twenty-one-and-a-half hours daily. Service runs from 4:00 AM of one day to 1:30 AM of the following day, seven days a week. All Grinding shall be performed so as not to interfere with revenue service on the adjacent track or beyond the limits of the defined work area.

The rail grinding shall be performed during an approved work window as shown below:

- i. Blue Line

- East Bound: 12:30AM - 4:00AM (3 Hours 30 Minutes)
- West Bound: 1:30AM - 4:20AM (2 Hours 50 Minutes)
- ii. Green Line
 - East Bound: 1:10AM - 3:50AM (2 Hours 50 Minutes)
 - West Bound: 1:10AM - 4:50AM (3 Hours 40 Minutes)
- iii. Orange Line
 - East Bound: 12:38AM - 4:00AM (3 Hours 22 Minutes)
 - West Bound: 1:20AM - 4:45AM (3 Hours 25 Minutes)

This time allowance may vary depending on the designated location of a grind. The time of availability may also be adjusted by MTS to allow it to accommodate additional operating requirements.

MTS will turn off rail lubricators off for a minimum of two weeks prior to rail grinding. Contractor will give MTS notice of planned work so that MTS can plan accordingly.

No work by personnel or equipment shall be performed within ten feet of the centerline of any operating trolley track during operating hours without appropriate notification and protection of a flagger. If any such work is planned within these zones, Contractor must notify MTS by not less than 48 hours prior to performing such work. Flagging and/or switch tending will be provided by MTS to the Contractor at no cost, provided the required deadline for advance notification is met. If the Contractor's plans change Contractor shall notify MTS by not less than 12 hours prior to the prescheduled operation. If the Contractor neglects to notify MTS of its planned work by the required notification deadline, all costs incurred by MTS' in provision of flaggers or switch tenders to the Contractor shall be charged to the Contractor. The Contractor will not be assessed flagging expenses when planned work is not performed due to conditions beyond Contractor's control.

Contractor will include an equipment failure contingency plan that will describe the process for the removal of failed test equipment from the MTS mainline track in a manner that will not result in any service delay. It is the MTS' intent for this plan to be submitted by the Contractor for MTS review and approval prior to the Contractor submitting a request for a work window for rail grinding.

Similarly, Contractor will include in its equipment failure contingency plan the process by which it will ensure that rail grinding services are restored quickly and efficiently so as to guarantee that MTS will not suffer any harm as a result of uncompleted rail grinding due to failure of equipment. Contractor will also include a plan for recovery from other foreseeable delays not necessarily induced by equipment failures.

Grinding shall be performed only by experienced and qualified personnel and shall follow the requirements of the California Public Utilities Commission (CPUC) General Order 143-B, and the American Railroad Engineering and Maintenance Association (AREMA) Manual for Railway Engineering.

The contractor shall comply with all applicable Federal, State, and local regulatory requirements, and is responsible to obtain any and all required permits.

E. Contractor:

The successful Contractor will provide technical services for rail maintenance analysis and production, rail grinding, inclusive of program planning, program execution, and economic analysis for SDTI's annual and long-term rail maintenance program. The program will include analysis of rail wear and profile conditions, as well as recommendations for the management and execution of rail grinding to produce enhanced steering through profile enhancement and defect removal.

The Contractor will provide rail maintenance analysis and grinding for the main tracks in the entire SDTI system every year. The amount of funds available each fiscal year varies and may not be sufficient to perform all grinding recommended by the Contractor.

The Contractor will provide a combination of technical expertise and a Rail Grinding Specialist (RGS), to apply the best available rail grinding practices technology in performing the services.

F. Contractor Requirements:

- i. Must be licensed to do business in California.
- ii. Contractor must have a minimum of 10 years' experience in rail grinding.
- iii. RGS must be a licensed professional.
- iv. RGS must have a minimum of 10 years proven rail grinding industry experience.

These requirements shall be submitted with the proposal. If the Proposer does not meet the criteria mentioned above, the proposal may be rejected.

G. Technical Expertise and Proficiency:

The RGS will have a working knowledge of the industry standards associated with rail grinding, providing SDTI with the ability to cross-reference and evaluate rail grinding techniques and applications. The RGS will be familiar with industry issues associated with rail grinding and understand rail grinding programs and similar development on other rail carriers. The RGS must be responsive and effectively provide support to SDTI staff in any and all areas of rail grinding.

The RGS will possess proven ability to associate recommendations and program planning consistent with recommendations of the AREMA, Federal Railroad Administration (FRA), CPUC, MTS and other applicable local, state, and regulatory agencies.

The RGS will also be familiar with issues associated with commuter rail systems and demonstrate the ability to have previously developed successful production rail grinding programs.

H. The RGS, with support from the Contractor's technical support team will:

- i. Identify a preferred rail grinding template or templates by evaluating current rail conditions.
- ii. Recommend design modifications for rail profile to improve the ride quality, steering characteristics, and reduce noise levels.
- iii. Determine the status of rail profile in track and the rail grinding requirements to modify the rail to desired profile specifications.

- iv. Use proven and efficient application of industry rail grinding practices to maximize the use of SDTI's capital funds and optimize the use of its current rail infrastructure.
- v. Plan and program the application of production rail grinding, so that any impact on the current SDTI operations is minimized and the in use of its infrastructure and resources are optimized.

I. Contractor's Responsibilities for Equipment and Facilities:

- i. Contractor shall maintain and keep its equipment in good order (in particular the water sprinkler and fire control nozzles and apparatus). Repair and use same in grinding the rails for the tracks, at such points as SDTI shall designate.
- ii. Contractor shall see that the grinding apparatus when not in operation shall conform to the clearance requirements of SDTI. It is the Contractor's responsibility to guard and protect said apparatus when not in use.

J. Training Requirements:

Contractor shall provide, administer, and maintain training programs, which address all required aspects of safety and personnel qualifications, except for the SDTI provided training. The training programs shall be consistent with the objectives of providing the highest quality service to the public, with the policies of and in the best interest of SDTI. Training shall be in accordance with all, applicable federal, state local laws, and regulations and requirements. The training programs shall be designed to ensure that all employees are qualified to perform the functions necessary for their positions.

K. Scope of Services:

- i. Summary of Rail Grinding Program Deliverables:
 - a. System Pre-Grind Rail Report for review by SDTI. This report will contain rail profile information for pre-grind analysis and will clearly define rail profile conditions on curves and tangents. The report will be a database report formatted to compare existing rail data (weight, age, existing rail profile, head loss) with historical and current information. Report to include a prioritized five (5) year rail grinding program, based on profile of existing rail, comparing current profile measurement, and historical rail profile. Data for rail wear, tonnage, and defect histories to be included as available.
 - b. Recommendations for grinding based on an analysis of the system report and in correlation with actual infrastructure locations.

Recommendations will include rail grind profiles (templates):

- Grinding rates.
- Specific work plan based on track feet, grind hours, operational evaluation, and equipment grinding application.
- c. Rail grinding services that include providing and executing the rail-grinding program based on the pre-grind analysis and agreed work of Contractor-operated or subcontractor grinding services. It will also include management of the rail grinding application, documentation, and measurement of the completed grinding

process for payment and program evaluation. Services will include training SDTI personnel in both practical and technical applications of the rail-grinding programs.

- d. System Post-Grind Rail Report that analyzes and documents real-time and field data for only those areas ground in the annual program. Report to be a database report formatted to integrate the pre-grind database and other SDTI system track data.

ii. System Pre-Grind Rail Report:

The rail grinding Contractor, under this contract, will provide a rail maintenance analysis and existing conditions report. Report shall include a printable database and rail profile image, based on technical data that pertains to:

- a. Optical rail measurement data:
 - Minimum of 2 points on curves.
 - Minimum of 0.5-mile points on tangents.
 - Database image of rail profile.
 - Rail trend wear analysis for rail classification and gage face wear limits.
- b. Inclusive of:
 - Age of rail.
 - Year laid.
 - Last grinding date.
 - Distance to nearest east and west rail flange lubricator.
 - Radius differential evaluation.

i. Five (5) year prioritized annual rail grinding program:

The Contractor will also identify skill requirements and train SDTI staff to use database information consistent with the pre-grind report to support the rail grinding program and provide licensing for software if applicable.

L. Recommendations for Grinding:

The RGS will be required to develop a rail grinding production work plan. The plan will include grinding locations, recommended profiles, grinding passes, and speed. The plan will also include a proposed grinding schedule coordinated with corridor stakeholders, train operations, and grinding locations. Plan should provide dates, time, and duration, and will identify SDTI resource requirements for flag protection and/or grinding support. The RGS will be required to:

- i. Develop recommendations for:
 - a. Grinding pattern selection.
 - b. Grinding templates.
 - c. Defect development control.
 - d. Gage corner fatigue control.
 - e. Surface fatigue control.
 - f. Corrugation control.
- ii. Recommend rail grinding equipment application for:
 - a. Production grinding train consist.

- b. Spot grinding equipment consist.
 - c. Grinding support equipment.
 - d. Grinding stone specifications.
 - e. Imbedded rail grinding.
 - f. Switch grinding.
- iii. Schedule production rail grinding to:
 - a. Determine production-grinding rates.
 - b. Integrate grinding program with ongoing train operations.
 - c. Plan for SDTI support and flag personnel.
- iv. Schedule spot rail grinding to:
 - a. Determine locations for spot grinding and grind rate.
 - b. Integrate spot grinding program with production grinding program and ongoing train operations.
- v. Plan for SDTI support and flag personnel.
- vi. Provide methodology for measurement of actual rail ground based on production rail grinding schedule.

M. Rail Grinding Services:

The Contractor will provide the rail grinding services necessary to perform both spot and production rail grinding, as set forth in the rail-grinding program developed by its RGS and authorized by SDTI Project Manager.

N. Minimum Production Grinding Train/Equipment Requirements:

- i. Computer-based technology for grind pattern control.
- ii. Automated motor positioning grinding heads.
- iii. Minimum of 16 motors not less than 30 hp per motor.
- iv. Travel locks for all work heads.
- v. Travel at a minimum 30-mph for on-track machine and 20mph for hi-rail machine with all grinding equipment locked clear.
- vi. Comply with all state, local, municipal, and federal environmental codes.
- vii. Equipment must have a dust-collection system capable of removing sufficient materials to be able to pass applicable government clean air regulations.
- viii. Self-contained and propelled equipment capable of grinding at speeds between 1.5 and 8 mph.
- ix. Bi-directional operation.
- x. Sequencing grinding head control to clear obstructions.

- xi. Production grinding train with fully adjustable and automated grinding head control to accommodate multiple grinding patterns and have the ability to grind only those areas required.
- xii. Operator and/or computer-controlled grind-head configuration and adjustment to adjust profile in tangent-to-curve grinding situations.
- xiii. Ability to perform production rail grinding on track with up to 12° curves and 4.2% grades.
- xiv. Fire suppression equipment (tie sprayers and water cannon) to meet requirements for right-of-way protection during grinding operations.
- xv. Grinding equipment that fits within the clearance envelope of the AAR Plate C for equipment used in the joint Freight and LRT corridors.
- xvi. Grinding equipment operating in LRT only corridors must not exceed 13 feet from top of rail in height and 8 feet 11 inches in width.
- xvii. On-board mobile radio equipment for communication with SDTI dispatchers and emergency response equipment.
- xviii. Equipment lighting to meet minimum operating standards for night rail travel and work, including all necessary safety and warning lights and sound devices.
- xix. Maximum axle load of 75,000 lbs.
- xx. Brake system that complies with AAR regulations.
- xxi. Provisions for emergency coupling at either end of equipment to allow equipment removal in case of operational failure.

O. Minimum Spot Grinding Equipment Requirements:

- i. The equipment must have a nominal configuration of 16 stones, capable of creating 8 unique facets on each rail or the equivalent capability with fewer stones and alternate technology.
- ii. Equipment will meet or exceed all safety, operational, regulatory, and travel speed requirements, unless otherwise noted, as set forth in the production grinding equipment requirements.
- iii. Grinding unit must have the ability to travel at a minimum of 20 mph and work at a speed of 1 to 6 mph on up to 4.2% grades.
- iv. The unit must be capable of grinding a variety of profiling and reencountering patterns depending on varying rail wear conditions. Such pattern changes and adjustments should be made instantly from an onboard central control center.
- v. Grinding equipment must be capable of storing at least 10 of the railways patterns and unit must be able to grind two different patterns in parallel.
- vi. The unit must be capable of grinding any of at least 4 optimal rail shapes.

- vii. Metal removal rates must not vary more than 25% between rail with hardness ranging from 280 to 380 bhn.
- viii. Ridges left by grinding facets must not be so sharp as to result in the development of flow lines, or spalling at edge of contact bands.
- ix. The unit must be equipped with selective vertical stability control.
- x. Grinding motor load control must be manually selected and automatically maintained.
- xi. Grinding carriages must be capable of being raised and lowered on curved track and locked into position.
- xii. The grinding equipment must be capable of removing sufficient metal in 3 passes to meet the equivalency of a single pass.
- xiii. Grinding equipment must be capable of grinding for two hours while incurring no inoperative motors. At no time will grinding equipment be permitted to operate with more than five (5) percent of the motors drawing less than 16 amps. At no time will more than five (5) percent of the motors be inoperative.
- xiv. Grinding motors must be 100% operational at the start of each shift.
- xv. All grinding patterns must be balanced and may not change with curve elevation, or track gauge.
- xvi. The unit must be capable of automatic lateral positioning to allow grinding at angles of up to 45 degrees to field and gauge within a flangeway clearance of 1.75 inches on at least 25% of all motors.

The above requirements for spot and production grinding are a minimum only. The grinding Contractor and the RGS may recommend advanced grinding equipment that exceeds these minimum requirements.

P. System Post-Grind Rail Report:

The RGS, under this contract, will provide the following database information and tools (software) when presenting the cost evaluation for rail grinding program planning and execution, so that SDTI can clearly understand and review areas where the rail grinding was performed:

- i. Rail grinding program cost.
- ii. Payment verification for rail grinding services.
- iii. Rail grinding program benefits.
- iv. Rail grinding program cost impacts for annual and long-term programs.
- v. Savings associated with rail grinding application.
- vi. Final rail profiles at points to correspond to the pre-grind report.

- vii. Revisions (if any) on pre-grind rail report recommendations for rail replacement.

Q. Spot and Production Grinding Operational Limitations:

- i. Maximum equipment consists cannot exceed 1,000 feet in total length due to storage capacity limitations.
- ii. Production operation will be restricted to nighttime hours only.
- iii. A maximum of 30 on-track hours will be available per week.
- iv. Production grinding to be performed during January, February, March, and April.

R. Services Provided By SDTI:

SDTI shall provide:

- i. Proper and adequate flagging protection at all times, not only on the track being worked but also on adjacent tracks, as is deemed necessary.
- ii. From the delivery point on the line of SDTI to the location of the rail grinding operations transportation and/or piloting of the Contractor's equipment together with all parts, materials, and supplies required by the Contractor for each rail grinding program.
- iii. Water as may be required by the Contractor for the operation of its fire protection system, water to be furnished in one or more tanks or tank cars with a capacity of 8,000 to 20,000 gallons. The tank cars to be furnished by the Contractor.
- iv. Layover storage in safe and suitable area. This area should be accessible by truck for delivery of supplies and/or repairs, for the Contractor's grinding apparatus and accessory equipment; during such periods of time as said rail grinding apparatus and accessory equipment is inoperative on the lines of SDTI in connection with the program work. In addition for a period not the exceed ninety (90) days upon completion of each rail grinding program on the lines of the SDTI.
- v. Maintenance of Way Inspector and crew to assist in control of burning ties and small fires, with water truck.

2. PAYMENT TERMS

Unless otherwise stated in the specifications or cost proposal forms, one hundred percent (100%) of the contract price for each unit or units of material or equipment furnished and delivered under these specifications, will be paid to the Contractor within thirty (30) days after delivery to and acceptance by MTS of the unit or units ordered, as herein provided, and after the statements covering the unit or units have been presented to MTS by the Contractor.

Cash discounts as shown on the bid form shall be accepted at the option of MTS. Otherwise the terms will be Net thirty (30) from acceptance. Payment terms less than ten (10) days from acceptance will not be considered. ***Advanced Payment is Not Allowable.***

3. INVOICING

Contractor shall email invoices to AP@sdmts.com. MTS will make payments within thirty (30) days of invoice date. All invoices must have the date, time and units delivered. Contractor shall reference the MTS Purchase Order number on all invoices.

Invoices shall be based on work completed and accepted by the MTS Project Manager and must be accompanied by documented proof of acceptance by MTS.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
MTS Doc. No. PWL288.0-20

BEST AND FINAL OFFER

Proposer's Name: Advanced Rail Management Corporation

		Year 1 - 16-Stone Grinder	
Description	Qty	Unit Cost	Extended Total
Rail Grinding (per shift)	20	20,745.00	414,900.00
Mobilization/Transportation Cost	1	49,000.00	49,000.00
Rail Inspection and Grinding Plan	1	34,900.00	34,900.00
Survey Before and After Grinding	1	93,200.00	93,200.00
Standby Hourly Rate (up to 12 hours)	12	2,475.63	29,707.56
Evaluation of Optimum Wheel and Rail Interface	100	185.00	18,500.00
Annual Total			640,207.56

		Year 2 - 8-Stone Grinder	
Qty	Unit Cost	Extended Total	
25	17,980.78	449,519.50	
1	50,470.00	50,470.00	
1		0.00	
1	29,910.00	29,910.00	
12	2,174.20	26,090.40	
		555,989.90	

		Year 3 - 16-Stone Grinder	
Qty	Unit Cost	Extended Total	
20	22,007.26	440,145.20	
1	52,100.00	52,100.00	
1		0.00	
1	110,020.00	110,020.00	
12	2,626.40	31,516.80	
		633,782.00	

*potential \$30k savings for mobilization if rubber tired unit used

		Year 4 - 8-Stone Grinder	
Description	Qty	Unit Cost	Extended Total
Rail Grinding (per shift)	25	19,078.29	476,957.25
Mobilization/Transportation Cost	1	53,650.00	53,650.00
Rail Inspection and Grinding Plan	1		0.00
Survey Before and After Grinding	1	31,800.00	31,800.00
Standby Hourly Rate (up to 12 hours)	12	2,306.61	27,679.32
Evaluation of Optimum Wheel and Rail Interface			
Annual Total			590,086.57

		Year 5 - 16-Stone Grinder	
Qty	Unit Cost	Extended Total	
20	23,323.76	466,475.20	
1	55,259.50	55,259.50	
1		0.00	
1	116,700.00	116,700.00	
12	2,786.44	33,437.28	
		671,871.98	

*potential \$30k savings for mobilization if rubber tired unit used

NOTES:**1 Grinders will be billed by shift.**

Total shifts proposed per year are in our proposal

2 Mobilization rebate of \$15,000 can be applied *if* the rail grinder can be moved from neighboring projects (i.e. NCTD) on rails using one shift for transit each year

Annual Total Summary

Total Year 1	\$	640,207.56
Total Year 2	\$	555,989.90
Total Year 3	\$	633,782.00
Total Year 4	\$	590,086.57
Total Year 5	\$	671,871.98
CONTRACT TOTAL (BASIS FOR AWARD)	\$	3,091,938.01

Costs must be all-inclusive of requirements to perform all the work described in the scope of services. MTS will not pay additional costs.

Quantities displayed on the bid form are for proposal purposes only. They represent what MTS anticipates, but are not guaranteed. The actual quantities may be more or less than anticipated, and are dictated by MTS's actual needs and available funding.

Proposer accepts responsibility for accuracy and presentation of the above numbers.



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Agenda Item No. 9

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 12, 2019

**Draft for
Executive Committee
Review Date: 12/5/19**

SUBJECT:

FIBER OPTIC COMMUNICATION NETWORK GAP CLOSURES – FUND TRANSFER

RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors authorize the Chief Executive Officer (CEO) to execute Addendum 17, Scope of Work 88 (in substantially the same format as Attachment A) to the MOU between the San Diego Association of Governments (SANDAG) and MTS for the Fiber Optic Communication Network Gap Closures project in the amount of \$150,000.00.

Budget Impact

There would be no change to the overall Capital Improvement Project (CIP) amount. SANDAG would be reimbursed for the Fiber Optic Communication Network Gap Closures Project from MTS WBSE # 1009103601 for a total amount not to exceed \$150,000.00.

DISCUSSION:

MTS, North County Transit District (NCTD), Caltrans and SANDAG (the Agencies) entered into an Inter-Agency Fiber Optic Cable Sharing Agreement Memorandum of Understanding (MOU), (NCTD Doc No. 2017-01 / SANDAG Doc No. 5004795), to share spare capacity in each of the agencies existing fiber optic cables throughout the region with each other. The purpose of the MOU is to create a redundant ring in the fiber optic information networks, thereby increasing network functionality, reliability, and availability, and ensuring a single point of failure will not interrupt communications between the Imperial Avenue Division and Kearney Mesa Transit Central Offices, and the I-15 Bus Rapid Transit Stations.



The Agencies intend to contribute funding to this effort to close network gaps throughout San Diego County. SANDAG has completed work in San Diego between Caltrans Hub 3 and the MTS/Caltrans Interface cabinet at Interstate 5, at Imperial Avenue and along the State Route (SR) 94 and Interstate 15 highways. SANDAG's South Bay Bus Rapid Transit (BRT) and Mid-Coast Light Rail Transit (LRT) Extension projects are implementing additional fiber optic improvements. Caltrans has projects in place that are implementing additional improvements as well.

To complete the redundant ring in North County, network gaps in Escondido and Oceanside must be closed. When completed, the North County fiber optic ring will extend from Downtown San Diego to Oceanside to Escondido and back to Downtown San Diego. Following completion of the network gap closures, each of the Agencies will be able to configure their networks to take advantage of the North County redundant information network ring. In accordance with the MOU, NCTD and SANDAG will provide funding to close the network gaps in Escondido and Oceanside. Since the Oceanside network gap was not an identified gap in the fiber optic network at the time of execution of the MOU, MTS in accordance with this Addendum 17 is contributing funding towards the network gap closure effort.

The total cost of the project to close both fiber optic network gaps in Escondido and Oceanside is estimated at \$808,000. SANDAG Toll will contribute \$430,000 (plus an additional \$104,000), NCTD will contribute \$90,000 (they do not benefit from network gap closure in Oceanside), plus NCTD will be covering flagging costs in Oceanside and Escondido, estimated at \$34,000 dollars. MTS's contribution to this project is estimated at \$150,000. SANDAG staff went to their Board to transfer \$430,000 from SANDAG Toll and to accept \$90,000 from NCTD. SANDAG staff will be going back to SANDAG Transportation Committee Board to accept \$150,000 from MTS and to transfer the aforementioned additional \$104,000 from SANDAG Tolling. As part of their contribution to the MOU, Caltrans is currently working on a project to establish fiber connections to Otay Mesa Transit Center and SR-11 Tolling. The work should be completed in approximately one year.

Therefore, staff recommends that the MTS Board of Directors authorize the CEO to execute Addendum 17, Scope of Work 88, for Fiber Optic Communication Network Gap Closures project in the amount of \$150,000.00.

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

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

Attachment: A. Addendum 17 SOW 88

Addendum 17 Project Scope of Work

MTS File No.	G0930.17-04.88	SANDAG Reference No.	5000710 SOW 88
CIP Title:	Fiber Optic Communication Network Escondido and Oceanside Gap Closures		
CIP /WBSE No.	MTS - 1009103601 SANDAG - 1131500	Project Managers:	MTS – Thang Nguyen SANDAG – Dinara Ussenova
Lead Agency:	SANDAG	Operating Agency:	MTS
Estimated Start Date:	08/01/19	Original SOW 88 Budget	\$150,000
Estimated Completion Date:	8/01/20	Additional SOW __ Budget (this amendment)	N/A
Total CIP Budget	\$150,000	Total SOW Budget (value of work to be invoiced between SANDAG/MTS):	\$150,000

Intended Source of Funds:

MTS's \$150,000 contribution to this project will be funded out of Miscellaneous Capital project with local Funding, MTS WBSE # 1009103601.

Describe Any Necessary Transfers of Project Funds Between the Parties:

MTS shall reimburse SANDAG via invoices for services described herein.

Project Description:

MTS, NCTD, Caltrans and SANDAG (the Agencies) entered into an Inter-Agency Fiber Optic Cable Sharing Agreement Memorandum of Understanding (MOU), (NCTD Doc No. 2017-01 / SANDAG Doc No. 5004795), to share spare capacity in each of the agencies existing fiber optic cables throughout the region with each of the other agencies. Spare fiber optic strand capacity in each agency's fiber optic cable network is being shared with the other agencies to create additional network connections, increase system functionality, and network reliability. Redundancy in the fiber optic networks increases network availability by ensuring the information network continues to function even when a single device or cable break occurs.

In accordance with Exhibit D of the MOU, the Agencies intend to contribute funding to this effort to close gaps throughout San Diego County. SANDAG has completed work in San Diego between Caltrans Hub 3 and the MTS/Caltrans Interface cabinet at I-5 at Imperial Avenue and along the State Route (SR) 94 and Interstate 15 highways. SANDAG's South Bay BRT and MidCoast LRT Extension projects are implementing the fiber optic improvements described in Exhibit D. Caltrans has projects in place that are implementing the improvements described in Section C and D of the MOU.

To complete the redundant ring in north county, gaps in Escondido and Oceanside must be closed. When completed the North County fiber optic ring will extend from Downtown San Diego to Oceanside to Escondido and back to Downtown San Diego. Following completion of the gap closures, the Agencies will all be able to configure their networks to take advantage of the north county redundant information network ring. In accordance with sections A and B of Exhibit D of the MOU, NCTD and SANDAG will provide funding to close the gaps in Escondido and Oceanside. Since the Oceanside gap was not an

identified gap in the fiber optic network at the time of execution of the MOU, MTS in accordance with this Addendum 17 is contributing funding towards the gap closure effort.

Total cost of the project to close both fiber gaps in Escondido and Oceanside is estimated at \$808,000. SANDAG Toll contributed \$430,000 (plus an additional \$104,000), NCTD contributed \$90,000 (they do not benefit from gap closure in Oceanside) plus NCTD will be covering flagging costs in Oceanside and Escondido, estimated at \$34,000 dollars. MTS's contribution to this project is estimated at \$150,000. SANDAG staff went to the board to transfer \$430,000 from SANDAG Toll and to accept \$90,000 from NCTD. SANDAG staff will be going back to TC and the Board to accept \$150,000 from MTS and to transfer an additional \$104,000 from SANDAG Tolling. Caltrans is working on a project to establish connections to Otay Mesa Transit Center and SR-11 Tolling as their contribution to regional connectivity which should be complete in a year.

Closing the remaining fiber optic cabling gaps in the redundant ring information network, will ensure a single point of failure will not interrupt communications between the Imperial Avenue Division and Kearney Mesa Transit Central Offices, and the I-15 Bus Rapid Transit Stations. As currently configured a failure of a single device or breaking the fiber optic link would result in an interruption in communications between the facilities.

Scope of Work to be Performed by SANDAG:

1. To finalize design drawings, issue work to construction and implement and manage construction as well as the contractor.
2. Close gaps in Oceanside and Escondido.

Scope of Work to be performed by MTS:

1. MTS agrees to reimburse SANDAG for the full and actual cost for technical services provided herein within 30 days of receipt of invoice.
2. If SANDAG were to notify MTS that the amount will be exceeded, MTS will meet with SANDAG to discuss the need for additional funds. In no event shall SANDAG have the responsibility to move forward until both parties are able to identify sufficient funding for items associated with this procurement.

Any Additional Project-Specific Conditions:

None

APPROVED BY:
SANDAG

METROPOLITAN TRANSIT SYSTEM

Jim Linthicum
Director of Mobility Management and
Project Implementation

Date

Paul Jablonski
Chief Executive Officer

Date



1255 Imperial Avenue, Suite 1000
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Agenda Item No. 10

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 12, 2019

**Draft for
Executive Committee
Review Date: 12/5/19**

SUBJECT:

ON-CALL TREE TRIMMING AND REMOVAL SERVICES - CONTRACT AWARD

RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. PWG300.0-20 (in substantially the same format as Attachment A), with Atlas Environmental Services, for On-Call Tree Trimming and Removal Services, in the amount of \$522,000, for a 10-year period from January 1, 2020 to December 31, 2029.

Budget Impact

The total project amount is \$522,000 and is funded as follows:

	San Diego Trolley, Inc. (SDTI)	San Diego Transit Corp. (SDTC)
Operating Budget	380016 - 571140	331014 - 536600
Amount	\$501,120	\$20,880

DISCUSSION:

Annual services for tree trimming, maintenance and removal are required to provide the best possible tree care at MTS Bus and Trolley stations and along the MTS Right of Way. Proper tree maintenance enhances the aesthetics of MTS properties and provides a safer environment for bus and rail operations as utility line clearance is performed in conjunction with routine or non-routine trimming activities. Contractor shall provide all labor, supplies and equipment required to perform the services.



On October 1, 2019, MTS issued an Invitation for Bids (IFB) for on-call tree trimming and removal services. Four bids were received by the due date of November 7, 2019. The Bidders and their respective bids are as follows:

BIDDER	SDTI	SDTC	TOTAL AMOUNT	#
Atlas Environmental Services	\$501,120	\$20,880	\$522,000	1
West Coast Arborists	\$565,920	\$23,130	\$589,050	2
Singh Group Inc.	\$597,600	\$24,900	\$622,500	3
California Tree Service	\$684,000	\$28,500	\$712,500	4

The pricing provided by Atlas Environmental Services in comparison with the market rates from the other bids received is determined to be fair and reasonable.

Therefore, staff recommends that the MTS Board of Directors authorize the CEO to execute MTS Doc. No. PWG300.0-20 (in substantially the same format as Attachment A), with Atlas Environmental Services, Inc., for On-Call Tree Trimming and Removal Services, in the amount of \$522,000, for a 10-year period from January 1, 2020 to December 31, 2029.

/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 Standard Services Agreement MTS Doc. No. PWG300.0-20
B. Scope of Work
C. Bid Summary

ATTACHMENT A

**STANDARD SERVICES AGREEMENT
FOR
ON-CALL TREE TRIMMING AND REMOVAL SERVICES**

MTS DOC. No. PWG300.0-20
Contract #

THIS AGREEMENT is entered into this _____ day of _____ 2020, in the State of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following, hereinafter referred to as "Contractor":

Name: Atlas Environmental Address: 9032 Olive Drive
Spring Valley, CA 91977

Form of Business: Corporation
(Corporation, Partnership, Sole Proprietor, etc.) Email Address: jeff@atlastree.com

Telephone: 619-463-1707

Authorized person to sign contracts Jeff Bruhn President
Name Title

The attached Standard Conditions are part of this Agreement. The Contractor agrees to

Provide On-Call Tree Trimming And Removal Services as specified in the Scope of Work (attached as Exhibit A), Bid Form (attached as Exhibit B), and in accordance with the Standard Conditions (attached as Exhibit C), Federal Requirements (attached as Exhibit D) and Forms (attached as Exhibit E).

The contract term is for up to ten (10) years effective 1/1/2020 to 12/31/2029.

Payment terms shall be net 30 days from invoice date. The total cost of this contract shall not exceed \$522,000.00 without the express written consent of MTS.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM	CONTRACTOR AUTHORIZATION
By: _____	Firm: _____
Approved as to form:	By: _____
By: _____	Title: _____

ATTACHMENT B - SCOPE OF WORK/TECHNICAL SPECIFICATIONS

1.0 OVERVIEW

MTS is seeking bids from experienced, licensed entities to provide as-needed tree trimming and removal services, in accordance with federal, state and local environmental compliance laws and regulations, on behalf of San Diego Trolley Inc., (SDTI, which is MTS's Trolley division) and San Diego Transit Corp., (SDTC, which is MTS's Bus division). Each division has various service areas. During the course of the contract, MTS may add other locations and Contractor's pricing shall apply.

On the bid form, hourly rates shall be all-inclusive including but not limited to the cost of labor, tools, equipment, fuel, tax, overhead, profit and all other related costs necessary to perform the work described. Travel time will not be billable. Hours billed shall be for onsite work only as agreed upon on each work order. Charges not described on the bid forms will not be considered valid and MTS will not pay additional costs.

MTS will award one (1) contract for ten (10) years effective January 1, 2020 to the lowest responsive, responsible bidder, and issue two (2) purchase orders for invoicing purposes, one for each division.

1.1 SPECIFIC REQUIREMENTS/CONTRACTOR MINIMUM QUALIFICATIONS

- A. Bidder shall carry licenses C61 and D49.
- B. Bidders shall provide a list of certified employees and overhead power line clearance certifications with the bid. Tree trimmer shall have overhead power line clearance certification. Throughout the contract term Contractor must maintain overhead power line clearance certifications and training records, and make them available to MTS for review at any time.
- C. Bidder shall have at least three (3) years of tree trimming and removal service experience as a prime contractor or a subcontractor. Experience shall include working in areas with public traffic. Proof of experience/past performance shall be provided using the Status of Current and Past Contracts Form in this IFB.
- D. By submitting a bid, Bidder certifies that it has the appropriate license/s and certifications required to perform the specified services. A contract will not be awarded unless MTS is in receipt of the required documentation.

1.2 RESPONSIBILITIES FOR TREE TRIMMING SERVICES

Provide as-needed tree trimming services to MTS trees including but not limited to:

- A. Balance: To give the tree an over-all balanced look.
- B. Clean-up: Includes the removal of all dead branches, crisscrosses, nubs, new sucker growth. A general thinning of the tree to give it a neat and organized appearance.

- C. Crown Restoration: To prune in such a way that 1 to 3 sprouts on the main branch stubs are selected to become permanent branches, and to reform a more natural appearing crown.
- D. Drop-Crotch Pruning or Crown Reduction: To thin out by cutting back limbs to side branches without leaving stubs or right-angle truncations.
- E. Minimal Limb Removal: To remove only 1 or 2 major lower limbs in order to balance the overall appearance of the tree, to raise the crown and/or to reduce excess weight on one side of the tree.
- F. Cut Limbs: Apply tree paint on all cut limbs over 1".

1.3 CONTRACTOR RESPONSIBILITIES FOR TREE REMOVAL

Provide as-needed tree removal services to MTS trees including but not limited to:

- A. To cut down the whole tree and to, as described following, remove the stump.
- B. Root Removal: Without doing damage to the tree, to selectively remove large surface roots starting 3 feet out from the trunk of the tree, removing the root to the end of the run, while never removing more than 25% of a tree root system in any one annual root pruning without prior written approval of MTS Project Manager (MTS PM). If required by MTS, repair any ensuing landscape area damaged by such removal.
- C. Stump Removal: To remove the remaining stump to 12" below the ground level and to remove all exposed roots up to 6' from the original base of the stump. The Contractor shall remove all chips from the ensuing hole and shall in-fill the hole with planting soil, compacted to ground level.
- D. All tree removal shall be done in a manner to protect surrounding property, vegetation, etc.
- E. MTS will not provide supplies. Contractor needs to supply all necessary equipment, tools, supplies required to perform the work.
- F. Contractor will not be responsible if a tree dies during removal of roots if the Contractor follows the instructions in the Scope of Work.

1.4 ADDITIONAL CONTRACTOR RESPONSIBILITIES

- A. Debris Removal: Removal of all debris from the work site. Include the prompt transport all green waste to a composting facility or a transfer station that offers separate processing for a green waste for composting at Contractor's expense.
- B. Response Time:
 - Arrival on site, within eight (8) hours' notice from the MTS PM, under normal conditions, of an aerial lift, operator, and crew.

- Arrival on site, within two (2) hours' notice from the MTS PM, under storm and/or emergency conditions, as determined by the Project Manager, of an aerial lift, operator and crew.
 - Travel time is not billable. Hours billed will be for onsite work only.
- C. MTS Approval: The Contractor shall not remove any trees or shrubs unless authorized by MTS PM or designee.
- Contractor shall submit quotes, including price and total time to complete, for all non-emergency work requiring more than two (2) day's work.
- The MTS PM has the right to modify or suspend any work assignment for any reason, including adverse weather conditions, at no cost to MTS.
- MTS reserves the right to use alternative contractors at any time for any reason.
- D. Inspections: All completed work is to be inspected and accepted by MTS PM or designee upon completion. All work that is not completed to the satisfaction of MTS will be corrected within three (3) working days.
- E. Repairs to Property: Contractor shall exercise great caution and report any damages to MTS property or other's property during performance of services. Contractor shall be responsible for repairs or replacement in a timely manner when damages are incurred, whether such acts were intentional or not. All replacements and repairs shall be performed after coordination and written approval from the MTS PM.

1.5 CONTRACTOR'S STAFF

By submitting its bid, Contractor certifies that it shall:

- A. Provide qualified staff, legally eligible to work under the laws of the United States of America. Contractor agrees to comply with all employment and labor standards, all applicable federal, state, local laws and regulations.
- B. Provide a single point of contact (name, phone number and email address) that MTS will use for communications such as work orders and invoicing.
- C. Provide uniformed employees who must have proper identification at all times when on MTS property.
- D. Ensure that no illegal drugs or alcohol will be consumed on site or off the premises while on a job for MTS.
- E. Be responsible for all its employee's acts during performance of services.

1.6 SAFETY

Safety is very important to MTS during the performance of this contract. Identification and location of all utility or power lines are the responsibility of the Contractor.

The Contractor shall:

- A. At all times ensure the safety of Contractor staff, MTS employees and the general public.
- B. It is especially important that the Contractor trains its staff in the proper ways to work around power lines, and staff shall follow the power line-clearance requirements as applicable. Throughout the contract term, Contractor must follow the power line-clearance requirements, maintain overhead power line clearance certifications and training records, and make them available to MTS for review at any time.
- C. Tree trimmer shall have overhead power line clearance certification.
- D. Proceed with caution to avoid damaging any utilities known or unknown. In the event unidentified utilities are encountered, the Contractor shall notify the MTS PM immediately.
- E. In the event utilities are damaged during tree trimming or removal process, temporary services and/or repairs shall be made immediately, at the Contractor's expense, to maintain continuity of services, and permanent repairs shall be made in a timely manner at Contractor's expense.
- F. Ensure that its staff receives the training required to perform the contract, including but not limited to safety, compliance with best practices and OSHA standards on both personnel and equipment requirements. Contractor's personnel shall be fully qualified and trained to operate the equipment and be knowledgeable in safe operating practices regarding tree trimming and removal.

1.7 RED TAG TRACTION POWER REMOVAL REQUEST

The Contractor shall request a Red Tag/Traction power removal request from MTS/SDTI, 72 hours in advance of any work that requires a power shutdown in MTS right-of-way. The MTS Project Manager shall furnish the necessary forms to request a power shutdown.

1.8 SERVICE HOURS

Regular service hours will be Monday to Friday, from 8:00 a.m. to 5:00 p.m.

After-hours service will be Monday to Friday, from 5:00 p.m. to 8:00 a.m., all of Saturday, Sunday and MTS holidays.

MTS Holidays (subject to change during the contract term) are:

1. New Year's Day	6. Independence Day
2. Martin Luther King Day	7. Labor Day
3. President's Day	8. Veterans Day
4. Cesar Chavez Day	9. Thanksgiving Day
5. Memorial Day	10. Christmas Day

1.9 **PRICING**

On the Bid Form, MTS is asking Bidders to submit:

- A. All-inclusive hourly rate for regular hours.
- B. All-inclusive hourly rate for after-hours, weekend, and emergency service calls

Hourly rates shall be all-inclusive including but not limited to the cost of labor, tools, equipment, fuel, tax, overhead, profit and all other related costs necessary to perform the work described. Travel time is not billable. Hours billed shall be for onsite work only. Charges not described on the bid forms will not be considered valid and MTS will not pay additional costs.

1.10 **SERVICE REQUESTS/WORK ORDERS**

During the contract performance period, MTS will initiate a service request or work order for each project via an email to the successful contractor's primary contact. Contractor shall submit to the MTS PM an estimate based on the pricing in Section 2.9 above, showing the number of hours and number of crew members. The MTS PM will review, discuss with the Contractor as needed, and provide written approval prior to the start of work.

Travel time will not be included in the work order estimate. Charges not described on the bid forms will not be considered valid and MTS will not pay additional costs.

No work shall be performed prior to getting written MTS PM authorization to begin.

1.11 **PAYMENT TERMS**

Contractor billing shall be based on services performed on each work order. Hours billed shall be for onsite work only as agreed upon on each work order.

Payment will be made to the Contractor within thirty (30) days. Cash discounts as shown on the bid form shall be accepted at the option of MTS. Otherwise the terms will be Net thirty (30) from acceptance. Payment terms less than ten (10) days from acceptance will not be considered. **Advanced Payment is Not Allowable.**

1.12 **INVOICES**

Invoices must be sent to the MTS Accounting Department, via email at ap@sdmts.com. All invoices must have the Purchase Order and contract number clearly displayed to ensure timely payment. Invoices shall include the work order approval. MTS will not pay on packing slips, receiving documents, delivery documents, or other similar documents. Invoices must be submitted for payment.

Contractor must also indicate if any of the invoiced amount is for service or work provided by a subcontractor and indicate the amount that will be paid to the subcontractor. Contractors must also comply with the prompt payment requirements in the Prompt Progress Payments section of the Standard Conditions.

BID SUMMARY

ON-CALL TREE TRIMMING AND REMOVAL SERVICES - MTS DOC. NO. PWG300.0-20

Att. C, AI 10, 12/12/19

SDTI			ATLAS		WEST COAST ABORISTS		SINGH GROUP INC		CALIFORNIA TREE TRIMMING	
Year	Description	# of Hours	Hourly Rate	Extended Price	Hourly Rate	Extended Price	Hourly Rate	Extended Price	Hourly Rate	Extended Price
1	Regular hours	600	\$67.00	\$40,200.00	\$73.00	\$43,800.00	\$65.00	\$39,000.00	\$95.00	\$57,000.00
1	After-hours, weekends, emergency service	120	\$67.00	\$8,040.00	\$73.00	\$8,760.00	\$65.00	\$7,800.00	\$95.00	\$11,400.00
2	Regular hours	600	\$67.00	\$40,200.00	\$73.00	\$43,800.00	\$65.00	\$39,000.00	\$95.00	\$57,000.00
2	After-hours, weekends, emergency service	120	\$67.00	\$8,040.00	\$73.00	\$8,760.00	\$65.00	\$7,800.00	\$95.00	\$11,400.00
3	Regular hours	600	\$67.00	\$40,200.00	\$73.00	\$43,800.00	\$70.00	\$42,000.00	\$95.00	\$57,000.00
3	After-hours, weekends, emergency service	120	\$67.00	\$8,040.00	\$73.00	\$8,760.00	\$70.00	\$8,400.00	\$95.00	\$11,400.00
4	Regular hours	600	\$69.00	\$41,400.00	\$76.00	\$45,600.00	\$75.00	\$45,000.00	\$95.00	\$57,000.00
4	After-hours, weekends, emergency service	120	\$69.00	\$8,280.00	\$76.00	\$9,120.00	\$75.00	\$9,000.00	\$95.00	\$11,400.00
5	Regular hours	600	\$69.00	\$41,400.00	\$76.00	\$45,600.00	\$80.00	\$48,000.00	\$95.00	\$57,000.00
5	After-hours, weekends, emergency service	120	\$69.00	\$8,280.00	\$76.00	\$9,120.00	\$80.00	\$9,600.00	\$95.00	\$11,400.00
6	Regular hours	600	\$69.00	\$41,400.00	\$80.00	\$48,000.00	\$85.00	\$51,000.00	\$95.00	\$57,000.00
6	After-hours, weekends, emergency service	120	\$69.00	\$8,280.00	\$80.00	\$9,600.00	\$85.00	\$10,200.00	\$95.00	\$11,400.00
7	Regular hours	600	\$72.00	\$43,200.00	\$80.00	\$48,000.00	\$90.00	\$54,000.00	\$95.00	\$57,000.00
7	After-hours, weekends, emergency service	120	\$72.00	\$8,640.00	\$80.00	\$9,600.00	\$90.00	\$10,800.00	\$95.00	\$11,400.00
8	Regular hours	600	\$72.00	\$43,200.00	\$85.00	\$51,000.00	\$95.00	\$57,000.00	\$95.00	\$57,000.00
8	After-hours, weekends, emergency service	120	\$72.00	\$8,640.00	\$85.00	\$10,200.00	\$95.00	\$11,400.00	\$95.00	\$11,400.00
9	Regular hours	600	\$72.00	\$43,200.00	\$85.00	\$51,000.00	\$100.00	\$60,000.00	\$95.00	\$57,000.00
9	After-hours, weekends, emergency service	120	\$72.00	\$8,640.00	\$85.00	\$10,200.00	\$100.00	\$12,000.00	\$95.00	\$11,400.00
10	Regular hours	600	\$72.00	\$43,200.00	\$85.00	\$51,000.00	\$105.00	\$63,000.00	\$95.00	\$57,000.00
10	After-hours, weekends, emergency service	120	\$72.00	\$8,640.00	\$85.00	\$10,200.00	\$105.00	\$12,600.00	\$95.00	\$11,400.00
10 YEAR COST (SDTI)				\$501,120.00		\$565,920.00		\$597,600.00		\$684,000.00

SDTC			ATLAS		WEST COAST ABORISTS		SINGH GROUP INC		CALIFORNIA TREE SERVICE	
Item	Description	# of Hours	Hourly Rate	Extended Price	Hourly Rate	Extended Price	Hourly Rate	Extended Price	Hourly Rate	Extended Price
1	Regular hours	25	\$67.00	\$1,675.00	\$73.00	\$1,825.00	\$65.00	\$1,625.00	\$95.00	\$2,375.00
1	After-hours, weekends, emergency service	5	\$67.00	\$335.00	\$73.00	\$365.00	\$65.00	\$325.00	\$95.00	\$475.00
2	Regular hours	25	\$67.00	\$1,675.00	\$73.00	\$1,825.00	\$65.00	\$1,625.00	\$95.00	\$2,375.00
2	After-hours, weekends, emergency service	5	\$67.00	\$335.00	\$73.00	\$365.00	\$65.00	\$325.00	\$95.00	\$475.00
3	Regular hours	25	\$67.00	\$1,675.00	\$73.00	\$1,825.00	\$70.00	\$1,750.00	\$95.00	\$2,375.00
3	After-hours, weekends, emergency service	5	\$67.00	\$335.00	\$73.00	\$365.00	\$70.00	\$350.00	\$95.00	\$475.00
4	Regular hours	25	\$69.00	\$1,725.00	\$76.00	\$1,900.00	\$75.00	\$1,875.00	\$95.00	\$2,375.00
4	After-hours, weekends, emergency service	5	\$69.00	\$345.00	\$76.00	\$380.00	\$75.00	\$375.00	\$95.00	\$475.00
5	Regular hours	25	\$69.00	\$1,725.00	\$76.00	\$1,900.00	\$80.00	\$2,000.00	\$95.00	\$2,375.00
5	After-hours, weekends, emergency service	5	\$69.00	\$345.00	\$76.00	\$380.00	\$80.00	\$400.00	\$95.00	\$475.00
6	Regular hours	25	\$69.00	\$1,725.00	\$80.00	\$2,000.00	\$85.00	\$2,125.00	\$95.00	\$2,375.00
6	After-hours, weekends, emergency service	5	\$69.00	\$345.00	\$80.00	\$400.00	\$85.00	\$425.00	\$95.00	\$475.00
7	Regular hours	25	\$72.00	\$1,800.00	\$80.00	\$2,000.00	\$90.00	\$2,250.00	\$95.00	\$2,375.00
7	After-hours, weekends, emergency service	5	\$72.00	\$360.00	\$80.00	\$400.00	\$90.00	\$450.00	\$95.00	\$475.00
8	Regular hours	25	\$72.00	\$1,800.00	\$80.00	\$2,000.00	\$95.00	\$2,375.00	\$95.00	\$2,375.00
8	After-hours, weekends, emergency service	5	\$72.00	\$360.00	\$80.00	\$400.00	\$95.00	\$475.00	\$95.00	\$475.00
9	Regular hours	25	\$72.00	\$1,800.00	\$80.00	\$2,000.00	\$100.00	\$2,500.00	\$95.00	\$2,375.00
9	After-hours, weekends, emergency service	5	\$72.00	\$360.00	\$80.00	\$400.00	\$100.00	\$500.00	\$95.00	\$475.00
10	Regular hours	25	\$72.00	\$1,800.00	\$80.00	\$2,000.00	\$105.00	\$2,625.00	\$95.00	\$2,375.00
10	After-hours, weekends, emergency service	5	\$72.00	\$360.00	\$80.00	\$400.00	\$105.00	\$525.00	\$95.00	\$475.00
10 YEAR COST (SDTC)				\$20,880.00		\$23,130.00		\$24,900.00		\$28,500.00

SUMMARY

	ATLAS	WEST COAST	SINGH	CA TREE SVCE
TOTAL SDTI	\$501,120.00	\$565,920.00	\$597,600.00	\$684,000.00
TOTAL SDTC	\$20,880.00	\$23,130.00	\$24,900.00	\$28,500.00

10 YEAR TOTAL (BASIS FOR AWARD)	\$522,000.00	\$589,050.00	\$622,500.00	\$712,500.00
RANKING	1	2	3	4



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Agenda Item No. 11

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 12, 2019

Draft for Executive Committee Review Date: 12/5/19

SUBJECT:

LIGHT RAIL VEHICLE (LRV) UPPER LEVEL WORK PLATFORMS COMBINED -
CONTRACT AWARD

RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. PWL287.0-19 (in substantially the same format as Attachment A), with Metro Builders, Inc., for the construction of LRV Upper Level Work Platforms Combined Project in the amount of \$2,084,002.

Budget Impact

The total cost of this Agreement will not exceed \$2,084,002 over the duration of the construction services. This includes the \$1,894,547 bid amount by Metro Builders, Inc., plus an additional 10% for Construction Contingency in the amount of \$189,455.

Funding will be through multiple MTS Capital Improvement Project (CIP) accounts as follows:

CIP	2006003302	\$ 841,128	Building A, Tracks 2, 3
CIP	2006005402	\$ 527,068	Building C, Tracks 4, 5
CIP	2006105801	\$ 526,351	Building C, Track 1
		\$189,455	10% Contingency

DISCUSSION:

The addition of LRV upper level work platforms in Buildings A and C is necessary to enhance a safe working environment for LRV maintainers. This project will provide additional space for LRV shop maintenance and will reduce vehicle down time for repairs.



As MTS transitions from the older SD100 LRVs to new low-floor LRVs, additional upper level work platforms in Buildings A and C have become increasingly necessary. The majority of the fleet is now S70 and S70US low-floor vehicles with braking and propulsion equipment mounted on the roof. Furthermore, the delivery of additional LRVs for the Mid-Coast extension will increase the low-floor fleet size by approximately 60%, requiring additional maintenance areas.

On April 12, 2018, the MTS Board of Directors approved a contract for construction of LRV Upper Level Work Platforms with MTM Builders. The scope of work for the MTM Builders contract included Building A (tracks 2 and 3), and Building B (tracks 4 and 5). Unforeseen site conditions required a redesign of the project, resulting in the need for a contract change order. Staff and MTM Builders were not able to agree on change order pricing, in accordance with the contract terms, and staff determined that the best course of action was to terminate the contract with MTM Builders. The contract was terminated on March 7, 2019. Negotiations with MTM Builders regarding the contract termination are ongoing.

On April 11, 2019, the MTS Board of Directors authorized staff to execute a construction contract with the second lowest bidder, Jennette Company. The scope of work for the proposed contract includes Building A (tracks 2 and 3), and Building B (tracks 4 and 5), including the project redesign. Following the April Board meeting, MTS staff was advised that the award of this contract did not comply with the public procurement code, and therefore the contract was not executed.

On August 9, 2019, MTS issued an Invitation for Bids (IFB) for construction of the LRV platforms. The most recent solicitation included additional project elements. Alternate A – an additional platform at Building B, Track 1; and Alternate B – Removable Handrails for all 5 tracks. Two (2) bids were received on November 7, 2019. After a review for responsiveness and responsibility, staff determined that Metro Builders, Inc. presented MTS with the lowest responsive and responsible bid. The table below lists both bidders and their respective bid amounts, including Alternates A and B.

LRV Upper Level Work Platforms	
COMPANY NAME	BID AMOUNT (not including contingency)
<i>Metro Builders, Inc.</i>	\$1,894,547
<i>Four Dyce</i>	\$2,502,286.50
<i>ICE</i>	\$1,960,500

The pricing provided by Metro Builders in comparison with the independent cost estimate (ICE), and an MTS price analysis, was determined to be fair and reasonable.

Therefore, staff recommends that the MTS Board of Directors authorize the CEO to execute MTS Doc. No. PWL287.0-19, with Metro Builders, Inc., for the construction of LRV Upper Level Work Platforms Combined Project in the amount of \$2,084,002.

/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. PWL287.0-19
B. Bid Summary

**STANDARD CONSTRUCTION AGREEMENT
FOR
LRV UPPER PLATFORMS BUILDINGS A, C AND C1 -EAST**

PWL287.0-19 CONTRACT NUMBER

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, hereinafter referred to as "Contractor":

Name: METRO BUILDERS & ENGINEERS GOUP, LTD. Address: 2610 Avon St.

Form of Business: _____ Newport Beach, CA 92663
(Corporation, Partnership, Sole Proprietor, etc.)

Telephone: 949-515-4350 Email Address: estimating@metrobuilders.com

Authorized person to sign contracts: <u>Fouad Houalla</u>	<u>President</u>
Name	Title

The specified Contract Documents are part of this Agreement. The Contractor agrees to furnish to MTS services and materials, as follows:

Contractor shall furnish all necessary management, supervision, labor, materials, tools, supplies, equipment, plant, services, engineering, testing and/or any other act or thing required to diligently and fully perform and complete the Project as specified in the Scope of Work (Exhibit A), Bid Proposal (Exhibit B), and in accordance with the Standard Construction Agreement and Special Conditions (Exhibit C).

SCOPE OF WORK

Contractor, for and in consideration of the payment to be made to Contractor as hereinafter provided, shall furnish all plant, labor, technical and professional services, supervision, materials and equipment, other than such materials and equipment as may be specified to be furnished by MTS, and perform all operations necessary to complete the Work in strict conformance with the Contract Documents (defined below) for the following public work of improvement:

LRV UPPER PLATFORMS BUILDINGS A, C AND C1 -EAST

Contractor is an independent contractor and not an agent of MTS. The Contractor and its surety shall be liable to MTS for any damages arising as a result of the Contractor's failure to comply with this obligation.

CONTRACT TIME

Time is of the essence in the performance of the Work. The Work shall be commenced by the date stated in MTS's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within 120 calendar days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the Contract Time is adequate and reasonable to complete the Work.

CONTRACT PRICE

MTS shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **One million eight hundred ninety four thousand five hundred forty seven** Dollars (\$1,894,547.00). Payment shall be made as set forth in the General Conditions.

LIQUIDATED DAMAGES

It is agreed that the Contractor will pay MTS the sum of **\$1000** for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees MTS may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents.

COMPONENT PARTS OF THE CONTRACT

The "Contract Documents" include the following:

Invitation for Bids (IFB)	Performance Bond
Information and Instructions for Bidders	Payment (Labor and Materials) Bond
Contractor's Bid Forms	General Conditions
Bid Bond	Special Provisions (or Special Conditions)
Designation of Subcontractors	Technical Specifications prepared by RailPros., dated July, 2016
Designation of Other Third Party Contractors	Standard Specifications (Excluding sections 1-9 in their entirety)
Information Required of Bidders	Addenda
Non-Collusion Declaration Form	Plans prepared by RailPros, dated <u>July, 2016</u>
Iran Contracting Act Certification	Change Orders as executed by MTS
Public Works Contractor Registration	
Certification	

The Contractor shall complete the Work in strict accordance with all of the Contract Documents.

This Contract shall supersede any prior agreement of the parties.

PROVISIONS REQUIRED BY LAW

Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of the California Labor Code applicable to this Project.

INDEMNIFICATION

Contractor shall provide indemnification as set forth in the General Conditions.

PREVAILING WAGES

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at MTS's Administrative Office or may be obtained online at <http://www.dir.ca.gov> and which must be posted at the job site

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

MTS LRV UPPER PLATFORMS COMBINED CONSTRUCTION (ADDENDUM 4) Bid Form					
No.	Item	Quantity	Unit	Unit Price	Amount
BASE BID					
1	Mobilization/Demobilization	1	LS	\$ 124,490	\$ 124,490
Structure-Building A					
2	Remove and Replace Existing Handrail	1	LS	\$ 92,040	\$ 92,040
3	Excavation Including Excavation Protection	74	CY	\$ 153.40	\$ 11,352
4	Furnish and Install Spread Footings	65	CY	\$ 1,652	\$ 107,380
5	Utility Relocation	1	LS	\$ 23,600	\$ 23,600
6	Furnish and Install Structural Steel	42000	LB	\$ 5.31	\$ 223,020
7	Furnish and Install Steel Grating	2490	SF	\$ 35.40	\$ 88,146
8	Furnish and Install Fixed Handrail	461	LF	\$ 118	\$ 54,398
9	Furnish and Install Flip-Down Step	3	EA	\$ 11,800	\$ 35,400
10	Remove and Replace Existing Concrete	51	CY	\$ 944	\$ 48,144
Building A Bid (Items 2-10) Total:				\$ 683,480	
Structure-Building C West					
11	Excavation Including Excavation Protection	60	CY	\$ 153.40	\$ 9,204
12	Furnish and Install Spread Footings	51	CY	\$ 1,652	\$ 84,252
13	Utility Relocation	1	LS	\$ 17,700	\$ 17,700
14	Furnish and Install Structural Steel	33,000	LB	\$ 5.31	\$ 175,230
15	Furnish and Install Steel Grating	1,870	SF	\$ 35.40	\$ 66,198
16	Furnish and Install Fixed Handrail	320	LF	\$ 118	\$ 37,760
17	Furnish and Install Non-Retractable Ladders	2	EA	\$ 11,800	\$ 23,600
18	Remove and Replace Existing Concrete	58	CY	\$ 944	\$ 54,752
19	Painting Concrete	114	LF	\$ 14.16	\$ 1,614
Building C West Bid (Items 11-19) Total:				\$ 470,310	
Base Bid Subtotal (Items 1-19)				\$ 1,153,790	
Performance / Payment Bond				\$ 23,600	
Base Bid Total				\$ 1,177,390	

MTS LRV UPPER PLATFORMS COMBINED CONSTRUCTION (ADDENDUM 4) Bid Form					
No.	Item	Quantity	Unit	Unit Price	Amount
ADDITIVE ALTERNATES					
Additive Alternate A - Building C East					
20	Excavation Including Excavation Protection	131	CY	\$ 153.40	\$ 20,095
21	Furnish and Install Spread Footings	62	CY	\$ 1,652	\$ 102,424
22	Utility Relocation	1	LS	\$ 17,700	\$ 17,700
23	Furnish and Install Structural Steel	30,000	LB	\$ 5.31	\$ 159,300
24	Furnish and Install Steel Grating	1,410	SF	\$ 35.40	\$ 49,914
25	Furnish and Install Fixed Handrail	404	LF	\$ 118	\$ 47,672
26	Furnish and Install Retractable Ladders	1	EA	\$ 11,800	\$ 11,800
27	Furnish and Install Flip-Down Step	1	EA	\$ 11,800	\$ 11,800
28	Remove and Replace Existing Concrete	69	CY	\$ 944	\$ 65,136
29	Painting Concrete	82	LF	\$ 17.70	\$ 1,451
Building C East Bid (Items 20-29) Total:				\$ 487,293	
Add Alt A Subtotal				\$ 487,293	
Performace / Payment Bond				\$ 5,900	
Add Alt A Bid Total				\$ 493,193	
Additive Alternate B - Removable Handrail					
Structure-Building A				\$	\$
30	Furnish and Install Removable Handrail	261	LF	\$ 118	\$ 30,798
Structure-Building C West				\$	\$
31	Furnish and Install Removable Handrail	281	LF	\$ 118	\$ 33,158
Structure-Building C East				\$	\$
32	Furnish and Install Removable Handrail	281	LF	\$ 118	\$ 33,158
Removable Handrail Bid (Items 30-32) Total:				\$ 97,114	
Performace / Payment Bond				\$ 1,770	
Add Alt B Bid Total				\$ 98,884	

MTS LRV UPPER PLATFORMS COMBINED CONSTRUCTION (ADDENDUM 4) Bid Form					
No.	Item	Quantity	Unit	Unit Price	Amount
BID BOND				\$ 590	
GRAND TOTAL BASIS OF AWARD (base, add alts and bonds)				\$ 1,894,547	



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Agenda Item No. 12

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 12, 2019

**Draft for
Executive Committee
Review Date: 12/5/19**

SUBJECT:

ZERO EMISSION BUS (ZEB) CHARGER PROJECT PHASE II – CONTRACT AWARD

RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. PWG301.0-20 (in substantially the same format as Attachment A), with Baker Electric, for the installation of electric bus chargers and related underground work at the Kearny Mesa Division, East County Division, and South Bay Division in the amount of \$458,334.09.

Budget Impact

The value of this agreement will not exceed \$458,334.09, and is funded under the San Diego Transit Corporation (SDTC) Capital Improvement Program account 1001105501.

DISCUSSION:

In October 2017, the MTS Board directed staff to implement a zero-emission bus pilot program. As part of the pilot, MTS is in the process of purchasing and taking delivery of nine zero-emissions buses to use on existing routes throughout San Diego. The pilot program will allow MTS to analyze vehicle performance, challenges and capabilities. Staff will analyze characteristics such as in-route vs. depot charging, climate, route profiles, passenger loads, operator performance, battery capacity and more.

A major component of the ZEB is the charging infrastructure. To date, MTS has installed six (6) chargers at the Imperial Avenue Division (IAD). Staff is now moving to Phase II of the ZEB pilot program. The ZEB Bus Charger Project Phase II project consists of the installation of two (2) charging stations at the Kearny Mesa Division, two (2) charging stations at the East County Division, and two (2) chargers at the South Bay Division with



related new electrical service, San Diego Gas and Electric (SDG&E) meter, transformer, switchgear and related underground conduit and conductors.

On September 27, 2019, staff issued an Invitation for Bids (IFB). Two (2) responsive bids were received by the due date of October 31, 2019.

ZEB PHASE 2	
COMPANY NAME	BID AMOUNT
<i>Baker</i>	\$458,334.09
<i>Firestone Builders</i>	\$477,310.75
<i>ICE</i>	\$419,000

Based on the bids received, and in comparison, with the independent cost estimate (ICE), Baker Electric's price of \$458,334.09 was determined to be fair and reasonable.

Therefore, staff recommends that the MTS Board of Directors authorize the CEO to execute MTS Doc. No. PWG301.0-20 (in substantially the same format as Attachment A), with Baker Electric, for the installation of six total ZEB charging stations at the Kearny Mesa Division, East County Division, and South Bay Division for a not to exceed amount of \$458,334.09.

/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. PWG301.0-20
B. MTS Zero Emissions Bus Charger Project Phase II Bid Form

PWG301.0-20 CONTRACT NUMBER
--

STANDARD CONSTRUCTION AGREEMENT FOR

ZERO EMISSION BUS (ZEB) PHASE 2 CONSTRUCTION

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, hereinafter referred to as "Contractor":

Name: Baker Electric Inc.

Address: 1298 Pacific Oaks Pl.

Form of Business: Corp. _____
(Corporation, Partnership, Sole Proprietor, etc.)

Escondido, CA 92029

Telephone: 760-745-2001

Email Address: mbisher@baker-electric.com

Authorized person to sign contracts: <u>George England</u>	Vice President
Name	Title

The specified Contract Documents are part of this Agreement. The Contractor agrees to furnish to MTS services and materials, as follows:

Contractor shall furnish all necessary management, supervision, labor, materials, tools, supplies, equipment, plant, services, engineering, testing and/or any other act or thing required to diligently and fully perform and complete the Project as specified in the Scope of Work (Exhibit A), Bid Proposal (Exhibit B), and in accordance with the Standard Construction Agreement and Special Conditions (Exhibit C).

SCOPE OF WORK

Contractor, for and in consideration of the payment to be made to Contractor as hereinafter provided, shall furnish all plant, labor, technical and professional services, supervision, materials and equipment, other than such materials and equipment as may be specified to be furnished by MTS, and perform all operations necessary to complete the Work in strict conformance with the Contract Documents (defined below) for the following public work of improvement:

ZERO EMISSION BUS (ZEB) PHASE 2 CONSTRUCTION

Contractor is an independent contractor and not an agent of MTS. The Contractor and its surety shall be liable to MTS for any damages arising as a result of the Contractor's failure to comply with this obligation.

CONTRACT TIME

Time is of the essence in the performance of the Work. The Work shall be commenced by the date stated in MTS's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within 140 calendar days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the Contract Time is adequate and reasonable to complete the Work.

CONTRACT PRICE

MTS shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Four hundred fifty eight thousand three hundred thirty four dollars and nine cents** (\$458,334.09). Payment shall be made as set forth in the General Conditions.

LIQUIDATED DAMAGES

It is agreed that the Contractor will pay MTS the sum of \$1000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees MTS may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents.

COMPONENT PARTS OF THE CONTRACT

The "Contract Documents" include the following:

Invitation for Bids (IFB)	Performance Bond
Information and Instructions for Bidders	Payment (Labor and Materials) Bond
Contractor's Bid Forms	General Conditions
Bid Bond	Special Provisions (or Special Conditions)
Designation of Subcontractors	Technical Specifications prepared by HDR.,
Designation of Other Third Party Contractors	Standard Specifications (Excluding sections 1-9
Information Required of Bidders	in their entirety)
Non-Collusion Declaration Form	Addenda
Iran Contracting Act Certification	Plans prepared by HDR
Public Works Contractor Registration	Change Orders as executed by MTS
Certification	

The Contractor shall complete the Work in strict accordance with all of the Contract Documents.

This Contract shall supersede any prior agreement of the parties.

PROVISIONS REQUIRED BY LAW

Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of the California Labor Code applicable to this Project.

INDEMNIFICATION

Contractor shall provide indemnification as set forth in the General Conditions.

PREVAILING WAGES

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at MTS's Administrative Office or may be obtained online at <http://www.dir.ca.gov> and which must be posted at the job site.

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

MTS Zero Emissions Bus Charger Project Phase II Bid Form

BID ITEM	DESCRIPTION	QUANTITY	UNIT	ICE		Baker Electric		Firestone Builders	
				UNIT PRICE	TOTAL COST	UNIT PRICE	TOTAL COST	UNIT PRICE	TOTAL COST
1	Mobilization	1	LS	\$ 38,041.85	\$ 38,041.85	\$ 40,352.40	\$ 40,352.40	\$ 47,000.00	\$ 47,000.00
2	WPCP	1	LS	\$ 6,000.00	\$ 6,000.00	\$ 2,725.80	\$ 2,725.80	\$ 7,000.00	\$ 7,000.00
3	Sawcut Existing Pavement	717	LF	\$ 7.50	\$ 5,377.50	\$ 9.54	\$ 6,840.18	\$ 10.00	\$ 7,170.00
4	Remove and dispose existing asphalt	330	SF	\$ 17.00	\$ 5,610.00	\$ 20.73	\$ 6,840.90	\$ 21.25	\$ 7,012.50
5	Remove and dispose existing concrete	559	SF	\$ 8.00	\$ 4,472.00	\$ 28.56	\$ 15,965.04	\$ 28.75	\$ 16,071.25
6	Remove and dispose existing bollards	4	EA	\$ 280.00	\$ 1,120.00	\$ 855.27	\$ 3,421.08	\$ 793.00	\$ 3,172.00
7	Loading, Hauling & Disposing clean fill export (no manifest)	27	CY	\$ 112.00	\$ 3,024.00	\$ 168.94	\$ 4,561.38	\$ 180.00	\$ 4,860.00
8	Loading, Hauling & Disposing Non-Hazardous waste (manifest required)	27	CY	\$ 300.00	\$ 8,100.00	\$ 211.18	\$ 5,701.86	\$ 217.00	\$ 5,859.00
9	Loading, Hauling & Disposing Cal Hazardous Waste (manifest required)	27	CY	\$ 1,500.00	\$ 40,500.00	\$ 337.88	\$ 9,122.76	\$ 312.00	\$ 8,424.00
10	Excavation	27	CY	\$ 500.00	\$ 13,500.00	\$ 675.76	\$ 18,245.52	\$ 902.00	\$ 24,354.00
11	Potholing	9	EA	\$ 1,600.00	\$ 14,400.00	\$ 1,267.06	\$ 11,403.54	\$ 1,227.00	\$ 11,043.00
12	Install minor concrete (switchboard & charger pads)	107	SF	\$ 550.00	\$ 58,850.00	\$ 213.15	\$ 22,807.05	\$ 206.00	\$ 22,042.00
13	Install asphalt pavement	15	Ton	\$ 1,000.00	\$ 15,000.00	\$ 760.23	\$ 11,403.45	\$ 702.00	\$ 10,530.00
14	Install Concrete Pavement	21	CY	\$ 500.00	\$ 10,500.00	\$ 2,172.10	\$ 45,614.10	\$ 2,518.00	\$ 52,878.00
15	Install pavement markings	1	LS	\$ 950.00	\$ 950.00	\$ 6,842.11	\$ 6,842.11	\$ 5,343.00	\$ 5,343.00
16	Install bollards	14	EA	\$ 660.00	\$ 9,240.00	\$ 651.63	\$ 9,122.82	\$ 1,143.00	\$ 16,002.00
17	Install 1 sack cement slurry backfill	27	CY	\$ 800.00	\$ 21,600.00	\$ 337.88	\$ 9,122.76	\$ 325.00	\$ 8,775.00
18	Switchboards, Local Disconnects, and Electrical Requirements	1	LS	\$ 92,000.00	\$ 92,000.00	\$ 92,166.88	\$ 92,166.88	\$ 80,000.00	\$ 80,000.00
19	U/G Ductbank per Detail 8 / C402 - ECD	150	LF	\$ 49.00	\$ 7,350.00	\$ 30.41	\$ 4,561.50	\$ 235.00	\$ 35,250.00
20	U/G Ductbank per Detail 8 / C402 - SBD	50	LF	\$ 49.00	\$ 2,450.00	\$ 91.23	\$ 4,561.50	\$ 235.00	\$ 11,750.00
21	U/G Ductbank per Detail 9 / C402	90	LF	\$ 49.00	\$ 4,410.00	\$ 50.68	\$ 4,561.20	\$ 235.00	\$ 21,150.00
22	U/G Ductbank per Detail 10 / C402 - ECD	30	LF	\$ 48.00	\$ 1,440.00	\$ 125.05	\$ 3,751.50	\$ 235.00	\$ 7,050.00
23	U/G Ductbank per Detail 10 / C402 - SBD	25	LF	\$ 45.00	\$ 1,125.00	\$ 182.46	\$ 4,561.50	\$ 235.00	\$ 5,875.00
24	Raceways, Conductors, and Boxes	1	LS	\$ 11,400.00	\$ 11,400.00	\$ 47,160.62	\$ 47,160.62	\$ 18,500.00	\$ 18,500.00
25	Installation of 6 OFCI Charging Stations	1	LS	\$ 12,000.00	\$ 12,000.00	\$ 10,403.13	\$ 10,403.13	\$ 15,000.00	\$ 15,000.00
26	Temp Power - 3 Sites	1	LS	\$ 30,000.00	\$ 30,000.00	\$ 11,682.00	\$ 11,682.00	\$ 10,000.00	\$ 10,000.00
27	Bid Bond – Ten Percent (10%)				\$		\$ 41,431.51		\$ -
28	Performance Bond – One Hundred Percent (100%)				\$		\$ 1,700.00		\$ 7,600.00
29	Payment Bond – One Hundred Percent (100%)				\$		\$ 1,700.00		\$ 7,600.00
30	GRAND TOTAL (BASIS OF AWARD)				\$ 418,460.35		\$ 458,334.09		\$ 477,310.75



1255 Imperial Avenue, Suite 1000
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Agenda Item No. 13

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 12, 2019

Draft for Executive Committee Review Date: 12/5/19

SUBJECT:

SAN DIEGO STATE UNIVERSITY (SDSU) TROLLEY STATION FIRE AND SAFETY
MONITORING AND MAINTENANCE SERVICES – SOLE SOURCE CONTRACT
AWARD

RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. PWL304.0-20 (in substantially the same format as Attachment A), with Johnson Controls Fire Protection, LP (JCI), for fire and safety monitoring and maintenance services at the SDSU trolley station for a period of five years in an amount not to exceed \$299,551.24.

Budget Impact

The value of this agreement would not exceed \$299,551.24. The project will be funded through the Maintenance of Wayside operating budget account 380016/571250.

DISCUSSION:

SDSU currently uses JCI to monitor fire and safety on its campus. Since the MTS SDSU trolley station is also on campus property, the State Fire Marshall mandated that SDSU's fire and safety monitoring system have full ability to communicate seamlessly with the MTS trolley station monitoring system. As the trolley station is equipped with the Simplex 4100ES fire control panel, it has the capability to fully integrate into the network of SDSU's existing fire and safety monitoring system.

Due to the complexities and interconnections of the fire alarm and sprinkler systems, it is optimal to have JCI provide monitoring, inspection and maintenance of the fire alarm and fire suppression systems for MTS. This ensures that any discrepancies identified



through the fire and safety monitoring systems for both the SDSU campus and the MTS station, are corrected timely, precisely and according to State fire code.

On November 25, 2019, MTS received a price proposal from JCI in the amount of \$. Staff compared JCI's price proposal to its Independent Cost Estimate (ICE) in the amount of \$249,916.95, and determined JCI's pricing to be fair and reasonable.

Therefore, staff recommends that the MTS Board of Directors authorize the CEO to execute MTS Doc. No. PWL304.0-20 (in substantially the same format as Attachment A) with JCI for fire and safety monitoring and maintenance services at the SDSU trolley station for a period of five years in an amount not to exceed \$299,551.24.

/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 MTS Doc. No. PWL304.0-20
B. Scope of Work PWL304.0-20

**STANDARD SERVICES AGREEMENT
FOR
SDSU TROLLEY STATION FIRE AND SAFETY MONITORING AND MAINTENANCE SERVICES**

THIS AGREEMENT is entered into this _____ day of _____ 2019, in the State of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following, hereinafter referred to as "Contractor":

Name: Johnson Controls Fire Protection, LP Address: 3568 Ruffin Road
San Diego, CA 92123

Form of Business: Corporation
 (Corporation, Partnership, Sole Proprietor, etc.) Email Address: Betsy.hollismatheny@jci.com

Telephone: 858.633.9100

Authorized person to sign contracts Betsy A. Hollis-Matheny Safety Consultant
 Name Title

The attached Standard Conditions are part of this Agreement. The Contractor agrees to Provide Fire and Safety Monitoring and Maintenance services as specified in the Scope of Work (attached as Exhibit A), Bid Form (attached as Exhibit B), and in accordance with the Standard Services Agreement, including Standard Conditions Services (attached as Exhibit C), Federal Requirements (attached as Exhibit D) and Forms (attached as Exhibit E).

The contract term is for up to five (5) years effective January 1, 2020 through December 31, 2024.

Payment terms shall be net 30 days from invoice date. The total cost of this contract shall not exceed \$299,551.24 without the express written consent of MTS.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM	CONTRACTOR AUTHORIZATION
By: _____ Approved as to form: By: _____	Firm: _____ By: _____ Title: _____

**San Diego Metropolitan Transit System
SDSU Monitoring Services for Fire and Safety**

MTS is seeking a proposal from your firm for comprehensive servicing of the fire and safety equipment at the San Diego State University (SDSU) Trolley Station.

1. CONTRACT TERM

The term of this agreement shall be for a period of five (5) years.

2. REGULAR SERVICE HOURS

Inspection Services to be performed between Midnight and 4:00am

3. SCOPE OF WORK

The Scope of Work shall provide for comprehensive servicing of the following fire and safety equipment at the San Diego State University (SDSU) Trolley Station:

- a. Fire Alarm Test and Inspect - Parts and Labor (Panel & Peripherals) - Simplex 4100es Fire Alarm Management Panel
 - i. Fire Alarm Panel and Peripheral Component Replacement for Fire Alarm Systems:
This service covers component replacement on the central processing unit, including reprogramming of system due to failure, replacement of circuit boards, and all components in the control panels, annunciator panels, transponders, printers, keyboards monitors, and peripheral devices (smoke detectors, pull stations, audible/ visible units, door contacts, etc.) associated with system. Replacement of the entire fire alarm panel, batteries, faulty wiring and/or ground faults are not covered.
 - ii. Testing and Inspection Overview:
Contractor shall perform inspections and diagnostic tests for the accessible peripheral devices listed and currently connected to the facility fire alarm system. Tests will be scheduled in advance.
 - iii. Documentation:
Accessible components and devices logged for:
 - 1. Location of each device tested, including system address or zone location
 - 2. Test results and applicable voltage readings
 - 3. Any discrepancies found noted (individually and on a separate summary page)

Inspection documentation shall be provided to MTS.

iv. Parts and Service Frequency:

Service/Product Description	Quantity	Frequency
4100ES FIRE ALARM PANEL		
Main Fire Alarm Panel	2	Quarterly
Fire Alarm Battery (each)	28	Annual
Annunciator	1	Annual
Duct Sensor Addressable	17	Annual
Audio-Visual Unit Addressable	227	Annual
Elevator Recall	1	Annual
Phone Jacks	43	Annual
Remote Power Supply/NAC Extender	9	Annual
Transponder	4	Annual
Waterflow Electronic Test	8	Semi-Annual
Tamper Switch (electronic test only)	20	Semi-Annual

b. Sprinkler Test & Inspect – Parts and Labor – Wet Sprinkler System

- i. Parts/Component Replacement for Listed Fire Sprinkler Systems:
This service covers replacement of moving parts of the devices listed in the Service/Product Description for "Sprinkler Test & Inspect-Parts and Labor", as set forth in this Agreement. Repair of leaks, replacement of faulty wiring or piping, fittings, fire pumps, standpipes, antifreeze (Not Used) solutions, foam, water mist, water spray systems, hydrants, sprinkler heads, water storage tanks, pressure reducing valves, hose valves, private fire mains and electrical control equipment are not covered, unless otherwise specified.
- ii. Test and Inspection Overview:
Contractor shall perform inspections and diagnostic tests for the accessible fire sprinkler devices listed and currently connected to the fire sprinkler system. Tests will be scheduled in advance.
- iii. Documentation:
Accessible components and devices logged for:
 1. Test results
 2. Any discrepancies found noted (individually and on a separate summary page)

Inspection documentation provided to Customer.

iv. Parts and Service Frequency:

Service/Product Description	Quantity	Frequency
WET SPRINKLER SYSTEM		
Tamper, Flow, Gate Valve, Fire Dept Connection Plastic Caps, Valve Trim & Main Drain Valve)	6	Quarterly

Annual wet pipe sprinkler test and inspect includes inspecting gauges, systems valves, components and signs; operating control valves; testing tamper and flow switches, and local alarms and signals; opening main drain to record static and residual pressures; inspecting the fire department connection; and doing a building walkthrough to visually inspect sprinklers, piping, fittings and hangers from the floor level.

Semi-Annual wet pipe sprinkler test and inspect includes inspecting gauges, water flow alarms, valve supervisory alarms, hydraulic nameplate, and control valves for position. Test mechanical alarms and low-pressure alarms if present. One main drain test conducted downstream of main backflows or pressure reducing valves and test flow alarms and pressure switches.

Quarterly wet pipe sprinkler test and inspect includes inspecting gauges, water flow alarms, valve supervisory alarms, hydraulic nameplate, and control valves for position. Test mechanical alarms and low-pressure alarms if present. One main drain test conducted downstream of main backflows or pressure reducing valves.

c. Sprinkler Test & Inspect – Parts and Labor – Pre-action System

- i. Parts/Component Replacement for Listed Fire Sprinkler Systems:
This service covers replacement of moving parts of the devices listed in this Agreement.
- ii. Test and Inspection Overview:
Contractor shall perform inspections and diagnostic tests for the accessible fire sprinkler devices listed and currently connected to the fire sprinkler system. Tests will be scheduled in advance.
- iii. Documentation:
Accessible components and devices logged for:
 1. Test results
 2. Any discrepancies found notes (individually and on a separate summary page)

Inspection documentation provided to Customer.

iv. Parts and Service Frequency:

Service/Product Description	Quantity	Frequency
PREACTION SYSTEM		
Preaction System Test & Inspect (Includes Tamper, Pressure Switch, Low Air, Gate Valve, Valve Trim, Main Drain Valve, Fire Dept. Plastic Caps Trip Test)	2	Quarterly

Annual preaction system sprinkler test and inspection includes inspecting gauges, systems valves, components and signs; operating control valves; testing tamper and flow switches, and local alarms and signals; opening main drain to record static and residual pressures; partial trip test, draining of low point drains [locations to be provided by owner], inspecting the fire department connection; and doing a building walkthrough to visually inspect sprinklers, piping, fittings and hangers from the floor level.

Semi-Annual preaction system sprinkler test and inspect includes inspecting gauges, water flow alarms, valve supervisory alarms, hydraulic nameplate, and control valves for position. Test mechanical alarms and low-pressure alarms if present. One main drain test conducted downstream of main backflows or pressure reducing valves and test flow alarms and pressure switches.

Quarterly preaction system sprinkler test and inspect includes inspecting gauges, water flow alarms, valve supervisory alarms, hydraulic nameplate, and control valves for position. Test mechanical alarms and low-pressure alarms if present. One main drain test conducted downstream of main backflows or pressure reducing valves.

- d. Fire Alarm Test & Inspect – Parts and Labor (Panel & Peripherals) – Multi-Vendor Other Programmable
 - i. Fire Alarm Panel and Peripheral Component Replacement for Fire Alarm Systems:
This service plan covers component replacement on the central processing unit, including reprogramming of system due to failure, replacement of circuit boards, and all components in the control panels, annunciator panels, transponders, printers, keyboards monitors, and peripheral devices (smoke detectors, pull stations, audible/ visible units, door contacts, etc.) associated with system.
 - ii. Test and Inspection Overview:

Contractor shall perform inspections and diagnostic tests for the accessible peripheral devices listed and currently connected to the facility fire alarm system. Tests will be scheduled in advance.

iii. Documentation:

Accessible components and devices logged for:

1. Location of each device tested, including system address or zone location
2. Test results and applicable voltage readings
3. Any discrepancies found noted (individually and on a separate summary page)

Inspection documentation shall be provided to MTS.

iv. Parts and Service Frequency:

Service/Product Description	Quantity	Frequency
MULTI-VENDOR OTHER PROGRAMMABLE		
Main Fire Alarm Panel	2	Annual
Fire Alarm Battery (each)	4	Annual
Radiant Energy Fire Detector	2	Annual

e. Sprinkler Test & Inspect - Parts and Labor - Deluge System

i. Parts/Component Replacement for Listed Fire Sprinkler Systems:

This service covers replacement of moving parts of the devices listed in the Service/Product Description for "Sprinkler Test & Inspect - Parts and Labor", as set forth in this Agreement.

ii. Test and Inspection Overview:

Contractor shall perform inspections and diagnostic tests for the accessible fire sprinkler devices listed and currently connected to the fire sprinkler system. Tests will be scheduled in advance

iii. Documentation:

Accessible components and devices logged for:

1. Test results
2. Any discrepancies found noted (individually and on a separate summary page)

Inspection documentation provided to Customer.

iv. Parts and Service Frequency:

Service/Product Description	Quantity	Frequency
DELUGE SYSTEM		
Deluge System Test & Inspect (Includes Tamper, Pressure Switch, Low Air, Gate Valve, Valve Trim, Main Drain Valve, Fire Dept. Plastic Caps, Trip Test)	2	Quarterly

Annual deluge system sprinkler test and inspection includes inspecting gauges, systems valves, components and signs; operating control valves; testing tamper and pressure switches, and local alarms and signals; opening main drain to record static and residual pressures; trip test [full flow where authorized by the owner], inspecting the fire department connection; and doing an area walkthrough to visually inspect sprinklers/nozzles, piping, fittings, and hangers from the floor/ground level.

Semi-Annual deluge system sprinkler test and inspect includes inspecting gauges, water flow alarms, valve supervisory alarms, hydraulic nameplate, and control valves for position. Test mechanical alarms and low pressure alarms if present. One main drain test conducted downstream of main backflows or pressure reducing valves and test flow alarms and pressure switches.

Quarterly deluge system sprinkler test and inspect includes inspecting gauges, water flow alarms, valve supervisory alarms, hydraulic nameplate, and control valves for position. Test mechanical alarms and low pressure alarms if present. One main drain test conducted downstream of main backflows or pressure reducing valves.

f. Sprinkler Test & Inspect – Backflow System

i. Test and Inspection:

Contractor shall perform inspections and diagnostic tests for the accessible fire sprinkler devices listed and currently connected to fire sprinkler system. Tests will be scheduled in advance.

ii. Documentation:

Accessible components and devices logged for:

1. Test results
2. Any discrepancies found noted (individually and on a separate summary page)

Inspection documentation shall be provided to MTS.

iii. Parts and Service Frequency:

Service/Product Description	Quantity	Frequency
BACKFLOW SYSTEM		
Backflow Preventer-Fire	2	Quarterly

g. NOVEC 1230 Fire Suppression System Testing and Inspection_– Other Suppression

i. Test and Inspection:

Contractor shall perform inspections and diagnostic tests for the accessible special hazards fire suppression devices listed and currently connected to special hazards fire suppression system. Tests will be scheduled in advance. For the Eastside and Westside Electrical rooms and the Communication room

ii. Documentation:

Accessible components and devices logged for:

1. Location of each device tested, including system address or zone location
2. Test results and applicable voltage and pressure readings
3. Required device tags
4. Any discrepancies found noted (individually and on a separate summary page)

Inspection documentation shall be provided to MTS signed and dated for each location.

iii. Parts and Service Frequency:

Service/Product Description	Quantity	Frequency
Sapphire System (NOVEC 1230)	3 Locations	Semi-Annual

h. Smoke Detector Cleaning – 100% Of Device Annual

i. Detector Cleaning Smoke Detectors:

Accessible smoke detection devices will be cleaned using manufacturer's recommended procedures, but not less than once a year. Devices may be dismantled to expose the smoke chamber (where applicable.) NOTE: Certain types of analog smoke sensors will be cleaned as needed per panel readings.

i. Elevator Phone Monitoring

Emergency phone initiates a call to central station. Contractor shall endeavor to notify the appropriate party in accordance with Customer instructions. (For ADA

compliance then Customer must provide elevator telephone hardware with ANI (Automatic Number Identification) capability and one POTS (Plain Old Telephone Service) telephone line per elevator.) This service includes toll free signal transmission. This service excludes the telephone equipment, elevator signage and telephone line.

i. Parts and Service Frequency:

Service/Product Description	Quantity	Frequency
ALARM & DETECTION MONITORING		
Elevator Phone Monitoring	1	Monthly
Fire Alarm Management System AM1010/2020	1	Monthly

j. 24/7 Service

24-hour/7-day Service (Provided 24 hours a day, 7 days a week, including holidays). This service includes labor, travel, and mileage charges for repairs associated with normal wear and tear. Contractor shall provide emergency service within 24 hours of notification unless a different response time has been outlined in the agreement.

k. Additional Requirements and Services

- i. Sprinkler Inspections to be performed quarterly – 3 quarterly and 1 annual inspection.
- ii. Pre-Action System (2 systems) Inspections to be performed quarterly – includes annual trip test.
- iii. Fire Backflow (2 fire backflows) Inspection to be performed annually. 1 – 100% inspection to be performed upon presentation of City Department paperwork given to SimplexGrinnell from MTS.
- iv. Fire Alarm System Inspection to be performed quarterly – 4 – 25% inspections to include any necessary smoke detector cleaning.
- v. Protector Wire Systems (quantity 2) to be performed annually -- 1 - 100% inspection.
- vi. Elevator Recall Assistance to be performed annually. Service to be coordinated by MTS between Elevator Company & SimplexGrinnell.

4. EMERGENCY AND NON-EMERGENCY CALL BACK SERVICES

a. Non-Emergency Repair Services:

- i. Arrival on site, within eight (8) hours of notice from the MTS Project Manager, under normal conditions, of an aerial lift, operator, and crew.

b. Emergency Repair Call Back Services:

- i. Arrival on site, within two (2) hours of notice from the MTS Project Manager, under storm and/or emergency conditions, as determined by the Project Manager, of an aerial lift, operator and crew.
- ii. Travel time is not billable. Hours billed may be for onsite work only.

c. General Requirements

- i. Contractor shall comply with all City, County, State, or Federal building laws, regulations, and code requirements in the performance of their work.
- ii. Contractor shall be responsible for diagnosing the problem and making the necessary repairs.
- iii. Contractor shall only perform work that is approved by MTS. Approval by the MTS Project Manager is required prior to any work being performed.
- iv. Prior to performing any repair services, Contractor shall provide a quote for the services to be performed. The quote shall include at minimum the following information:
 - Estimated hour(s) and hourly rate
 - At cost part(s) amount
 - Part percentage mark up
 - Date the service is to be performed and completed
- v. Any work in excess \$5,000 requires approval from MTS Procurement prior to commencement of services.
 - Contractor shall perform and complete each work order in the agreed upon manner and time period.
 - In the event of accidental site damage by the Contractor, Contractor shall be responsible to return the site to its original condition at no cost to MTS.
 - Contractor shall remove all debris generated while making repairs, replacement, or installation and leave the work area clean, "broom swept" state.
 - Unless otherwise stated, Contractor shall remove all equipment, materials, etc. as directed by MTS.
 - Contractor is responsible for clarifying with the MTS Project Manager any questions regarding the work that is to be performed.

d. Hourly Rates

All estimated travel subsistence costs (i.e. mileage, fuel surcharge, etc.), projected to be utilized by the Contractor during the term of performance of any resultant Contract are to be absorbed, amortized, and incorporated into the Proposer's fully burdened unit per hour rates as set forth in the Cost Proposal Form.

For item 3,a, "Fire Alarm Test and Inspect - Parts and Labor (Panel & Peripherals) - Simplex 4100es Fire Alarm Management Panel," all parts and labor for as-needed repairs shall be included in the test and inspect for the monthly fee.

- i. Emergency and Non-Emergency Call Back Services shall be billed at the labor rates as set forth in the Cost/Price Proposal for the following categories:

- (1) Single Man Crew - Straight Time Hourly Rate
- (2) Two Man Crew - Straight Time Hourly Rate
- (3) Single Man Crew - Outside of MTS Normal Business Hours (evenings, weekends and holidays) Hourly Rate.
- (4) Two Man Crew - Outside of MTS Normal Business Hours (evenings, weekends and holidays) Hourly Rate

e. Replacement Parts

In the event that the Contractor need to purchase replacement parts (not covered in the scope of the contract) to repair an elevator and/or escalator, parts, materials and supplies shall be reimbursed by MTS based on actual cost plus the percent provided in the proposer's proposal. All pass-through expenses must be authorized by the designated MTS Project. The maximum cost plus percent allowed shall not be more than a 5% mark-up expense.

Contractor must attach supporting documentation that proves actual purchase price of parts with the invoice to show actual cost paid/final sale for parts or materials obtained from its suppliers.

Contractor shall also certify that the original equipment manufacturer's major components and other special parts, not stocked locally, can be delivered within forty-eight (48) hours should emergency conditions warrant. Any such deliveries shall, however, be at no additional cost to MTS.

Replacement parts and technical support for the specified equipment must be guaranteed by the manufacturer; to be available for a one (1) year period from the date of purchase. Manufacturer shall keep parts books and maintenance manuals up-to-date for that period.

5. LIQUIDATED DAMAGES

Introduction

Liquidated damages (LDs) shall be assessed at the discretion of MTS for tasks and responsibilities not performed in a timely manner under the contract terms. LDs are a reasonable estimate of actual damages or costs intended to compensate MTS for real

economic damages and are not intended to be a penalty to the Contractor. LDs shall be deducted from the Contractor's monthly invoice.

In the case that the Contractor is unable to complete a task in a timely manner or within the scope of work outlined in the contract, MTS will provide notice to the contractor that outlines the deficiency that resulted in an inadequate Contractor performance. The Contractor shall receive this written notice from MTS's Contract Manager or Passenger Facilities Supervisor. Upon notice, the Contractor shall correct the deficiency immediately and in accordance with the scope of services. If the deficiency is not corrected, the Contractor will be assessed liquidated damages once per day and for each task until the issue or issues are corrected. Weekly, monthly or bi-annual tasks may be assessed a one-time liquidated damage charge if a deficiency is not corrected accordingly.

Rates

- a. The Contractor shall pay MTS the sum of the total rate of the task completed by a third-party contractor, plus MTS staff time to organize and hire a contractor. At no point will this payment exceed 125% of the Contractor's total fee of the original contract rate. This assessment may be applied for each calendar day and for each task that is not complete as outlined above.
- b. The rates are those that MTS would reasonably expect to incur if it had to contract with another vendor. LDs would be based on a labor rate ranging between \$20 and \$250 per hour for the task, plus an MTS administrative fee of \$35/hr, which is the labor rate MTS personnel would spend to ensure the deficiency is rectified.
- c. Rates take into account that the newly hired contractor or firm may not be familiar with MTS's operation. The \$20-\$250 rate is obtained by surveying rates in San Diego.
- d. $(\$20 \text{ to } \$250) + \$35/\text{hr} = \text{Range of } \$55 \text{ to } \$285 \text{ per incident, per day}$
- e. LDs will be capped at no more than 125% of the original total contract amount for each issue.

Example

Scheduled cleaning for 18 locations on Monday. LDs for this task would be calculated as such:

$$(18 \text{ locations} \times \$20/\text{ea daily}) + (\$35 \text{ per hr staff time} \times 3 \text{ hrs}) = (\$360.00 + \$105.00) = \$465.00.$$

Appeal Process

If the Contractor feels liquidated damages are being imposed unjustly the Contractor can file an appeal with the MTS Project Manager within twenty-four (24) hours of the MTS notification of impending liquidated damages. The letter must provide details of the

situation and why the Contractor feels the liquidated damages are unjust. The MTS Project Manager shall review the situation and if necessary, meet with the Contractor to provide an opportunity to state their reasons why liquidated damages should not be assessed. The MTS Project Manager shall render a written decision to the Contractor.

If the Contractor feels the decision is not acceptable and the situation warrants further consideration, appeal reconsideration may be filed in writing with the MTS Manager of Procurement within forty-eight (48) hours of receiving the Project Manager's written decision. The MTS Manager of Procurement shall review the reconsideration and a final determination shall be made in writing. The decision of the MTS Manager of Procurement shall be final. No other appeals shall be heard for this particular incident.

During the appeal process, the Contractor shall continue to diligently perform per the requirements of the contract including those in dispute.

6. UNAUTHORIZED WORK

Any services not required by the terms of this Contract that are performed by the Contractor without written authority from MTS will be considered as unauthorized and at the sole expense of the Contractor.

Services so performed will not be paid for and no extension in the period of performance shall be granted on account thereof.

7. NO RIGHTS TO ADVERTISE

The Contractor shall not utilize or lease space on its BRT Stations and Transit Centers and enclosures on MTS property for the display of advertising. MTS has the exclusive right under this agreement to post advertisements on its properties.

8. CONTRACTOR PRIMARY CONTACT AND BACK-UP

The Contractor shall provide one primary customer contact to MTS for the purpose of reporting necessary repairs or scheduling maintenance work. Names, phone numbers, and emails shall be provided in writing with a first and second level backup contact. Any change to these designations shall be effective immediately upon transmittal in writing by Contractor.

The Contractor's primary contact shall also be the Contractor's representative for the administration of the contract and supervision of any contract related work. In all matters relating to the performance of the work, payment, and in all situations involving actual, recommended, or proposed changes, MTS shall accept commitments and instructions from the Contractor's primary contact.

The Contractor shall notify MTS immediately in writing of any change in the staffing of its MTS account.

9. INVOICES

Invoices must be emailed to the MTS Accounting Department, ap@sdmts.com. All invoices must have the Purchase Order and contract number clearly displayed to ensure timely payment. MTS will not pay on packing slips, receiving documents, delivery documents, or other similar documents. Invoices must be submitted for payment.

Contractors must also indicate if any of the invoiced amount is for service or work provided by a subcontractor and indicate the amount that will be paid to the subcontractor. Contractors must also comply with the prompt payment requirements in Section 6 Prompt Progress Payments of the Standard Conditions.

10. MTS CONTACT INFORMATION

Contacts for San Diego Trolley, Inc. SDSU & Graphic Command Center:

Fred Byle, Superintendent of Wayside Maintenance 619-595-4937

fred.byle@sdmts.com.

Alex Pereya, Assistant Superintendent of Wayside Management 619-595-4938

alex.pereyra@sdmts.com.

David Bagley, System Safety Manager 619-595-4946 david.bagley@sdmts.com.

Steve Augustyn, Procurement Specialist 619-557-4576 steve.augustyn@sdmts.com.



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Agenda Item No. 14

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 12, 2019

**Draft for
Executive Committee
Review Date: 12/5/19**

SUBJECT:

REVISIONS TO SAN DIEGO METROPOLITAN TRANSIT SYSTEM (MTS)
ORDINANCE NO. 11

RECOMMENDATION:

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

- 1) Adopt the proposed amendments to MTS Ordinance No. 11, "An Ordinance Providing for the Licensing and the Regulating of Transportation Services Within the City and County by the Adoption of a Uniform Paratransit Ordinance" (Attachment A);
- 2) Direct publication of a summary of the amendments to MTS Ordinance No. 11; and
- 3) Upon adoption of the proposed amendments, grant the Chief Executive Officer (CEO) the discretion to enforce MTS Ordinance No. 11 in its amended form.

Taxicab Advisory Committee (TAC) Recommendation

[The TAC recommendation relating to this item will be included after the TAC Meeting on December 2, 2019.]

Budget Impact

None with this action.



DISCUSSION:

MTS Ordinance No. 11 provides for the licensing and regulation of taxicab and other for-hire transportation services. MTS Taxicab Administration staff work with the taxicab industry to identify regulatory changes that can benefit taxicab operators without impacting public safety. The proposed revisions to MTS Ordinance No. 11 are as follows:

MTS Ordinance No. 11, Section 2.2(a) (see page A-29)

Currently, MTS Ordinance No. 11, Section 2.2(a) states that MTS shall establish the maximum rates of fare for for-hire vehicles but will not establish the maximum rates of fare for trips originating from San Diego International Airport. The proposed revisions will remove that exception, as MTS Taxicab Administration calculates the maximum rates of fare for both trips originating from the airport and trips originating from city/non-airport.

MTS Ordinance No. 11, Section 2.2(j) (see page A-31)

Currently, MTS Ordinance 11, Section 2.2(j) allows a permit holder or driver from agreeing with prospective passenger(s) to a rate of fare which is less than the permit holder's posted rates of fare if the agreement is entered into in advance of the passenger hiring the taxicab.

The proposed revisions would expressly allow for dispatch services, in addition to permit holders and drivers, to provide up-front trip pricing to prospective passengers so long as it is equal to or less than the maximum rates of fare. The proposed revisions would also require the taximeter flag to remain recording at the termination of each and every trip, for the purpose of allowing the passenger(s) to verify the up-front trip or agreed fare price is lower than the maximum rate.

MTS Ordinance No. 11, Section 2.3(h) (see page A-33)

Currently, MTS Ordinance No. 11, Section 2.3(h) only allows the permit holder or dispatch service to be the merchant of record associated with the vehicle's electronic credit card acceptance device. The proposed revision would also allow the driver operating the taxicab to be the merchant of record associated with the credit card acceptance device.

/s/ Paul C. Jablonski _____

Paul C. Jablonski
Chief Executive Officer

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

Attachment: A. Revisions to MTS Ordinance No. 11 (red-lined version)

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

CODIFIED ORDINANCE NO. 11

(as amended through ~~October 10~~December 12, 2019)

An Ordinance Providing for the Licensing and the Regulating of
Transportation Services Within the City and County by the Adoption of
a Uniform Paratransit Ordinance

MTS CODIFIED ORDINANCE NO. 11

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SAN DIEGO METROPOLITAN TRANSIT SYSTEM

CODIFIED ORDINANCE NO. 11

(as amended through ~~October, 10~~December 12, 2019)

An Ordinance Providing for the Licensing and the Regulating
of Transportation Services Within the City and County By the Adoption of
a Uniform Paratransit Ordinance

SECTION 1.0 - GENERAL REGULATIONS

Section 1.1 - Definitions

The following words and phrases, wherever used in this section, shall be construed as defined in this section, unless from the context a different meaning is intended, or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases.

(a) "Board" shall mean the Board of Directors of the San Diego Metropolitan Transit System.

(b) "Charter vehicle" shall mean every vehicle which:

(1) Transports passengers or parcels or both over the public streets of the City;

(2) Is routed at the direction of the hiring passenger;

(3) Is prearranged in writing for hire;

(4) Is not made available through "cruising"; and

(5) Is hired by and at the service of a person for the benefit of himself or herself or a specified group.

(c) "Chief Executive Officer" shall mean the Chief Executive Officer of MTS or his or her designated representative.

(d) "City" and "Cities" shall mean the incorporated areas of the Cities of Chula Vista, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, San Diego, Santee and any other City that has entered into a contractual agreement with MTS for the licensing and regulation of transportation services.

(e) "Compensation" shall mean any money, thing of value, payment, consideration, reward, tip, donation, gratuity or profit paid to, accepted, or received by the driver or owner of any vehicle in exchange for transportation of a person, or persons; whether paid upon solicitation, demand or contract, or voluntarily, or intended as a gratuity or donation.

(f) "County" shall mean the unincorporated area of the County of San Diego located within MTS's jurisdictional boundaries. Only the sections of MTS Ordinance No. 11 that apply to taxicab permit holders and taxicab drivers shall be applicable to the County of San Diego.

(g) "Cruising" shall mean the movement over the public streets of a taxicab or low-speed vehicle (LSV) in search of prospective passengers; except the term does not include either the travel of a taxicab or LSV proceeding to answer a call for service received by telephone or radio

from an intended passenger or the travel of such a vehicle, having discharged a passenger or passengers, returning to the owner's place of business or to its established point of departure.

(h) "Days" shall mean working days, exclusive of weekends and holidays for which MTS offices are closed.

(i) "Doing business" shall mean accepting, soliciting or transporting passengers for hire or compensation in a City or County.

(j) "Driver" shall mean every person operating any for-hire vehicle.

(k) "Driver's identification card" shall mean license, issued pursuant to this Ordinance, which permits a person to drive a for-hire vehicle within the City or County.

(l) "Employ" as used in this Ordinance includes any form of agreement or contract under which the driver may operate the permit holder's for-hire vehicle.

(m) "Exclusive ride" shall mean exclusive use of a for-hire vehicle by one or more related passengers at a time.

(n) "For-hire vehicle" shall mean every vehicle, other than public transit vehicles or vehicles involved in an organized carpool not available to the general public, which is operated for any fare for compensation and used for the transportation of passengers over public streets, irrespective of whether such operations extend beyond the boundary limits of said City or County. Such for-hire vehicles shall include taxicabs, vehicles for charter, jitneys, nonemergency medical vehicles, sightseeing vehicles, and LSVs.

(o) "Group ride" shall mean shared use of a taxicab or LSV where a group of related passengers enter at the same point of origin and disembark at the same destination and pay a single fare for the trip.

(p) "Hearing officer" shall mean any person or entity that meets the requirements of this Ordinance and that has been retained to conduct administrative hearings.

(q) "Jitney" shall mean every vehicle which:

(1) Transports passengers or parcels or both over the public streets of the City;

(2) Follows a fixed route of travel between specified points with the fare based on a per capita charge established in its permit; and

(3) Is made available to boarding passengers at specified locations along its route on a variable schedule.

(r) A "low-speed vehicle" or "LSV" is a motor vehicle, other than a motor truck, having four wheels on the ground and an unladen weight of 1,800 pounds or less, that is capable of propelling itself at a minimum speed of 20 miles per hour and a maximum speed of 25 miles per hour, on a paved level surface. For the purposes of this section, a "low-speed vehicle" or "LSV" is not a golf cart, except when operated pursuant to California Vehicle Code Section 21115 or 21115.1.

(s) "Medallion" shall mean the numbered plate, sticker, or decal issued by MTS to the permit holder which is displayed on a for-hire vehicle to indicate the authorized use or uses of that vehicle.

(t) "MTS" shall mean the San Diego Metropolitan Transit System, a public agency created pursuant to Public Utilities Code Section 120050 et seq.

(u) "MTS inspector" shall mean those individuals, regardless of job title, who are authorized by the Board, by ordinance, to enforce the provisions of this Ordinance.

(v) "Nonemergency medical vehicle" shall mean every vehicle which: transports persons, regardless of whether specialized transportation equipment or assistance is needed, for primarily medical purposes, over the public streets of the City. Medical purposes is defined as providing transportation services to or from the following places: hospitals, convalescent homes, retirement homes, homes receiving funding for the board and care of residents living in those homes, medical or rehabilitation clinics, senior citizen centers, and any other like social service category, over the public streets of the City. It shall be the responsibility of the transportation provider to determine if the service is primarily for medical purposes.

(w) "Operate" or "Operating" shall refer to the solicitation or acceptance of a fare within City or County for compensation or providing passenger transportation for compensation, regardless if such compensation is obtained from the passenger or a third party. It shall also include, as the context may require, the act of driving, managing or directing the utilization of one or more for-hire vehicles.

(x) "Owner" shall mean the person, partnership, association, firm or corporation that is the registered owner of any for-hire vehicle and that holds the right to use the vehicle for its advantage.

(y) "Passenger" shall mean every occupant other than the driver of the for-hire vehicle.

(z) "Permit" shall mean the authority under which a person, firm, partnership, association, or corporation may operate a for-hire vehicle as a business.

(aa) "Permit holder" shall mean any person or approved entity operating a business under a for-hire vehicle permit.

(bb) "Shared ride" shall mean nonexclusive use of a for-hire vehicle by two or more unrelated passengers traveling between different points of origins and/or destination, and traveling in the same general direction.

(cc) "Shifts" shall mean the minimum number of hours a permit holder or driver operates a for-hire vehicle.

(dd) "Sightseeing vehicle" shall mean every vehicle which:

(1) Transports passengers for sightseeing purposes of showing points of interest over the public streets of the City; and

(2) Charges a fee or compensation therefor; regardless of whether any fee or compensation is paid to the driver of such sightseeing vehicle, either by the passenger or by the owner or by the person who employs the driver or contracts with the driver or hires such sightseeing vehicle with a driver to transport or convey any passenger; and irrespective of

whether or not such driver receives any fee or compensation for his or her services as driver.

(ee) "Stands" shall mean public areas designated for specific use of for-hire vehicles.

(ff) "Street" shall mean any place commonly used for the purpose of public travel.

(gg) "Substantially Located" shall mean where the primary business address of the taxicab permit holder is located and/or the jurisdiction where the largest share of the taxicab permit holder's total number of prearranged and non-prearranged trips originate over the previous calendar year, as determined annually. Trip logs and/or other documentation shall be used to substantiate the jurisdiction where the largest share of taxicab permit holder's total number of originating trips occur over the applicable time period.

(hh) "Taxicab" shall mean every vehicle other than a vehicle-for-charter, a jitney, a nonemergency medical vehicle, a sightseeing vehicle, or LSV which:

(1) Carries not more than eight (8) passengers excluding the driver;

(2) Transports passengers or parcels or both over City or County public streets;

(3) Is made available for hire on call or demand through "cruising," at taxi stands or by telephone or other communication devices to destination(s) specified by the hiring passenger; and

(4) Is Substantially Located within the jurisdiction of City and/or County.

(ii) "Taximeter" shall mean any instrument, appliance, device, or machine by which the charge for hire of a passenger-carrying vehicle is calculated, either for distance traveled or time consumed, or a combination of both, and upon which such charge is indicated by figures. Includes both a Hard Meter and a Soft Meter.

(1) A Hard Meter is a Taximeter that has a prefixed fare with an external seal approved by the County of San Diego Agriculture, Weights and Measures and mileage is calculated based on distance and time.

(2) A Soft Meter is a Taximeter that is provided through a smartphone or tablet that uses GPS or other on-board diagnostics approved by the California Department of Food and Agriculture Division of Measurement Standards to calculate distance and rates.

(jj) "Vehicle" is a device by which any person or property may be propelled, moved, or drawn upon a street, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

(kk) "Vehicle for Developmentally Disabled Persons (VDDP) driver certificate" shall mean certificate issued by California Highway Patrol pursuant to Vehicle Code section 12523.6, which is required for any driver who primarily transports persons with developmental disabilities on a for-hire basis. A VDDP driver certificate with a commercial driver's license may be used in lieu of a driver identification card to drive a for-hire vehicle within the City or County, unless for a taxicab.

(Section 1.1 amended 10/10/2019)

(Section 1.1 amended 2/14/2019)

(Section 1.1 amended 11/8/2018, effective 1/1/2019)
(Section 1.1 amended 9/20/2018)
(Section 1.1 amended 12/14/2017)
(Section 1.1 amended 5/12/2016)
(Section 1.1 amended 8/7/2003)
(Section 1.1 amended 11/14/2002)
(Section 1.1 amended 6/24/1999)
(Sections 1.1(d), 1.1(R)(1) amended 6/22/1995)
(Section 1.1 amended 1/12/1995)
(Section 1.1 amended 6/27/1991; effective 7/27/1991)
(Section 1.1 amended 5/23/1991; effective 6/23/1991)

Section 1.2 - Operating Permits

(a) No person shall engage in the business of operating any for-hire vehicle or in the business of providing any vehicle for the operation of vehicle for-hire services within the Cities or County without first having obtained an operating permit from the Chief Executive Officer or designated representative, which permit has not been revoked, suspended or otherwise canceled or terminated by operation of law or otherwise. A separate permit is required for each for-hire vehicle operated or provided for operation.

(b) An operating permit represents the granting of a privilege to operate a for-hire vehicle within the Cities, County or zones specified by the permit for the purpose of the public convenience and necessity. This privilege may be rescinded at any time by operation of law or otherwise.

(c) A person who obtains an operating permit shall be responsible for the provision of vehicle-for-hire services in accordance with the provisions of this Ordinance and shall exercise due diligence to assure that drivers of the permitted vehicles adhere to all pertinent requirements of this ordinance.

(Section 1.2 amended 11/8/2018, effective 1/1/2019)
(Section 1.2 amended 12/14/2017)
(Section 1.2 amended 8/7/2003)
(Section 1.2 amended 11/14/2002)
(Section 1.2 amended 6/24/1999)

Section 1.3 - Application for Permit

(a) All persons applying to the Chief Executive Officer for new permit(s) for the operation of one or more for-hire vehicles shall file with the Chief Executive Officer a proposal to meet San Diego City Council Policy 500-02 requirements, and a sworn application therefore on forms provided by the Chief Executive Officer, stating as follows:

(1) The applicant name, company name, doing business as ("DBA") name if different than company name, mailing and business address (a business address or mailing address is not a Post Office [PO] Box or dispatch service address), and business telephone number of the permit applicant. If a taxicab permit applicant, the business address will also serve the purpose of establishing where Substantially Located;

(2) The number of permitted vehicles actually owned and operated by such owner on the date of application, if any;

- (3) The name and address of all legal and registered owner(s) of the vehicle(s);
- (4) The name and address of each person with a financial interest in the business which operates the vehicle;
- (5) Data sufficient to establish the applicant's financial responsibility;
- (6) The number of vehicle(s) for which a permit(s) is desired;
- (7) Proof that vehicle(s) meet California Air Resources Board criteria for zero emissions/low emissions, are ADA-compliant, are no older than 10 years of the model age and do not have a "salvage" title, and are equipped with a Global Positioning System (GPS);
- (8) The rates of fare which the applicant proposes to charge for vehicle-for-hire services. This requirement does not apply to taxicab permit applicants;
- (9) A description of the proposed vehicle design;
- (10) Where the application is for a limited permit or LSV, a detailed description of the geographic area in which said permit shall be in existence;
- (11) Such other information as the Chief Executive Officer may in his or her discretion require;
- (12) Provide evidence of at least six-months' experience driving a taxicab, transportation network vehicle, charter party carrier services, or similar service oriented transportation or managing a demand responsive transportation service, or similar service oriented business;
- (13) Provide a customer service and a customer complaint plan;
- (14) Provide a plan for administrative functions, vehicle maintenance, and off-street storage for vehicle when not in use; and
- (15) Provide a dispatch service plan incorporating 24 hour staffing and computerized dispatch utilizing GPS technology, if a taxicab permit applicant.

(b) The applicant shall also submit, with the application, a nonrefundable application fee prior to the permit approval. Upon issuance of the permit, the applicant shall also pay an initial nonrefundable permit vehicle regulatory fee to be determined by the Chief Executive Officer in order to recover the cost of processing such applications.

(Section 1.3 amended 11/8/2018, effective 1/1/2019)

(Section 1.3 amended 12/14/2017)

(Section 1.3 amended 2/12/2015)

(Section 1.3 amended 11/15/2012)

(Section 1.3 amended 8/7/2003)

(Section 1.3 amended 11/14/2002)

Section 1.4 - Issuance of Permit

(a) Based on San Diego City Council Policy 500-02 requirements, the Chief Executive Officer shall determine the number of permits to be granted any applicant(s) and approve permits

for any applicant(s) subject to such conditions as the Board and San Diego City Council Policy 500-02 may deem advisable or necessary in the public interest. Before a permit may be approved, the applicant shall pay an initial regulatory fee in an amount to be determined by the Chief Executive Officer.

(b) The Chief Executive Officer shall deny the approval of a permit upon making a finding:

(1) That the applicant is under twenty-one (21) years of age; or

(2) That within the five (5) years immediately preceding the processing of the application, the applicant has been convicted of, or held by any final administrative determination to have been in violation of any statute, ordinance, or regulation reasonably and rationally pertaining to the same or similar business operation which would have resulted in suspension or revocation of the permit in accordance with Section 1.13 of this Ordinance. For purposes of this section, a plea or verdict of guilty, a finding of guilty by a court, a plea of nolo contendere or a forfeiture of bail shall be deemed a conviction; or

(3) That the applicant provided false information of a material fact in an application within the past five (5) years.

(c) All permits issued after April 1, 2015 shall be renewable annually upon evidence San Diego City Council Policy 500-02 requirements are being met, that if a taxicab permit holder they are Substantially Located within City or County, and payment of a regulatory fee in an amount and on a date to be determined by the Chief Executive Officer.

(d) No permit issued after April 1, 2015 shall be approved or renewed for any person who has not fully complied with all of the requirements of this Ordinance, San Diego City Council Policy 500-02, and all other applicable laws and/or regulations necessary to be complied with before commencement of the operation of the proposed service.

(e) Permits held prior to April 1, 2015 by corporations and LLCs shall meet all of the screening criteria included in San Diego City Council Policy 500-02 by February 12, 2020. However, upon issuance of any new permits to said corporation or LLC, or upon the transfer of a permit to said corporation or LLC, the corporation or LLC shall need to be in compliance with requirements of this Ordinance and San Diego City Council Policy 500-02 for the new permit(s).

(f) When the permit has been approved and upon determination by the Chief Executive Officer that the for-hire vehicle, after appropriate inspection, meets the requirements of this Ordinance, the Chief Executive Officer will issue a numbered medallion(s) to be affixed to the for-hire vehicle.

(Section 1.4 amended 11/8/2018, effective 1/1/2019)

(Section 1.4 amended 12/14/2017)

(Section 1.4 amended 2/12/2015)

(Section 1.4 amended 11/15/2012)

(Section 1.4 amended 11/14/2002)

Section 1.5 - Transfer and Administration of Permits

(a) Each permit issued pursuant to the provisions of this section is separate and distinct and shall be transferable from the permit holder to another person or entity only with the approval of

the Chief Executive Officer, and upon meeting the requirements of this Ordinance and San Diego City Council Policy 500-02 including, but not limited to:

(1) Provide evidence of at least six-months' experience driving a taxicab, transportation network vehicle, charter party carrier services, or similar service oriented transportation or managing a demand responsive transportation service, or similar service oriented business.

(2) Vehicle(s) must meet California Air Resources Board criteria for zero emissions/low emissions, be ADA-compliant, be equipped with a Global Positioning System (GPS), be no older than 10 years of the model age and not have a "salvage" title, if a taxicab.

(3) Provide a customer service plan that demonstrates, a requirement for drivers to accept credit cards, detailed record keeping of all calls for service, trips provided, and a customer service complaint resolution plan.

(4) Provide a plan for administrative functions, vehicle maintenance, and off-street storage for vehicle when not in use.

(5) Provide a Dispatch service plan incorporating 24 hour staffing and computerized dispatch utilizing GPS technology, if a taxicab.

(b) Permits held prior to April 1, 2015 shall be in compliance with San Diego City Council Policy 500-02 Screening Criteria by February 12, 2020. Whenever a corporation or LLC is issued any new permits, then it shall be in compliance with requirements of this Ordinance and San Diego City Council Policy 500-02.

(c) The proposed transferee shall file with the Chief Executive Officer a sworn application for the transfer and shall comply with the requirements of Section 1.3. The permit holder shall certify in writing that the permit holder has notified the proposed transferee of the requirements of this section pertaining to the transfer of a permit. Whenever an application for a transfer of permit is filed, the Chief Executive Officer shall process the application for transfer in accordance with Section 1.4 of this Ordinance.

(d) The Chief Executive Officer shall charge regulatory fees to affect the full cost recovery of activities associated with the administration, regulation, issuance, or transfer of for-hire vehicle permits and associated records.

(1) Changes in fee schedules affecting permits shall be mailed to all permit holders. Changes shall be effective thirty (30) calendar days thereafter.

(2) Any person objecting to a particular fee or charge may file, within ten (10) days of the mailing of such changes, an appeal for review with the Chief Executive Officer who shall thereafter process it in accordance with Section 1.17; provided, however, that the sole issue to be determined on review is whether the fee or charge exceeds the reasonable costs for personnel salaries and administrative overhead associated with the particular administrative service or function.

(Section 1.5 amended 11/8/2018, effective 1/1/2019)

(Section 1.5 amended 12/14/2017)

(Section 1.5 amended 2/12/2015)

(Section 1.5 amended 8/7/2003)

(Section 1.5 amended 11/14/2002)

Section 1.6 - Blank

The text of Section 1.6 is deleted in its entirety effective February 12, 2015.

(Section 1.6 deleted 2/12/2015)

(Section 1.6 amended 11/14/2002)

Section 1.7 - Blank

The text of Section 1.7 is deleted in its entirety effective October 24, 1998.

(Section 1.7 was deleted 9/24/1998)

Section 1.8 - Equipment and Operating Regulations

(a) No medallion shall be issued for a vehicle unless the vehicle conforms to all the applicable provisions of this Ordinance.

(b) The privilege of engaging in the business of operating a for-hire vehicle in a City or County granted in the permit is personal to the permit holder, who must be the owner of the for-hire vehicle. The rights, requirements, and responsibilities which attach to the permit remain with the holder at all times the for-hire vehicle is operated under the authority of the permit. These rights, requirements and responsibilities, which include, but are not limited to, the requirements of this Ordinance, will remain unaffected by any agreement or contractual arrangement between the permit holder and those persons who operate for-hire vehicles, irrespective of the form or characterization of the agreement under which the driver operates the for-hire vehicle.

(c) The permit holder shall maintain a business address, a mailing address where he or she can accept mail directed to his or her company, and a business telephone in working order which must be answered during normal business hours, Monday through Friday, and during all hours of operation. A post office box or dispatch service address shall not be used for the business address or mailing address. The permit holder shall, in the case of any change in his or her business address, mailing address, or business telephone, notify the Chief Executive Officer in writing of such change within forty-eight (48) hours of the effective date of this change.

(d) Before a for-hire vehicle is placed in service and at least annually thereafter, the for-hire vehicle shall be delivered to a place designated by the Chief Executive Officer for inspection. All new permit holders are required to observe at least one full vehicle inspection as part of the initial permit issuance. MTS inspectors shall inspect the for-hire vehicle and its equipment to ascertain whether the vehicle complies with the provisions of this Ordinance. Failure to produce the vehicle for inspection shall be cause for suspension or revocation of the permit for such vehicle.

(e) Any MTS inspector or peace officer, after displaying proper identification, may make reasonable and periodic inspections of any for-hire vehicle operating under an MTS permit for the purpose of determining whether the vehicle is in compliance with the provisions of this Ordinance.

(f) Any for-hire vehicle which fails to meet the requirements of the California Vehicle Code or this section after inspection shall be immediately ordered out-of-service by an MTS inspector or peace officer if it is unsafe for service. Ordering a vehicle out-of-service does not constitute a suspension or revocation of the permit. A vehicle is deemed unsafe for service when any of the following conditions exists:

- (1) Tires fail to meet the requirements of the California Vehicle Code;
- (2) Headlights, taillights or signal lights are inoperable during hours of darkness (sunset to sunrise);
- (3) Windshield wipers are inoperable during rainy conditions;
- (4) Taximeter is not working, the Taximeter displays signs of tampering, the seal of a Hard Meter is broken, the County of San Diego seal of a Hard Meter is more than thirteen (13) months old from the date of issuance, a Service Agent's temporary seal of a Hard Meter is more than ninety (90) days old from the date of issuance, or a Soft Meter displays technology not approved by the California Department of Food and Agriculture Division of Measurement Standards or does not appear to be operating as is intended or approved;
- (5) Brakes, brake lights or brake system are inoperable or otherwise fail to meet the requirements of the California Vehicle Code;
- (6) Excessive play in steering wheel exceeding three (3) inches;
- (7) Windshield glass contains cracks or chips that interfere with driver's vision;
- (8) Any door latch is inoperable from either the interior or exterior of the vehicle;
- (9) Any seat is not securely fastened to the floor;
- (10) Seat belts, when required, fail to meet requirements of the California Vehicle Code;
- (11) Either side or rearview mirrors are missing or defective;
- (12) Any vehicle safety system light is activated; and
- (13) Any other condition which reasonably and rationally pertains to the operating safety of the vehicle or to passenger or pedestrian safety.

(g) If the vehicle is not unsafe but is unsuitable or otherwise in violation of this Ordinance or any vehicle condition/equipment section of the California Vehicle Code, the operator or permit holder, as appropriate, shall be subject to a seventy-two (72) hours correction notice.

(1) Failure to correct such violation within the seventy-two (72) hours shall then be cause to order the vehicle out-of-service. When a vehicle is ordered out-of-service, the medallion shall be immediately removed.

(2) Before the vehicle may again be placed in service, the violation shall be corrected and the vehicle shall be inspected by an MTS inspector.

(3) The medallion shall be reaffixed when the MTS inspector finds that the vehicle meets prescribed standards.

(h) The interior and exterior of the for-hire vehicle shall be maintained in a safe and efficient operating condition, and meet California Vehicle Code requirements and the requirements

of this Ordinance at all times when in operation. The following minimum vehicle standards must be maintained to comply with this section:

(1) Wheels. Hubcaps or wheel covers shall be on all wheels for which hubcaps or wheel covers are standard equipment.

(2) Body Condition. There shall be no tears or rust holes in the vehicle body and no loose pieces hanging from the vehicle body. Fenders, bumpers, and light trim shall be securely fixed to the vehicle. No extensive unrepaired body damage shall be allowed and exterior paint shall be free from excessive fading. The vehicle shall be equipped with front and rear bumpers. The exterior of the vehicle shall be maintained in a reasonably clean condition so as not to obscure approved vehicle markings.

(3) Lights. Headlights shall be operable on both high and low beam. Taillights, parking lights, signal lights, and interior lights shall all be operable.

(4) Wipers. Each vehicle shall be equipped with adequate windshield wipers maintained in good operating condition.

(5) Brakes. Both the parking and hydraulic or other brake system must be operable.

(6) Steering. Excessive play in the steering mechanism shall not exceed three (3) inches free play in turning the steering wheel from side to side.

(7) Engine. The engine compartment shall be reasonably clean and free of uncontained combustible materials.

(8) Mufflers. Mufflers shall be in good operating condition.

(9) Windows. The windshield shall be without cracks or chips that could interfere with the driver's vision. All other windows shall be intact and able to be opened and closed as intended by the manufacturer. The windows and windshield shall be maintained in a reasonably clean condition so as not to obstruct visibility.

(10) Door Latches. All door latches shall be operable from both the interior and exterior of the vehicle.

(11) Suspension. The vehicle's suspension system shall be maintained so that there are no sags because of weak or broken springs or excessive motion when the vehicle is in operation because of weak or defective shock absorbers.

(12) Seats. All seats shall be securely fastened. Seat belts, when required by the California Vehicle Code, shall be installed. The upholstery shall be free of grease, holes, rips, torn seams, and burns.

(13) Interior. The interior of each vehicle and the trunk or luggage area shall be maintained in a reasonably clean condition, free of foreign matter, offensive odors, and litter. The seats shall be kept reasonably clean and without large wear spots. The door handles and doors shall be intact and clean. The trunk or luggage area shall be kept empty except for spare tire and personal container for the driver not exceeding one (1) cubic foot in volume and emergency equipment, to allow maximum space for passenger luggage and belongings.

(i) Each for-hire vehicle, except taxicabs and Low Speed Vehicles, shall contain:

(1) A fire extinguisher of the dry chemical or carbon dioxide type with an aggregate rating of at least 5 B/C units and a current inspection card affixed to it.

(2) A minimum of three (3) red emergency reflectors.

(3) A first-aid kit containing medical items to adequately attend to minor medical problems.

(j) In the event that a for-hire vehicle for which a permit has been approved is taken out of service, by the permit holder for maintenance or any purpose, other than a violation of any provision of this Ordinance, a spare vehicle operating permit may be granted. The spare vehicle operating permit shall only be valid for the vehicle for which it was issued. The permit holder may only utilize a spare for-hire vehicle which has been duly inspected by an MTS inspector and approved prior to use. The permit holder must immediately inform an MTS inspector when a spare for-hire vehicle is in use and the location of the disabled vehicle. The spare vehicle will be issued a "spare vehicle" sticker which must be affixed to the left rear portion of the for-hire vehicle for which it is approved, in plain view from the rear of the for-hire vehicle. The permit holder may utilize one (1) spare for-hire vehicle for a period not to exceed thirty (30) calendar days from the date of issuance. This subsection shall not be construed, nor deemed to replace, those provisions in this Ordinance which apply to permanent replacement of a for-hire vehicle.

(k) The medallion issued to the permit holder must be affixed by an MTS inspector on the for-hire vehicle for which the permit is approved in plain view from the rear of the for-hire vehicle. The permit holder must immediately report the loss, destruction, or defacing of a medallion to the Chief Executive Officer. Except as provided in Subsection (j), it shall be unlawful to operate a for-hire vehicle without the medallion affixed and visible.

(l) There shall be displayed in the passenger compartment of each for-hire vehicle between the sun visors, in full view of the passengers in the front and rear seats, a card not less than ten (10) inches wide by six (6) inches high in size. Posted on this card, utilizing "Universe" font in black ink on white background, shall be:

1) The first line of the card, 3/4 inch in height, shall say one of the following according to permit type: TAXICAB, SIGHTSEEING, CHARTER, NONEMERGENCY, LOW-SPEED VEHICLE, OR JITNEY LOST AND FOUND.

2) Below this, the card shall include the vehicle medallion number in three-inch numerals.

3) Below the medallion number, the name, address, and phone number of the MTS Taxicab Administration and the permit holder and/or permit holder trade name shall be printed, 1/4-inch in height.

4) Without approval from MTS, no other signs, markings, lettering, decals, or any type of information shall be displayed within 18 inches around the card.

(m) Advertisements, whether displayed on the inside or outside of the vehicle, shall be posted in accordance with MTS Board Policy No. 21, Revenue-Generating Display Advertising, Concessions, and Merchandise, any guidelines developed by the Chief Executive Officer, and the

provisions of this Ordinance. Advertisements shall not be displayed without prior approval from MTS.

(n) The driver of each for-hire vehicle may either carry: a map of the City or County, published within the past two (2) years; or an electronic device equipped with a GPS enabled map, which shall be displayed to any passenger upon request.

(o) The maximum rates of fare charged for for-hire vehicle services shall be clearly and conspicuously displayed in the passenger compartment, unless if a taxicab which shall be in compliance with Section 2.2(d) of this Ordinance.

(p) Each for-hire vehicle licensed to operate in the City or County shall have located on the passenger side dashboard area a driver identification card provided by the County of San Diego Sheriff or provide upon a request a valid VDDP driver certificate with a commercial driver's license. The driver identification card shall have no alterations or information covered. The driver identification card shall be visible to passengers, peace officers and MTS inspectors so they can easily view the driver identification card from either inside or outside the vehicle. The driver identification card issued by the Sheriff shall bear the following information:

- (1) The number of the license of the driver;
- (2) The name and business address of the driver;
- (3) The name of the owner of the vehicle; and
- (4) A small photograph of the driver.

(q) Each for-hire vehicle shall be equipped with a rearview mirror affixed to the right side of the vehicle, as an addition to those rearview mirrors otherwise required by the California Vehicle Code.

(r) The driver shall offer each passenger a printed receipt upon payment of the fare. The receipt shall accurately show the date, the amount of the fare, the driver's name and ID number, the taxicab number, the company (DBA) name, and the dispatch service name with phone number if a taxicab.

(s) All disputes to fare shall be determined by the peace officer or MTS inspector most readily available where the dispute is had. It shall be unlawful for any person to fail or refuse to comply with such determination by the peace officer or MTS inspector.

(t) It is unlawful for any person to refuse to pay the lawful fare of a for-hire vehicle after employing or hiring the same.

(u) The driver of any for-hire vehicle shall promptly obey all lawful orders or instructions of any peace officer, fire fighter, or MTS inspector.

(v) No driver of any for-hire vehicle shall transport any greater number of persons, including the driver, than the manufacturer's rated seating capacity for the vehicle.

(w) It shall be unlawful for any person to solicit business for a for-hire vehicle by making a contract or agreement with any owner of any hotel, apartment house, motel, inn, rental units, restaurant, or bar, or with the agent or employees of such owner, by which the owner, agent or employee receives any type of payment or commission for recommending or directing any

passenger to a specific for-hire vehicle or company. It shall be unlawful for any permit holder, association, or driver to have or make a contract or agreement with any owner of any hotel, apartment house, motel, inn, rental units, restaurant, or bar, or with the agents or employees of such owner, by which the permit holder, association or driver receives any type of payment or commission for recommending or directing any passenger to an establishment operated by a specific owner.

(x) The driver of a for-hire vehicle shall wear, in a manner clearly visible on their person, an identification card approved by the Chief Executive Officer.

(y) The Board specifically finds that the dress, grooming, and conduct of for-hire vehicle drivers affect the public health and safety, particularly as it relates to visitors and the tourist industry. Therefore, while driving or operating a for-hire vehicle, drivers shall be hygienically clean, well-groomed, and neat and suitably dressed. Violations of this subsection are administrative in nature and shall not be the subject of criminal prosecution.

(1) The term "hygienically clean" shall refer to that state of personal hygiene, body cleanliness, and absence of offensive body odor normally associated with bathing or showering on a regular basis.

(2) The term "well-groomed" shall mean that male drivers shall be clean-shaven, except for those parts of the face where a beard or mustache is worn and their hair shall be neatly trimmed; beards or mustaches shall be groomed and neatly trimmed at all times in order not to present a ragged appearance. For all drivers, it shall mean that scalp or facial hair shall be combed or brushed and that all clothing is clean, free from soil, grease and dirt, and without unrepaired rips or tears.

(3) The term "neat and suitably dressed" shall be interpreted to require that a driver shall be fully covered by clothing at a minimum from a point not to exceed four (4) inches above the center of the kneecap to the base of the neck, excluding the arms. Drivers shall wear shoes. It shall not be permissible for any driver to wear as an outer garment any of the following: undershirt or underwear, tank tops, body shirts (see-through mesh), swim wear, jogging or warm-up suits or sweatshirts or similar attire, jogging or bathing shorts or trunks, or sandals. Trouser-type shorts that are no shorter than four inches above the center of the kneecap are permissible.

(z) For-hire vehicles shall comply with the California Vehicle Code, e.g., not impede traffic, and, where applicable, not operate on streets where posted speed limits are above 35 miles per hour. For-hire vehicle drivers, including taxicab, shall not load or unload passengers in traffic lanes.

(aa) Smoking is not permitted at any time inside a MTS-permitted vehicle.

(bb) A driver or permit holder shall not prejudice, disadvantage, or require a different rates or provide different service to a person because of race, national origin, religion, color, ancestry, physical disability, medical condition, occupation, marital status or change in marital status, sex or any characteristic listed or defined in Section 11135 of the Government Code.

(cc) A driver shall not use rude or abusive language toward a passenger(s) or conduct any physical action that a reasonable person would construe as threatening or intimidating.

(dd) A driver may refuse a fare if it is readily apparent that the prospective or actual fare is a hazard to the driver or operator. A driver is not obligated to transport any person who is verbally

or otherwise abusive to the driver. Such incidents shall also be noted on the trip log and notification shall be immediately sent to the dispatch service organization, if a taxicab, which shall record the incident and keep the record for the minimum of 6 months.

(ee) No driver shall stop, park, or otherwise leave standing any MTS permitted vehicle within fifteen (15) feet of any fire plug except as modified in Section 2.5 of this Ordinance.

(ff) No driver shall stop, park or otherwise leave standing any MTS permitted vehicle in a disabled parking zone except as authorized per California Vehicle Code section 22507.8.

(Section 1.8 amended 10/10/2019)

(Section 1.8 amended 11/8/2018, effective 1/1/2019)

(Section 1.8 amended 12/14/2017)

(Section 1.8 amended 10/13/2016)

(Section 1.8 amended 5/12/2016)

(Section 1.8 amended 2/12/2015)

(Section 1.8 amended 8/7/2003)

(Section 1.8 amended 11/14/2002)

(Section 1.8 amended 9/24/1998)

(Section 1.8 amended 2/13/1997)

(Section 1.8 amended 6/24/1993)

Section 1.9 - Public Liability

(a) It shall be unlawful to operate a for-hire vehicle unless the permit holder establishes and maintains in effect one of the forms of financial responsibility specified in this section.

(1) This requirement may be met by maintaining a valid policy of insurance executed and delivered by a company authorized to carry on an insurance business, the financial responsibility of which company has been approved by the Chief Executive Officer. The terms of the policy shall provide that the insurance company assumes financial responsibility for injuries to persons or property caused by the operation of the for-hire vehicle in an amount determined by the Chief Executive Officer.

(2) The permit holder may also meet this requirement by obtaining a certificate of self-insurance for a specified amount approved by the Board and pursuant to the applicable provisions of the California Vehicle Code.

(b) A valid proof of insurance issued by the company providing the insurance policy required under Subsection (a) (1) of this section shall be filed with and approved by the Chief Executive Officer. This certificate shall provide that MTS is a named certificate holder and shall be placed in each vehicle, per California Vehicle Code Section 16020. It shall also provide that the insurer will notify MTS of any cancellation and that the cancellation notice shall be in writing and shall be sent by registered mail at least thirty (30) days prior to cancellation of the policy. The certificate shall also state:

- (1) The full name of the insurer;
- (2) The name and address of the insured;
- (3) The insurance policy number;
- (4) The type and limits of coverage;
- (5) The specific vehicle(s) insured;
- (6) The effective dates of the certificate; and
- (7) The certificate issue date.

(Section 1.9 amended 9/17/2015)
(Section 1.9 amended 11/14/2002)

Section 1.10 - Financial Ownership and Operating Records: Reporting Requirements

(a) Every person engaged in the business of operating a for-hire vehicle within the City under a permit granted by the Chief Executive Officer shall maintain:

(1) Financial records, including but not limited to the current executed taxicab driver lease agreement that includes all aspects of the business relationship between the permit holder and the lessee, and written receipts of all payments from lessee in accordance with good accounting practices;

(2) Ownership records; and

(3) Operating records in a form, and at intervals, which shall be determined from time to time by the Chief Executive Officer.

(b) Ownership and operating records shall be made available to the Chief Executive Officer upon demand at any reasonable time. The permit holder shall retain operating records for a minimum of six (6) months from the date the records are created.

(c) For purposes of this section, ownership records shall include, but are not limited to, the following:

(1) Copies of the Articles of Incorporation as filed with the Secretary of State of California;

(2) Records identifying all corporate officers and members of the corporation's Board of Directors. A corporation shall report any change in corporate officers or members of its Board of Directors to MTS within ten (10) days of the effective date.

(3) A stock register recording the issuance or transfer of any shares of the corporate stock; and

(4) The registration cards issued by the State of California Department of Motor Vehicles to the vehicle owner for all for-hire vehicles operated under the authority of an MTS for-hire vehicle permit. Valid proof of registration shall be maintained in the vehicle at all times.

(d) For purposes of this section, operating records shall include, but are not limited to, the following:

(1) Typed or written dispatch records for taxicab companies which operate their own dispatch service;

(2) Any logs which a for-hire vehicle driver keeps describing the trips carried by a for-hire vehicle other than a taxicab;

(3) Copies of the daily trip log required by taxicab or LSV drivers under Section 2.4 (o); and

(4) Any other similar records.

(e) Between January 1 and December 31 of each calendar year, every permit holder shall file with the Chief Executive Officer a signed statement which shall report and attest to the accuracy of the following information:

(1) The individual name(s), business name, business address, and telephone number of the permit holder(s);

(2) The name and address of all legal and registered owner(s) of the for-hire vehicle(s);

(3) The name and address of each person with a financial interest in the business which operates the vehicle(s); and

(4) The year, manufacturer, model, vehicle identification number, license plate, and medallion number affixed to the permitted vehicle(s).

(f) If the permit holder is an individual, the permit holder must email, mail or appear in person in the offices of MTS to file the statement; if the permit holder is a partnership, one of the partners must email, mail or appear in person in the offices of MTS to file the statement; if the permit holder is a corporation or LLC, an officer of the corporation, or a member of the LLC, authorized to represent the company, must email, mail or appear in person in the offices of MTS to file the statement and provide evidence San Diego City Council Policy 500-02 requirements are being met. If email or mail is used, the email address or mailing address used by the permit holder must be an email address or mailing address that is on file with the Chief Executive Officer.

(Section 1.10 amended 11/8/2018, effective 1/1/2019)

(Section 1.10 amended 5/12/2016)

(Section 1.10 amended 2/12/2015)

(Section 1.10 amended 8/7/2003)

(Section 1.10 amended 11/14/2002)

(Section 1.10 amended 6/24/1993)

Section 1.11 - Destruction, Permanent Replacement, Retirement or Inactive Status of For-Hire Vehicles

(a) Whenever a for-hire vehicle is destroyed, rendered permanently inoperative, is sold, or the permit holder is no longer the owner of the for-hire vehicle, the permit holder shall notify the Chief Executive Officer in writing within forty-eight (48) hours.

(b) If a taxicab permit holder plans to change where it is Substantially Located, the permit holder shall notify the Chief Executive Officer and the new jurisdiction in which it will become Substantially Located within six (6) months or as soon as practicable prior to making that change.

(c) A permit holder may place a for-hire vehicle under inactive status after written permission is obtained from the Chief Executive Officer. The following guidelines are to be used in granting permission for a for-hire vehicle to be placed and kept on inactive status:

(1) No laps in payment of annual regulatory fees during any time of inactive status;

(2) Permit must be in good standing (e.g. no pending disciplinary or enforcement action); and

(3) Annual statement must be filed in accordance with Section 1.10(e).

(d) At any time a permit holder may bring a for-hire vehicle under inactive status back into service after written permission is obtained from the Chief Executive Officer. The following guidelines are to be used in granting permission to return a for hire vehicle under inactive status back to service:

- (1) Permit holder must notify Chief Executive Officer in writing of their intent to place their vehicle back into service;
- (2) Permit holder must show proof of a valid vehicle insurance policy as required by Section 1.9;
- (3) Permit holder must show proof of current vehicle registration;
- (4) Permit holder must show proof of current subscription to a dispatch service organization, if a taxicab; and
- (5) Vehicle must pass MTS required inspection.

(e) The Chief Executive Officer shall, as a matter of owner right, allow the replacement of a vehicle which is destroyed, rendered inoperative, sold or transferred, provided that the permit holder has complied with, and the for-hire vehicle is in conformance with, all applicable provisions of this Ordinance. An owner must remove the markings from the vehicle that indicate it is a taxicab or LSV before the owner disposes of it.

(Section 1.11 amended 2/14/2019)
(Section 1.11 amended 10/13/2016)
(Section 1.11 amended 8/7/2003)
(Section 1.11 amended 11/14/2002)
(Section 1.11 amended 2/13/1997)

Section 1.12 - Driver's Identification Cards

(a) No person shall drive or operate any for-hire vehicle under the authority of a permit granted under this Ordinance unless such person: displays a valid driver's identification card obtained annually through the Sheriff of the County of San Diego; or provides upon request a VDDP driver certificate with a commercial driver's license.

(b) No permit holder shall employ as a for-hire vehicle driver or operator any person who has not obtained a for-hire vehicle driver's identification card through the Sheriff of the County of San Diego or VDDP driver certificate with a commercial driver's license.

(c) No permit holder shall employ as a driver or operator any person whose privilege to operate a for-hire vehicle within the City has expired, or has been revoked, denied or suspended or prohibited.

(d) A driver may drive for more than one permit holder. The driver must, however, have on file with and accepted by the Sheriff of the County of San Diego, a separate application on forms provided by the Sheriff, for each permit holder with whom he has a current driving agreement. A

driver may have on file with the Sheriff a maximum of four (4) such applications at any one time. It shall be unlawful for a driver to accept or solicit passengers for hire in the City or County while operating the taxicab or LSV of any permit holder for whom the driver does not have such an application on file with the Sheriff.

(e) No person shall drive or operate any for-hire vehicle, under the authority of a permit granted under this Ordinance unless such person has successfully completed an MTS-approved driver safety training course concerning driver safety rules and regulations, map reading, crime prevention, courtesy and professionalism, compliance with ADA, and a corresponding qualification examination.

(f) No person who has received a notice of prohibition pursuant to Section 1.14, or whose privilege to operate a for-hire vehicle within the City has expired, or has been suspended, revoked or denied by the Sheriff, California Highway Patrol, or the Chief Executive Officer shall drive or operate a for-hire vehicle within the City.

(g) No for-hire vehicle driver's identification card shall be issued or renewed by the Sheriff to any of the following persons:

(1) Any person under the age of twenty-one (21) years.

(2) Any person who has been convicted of a felony involving a crime of force or violence against any person, or the theft of property, unless five (5) years have elapsed since his or her discharge from a penal institution or satisfactory completion of probation for such conviction during which period of time his or her record is good.

(3) Any person who has been convicted of assault, battery, resisting arrest, solicitation of prostitution, any infraction, misdemeanor, or felony involving force and violence, or any crime reasonably and rationally related to the paratransit industry or any similar business operation which bears upon the integrity or ability of the driver to operate a for-hire vehicle business and transport passengers, unless five (5) years shall have elapsed from the date of discharge from a penal institution or the satisfactory completion of probation for such conviction.

(4) Any person who, within the five (5) years immediately preceding the processing of the application, has been convicted of or held by any final administrative determination to have been in violation of any statute, ordinance, or regulation reasonably and rationally related to the for-hire vehicle industry or any similar business operation which would have authorized the suspension or revocation of the driver's identification card in accordance with Section 1.14 of this Ordinance.

(5) Any person who is required to register as a sex offender pursuant to the California Penal Code.

(6) Any person who has provided false information of a material fact in their application within the past five (5) years.

(7) No person shall obtain or renew a driver's identification card unless such person has successfully completed a driver safety training course approved by the Chief Executive Officer.

(8) When a driver permanently no longer drives for an MTS Taxicab Administration permit holder, the permit holder shall report this to the Sheriff's Department within ten (10) calendar days.

(h) The Sheriff is authorized to issue temporary for-hire vehicle driver identification cards pending the approval or denial of an application for a regular for-hire vehicle driver identification card. No temporary for-hire vehicle driver identification card shall be issued without the satisfactory completion of a local law enforcement agency record check of the applicant. Any temporary identification card so issued shall be valid for a period not to exceed ninety (90) days or until the date of approval or denial of the application for a regular for-hire vehicle driver identification card, whichever shall occur first. The issuance of a temporary identification card hereunder shall not authorize the operation of a for-hire vehicle following the denial of the application while pending the resolution of any appeal otherwise provided for in Section 1.16 of this Ordinance. The Sheriff or the Chief Executive Officer shall establish nonrefundable filing fees to defray the costs of processing regular and temporary driver identification cards.

(Section 1.12 amended 10/10/2019)

(Section 1.12 amended 11/8/2018, effective 1/1/2019)

(Section 1.12 amended 12/14/2017)

(Section 1.12 amended 5/12/2016)

(Section 1.12 amended 11/15/2012)

(Section 1.12 amended 8/7/2003)

(Section 1.12 amended 11/14/2002)

(Section 1.12 amended 9/24/1998)

(Section 1.12 amended 10/30/1997)

(Section 1.12 amended 11/9/1995)

Section 1.13 - Suspension and Revocation of Permit

(a) Permits may be suspended or revoked by the Chief Executive Officer at any time in case:

(1) The Chief Executive Officer finds the permit holder's past record to be unsatisfactory with respect to satisfying the provisions of this Ordinance.

(2) The permit holder fails to comply with the applicable provisions of this Ordinance.

(3) The drivers of the for-hire vehicle or vehicles fail to act in accordance with those provisions of this Ordinance which govern driver actions. The permit holder shall have strict liability in this regard; however, this provision shall not restrict the Chief Executive Officer's ability to penalize a driver for violations of those provisions of this Ordinance which govern driver actions.

(4) The owner ceases to operate a for hire vehicle without having obtained written permission from the Chief Executive Officer.

(5) The permit holder is found to be operating a for-hire vehicle that is under inactive status.

(6) The for-hire vehicle or vehicles, if operated as other than a taxicab, are operated at a rate of fare other than those fares on file with the Chief Executive Officer.

(7) The for-hire vehicle or vehicles, if operated as a LSV, are operated at a rate of fare greater than those fares on file with the Chief Executive Officer or posted on the taxicab or LSV pursuant to Section 2.2 (b) of this Ordinance.

(8) The for-hire vehicle or vehicles, if operated as a taxicab, are operated at a rate of fare greater than current maximum rate established by the Board pursuant to Section 2.2(a) of this Ordinance or the applicable rate provided to passenger pursuant to Section 2.4 (q) of this Ordinance.

(9) The permit holder fails to begin operating the for-hire vehicle for which the permit is first approved within ninety (90) days after the approval date.

(10) The permit holder has been convicted of assault, battery, resisting arrest, solicitation of prostitution, any infraction, misdemeanor, or felony involving force and violence, or any crime reasonably and rationally related to the paratransit industry or any similar business operation which bears upon the integrity or ability of the applicant or permit holder to operate a for-hire vehicle business and transport passengers, unless five (5) years shall have elapsed from the date of discharge from a penal institution or the satisfactory completion of probation for such conviction.

(11) The permit holder has been convicted of a crime that would require a person to register as a sex offender under the California Penal Code. For purposes of this section, a plea or verdict of guilty, a finding of guilt by a court, a plea of nolo contendere or a forfeiture of bail shall be considered a conviction.

(b) A permit holder shall be notified in writing within 10 working days when a credible complaint has been filed with the Chief Executive Officer by a member of the public where such complaint involves the permit holder, the driver of the permitted for-hire vehicle, or the dispatch service to which the permit holder is subscribed. It shall be the responsibility of the permit holder to investigate the complaint and report in writing to the Chief Executive Officer within 30 days the result of the investigation and any corrective action taken or proposed. Where the complainant has agreed to the sharing of their identity, the results of the investigation, findings, and actions shall be communicated to the complainant.

(c) In the event the Chief Executive Officer finds a permit holder has failed to responsibly respond to notification of complaints or to initiate corrective action, the Chief Executive Officer shall issue a notice of proposed adverse action to the permit holder. If the circumstances of the complaint or subsequent investigation so warrant, the Chief Executive Officer may issue a notice of adverse action to a driver independently of or in conjunction with any adverse action proposed to the permit holder. The Chief Executive Officer shall refer to the Administrative Penalty Guidelines in determining a proposed adverse action.

(d) The permit holder or driver in receipt of a notice of proposed adverse action shall be given the opportunity to appear for an informal hearing before the Chief Executive Officer or designated representative. Failure to appear will constitute waiver of the hearing. Following the hearing or waiver thereof, the Chief Executive Officer shall issue the notice of adverse action if justified by the facts. If the Chief Executive Officer determines that the performance of the permit holder or driver involves criminal activity or constitutes a serious degradation of the public safety, convenience, or necessity, a notice of adverse action may be issued and the action effected without hearing.

(e) Upon a finding by the Chief Executive Officer that a permit holder falls within the provisions of this section, the permit holder or driver shall be notified that his or her permit has been subjected to an adverse action and that the matter is such that the action may be appealed. In lieu of an action provided for in the Administrative Penalty Guidelines, the Chief Executive Officer may impose a fine or a fine and a period of suspension for any violation(s) of this Ordinance.

(Section 1.13 amended 2/14/2019)

(Section 1.13 amended 11/8/2018, effective 1/1/2019)

(Section 1.13 amended 12/14/2017)

(Section 1.13 amended 10/13/2016)

(Section 1.13 amended 5/12/2016)

(Section 1.13 amended 8/7/2003)

(Section 1.13 amended 11/14/2002)

(Section 1.13 amended 6/24/1999)

Section 1.14 - Suspension and Revocation of Driver's Identification Cards

(a) Driver's identification cards issued by the Sheriff may be suspended or revoked by the Chief Executive Officer at any time in case:

(1) The Chief Executive Officer finds the driver's past record to be unsatisfactory with respect to satisfying the provisions of this Ordinance; or

(2) The driver fails to comply with the applicable provisions of this Ordinance; or

(3) Circumstances furnish grounds for the denial, suspension, revocation or refusal to renew the driver's identification card by the Sheriff under the terms of the applicable Ordinance of the County of San Diego; or

(4) His/her California Driver's License is revoked or suspended; or

(5) The driver is convicted of reckless driving or driving while under the influence of intoxicating liquors and/or narcotics; or

(6) The driver has been convicted of assault, battery, resisting arrest, solicitation of prostitution, any crime involving force and violence, or reasonably and rationally is related to the ability or integrity of the driver to operate a for-hire vehicle or transport passengers; or

(7) The driver has ever been convicted of a crime that requires registration under the California Penal Code as a sex offender.

(b) For purposes of Subsections (a) (1) through (a) (6) of this section, a plea of nolo contendere, or a forfeiture of bail shall be considered a conviction if it occurred within the five (5) years immediately preceding the date of application for a permit or identification card.

(c) Notwithstanding a driver's possession of a valid taxicab or LSV driver identification card, the Chief Executive Officer may deny, suspend, revoke, or refuse to renew the driver's privilege to operate a for-hire vehicle in the City if the driver falls within the provisions of this section. The Chief Executive Officer shall send a notice of prohibition the date postmarked to operate a taxicab or LSV to any holder of a Sheriff's driver identification card who is ineligible under Subsection (a) to operate a for-hire vehicle within the City limits. The notice of prohibition shall be appealable in accordance with Section 1.16.

(Section 1.14 amended 10/10/2019)

(Section 1.14 amended 5/12/2016)

(Section 1.14 amended 8/7/2003)

(Section 1.14 amended 11/14/2002)

(Section 1.14 amended 6/24/1999)

Section 1.15 - Surrender of Medallion

(a) When a permit has been suspended or revoked, the operation of any for-hire vehicle authorized by such permit shall cease, and its medallion surrendered immediately to the Chief Executive Officer.

(Section 1.15 amended 11/14/2002)

Section 1.16 - Right of Administrative Appeal from Denial, Suspension or Revocation of Permit or Driver's Identification Card or Related Adverse Action

(a) The permit holder or driver shall be notified that he or she may file with the Chief Executive Officer a written administrative appeal ten (10) days after delivery of the notice of revocation or suspension, or the denial of a license, permit, or driver's identification card issued by the Sheriff, the notice of prohibition to operate or the imposition of a fine. The permit holder or driver shall set forth in the appeal the reasons why such action is not proper.

(b) If no administrative appeal is filed within the proper time, the permit or driver's identification card issued by the Sheriff shall be considered revoked, suspended or denied, and shall be surrendered, the fine be imposed, as applicable, or the notice of prohibition to operate take effect.

(c) Except as provided in Subsection (d), once an administrative appeal is filed, the revocation or suspension of the permit or driver's identification card issued by the Sheriff, the effect of the notice of prohibition to operate, or the imposition of the fine shall be stayed pending the final determination of the administrative appeal.

(d) If, in the Chief Executive Officer's opinion, the continued operation of a for-hire vehicle or possession of a driver's identification card issued by the Sheriff represents an unsafe condition for any passenger or pedestrian, the revocation or suspension of the related permit, driver's identification card, or the effect of any notice of prohibition to operate shall not be stayed. A revocation or suspension of a permit imposed for failure to comply with Section 1.8 (f) or Section 1.9 is rebuttably presumed to represent an unsafe condition pending the determination of the appeal or the correction of the violation, whichever shall occur first. Notwithstanding, no medallion shall be reaffixed to a vehicle until the violation under Sections 1.8 (f) or 1.9 has been corrected.

(Section 1.16 amended 10/10/2019)

(Section 1.16 amended 8/7/2003)

(Section 1.16 amended 11/14/2002)

Section 1.17 - Procedure Upon Administrative Appeal

(a) When an appeal is filed, the Chief Executive Officer shall review the appeal, and based on additional information provided therein, may revise the findings and penalty; in accordance with the additional information provided; or cause the appeal to be assigned to a Hearing Officer, who shall expeditiously schedule the hearing before him/her.

(1) The Chief Executive Officer shall use California Department of General Services, Office of Administrative Hearings Administrative Law Judges as Hearing Officers. The assignment of Administrative Law Judges as Hearing Officers shall be determined by the California Department of General Services, Office of Administrative Hearings.

(2) The Hearing Officer shall be a member of the California State Bar and shall not be an MTS employee.

(b) The appellant and the Chief Executive Officer or designate shall each have the right to appear in person and be represented by legal counsel, to receive notice, to present evidence, to call and cross-examine witnesses under oath, and to present argument.

(c) An appellant may select an individual to interpret for them. MTS will not pay any costs or be held responsible for any aspect of the interpreter's ability to accurately interpret the hearing.

(1) The Hearing Officer shall have the power to compel attendance of witnesses and documents by subpoena, in accordance with state law.

(2) The formal rules of evidence need not apply, and any relevant evidence that is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs shall be admissible. Hearsay evidence may be considered by the Hearing Officer, but no findings may be based solely on hearsay evidence unless supported or corroborated by other relevant and competent evidence. The formal exceptions to the hearsay rule shall apply.

(d) The Chief Executive Officer shall promulgate supplementary rules and procedures for the conduct of the hearing, the forms of notice and proceedings, and the preparation and submission of the record.

(e) The decision of the Hearing Officer shall be the final administrative remedy and shall be binding upon the parties to the appeal.

(f) If the Hearing Officer decides to suspend or revoke a permit or driver's identification card, the appellant shall immediately surrender the medallion or driver's identification card to the Chief Executive Officer.

(Section 1.17 amended 5/12/2016)

(Section 1.17 amended 11/15/2012)

Section 1.18 - Exceptions to Provisions

(a) The provisions of this Ordinance do not apply to:

(1) a vehicle properly licensed under the jurisdiction of the California Public Utilities Commission (CPUC) unless such vehicle also provides transportation services regulated by MTS under this Ordinance;

(2) public transit vehicles owned, operated, or contracted for by MTS and operators and drivers of such vehicles;

(3) a vehicle properly licensed by the State or County as an ambulance, and its driver if properly licensed by the California Highway Patrol pursuant to Vehicle Code section 12527 (i.e. for-hire driver for an ambulance); or

(4) a vehicle properly regulated by the California Highway Patrol pursuant to Vehicle Code sections 34500 et seq. (i.e. bus, schoolbuses, school pupil activity buses, or youth buses), and its driver if properly licensed by the California Highway Patrol pursuant to Vehicle Code sections 12523.6 (i.e. for-hire driver of vehicles for developmentally disabled) or 12517.3 (i.e. for-hire driver for a schoolbus, school pupil activity bus, or youth bus).

(b) For compliance purposes, MTS inspectors may inspect all vehicles listed in Section 1.18 (a) to ensure they are not exceeding the authority granted by their license or operating as unlicensed private- hire transportation provider.

(Section 1.18 amended 10/10/2019)

(Section 1.18 amended 12/14/2017)

(Section 1.18 amended 5/12/2016)

(Section 1.18 amended 11/15/2012)

(Section renumbered to 1.18 9/24/1998)

(Section 1.17 amended 1/12/1995)

(Section 1.17 amended 6/24/1993)

Section 1.19 - Chief Executive Officer's Authority to Adopt Rules and Promulgate a Schedule of Fines

(a) Except where Board action is specifically required in this Ordinance, the Chief Executive Officer may adopt any rules and regulations reasonable and necessary to implement the provisions of this Ordinance. The Chief Executive Officer shall promulgate a schedule of administrative fines and penalties for violations of this Ordinance in lieu of the revocation or suspension of a permit or identification card issued by the Sheriff, a copy of which schedule shall be filed with the Clerk of the Board.

(Section 1.19 amended 10/10/2019)

(Section renumbered to 1.19 9/24/1998)

Section 1.20 - Americans with Disabilities Act

(a) Permit holders, vehicles, and drivers are required to comply with the requirements of the federal Americans with Disabilities Act (ADA), and ADA regulations are hereby incorporated into MTS Ordinance No. 11 by reference. A violation of ADA requirements is a violation of this Ordinance and subject to a fine or suspension or revocation or a combination.

(Section renumbered to 1.20 9/24/1998)

(Section 1.19(a) was added 4/10/1997)

SECTION 2.0 - TAXICABS AND/OR LSVs

Section 2.1 - Types of Service

(a) A taxicab or LSV is authorized to provide exclusive ride and group ride service.

(Section 2.0 and 2.1 amended 8/7/2003)

Section 2.2 - Rates of Fare

(a) After a noticed and open public hearing of the Taxicab Advisory Committee, MTS shall establish a maximum rate of fare for exclusive ride and group ride hire of taxicabs and/or LSVs ~~except for trips from San Diego International Airport~~. A permit holder may petition the Board for any desired change in the maximum taxicab or LSV rates for exclusive ride and/or zone rates and group ride hire.

(b) Taxicab trips from San Diego International Airport shall not be charged more than the authorized maximum rate of fare. Notwithstanding, rates for trips originating at the airport may include an extra charge equal to the Airport Access Fee assessed against the individual taxicab operator by the San Diego County Regional Airport Authority. The extra may not be charged on any trip that does not originate at the airport or on any trip where the taxicab operator does not pay the fee to the San Diego County Regional Airport Authority. The extra charge may only be charged to the passenger by visually identifying the Airport Access Fee on the taxicab meter. A driver may not verbally request payment. All taxicabs utilizing the Airport Access Fee must have a decal, approved by the Chief Executive Officer and the County of San Diego Office of Weights and Measures. The decal shall identify and accurately describe the extra charge consistent with regulatory requirements.

(c) All taxicabs shall accept major credit cards including, but not limited to, VISA, MasterCard, American Express, and Discover. Credit Card fees shall not be passed onto passengers.

(d) The taxicab permit holder or taxicab driver shall disclose fares, fees or rates to the passenger. The taxicab permit holder or taxicab driver may disclose by website, mobile telephone application or telephone orders.

(e) It shall be unlawful for a permit holder or driver to operate any taxicab in the City or County, unless the vehicle is equipped with a Taximeter that meets the requirements of the State of California.

(1) If Hard Meter, each taxicab permit holder shall have the Taximeter set by properly licensed personnel for the rate that he/she will charge and have the Taximeter sealed and inspected.

(2) If Soft Meter, a certificate of approval must be provided by the California Department of Food and Agriculture Division of Measurement Standards

(3) The Taximeter shall calculate fares upon the basis of a combination of mileage traveled and time elapsed. When operative with respect to fare indication, the fare-indicating mechanism shall be actuated by the mileage mechanism whenever the vehicle is in motion at such a speed that the rate of mileage revenue equals or exceeds the time rate, and may be actuated by the time mechanism whenever the vehicle speed is less than this, and when the vehicle is not in motion.

(4) Waiting time shall include all time when a taxicab occupied or engaged by a passenger is not in motion or is traveling at a speed which is slow enough for the time rate to exceed the mileage rate. Waiting time will also include the time consumed while standing at the direction of the passenger or person who has engaged the taxicab.

(5) It shall be the duty of every permit holder operating a taxicab to keep the Taximeter in proper condition so that the Taximeter will, at all times, correctly and accurately

indicate the charge for the distance traveled and waiting time. The Taximeter shall be at all times subject to the charge for the distance traveled and waiting time.

(6) The Taximeter shall be at all times subject to inspection by an MTS inspector or any peace officer. The MTS inspector or peace officer is hereby authorized at his or her instance or upon complaint of any person to investigate or cause to be investigated the Taximeter, and upon discovery of any inaccuracy in the Taximeter, or if the Taximeter is unsealed, to remove or cause to be removed the vehicle equipped with this taximeter from the streets of the City until the Taximeter has been correctly adjusted and sealed. Before being returned to service, the vehicle and Taximeter must be inspected and approved by the Chief Executive Officer.

(7) Any device repairperson who places into service, repairs, or recalibrates a Taximeter shall record the tire size and pressure of the drive wheels of that vehicle, as tested, on the repair person's sticker.

(8) It shall be the duty of the permit holder to ensure the proper device repair person's sticker is affixed to the Taximeter and to ensure the tires are the proper size.

(f) It shall be unlawful for any driver of a taxicab, while carrying exclusive or group ride passengers, to display the flag or device attached to the Taximeter in such a position as to denote that the vehicle is for hire, or is not employed, or to have the flag or other attached device in such a position as to prevent the Taximeter from operating. It shall be unlawful for any driver to throw the flag into a position which causes the Taximeter to record when the vehicle is not actually employed, or to fail to throw the flag or other device into non-recording position at the termination of each and every service.

(g) The Taximeter shall be so placed in the taxicab that the reading dial showing the amount of fare to be charged shall be well-lighted and easily readable by the passenger riding in such taxicab.

(h) It shall be unlawful for any permit holder and/or driver of a taxicab or LSV to demand of a passenger a charge for hire which is greater than the current maximum rate approved by the Board pursuant to Section 2.2 (a) or (b) of this Ordinance.

(i) Except as provided in this section, it shall be unlawful for any permit holder and/or driver to demand of a passenger a charge for hire which is greater than the permit holder's meter rate pursuant to Sections 2.1 (a), or 2.2 (c) of this Ordinance.

(j) Nothing in this Ordinance shall preclude a dispatch service, permit holder, or driver from agreeing with prospective passenger(s) to a rate of fare which is equal to or less than the permit holder's posted maximum rates of fare if the agreement is entered into in advance of the passenger(s) hiring the taxicab for the trip. To ensure the fare agreement is equal to or less than the maximum rates of fare, the taximeter shall remain in recording position until the termination of the trip.

(Section 2.2 amended 12/12/2019)

-(Section 2.2 amended 11/8/2018, effective 1/1/2019)

(Section 2.2 amended 12/14/2017)

(Section 2.2 amended 5/12/2016)

(Section 2.2(c)(2)amended 11/15/2012)

(Section 2.2(b) amended 4/19/2012)

(Section 2.2 amended 8/7/2003)

(Section 2.2 amended 5/8/2003)
(Section 2.2 amended 11/14/2002)
(Section 2.2 amended 6/24/1999)
(Section 2.2 amended 9/24/1998; Section 2.2c operative May 1, 1999)
(Section 2.2 amended 10/30/1997)
(Section 2.2 amended 4/10/1997)

Section 2.3 - Equipment and Specifications

(a) No taxicab shall be operated until the taximeter thereon has been inspected, tested, approved and sealed, if applicable, by an authorized representative of the State of California, and thereafter so maintained in a manner satisfactory to the Chief Executive Officer.

(b) Each taxicab may be equipped with a device which plainly indicates to a person outside the taxicab whether the taximeter is in operation or is not in operation.

(c) Mandatory Exterior Markings: The permit holder must display one of the following exterior markings schemes on each taxicab:

(1) Exterior Marking Scheme 1: The following must be displayed if in use of Exterior Marking Scheme 1:

(A) The permit holder's trade name shall be painted or permanently affixed in letters and numerals four (4) inches high all on one line on the upper third part of both rear doors or both rear quarter panels utilizing "Univers" or other Chief Executive Officer pre-approved font in black or white lettering to produce maximum contrast adequately spaced for maximum readability. In the event the trade name does not fit on one line utilizing four (4) inch lettering, the trade name lettering must be as large as possible, up to four (4) inches in height, to enable the trade name to fit on one line.

(B) The medallion number shall be painted or permanently affixed, on both rear doors or both rear quarter panels, one (1) inch below the permit holder's trade name, six (6) inches high, utilizing "Univers" or other Chief Executive Officer pre-approved font in black or white lettering to produce maximum contrast adequately spaced for maximum readability.

(2) Exterior Marking Scheme 2: The following must be displayed if in use of Exterior Marking Scheme 2:

(A) The permit holder's trade name shall be painted or permanently affixed in letters and numerals four (4) inches high all on one line on the upper third part of both front doors utilizing "Univers" or other Chief Executive Officer pre-approved font in black or white lettering to produce maximum contrast adequately spaced for maximum readability. In the event the trade name does not fit on one line utilizing four (4) inch lettering, the trade name lettering must be as large as possible, up to four (4) inches in height, to enable the trade name to fit on one line.

(B) The medallion number shall be painted or permanently affixed, on both front doors, one (1) inch below the permit holder's trade name, six (6) inches high, utilizing "Univers" or other Chief Executive Officer pre-approved font in black or white lettering to produce maximum contrast adequately spaced for maximum readability.

(C) The permit holder's trade name and medallion number shall be painted or permanently affixed on the rear of the taxicab, four (4) inches high, utilizing "Univers" or other Chief Executive Officer pre-approved font in black or white lettering to produce maximum contrast adequately spaced for maximum readability. In the event the rear of the vehicle does not have four inches of vertical space for the trade name and medallion number, the rear lettering may be less than four inches, provided that it is easily readable from a distance of 50 feet.

(d) Optional Exterior Vehicle Markings. The permit holder has the option of choosing to post any combination of the below-listed five options on his or her taxicab which must be posted only at the specific location and in the size noted.

(1) Trade Name Logo. If the permit holder chooses to display his or her trade name logo, the trade name logo shall be posted only on the rear portion of both side rear quarter panels.

(2) Dispatch Service Provider. If the permit holder chooses to display the dispatch service provider name or logo, the dispatch service provider name or logo cannot utilize the words "cab" or taxi." The dispatch service provider name or logo must be displayed only on the rear portion of both side rear quarter panels.

(3) Telephone Number. If permit holder chooses to display a telephone number, the telephone number must be no more than three (3) inches in height and posted only on the top front portion of both front side quarter panels.

(4) "Driver Carries Only \$_____ Change". If the permit holder chooses to post "Driver Carries only \$_____ Change", postings must be located only on rear quarter panels near the rear door but clear of the rates of fare.

(5) "Leased to Driver". If permit holder chooses to post "Leased to Driver," it must be posted only on both side rear quarter panels near the rear door but clear of the rate of fares in lettering no larger than 1 inch.

(6) Body Numbers. If the permit holder chooses to post an internally assigned body number, different from the medallion number, the body number shall be posted in one (1) inch numerals on the front and rear bumpers.

(e) All other exterior vehicle markings are prohibited unless they are directly related to the permit holder's business and pre-approved by the Chief Executive Officer.

(f) All taxicabs shall be equipped and operated so that they may be dispatched by two-way radio or two-way electronic communication, monitored by a dispatcher, in response to a telephone or other request for service by a prospective passenger.

(1) Means of dispatch device must be turned on, and audible to driver, at all times the taxicab is in service.

(2) Dispatch equipment, such as a two-way radio, cellular phone or tablet, shall be securely mounted within the vehicle in such a way to be visible to peace officers and MTS inspectors and allow for hands-free operation while the vehicle is in motion.

(g) If radio dispatch capability is utilized, the dispatch service must abide by the following: the radio dispatch capability described in paragraph (d) of this section must be provided so as to conform to the regulations of the Federal Communications Commission (FCC) pertaining to Land Transportation Radio Services. Failure to conform to those regulations will additionally constitute a failure to meet the requirements of this section.

(1) The current valid FCC license shall be on file with MTS.

(2) Taxicab permit holder shall provide current proof the radio or electronic device has passed inspection by an MTS-approved inspector.

(3) Taxicab radios shall have the capability to receive or transmit only on frequencies specified in the FCC license of the radio service subscribed to by the permit holder.

(h) Each permit holder shall equip each permitted taxicab with a device capable of electronically processing credit card transactions. The device must be visible to all passengers and must allow the passenger to operate the payment device independently of the driver, without having to hand the credit card to the driver. The device must be fully operational at all times. The permit holder ~~or dispatch service~~ or driver shall be the merchant of record associated with the device. Any means of electronic credit card acceptance is acceptable so long as it complies with the provisions set forth in Section 1.8 (r).

(Section 2.3 amended 12/12/2019)

(Section 2.3 amended 11/8/2018, effective 1/1/2019)

(Section 2.3 amended 12/14/2017)

(Section 2.3 amended 10/13/2016)

(Section 2.3 amended 5/12/2016)

(Section 2.3 amended 2/12/2015)

(Section 2.3 amended 11/15/2012)

(Section 2.3 amended 6/27/2002)

(Section 2.3 amended 9/24/1998; Section 2.3c operative May 1, 1999)

(Section 2.3 amended 6/27/1991; effective 7/27/1991)

(Section 2.3 amended 4/10/1997)

Section 2.4 - Operating Regulations

(a) Operating regulations shall be promulgated and adopted from time to time by resolution of the Board. These resolutions will have the force of law and will be published and processed as though set forth in this Ordinance.

(b) Any driver employed to transport passengers to a definite point shall take the most direct route possible that will carry the passenger to the destination safely and expeditiously.

(c) A failure of the driver of any taxicab or LSV to assist a passenger with the loading or unloading of a reasonable size, number, and kind of passenger luggage or other items, when requested to do so, shall be specifically defined as a violation of this section.

(1) A driver is not required to lift any single piece of passenger luggage or other item that exceeds 25 pounds in weight. The requirement for loading or unloading assistance shall be limited to retrieval from or deposit onto the nearest curbside adjacent to the legally parked taxicab or LSV. A sign in the form of a transparent decal may be affixed to the rear-

door, side window stating that, "DRIVER IS NOT REQUIRED TO LOAD LUGGAGE IN EXCESS OF 25 POUNDS PER ITEM OR OF A SIZE OR KIND THAT WILL NOT SAFELY FIT IN THE DESIGNATED LUGGAGE AREA OF THIS VEHICLE."

(2) A driver with a lawful disability that prevents him/her from handling items as defined in subsection (2) above is, upon submission of proof of such disability, relieved of responsibility for the requirements of subsection (2). A driver so situated may affix a small sign either in the passenger section of the vehicle to be clearly visible to a rear seat passenger or on the inside of the trunk cover lid stating that, "DRIVER HAS DISABILITY THAT PREVENTS HANDLING OF LUGGAGE."

(d) It shall be unlawful for taxicab operators to refuse or discourage a prospective or actual fare based upon trip length within City or County, or method of payment. Driver shall not refuse payment by credit card.

(1) A vehicle designated as an LSV may refuse a prospective or actual fare if the trip distance is outside allowed areas of operations.

(2) A failure to promptly dispatch (within the standards required by Sections 2.6(a)(1), (2), and (3) of this Ordinance), or any action by a driver of any taxicab or LSV to refuse or discourage a prospective or actual passenger who must transport foodstuffs or who must meet a medical appointment, irrespective of trip length, shall be specifically defined as a violation of this section so long as that prospective passenger has notified the dispatch service of this circumstance at the time a request for taxi service was made.

(e) No driver of any taxicab or LSV shall stop, park, or otherwise leave standing a taxicab or LSV on the same side of the street in any block in which taxicabs or LSVs are already stopped, parked, or otherwise standing except the taxicab or LSV may actively unload in a passenger loading zone or be parked in a marked taxi/LSV stand.

(f) No driver shall stop, park or otherwise leave standing a taxicab or LSV within one-hundred (100) feet of any other taxicab or LSV except in a marked taxi/LSV stand or while actively loading or unloading passengers.

(g) An out-of-service sign must be displayed when the taxicab or LSV is not available for hire and is being operated or is lawfully parked for purposes of maintenance, inspection, or personal use. The sign must be placed in a location in the vehicle that is clearly visible from the exterior of the vehicle. The sign must be of durable material and written in block letters in black ink and easily readable from a distance of not less than ten (10) feet.

(h) A taxicab driver may seek passengers by driving through any public street or place without stops, other than those due to obstruction of traffic, and at such speed as not to interfere with or impede traffic.

(i) It shall be unlawful, however, for the driver to seek passengers by stopping at or driving slowly in the vicinity of an entertainment center or transportation center or any other location of public gathering, in such a manner as to interfere with public access to or departure from that center or location, or so as to interfere with or impede traffic.

(j) It shall also be unlawful for a taxicab or LSV driver, having parked and left his or her taxicab or LSV, to solicit patronage among pedestrians on the sidewalk, or at any entertainment center, transportation center, or other location of public gathering.

(k) No person shall solicit passengers for a taxicab or LSV other than the driver thereof; however, the Chief Executive Officer may authorize a dispatcher to solicit passengers and assist in loading passengers at such times and places as, in his or her discretion, public service and traffic conditions require.

(l) It shall be unlawful for the driver or operator of any taxicab or LSV to remain standing in any established taxicab or LSV stand or passenger loading zone, unless the driver or operator remains within twelve (12) feet of his or her taxicab or LSV, except when the driver or operator is actually engaged in assisting passengers to load or unload.

(m) Only paying passengers and persons specifically authorized by the Chief Executive Officer may occupy a taxicab or LSV that is already occupied by a paying passenger. No driver, once a paying passenger has occupied the taxicab or LSV, shall permit any other nonpaying passenger to occupy or ride in the taxicab or LSV.

(n) It shall be unlawful to respond to a call for service dispatched to another operator except when an LSV refers service to another operator because the trip distance is outside of the approved area of jurisdiction.

(o) The taxicab or LSV driver shall maintain a daily trip log which shall be available for inspection upon request by any peace officer or MTS inspector. The trip log will accurately show the driver's name, taxicab or LSV number, date, time, beginning odometer reading, starting and ending locations, type of service provided, and fare paid for each trip provided.

(1) The daily trip log shall consist, at a minimum, of a five- by seven-inch paper form retained on a stiff-board writing surface with ruled lines and columns sufficient to contain the required information. All entries will be in black or dark blue ink, block letters, and be clearly legible. Colored paper that is lightly shaded is allowed provided there is sufficient contrast for entries to be easily read. Onboard electronically generated reports that meet the legibility requirements are acceptable.

(2) The driver shall deliver trip logs to the permit holder upon request or at a weekly interval, whichever is less.

(3) If a taxicab, the trip log shall be retained for at least 18 months.

(p) All operating regulations set forth in Section 1.8 apply.

(q) The permit holder or the driver of the taxicab shall notify the passenger of the applicable rate prior to the passenger accepting the ride for walkup rides and street hails. The rate may be provided on the exterior of the vehicle, with an application of a mobile phone, device, or other internet-connected device, or be clearly visible in either print or electronic form inside the taxicab.

(Section 2.4 amended 11/8/2018, effective 1/1/2019)

(Section 2.4 amended 12/14/2017)

(Section 2.4 amended 10/13/2016)

(Section 2.4 amended 5/12/2016)

(Section 2.4 amended 2/12/2015)

(Section 2.4 amended 11/15/2012)

(Section 2.4 amended 8/7/2003)

(Section 2.4 amended 11/14/2002)

(Section 2.4 amended 6/24/1999)

(Section 2.4 amended 2/13/1997)

(Section 2.4 amended 6/27/1991; effective 7/27/1991)

Section 2.5 - Stands

(a) The Chief Executive Officer may establish, locate and designate shared use taxicab/LSV stands for one or more taxicabs/LSVs, which stands when so established shall be appropriately designated "Taxis/LSVs Only." The operating regulations of this Ordinance shall apply to such stands and to taxicab/LSV stands established by the San Diego Unified Port District in areas under its jurisdiction within the City.

(b) Each taxicab or LSV stand established hereunder may be in operation twenty-four (24) hours of every day, unless otherwise specified by the Chief Executive Officer.

(c) Any individual, partnership, association, or other organization may petition MTS requesting that a new taxicab/LSV stand be established, or that the location of an existing taxicab/LSV stand be changed to another location. A nonrefundable filing fee to be determined by the Chief Executive Officer must be paid at the time the petition is submitted.

(d) It shall be unlawful for a vehicle other than a taxicab or LSV with a proper MTS taxicab or LSV permit to occupy a taxi/LSV stand.

(e) LSVs may only occupy taxicab stands that are specially signed, designated their approved use.

(Section 2.5 amended 11/15/2012)

(Section 2.5 amended 8/7/2003)

Section 2.6 - Dispatch Services

(a) In order to provide taxicab dispatch service required by Section 2.3(d, e), the dispatch service organization adding or changing subscribers after July 1, 1991 shall establish and conform to written policies and procedures concerning the following:

- (1) Standard time elapse for answering the telephone service-request line(s).
- (2) Standard time elapse for the taxicab's arrival at requested pick-up location.
- (3) Passenger's request for a specific driver ("personals").
- (4) Additional two-way communication devices (mobile or cellular phones) in taxicabs
- (5) Lost and found for passengers' items.
- (6) Assignment of vehicle body numbers.
- (7) Immediately notify the permit holder of all lost items and inquiries.

Current written policies and procedures shall be available to subscribers from the radio dispatch organization, and on file with MTS.

(b) Taxicab service organizations shall, 24 hours a day, have dispatch staff on duty at the business location, which must be a preapproved physical address, answer telephone- request line(s), properly dispatch those requests to all members, provide radio response to all licensed radio frequencies/channels, and respond to direct requests from drivers, permit holders, and MTS as well as law enforcement and local regulatory agencies.

(c) Taxicab dispatch services shall keep written records of all requests for taxi service, calls dispatched, and the time(s) each taxicab goes in and out of service. These records shall be kept on file for a minimum of six (6) months, and made available to MTS, upon request.

(d) No person, partnership, corporation, association, other organization providing radio or other dispatch service shall dispatch a request for service to a driver, owner, or vehicle unless the driver, owner, and vehicle are properly licensed to provide the service requested.

(e) The Chief Executive Officer may, at any time, revoke or suspend the taxicab privileges of or fine any person, partnership, corporation, association, other organization providing radio or other dispatch service that violates a provision of this ordinance.

(Section 2.6 amended 11/8/2018, effective 1/1/2019)

(Section 2.6 amended 12/14/2017)

(Section 2.6 amended 10/13/2016)

(Section 2.6 amended 11/15/2012)

(Section 2.6 amended 8/7/2003)

(Section 2.6 amended 9/24/1998)

(Section 2.6 added 6/27/1991; effective 7/27/1991)

Section 2.7 - Driver Safety Requirements

(a) No taxicab vehicle shall be operated unless such vehicle is equipped with an emergency signaling device approved by the Chief Executive Officer.

(b) No taxicab vehicle may be operated with window tinting, shades, or markings that could interfere with a clear view of the cab interior from the outside, unless equipped by the vehicle manufacturer and approved by an MTS inspector.

(c) Taxicab dispatch services required by Section 2.3 shall at all times have a dispatch staff person on duty who has successfully completed a driver safety training course approved by the Chief Executive Officer.

(d) The use of a cellular phone or other similar electronic device by drivers is prohibited at all times when the vehicle is in motion. Otherwise, California Vehicle Code rules apply.

(Section 2.7 amended 11/8/2018, effective 1/1/2019)

(Section 2.7 amended 12/14/2017)

(Section 2.7 amended 10/13/2016)

(Section 2.7 amended 5/12/2016)

(Section 2.7 amended 11/15/2012)

(Section 2.7 amended 8/7/2003)

(Section 2.7 added 9/24/1998)

Section 2.8 – Prearranged Trips by Taxicabs

(a) A Prearranged Trip shall mean a trip using an online enabled application, dispatch or Internet Web site.

(b) A MTS taxicab permit holder may provide Prearranged Trips anywhere within San Diego County.

(c) A taxicab not permitted by MTS, but permitted by another authorized agency within San Diego County, may provide Prearranged Trips within City or County. MTS will not require such a taxicab to apply for a permit with MTS if the taxicab is not Substantially Located in City or County. MTS will require such a taxicab to comply with mechanical safety regulations within Section 1.8 (f) as a public health, safety and welfare measure.

(Section 2.8 amended 2/14/2019)

(Section 2.8 added 11/8/2018, effective 1/1/2019)

SECTION 3.0 - CHARTER VEHICLES

Section 3.1 - Rates of Fare

(a) Within thirty (30) calendar days following the issuance of a permit by the Chief Executive Officer, each permit holder shall file a document with the Chief Executive Officer reflecting the rates of fare being charged by said permit holder for charter services.

(b) If a permit holder desires to change the rates of fare being charged for charter services during any calendar year, he shall first file a document with the Chief Executive Officer indicating said changes, and no change shall be effective until fourteen (14) days following the filing of said change.

(c) No permit holder shall charge any rate of fare for charter services unless said rates are on file with the Chief Executive Officer as aforesaid, and duly displayed.

(d) The rates of fare shall be established by a prearranged written contract on a per-mile or per-hour basis.

(Section 3.1 amended 4/10/1997)

Section 3.2 - Operating Regulations

(a) It shall be unlawful for any charter vehicle to remain standing on any public street in the City, except such reasonable time necessary when enabling passengers to load or unload.

(b) It shall be unlawful for any person, either as owner, driver, or agent, to approach and solicit patronage upon the streets, sidewalks, in any theater, hall, hotel, public resort, railway or airport, or light rail transit station.

(c) The charter for-hire vehicle driver shall maintain a daily trip log which shall be available for inspection upon request by any peace officer or MTS inspector. The trip log will accurately show the driver's name and the medallion number on the vehicle. In addition, the trip log shall identify the scheduling parties by name, date, and time of the prearranged hire. If the trip is medical in nature, the passenger's name may be omitted.

(d) All other operating regulations defined in Section 1.8 apply.

(Section 3.2 amended 12/14/2017)
(Section 3.2 amended 11/14/2002)

SECTION 4.0 - SIGHTSEEING VEHICLES

Section 4.1 - Rates of Fare

- (a) Within thirty (30) calendar days following the issuance of a permit by the Chief Executive Officer, each permit holder shall file a document with the Chief Executive Officer reflecting the rates of fare being charged by said permit holder of sightseeing vehicle services.
- (b) If a permit holder desires to change the rates of fare being charged for sightseeing services during any calendar year, the permit holder shall first file a document with the Chief Executive Officer indicating said changes, and no change shall be effective until fourteen (14) days following the filing of said changes.
- (c) No permit holder shall charge any rate of fare for sightseeing services unless said rates are on file with the Chief Executive Officer as aforesaid, and duly displayed.
- (d) The rate of fare shall be established on a per capita or per event basis.

(Section 4.1 amended 11/8/2018, effective 1/1/2019)
(Section 4.1 amended 4/10/1997)

Section 4.2 - Operating Regulations

- (a) It shall be unlawful for any sightseeing vehicle to remain standing on any public street in the City, except such reasonable time necessary when enabling passengers to load or unload.
- (b) It shall be unlawful for any person, either as owner, driver, or agent, to approach and solicit patronage upon the streets, sidewalks, in any theater, hall, hotel, public resort, railway or airport, or light rail transit station.
- (c) All other operating regulations defined in Section 1.8 apply, except Section 1.8 (v).

SECTION 5.0 - NONEMERGENCY MEDICAL VEHICLES

Section 5.1 - Rates of Fare

- (a) Within thirty (30) calendar days following the issuance of a permit by the Chief Executive Officer, each permit holder shall file a document with the Chief Executive Officer reflecting the rates of fare being charged by said permit holder for nonemergency medical vehicle services.
- (b) If a permit holder desires to change the rates of fare being charged for nonemergency medical vehicle services during any calendar year, he shall first file a document with the Chief Executive Officer indicating said changes, and no change shall be effective until fourteen (14) days following the filing of said change.
- (c) No permit holder shall charge any rate of fare for nonemergency medical vehicle services unless said rates are on file with the Chief Executive Officer as aforesaid.

(d) The rate of fare for exclusive ride service shall be established on a per capita plus per mile basis.

(e) The rates of fare for shared ride service shall be established on a per capita plus per mile basis, or on a per capita plus per zone basis.

(Section 5.1 amended 12/14/2017)

(Section 5.1 amended 4/10/1997)

Section 5.2 - Operating and Equipment Regulations

(a) It shall be unlawful for any nonemergency medical vehicle to remain standing on any public street in the City, except when enabling passengers to load or unload.

(b) All other operating regulations defined in Section 1.8 apply.

(c) Special equipment on a nonemergency medical vehicle shall, at all times the vehicle is in operation, be in proper working order. Such vehicles equipped with wheelchair ramps or lifts shall have proper device(s) to secure each wheelchair on board.

(d) The permit holder is responsible for ensuring that the driver of a nonemergency medical vehicle is properly trained:

(1) in the use of any of the vehicle's special equipment;

(2) concerning supervision of or assistance to the disabled passengers whom the driver is to transport.

(Section 5.2 amended 6/22/1995)

(Section 5.2 amended 6/24/1993)

Section 5.3 - Driver Identification Cards

In addition to the requirements set forth in Section 1.12, nonemergency medical vehicle drivers shall acquire and maintain valid proof of proper first-aid and CPR training.

(Section 5.3 added 6/24/1993)

SECTION 6.0 - JITNEY VEHICLES

Section 6.1 - Rates of Fare

(a) Within thirty (30) calendar days following the issuance of a permit by the Chief Executive Officer, each permit holder shall file a document with the Chief Executive Officer reflecting the rates of fare being charged by said permit holder for jitney services.

(b) If a permit holder desires to change the rates of fare being charged for jitney services during any calendar year, he shall first file a document with the Chief Executive Officer indicating said changes, and no change shall be effective until fourteen (14) days following the filing of said change.

(c) No permit holder shall charge any rate of fare for jitney services unless said rates are on file with the Chief Executive Officer and duly displayed.

- (d) The rates of fare shall be established on a per capita basis.

(Section 6.1 amended 11/8/2018, effective 1/1/2019)

(Section 6.1 amended 4/10/1997)

Section 6.2 - Jitney Routes

(a) A permit holder who wishes to provide a fixed route service shall apply to the Chief Executive Officer for authorization to serve a defined route with a specific vehicle. No for-hire vehicle may be operated as a jitney until it has met all other requirements of this Ordinance and has been approved for service on a specific fixed route. A jitney may be authorized to serve more than one route; however, a jitney may provide fixed route service on only those routes which the Chief Executive Officer has approved in writing for that vehicle.

(b) The application for a fixed route shall be in writing and shall contain the following information:

- (1) A description of the vehicle(s) which will be utilizing the route;
- (2) A detailed written description of the route, to include starting location, ending location, and the street name and direction of travel for all streets to be used in the route;
- (3) A map in sufficient detail to clearly indicate the proposed route;
- (4) The fare to be charged; and
- (5) Such other information as the Chief Executive Officer may, in his or her discretion, require.

(c) Upon approval of a fixed route by the Chief Executive Officer, the permit holder shall display a representation of the route, the fare, and the permit holder's trade name on each side of the vehicle in letters large enough to be easily read by potential customers in accordance with the standards established by the Chief Executive Officer under Section 6.5 of this Ordinance. Only one (1) route may be displayed on a vehicle at any time.

(d) If a permit holder wishes to alter his or her approved fixed route(s), he or she must apply in writing to the Chief Executive Officer, submitting the information required in Section 6.2 (b).

(e) The Chief Executive Officer may, in his or her discretion, place conditions on the approval of fixed routes.

(f) The Chief Executive Officer may change a route that has been approved previously when the Chief Executive Officer finds it necessary to do so. A change of route may be necessary when a street has been closed temporarily or permanently because of construction, or the direction of a street has been changed, or a street has been vacated, or for similar reasons as determined by the Chief Executive Officer. The Chief Executive Officer shall notify in writing any permit holder whose route has been changed. The Chief Executive Officer's change of a route is subject to appeal under Section 1.16 of this Ordinance.

(g) Except as provided for within this subsection, an approved fixed route may not be transferred to another vehicle or permit holder. A permit holder may receive approval for a vehicle that is replacing a jitney already in service to use the approved fixed routes of the replaced vehicle.

(Section 6.2 amended 11/14/2002)

Section 6.3 – Operating Regulations

(a) It is unlawful for any jitney to remain standing on any public street in the City, except when enabling passengers to load or unload, or except when standing in a jitney holding zone for the time period established by MTS.

(b) It is unlawful for any person including, but not limited to, a jitney owner, driver, or agent thereof, to approach and solicit patronage upon the streets, sidewalks, in any theater, hall, hotel, public resort, railway, airport, or light rail transit station.

(c) A peace officer or MTS inspector may authorize a dispatcher to solicit passengers and assist with loading passengers at such times and places as, in his/her discretion, public service and traffic conditions require.

(d) Except when a driver or operator is actually engaged in assisting passengers to load or unload, a jitney driver or operator must remain within twelve (12) feet of his/her jitney while the jitney is in service.

(e) It is unlawful for a jitney vehicle to operate a fixed route service on other than that route designated by the Chief Executive Officer.

(f) It shall be unlawful for a jitney driver to load or unload passengers in any place other than an authorized jitney stop, bus stop, or passenger loading zone.

(g) All other operating regulations defined in Section 1.8 apply.

(Section 6.3 amended 11/14/2002)

Section 6.4 - Jitney Holding Zones

(a) The Chief Executive Officer may, by resolution, locate and designate holding zones for one (1) or more jitneys, which holding zones when so established, shall be designated by appropriate signs. The operating regulations of Section 6.3 shall apply to any holding zones so established, and to holding zones established by the San Diego Unified Port District in areas under its jurisdiction. The Chief Executive Officer may, by his or her discretion, establish the maximum number of jitneys permitted to remain standing at one time in a holding zone.

(b) Each holding zone established hereunder shall be in operation twenty-four (24) hours of every day, unless otherwise specified by the Chief Executive Officer. The Chief Executive Officer shall adopt written standards to determine whether to allow holding zones to be in operation fewer than twenty-four (24) hours every day. If a holding zone is to be in operation fewer than twenty-four (24) hours every day, the Chief Executive Officer shall cause signs to be posted at or near the holding zone indicating the hours and days of operation.

(c) The Chief Executive Officer may, on his or her own motion, establish holding zones.

(d) Any individual, partnership, corporation, association or other organization may petition MTS requesting that a new holding zone be established. The petition must be filed in

writing with the Chief Executive Officer or his/her designee. The petition must state the reason for the request and the proposed location(s). The Board may approve, deny, or modify the request.

(e) Whether initiated by the Chief Executive Officer under Subsection (c) of this section or by persons described in Subsection (d) of this section, before any holding zone is established, the proposed location of any holding zone must be reviewed by the Traffic Engineer of the City. The Traffic Engineer shall report his/her recommendations to approve, deny, or modify the proposed location in writing to the Chief Executive Officer. The Traffic Engineer's report shall include a statement of reasons supporting the recommendation to the Chief Executive Officer.

(f) The Chief Executive Officer shall, by resolution, establish a maximum time limit for individual jitneys to remain standing in any holding zone. The time limit shall apply uniformly to all holding zones.

(g) It shall be unlawful for a vehicle other than a jitney with a proper MTS jitney permit to occupy a jitney holding zone.

(Section 6.4 amended 11/15/2012)

Section 6.5 - Equipment and Specifications

(a) Each jitney shall bear on the outside, signs clearly designating the route which it serves. The specifications of the sign are subject to the approval of the Chief Executive Officer. The Chief Executive Officer shall adopt written standards for approval or denial of the size of the signs, the location of the signs on the vehicle, the size of the lettering or graphics on the signs, and other specifications that the Chief Executive Officer finds necessary.

(b) All jitney vehicles must bear a trade name and shall be assigned a body number by the permit holder. The trade name and body number so assigned shall be placed on the vehicle in accordance with written standards adopted by the Chief Executive Officer.

Any violation of this Ordinance shall constitute an infraction unless otherwise specified.

SECTION 7.0 – LOW-SPEED VEHICLES

Section 7.1 – Low-Speed Vehicle (LSV) Definition

Low-Speed Vehicles (LSV) shall mean every vehicle that is designated per the requirements of Ordinance No. 11, Section 1.1(r). LSVs may operate by zones and/or a prearranged basis as set forth in Section 1.1 (b) (1)-(5).

(Section 7.1 amended 2/14/2019)

(Section 7.1 amended 11/8/2018, effective 1/1/2019)

(Section 7.0 and 7.1 added 8/7/2003)

Section 7.2 – Establishment of Zones

The Chief Executive Officer shall establish and authorize the use of zones of operation.

(Section 7.2 added 8/7/2003)

Section 7.3 – Zone Rates of Fare

(a) All vehicles permitted as LSV may use two methods of seeking compensation, either by zone rates or on a prearranged basis. Either method may be used when working inside of an approved zone. However, when operating on a prearranged charter basis, within an approved zone, no operator may exceed the maximum number of vehicles that are permitted.

(b) Within thirty (30) calendar days following the issuance of a permit by the Chief Executive Officer, each permit holder shall file a document with the Chief Executive Officer reflecting the rates of fare being charged by said permit holder for LSV services.

(c) When a permit holder desires to change the rates of fare being charged for LSV services during any calendar year, he shall first file a document with the Chief Executive Officer indicating said changes, and no change shall be effective until fourteen (14) days following the filing of said change.

(d) No permit holder shall charge any rate of fare for LSV services unless said rates are on file with the Chief Executive Officer as aforesaid, and duly displayed.

(e) The rates of fare shall be established by a zone and/or prearranged written contract on a per-mile or per-hour basis.

(f) The maximum rates of fare shall be established pursuant to Section 2.2.

(Section 7.3 amended 10/13/2016)

(Section 7.3 added 8/7/2003)

Section 7.4 – Spare Vehicle Policy

(a) The following sets out procedures for LSV permit holders to place a spare vehicle into service as either a temporary replacement for a permitted vehicle that is out of service for recharging or mechanical problems.

(1) Spare LSVs must be marked with the approved company markings.

(2) In place of the medallion number, the spare LSV must be marked "Spare LSV." Where more than one spare LSV is being requested, under the provisions of paragraph 9, the LSVs will be marked "Spare LSV 1," "Spare LSV 2," and so on. The "Spare LSV" marking should be sized to fit in approximately the same space as the medallion number would otherwise be placed with legibility and visibility being the primary criteria.

(3) Spare LSVs must be inspected upon initial issuance and annually thereafter.

(4) All spare LSVs must meet all MTS insurance requirements.

(5) To use a spare LSV that meets the requirements of 1 through 4 above, the permit holder must communicate in writing (facsimile is acceptable), a request to place a spare LSV into service.

The request must state:

(A) the medallion number of the LSV being taken out of service, the reason for being out of service, and the location of the out-of-service LSV; and

(B) the estimated time the spare LSV will be in use.

(6) When the out-of-service LSV is ready to re-enter service, the permit holder must immediately notify MTS in writing (facsimile is acceptable).

(7) The out-of-service LSV may not be required to be reinspected to be placed back into service.

(8) The spare LSV must be removed from service at the time the LSV it has been replacing is placed back into service.

(9) Under normal circumstances, a permit holder may utilize spare LSVs. Permit holders may utilize spare LSVs in a ratio of 3:1 permits held.

(10) Spare LSVs that are placed in service may only operate inside of the MTS-approved zone or zones. A permit holder shall not operate more spare vehicles than he/she has regular permitted vehicles.

(11) A permit holder found to have operated a spare LSV in deliberate violation of these procedures will be subject to immediate suspension/revocation of the permit and the loss of the spare LSV utilization privilege.

(Section 7.4 amended 10/13/2016)

(Section 7.4 amended 10/16/2003)

(Section 7.4 added 8/7/2003)

Section 7.5 – LSV Driver Identification Cards

(a) Refer to Section 1.12 of this Ordinance to reference driver and permit holder ID requirements.

(Section 7.5 added 8/7/2003)

Section 7.6 - Equipment and Specifications

(a) Each LSV shall display whether out of service in accordance with section 2.4 (g) of this Ordinance, which shall indicate to a person outside the LSV whether the LSV is in operation or is not.

(b) Exterior Markings

(1) Mandatory Exterior Vehicle Markings. The medallion number shall be painted or permanently affixed, on the front of the vehicle, one (1) inch below the permit holder's trade name, two (2) inches high, utilizing "Univers" or other Chief Executive Officer pre-approved font in black or white lettering to produce maximum contrast adequately spaced for maximum readability.

(2) Optional Exterior Vehicle Markings. The permit holder has the option of choosing to post any combination of the below-listed five options on his or her LSV which must be posted only at the specific location and in the size noted and are subject to the Chief Executive Officer's approval.

(A) Trade Name Logo. If the permit holder chooses to display his or her trade name logo, the trade name logo shall be posted only on the rear portion of both side rear quarter panels.

(B) Radio Service Provider. If the permit holder chooses to display the radio service provider name or logo, the radio service provider name or logo cannot utilize the words "cab" or taxi." The radio service provider name or logo must be displayed only on the rear portion of both side rear quarter panels.

(C) Telephone Number. If permit holder chooses to display a telephone number, the telephone number must be no more than two (2) inches in height and posted only on the top front portion of both front side quarter panels.

(D) "Driver Carries Only \$ _____ Change". If the permit holder chooses to post "Driver Carries only \$ _____ Change", postings must be located only on panels near the rear door but clear of the rates of fare.

(E) "Leased to Driver". If permit holder chooses to post "Leased to Driver," it must be posted only on both rear quarter panels near the rear door area but clear of the rate of fares in lettering no larger than 1 inch.

(3) All other exterior vehicle markings are prohibited unless they are directly related to the permit holder's business and pre-approved by the Chief Executive Officer.

(c) All LSVs shall be equipped and operated so that they have adequate means of electronic communication during business hours. The LSV company business address shall serve as the storefront for the purpose of handling lost and found items. All other operational requirements she be met as set forth in section 1.8 (c).

(Section 7.6 amended 11/8/2018, effective 1/1/2019)

(Section 7.6 amended 12/14/2017)

(Section 7.6 amended 10/4/2016)

(Section 7.6 added 8/7/2003)

SECTION 8 - EFFECTIVE DATE OF ORDINANCE

This Ordinance shall be effective 30 days after adoption, and before the expiration of 15 days after its passage, this Ordinance shall be published once with the names of the members voting for and against the same in a newspaper of general circulation published in the County of San Diego.

Amended:12/12/2019

Amended: 10/10/2019

Amended: 2/14/2019

Amended: 11/8/2018

Amended: 9/20/2018

Amended: 12/14/2017

Amended: 10/13/2016

Amended: 5/12/2016

Amended: 9/17/2015

Amended: 2/12/2015

Amended: 11/15/2012

Amended: 4/19/2012

Amended: 10/16/2003
Amended: 8/7/2003
Amended: 5/8/2003
Amended: 11/14/2002
Amended: 6/27/2002
Amended: 5/23/2002
Amended: 6/24/1999
Amended: 9/24/1998
Amended: 10/30/1997
Amended: 4/10/1997
Amended: 2/13/1997
Amended: 11/9/1995
Amended: 6/22/1995
Amended: 1/12/1995
Amended: 6/24/1993
Amended: 6/27/1991
Amended: 5/23/1991
Amended: 10/11/1990
Repealed & Readopted: 8/9/1990
Amended: 4/12/1990
Amended: 4/27/1989
Adopted: 8/11/1988



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Agenda Item No. 15

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 12, 2019

Draft for Executive Committee Review Date: 12/5/19

SUBJECT:

REVISIONS TO MTS BOARD POLICY NO. 34, "FOR HIRE VEHICLE SERVICES"

RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors approve the proposed revisions to MTS Board Policy No. 34 "For Hire Vehicle Services" (Attachment A).

MTS Taxicab Advisory Committee (TAC) Recommendation

[The TAC recommendation will be included after the December 2, 2019 TAC Meeting.]

Budget Impact

None with this action.

DISCUSSION:

In accordance with MTS Board Policy No. 34, MTS Taxicab Administration conducts annual calculations to determine the maximum rates of fare for trips originating from San Diego International Airport, and all other city/nonairport originated trips.

Currently, for city/nonairport originated trips, the maximum rate of fare may not exceed 20% more than the weighted average of fares. The fare structure consists of the dollar amounts charged by permit holders for the flag drop, the per-mile charge, and waiting time charge. The weighted average of fares is calculated by adding each flag drop, per-mile and waiting time charge resulting in a weighted average for each of these three categories, and dividing it by the total number of active permits.

Airport-originated trip fare calculations are made in accordance with the change in the Annual All Urban Western Transportation Consumer Price Index (CPI) for the San Diego



region. Historically, airport rate calculations based on the CPI have been 10% to 15% lower than the city/nonairport trip fare rates calculated under the weighted average method.

To reduce customer confusion with using two different rates and the concern that a dual rate of fare would not be generally good for the taxicab industry, on April 16, 2015, the MTS Board of Directors approved unifying the rates of fare for both airport and city/nonairport trips at the current airport rate (i.e. CPI rate). Thus, although there are two separate rates of fare calculations listed in MTS Board Policy No. 34 depending on the trip origin, there is only one maximum rate of fare currently for taxicabs.

Due to the loss of market share and increased competition with Transportation Network Companies (TNCs), the TAC has recommended each year since (in 2016, 2017, and 2018) to stabilize and maintain the maximum rates of fare as they were in 2015. Therefore, the maximum rates of fare remain the same since 2015 and are as follows:

Current Maximum Rates of Fare
\$2.80 flag drop 1/10 of a mile
\$3.00 per mile
\$24.00 per-hour waiting time

Since the implementation of Assembly Bill (AB) 1069 in January 1, 2019, MTS Taxicab Administration is restricted to only establishing the maximum rate of fare. MTS Taxicab may not establish a minimum rate of fare. Taxicab operators thus have the ability to continuously adjust trip fares, up or down, so long as the fare is lower than the maximum rate of fare.

Recently, a proposal was received to review whether to increase the maximum rates of fare to help offset costs experienced by taxicab drivers. No annual calculation of maximum rates of fare has occurred for 2019 as of yet. In order to ensure any change to the maximum rates of fare are appropriate, it is being recommended to waive a 2019 annual calculation and first review whether updates to the calculation methods required under MTS Board Policy No. 34 are necessary and then conduct an annual maximum fare calculation in early 2020.

I. Proposed Revision – Calculating Maximum Rate of Fare using CPI

As discussed above, the taxicab fare structure consists of the dollar amounts charged by permit holders for the flag drop, the per-mile charge, and waiting time charge. The weighted average of fares is calculated by adding each segment of each respective charge and dividing it by the number of taxicab permits. However, this current weighted average method to calculate maximum rate of fare for city/nonairport trips may no longer be the most appropriate calculation method.

Since the implementation of AB 1069, taxicab operators have the discretion to continuously adjust trip fares, up or down, so long as lower than the maximum allowed rate. Taxicab operators need not inform MTS Taxicab Administration of these adjustments. Since the weighted calculation method uses the maximum rate of fare the permit holders file with MTS Taxicab Administration, and not the actual amount charged day to day by taxicabs, the weighted average calculation provides imprecise results.

Also, as permit holders continue to adopt the maximum allowed rate for the applicable year, which is used in the weighted average calculation, the rate of fare will always increase for future calculations. Lastly, due to the gradual attrition of taxicab permits since 2016, the number by which the rates are averaged continues to lower, resulting in exponentially higher rates for future year calculations.

It is recommended that the current weighted average of fares calculation method for city/nonairport trips be replaced with the yearly change in the Annual All Urban Western Transportation CPI for the San Diego region. With this proposed change, there would no longer be two separate rates of fare calculations for city/nonairport trips and airport trips. There would only be one maximum rate of fare, with no differentiation between if coming from the airport or a city/nonairport location. Regardless of where the trip originated, the maximum rate of fare would be calculated based on CPI and no longer the weighted average method. Taxicab operators could choose to adopt this maximum rate of fare calculated by CPI and charge anything equal to or less than this amount.

The CPI method, provided by the U.S. Bureau of Labor Statistics, is based on verifiable, up to date economic data related to the transportation industry. The CPI measures the average change in prices over time that consumers pay for transportation and helps measure inflation. It provides for a more realistic maximum fare calculation method allowing the taxicab industry to better compete with TNC's and other types of for-hire transportation services.

II. Proposed Revision – Provide a Separate Maximum Rate of Fare for Taxicabs Equipped with Point of Sale Devices Electronically Connected to the Taximeter Capable of Printing or Electronically Conveying Receipts

Currently, taxicabs are required by MTS Ordinance No. 11 to comply with the following payment device requirements: requiring a driver to offer a printed receipt upon request; requiring a permit holder to equip each permitted taxicab with a device capable of electronically processing credit card transactions; requiring the payment device be visible to all passengers; requiring that the passenger be able to operate the payment device independently of the driver; and requiring that the payment device be operational at all times.

Consistent with other small businesses, many taxicab drivers use the Square as a payment device, which is connected to a cell phone, and not to the taximeter. Drivers manually enter the amount displayed on the taximeter into the Square application. Unless a credit card reader connected via Bluetooth is being utilized, the driver must hand over their cell phone to the passenger in order for the passenger to finalize the transaction. Many drivers prefer Square over other types of payment devices because it charges a lower credit card transaction fee.

At the September 11, 2019 TAC Meeting, Taxicab Administration staff proposed requiring that the payment device be electronically connected to the taximeter. The reasoning was to reduce complaints of the taxicab driver manually entering the wrong amount into the payment device than what was displayed on the taximeter. TAC did not approve the proposed revisions and recommended that it be reviewed further by the TAC subcommittee, Workshop on Regulatory Affairs (WORM). Feedback from the

meeting overwhelming stated that requiring the payment device be electronically connected to the taximeter would increase operating costs for drivers, as payment devices that can be connected to the taximeter have higher credit card transaction fees than Square.

To incentivize the implementation of new technologies in taxicabs, but to still allow drivers the option of using Square-like payment devices, it is recommended that an optional, higher maximum rate of fare be offered for taxicabs equipped with point of sale devices connected to the taximeter that are capable of printing or electronically conveying receipts.

The proposed revisions would allow taxicabs equipped with such point of sale devices to charge a maximum rate of fare of 6% more than the maximum rates of fare for taxicabs without such point of sale devices. The additional 6% results in an approximately \$0.20 increase to both the flag drop and per mile rates and a \$2.00 increase for the waiting time.

This optional, higher maximum rate of fare would still result in one maximum rate of fare that the taxicab would adopt. It is just a larger maximum rate of fare structure than what would be applicable for a taxicab without such point of sale device.

Offering a higher maximum rate of fare for taxicabs with a point of sale device connected to the taximeter may offset the additional costs associated with maintaining a payment device with higher credit card transaction fees. These point of sale devices may improve the customer experience by: electronically displaying the trip total calculated on the taximeter on the payment device; allow for more secure payment options (e.g. chip reader); allow for passengers to pay and select a tip amount without having to hand over their credit card to the driver; and that can either print a receipt or electronically send a receipt.

III. Annual Calculation of Maximum Rate of Fare

Per MTS Board Policy No. 34, the Chief Executive Officer calculates annually the maximum rates of fare. Per MTS Ordinance No. 11, the Chief Executive Officer presents the annual calculations at a noticed, public meeting of the TAC and the rates become effective immediately. No approval by the TAC or the MTS Board of Directors is necessary for the annual calculations. If the above proposed revisions to the calculation of the maximum rate of fare are approved by the MTS Board of Directors, the new 2020 Maximum Rate of Fare will be presented by the Chief Executive Officer at the next TAC meeting (to be scheduled for early 2020).

The 2019 annual CPI data is not yet available until early next year. Below is the maximum rate calculation using 2018 annual CPI data as reference only. It is anticipated that the below maximum rates of fare calculation using 2018 annual CPI data will likely be the same using the 2019 annual CPI data, once available.

Current Maximum Rates of Fare

\$2.80 flag drop 1/10 of a mile

\$3.00 per mile

\$24.00 per-hour waiting time

Proposed Maximum Rates if
Using 2018 Annual CPI Rates

\$2.90 flag drop 1/10 of a mile
\$3.10 per mile
\$25.00 per-hour waiting time

Proposed Maximum Rates for
Taxicabs with Point of Sale Devices
if Using 2018 Annual CPI Rates

\$3.10 flag drop 1/10 of a mile
\$3.30 per mile
\$27.00 per-hour waiting time

If the above described proposed revisions to MTS Board Policy No. 34 are not approved by the MTS Board of Directors, the Chief Executive Officer will calculate the 2020 maximum rates of fare using the weighted average method for city/nonairport trips and CPI method for airport trips and present the calculation at the next TAC meeting in early 2020. Unless the MTS Board of Directors chooses to unify the rates, there would again be a dual rate system depending on where the trip originated. All taxicabs authorized to provide airport originated trips would have the option to re-program their taximeters to add the nonairport/city rate to be selected whenever operating in the city.

IV. Proposed Revision –Cities MTS Taxicab Administration Regulates

MTS began regulating taxicabs and other for-hire vehicles for the City of Chula Vista in 2018 and City of National City in 2017. The proposed revisions will reflect the addition of Chula Vista and National City to the cities for which MTS provides regulation of for-hire vehicle services.

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

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

Attachments: A. Red-Line Proposed Revisions to MTS Board Policy No. 34
B. Annual All Urban Western Transportation CPI / San Diego
C. 2019 CPI Maximum Fare Calculation (Reference Only)

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Policies and Procedures

No. 34

Board Approval: ~~04/16/15~~ 12/12/2019

SUBJECT:

FOR-HIRE VEHICLE SERVICES

PURPOSE:

To establish a policy with guidelines and procedures for the implementation of MTS Ordinance No. 11.

BACKGROUND:

Regulation of for-hire vehicle service is in the interest of providing the citizens and visitors to the MTS region and particularly the Cities of Chula Vista, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, San Diego, and Santee, with a good quality local transportation service. Toward this end, MTS finds it desirable to regulate the issuance of taxicab permits, to establish maximum rates of fare, and to provide for annual review of cost-recovery regulatory fees.

POLICY:

34.1 City of San Diego Entry Policy

New City of San Diego taxicab permits will be issued in accordance with San Diego City Council Policy No. 500-02, "Taxicab Permits".

34.2 Maximum Rates of Fare Policy

~~Pursuant to MTS Ordinance No. 11, Section 2.2(a) and after a duly noticed and open public hearing, MTS determined that the M~~maximum rate of fare for exclusive ride and group ride hire of taxicabs shall be made ~~that fare~~ in accordance with the change in the Annual All Urban Western Transportation Consumer Price Index (CPI)/San Diego. ~~that does not exceed twenty percent (20%) more than the weighted average of fares as established in accordance with this policy.~~ The fare structure shall consist of the dollar amounts charged by permit holders for the flag drop, the per-mile charge, waiting-time charge, first zone, and each additional zone charge. The maximum rates of fare shall be computed annually by the Chief



Executive Officer and presented at a noticed public hearing of the Taxicab Advisory Committee.

34.2.1 Maximum Rates of Fare Determination

Unless Section 34.2.2 applies, the maximum fare determination shall be adjusted annually based on the 1990 Western transportation CPI/San Diego amounts of \$1.40 flag drop, \$1.50 per mile, and \$1-2.00 per hour waiting. Adjustments shall be rounded up or down, as appropriate, to the nearest even \$0.10 increment.

34.2.24 Maximun Rates of Fare Determination — Only for Taxicabs Equipped with Point Of Sale Devices Electronically Connected to the Taximeter and Equipped with Printed or Electronically Conveyed Receipt Capability

Taxicabs equipped with point of sale devices electronically connected to the taximeter and capable of printing or electronically conveying receipts may charge the an increase of 6% more than the Maximun Rates of Fare for Taxicabs without such devices, as determined pursuant to Section 34.2.1. Adjustments shall be rounded up or down, as appropriate, to the nearest \$0.10 increment.

34.2.21 ——— Maximum Fare Determination

The weighted average of fares shall be computed by the Chief Executive Officer and duly promulgated in writing upon the passage of this policy and thereafter each year by averaging each segment of the fare structure of all MTS taxicab permit holders. The fare structure shall consist of the dollar amounts charged by said permit holders for the flag drop, the per-mile charge, waiting-time charge, first zone, and each additional zone charge. The weighted average of these charges shall be arrived at by adding each segment of each respective charge and dividing it by the total number of taxicabs holding effective permits.

34.2.2 The Chief Executive Officer will use his discretion when the maximum rates of fare and the uniform rates of fare for trips from Lindbergh Field airport are incompatible. The Chief Executive Officer may adjust the maximum rates of fare so that the uniform rates of fare, based on the change in the Annual All Urban Western Transportation Consumer Price Index, do not exceed the maximum rates allowed in accordance with Section 34.2.1.

34.3 Airport Taxicab Fare Policy

Rates of fare for trips from Lindbergh Field Airport shall be uniform.

In the event an owner chooses a different rate for nonairport trips for taxicabs authorized to service the airport, two meters or a multirate meter shall be installed and identified. The meter(s) shall be activated according to the proper rate for the

~~trip's origin, and it shall be clearly visible to the passenger which rate is being charged.~~

~~34.3.1 The uniform rates of fare for taxicab trips from Lindbergh Field Airport are initially established at \$1.40 flag drop, \$1.50 per mile, and \$12.00 per hour, effective June 1, 1990.~~

~~The airport rates shall be reviewed annually, beginning in January 2009, by the Chief Executive Officer. Airport rates shall be adjusted based on the 1990 amounts, in accordance with the change in the Annual All Urban Western Transportation Consumer Price Index/ San Diego. Adjustments shall be rounded up or down, as appropriate, to the nearest even \$0.10 increment.~~

In addition to the applicable airport uniform maximum rate of fare described in Section 34.2.1, a taxicab operator may charge an "extra" equal to the Airport Trip Fee assessed against the individual taxicab operator by the San Diego County Regional Airport Authority. The extra may not be charged on any trip that does not originate at the airport or on any trip where the taxicab operator does not pay the fee to the San Diego County Regional Airport Authority. The extra charge may only be charged to the customer by utilizing the extra button on the taxicab meter. A driver may not verbally request payment.

34.4 Regulatory Fee Review

The following procedures will be utilized for the establishment of for-hire vehicle regulatory fees.

34.4.1 In accordance with State of California Public Utilities Code Section 120266, MTS shall fully recover the cost of regulating the taxicab and other for-hire vehicle industry. Pursuant to MTS Ordinance No. 11, Sections 1.3(b), 1.4(a), 1.4(d)(c), and 1.5(d), the Chief Executive Officer establishes a fee schedule to effect full-cost recovery and notify affected permit holders of changes in the fee schedule.

34.4.2 The procedure for establishing a regulatory fee schedule will include an annual review of the audited expenses and revenue of the previous fiscal year associated with MTS for-hire vehicle activities. The revised fee schedule will be available for review by interested parties in November each year and is subject to appeal as provided for in Ordinance No. 11, Section 1.5(d).

34.4.3 A fee schedule based on previous year expenses and revenue amounts will be put into effect each January.

POLICY.34.FOR-HIRE VEHICLE SERVICES

This policy was originally adopted on 12/8/88.
This policy was amended on 7/26/90.
This policy was amended on 5/9/91.
This policy was amended on 6/13/91.

This policy was amended on 1/28/93.
This policy was amended on 5/11/95.
This policy was amended on 10/31/02.
This policy was amended on 4/24/03.

This policy revised on 3/25/04.

This policy was amended on 4/26/07.

This policy was amended on 7/17/08.

This policy was amended on 4/19/12.

This policy was amended on 4/16/15.

This policy was amended on 12/12/2019.

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CPI for All Urban Consumers (CPI-U)

Series Id: CUUSS49ESAT

Not Seasonally Adjusted

Series Title: Transportation in San Diego-Carlsbad, CA, all urban consumers, not seasonally adjusted**Area:** San Diego-Carlsbad, CA**Item:** Transportation**Base Period:** 1982-84=100Download: [.xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2009													184.717	177.071	192.364
2010													200.398	198.572	202.224
2011													222.685	222.913	222.457
2012													227.691	229.775	225.608
2013													225.570	227.028	224.112
2014													223.308	228.254	218.362
2015													214.442	213.587	215.297
2016													205.271	205.418	205.124
2017											216.601		213.424	213.765	213.083
2018	220.368		225.661		229.934		229.921		229.015		228.504		227.594	226.494	228.694
2019	225.073		225.313		240.940		234.757		234.106					232.005	

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2019 CPI Maximum Fare Calculation (Reference)

Instructions on how calculate rates of fare:

EXAMPLE ONLY:

227.594 (Annual Consumer Price Index report value for 2018)

-121.000 (1990 Value)

106.594 (Replace "Y" with the subtracted value)

Flag Drop

Step 1- $\$1.40 \times 106.594(Y) = 149.2316$ convert it into a dollar amount \$1.492316

Step 2- $\$1.40 + 1.492316 = \2.892316 round up/down to the nearest .10 cent = **\$2.90** flag drop

Per Mile

Step 1- $\$1.50 \times 106.594(Y) = 159.891$ convert it into a dollar amount \$1.59891

Step 2- $\$1.50 + 1.59891 = \3.09891 round up/down to the nearest .10 cent = **\$3.10** per mile

Wait Time

Step 1- $\$12.00 \times 106.594(Y) = 1279.128$ convert it into a dollar amount \$12.79128

Step 2- $\$12.00 + 12.79128 = \24.79128 round up/down to the nearest \$1.00 = **\$25.00** wait time

Fraction Calculation

Step 1- $\$3.10$ (per mile) / .10 cent (fraction in which the meter clicks) = 31 = 1/31th fraction

The Time It Takes For Each Fraction to Click the Meter

Step 1- $\$25.00$ / .10 cent (or 1/10th in which the meter clicks) = 250

Step 2- 3600 (seconds per hour) / 250 = 14.4 seconds the meter will click 1/10th of a mile every 14.4 seconds the taxicab moves



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Agenda Item No. 16

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 12, 2019

**Draft for
Executive Committee
Review Date: 12/5/19**

SUBJECT:

FASHION VALLEY ELEVATOR PROJECT – CONTRACT AWARD

RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. PWL289.0-20 (in substantially the same format as Attachment A), with Conan Construction, Inc., in the amount of \$2,416,906.76 for constructing a second elevator at the Fashion Valley Station ("Project").

Budget Impact

The total cost of this Agreement will not exceed \$ 2,416,906.76 for the duration of the second elevator installation. This includes the \$2,197,187.76 bid amount by Conan Construction, Inc., plus an additional 10% for Construction Contingency in the amount of \$219,719.00. Funding for the project is allocated under MTS Capital Improvement Project (CIP) Budget No. 2004001902.

DISCUSSION:

The Fashion Valley Trolley Station is one of MTS's most highly traveled stations with more than 6,000 passengers per day. The station platforms are elevated above the surface parking lot and include an existing elevator/stair core to the east and a stair core to the west, both providing vertical circulation from grade to the platforms. A second elevator will reduce the demand on the stations' current single elevator and allow an elevator to remain in service during routine elevator maintenance at the station.

The bid from Conan also included an alternate price to perform a major rehabilitation of the existing elevator at the Fashion Valley station. The CIP budget for FY 20 and FY 21 does not provide funding for this work and therefore will not be executed at any time.



All modifications to the station and associated construction staging would occur within the existing station footprint and would have no adverse effects to traffic circulation.

On August 22, 2019, MTS issued an Invitation for bids (IFB). One (1) bid was received on October 24, 2019. MTS staff conducted a single bid survey as required and based on the results determined that there were no restrictive elements in the scope of work and the solicitation was conducted in a fair and open manner.

After a review for responsiveness and responsibility, staff determined that Conan Construction Inc. was responsive and the bid amount \$2,197,187.76 (not inclusive of 10% contingency) was fair and reasonable.

FASHION VALLEY ELEVATORS	
COMPANY NAME	BID AMOUNT (not including contingency)
<i>Conan Construction</i>	\$2,197,187.76
<i>ICE</i>	\$1,776,083

Therefore, staff recommends that the MTS Board of Directors authorize the CEO to execute MTS Doc. No. PWL289.0-20 (in substantially the same format as Attachment A), with Conan Construction Inc., for installation of a second elevator at the Fashion Valley Station in the amount of \$2,416,906.76.

/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 MTS Doc. No. PWL289.0-20

**STANDARD CONSTRUCTION AGREEMENT
FOR
FASHION VALLEY ELEVATOR REPLACEMENT**

PWL289.0-20 CONTRACT NUMBER

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, hereinafter referred to as "Contractor":

Name: Conan Construction Inc. _____	Address: 5937 Darwin Ct. Ste. 103
Form of Business: Corp. _____	Carlsbad, CA 92008
(Corporation, Partnership, Sole Proprietor, etc.)	

Telephone: 760-512-1188 Email Address: smaurer@conanconstruction.com

Authorized person to sign contracts: _____	Shannon Maurer	President
	Name	Title

The specified Contract Documents are part of this Agreement. The Contractor agrees to furnish to MTS services and materials, as follows:

Contractor shall furnish all necessary management, supervision, labor, materials, tools, supplies, equipment, plant, services, engineering, testing and/or any other act or thing required to diligently and fully perform and complete the Project as specified in the Scope of Work (Exhibit A), Bid Proposal (Exhibit B), and in accordance with the Standard Construction Agreement and Special Conditions (Exhibit C).

SCOPE OF WORK

Contractor, for and in consideration of the payment to be made to Contractor as hereinafter provided, shall furnish all plant, labor, technical and professional services, supervision, materials and equipment, other than such materials and equipment as may be specified to be furnished by MTS, and perform all operations necessary to complete the Work in strict conformance with the Contract Documents (defined below) for the following public work of improvement:

FASHION VALEY ELEVATOR REPLACEMENT

Contractor is an independent contractor and not an agent of MTS. The Contractor and its surety shall be liable to MTS for any damages arising as a result of the Contractor's failure to comply with this obligation.

CONTRACT TIME

Time is of the essence in the performance of the Work. The Work shall be commenced by the date stated in MTS's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within 551 calendar days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the Contract Time is adequate and reasonable to complete the Work.

CONTRACT PRICE

MTS shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Two million one hundred ninety seven thousand one hundred eighty seven dollars and 76 cents.**____ (\$2,197,187.76). Payment shall be made as set forth in the General Conditions.

LIQUIDATED DAMAGES

It is agreed that the Contractor will pay MTS the sum of **\$1650** for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees MTS may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents.

COMPONENT PARTS OF THE CONTRACT

The "Contract Documents" include the following:

Invitation for Bids (IFB)	Performance Bond
Information and Instructions for Bidders	Payment (Labor and Materials) Bond
Contractor's Bid Forms	General Conditions
Bid Bond	Special Provisions (or Special Conditions)
Designation of Subcontractors	Technical Specifications prepared by JACOBS, dated 7-30-2019
Designation of Other Third Party Contractors	Standard Specifications (Excluding sections 1-9 in their entirety)
Information Required of Bidders	Addenda
Non-Collusion Declaration Form	Plans prepared by JACOBS , dated 7-30-2019
Iran Contracting Act Certification	Change Orders as executed by MTS
Public Works Contractor Registration	
Certification	

The Contractor shall complete the Work in strict accordance with all of the Contract Documents.

This Contract shall supersede any prior agreement of the parties.

PROVISIONS REQUIRED BY LAW

Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of the California Labor Code applicable to this Project.

INDEMNIFICATION

Contractor shall provide indemnification as set forth in the General Conditions.

PREVAILING WAGES

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at MTS's Administrative Office or may be obtained online at <http://www.dir.ca.gov> and which must be posted at the job site

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



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Agenda Item No. 17

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 12, 2019

**Draft for
Executive Committee
Review Date: 12/5/19**

SUBJECT:

EXTENSION OF GAS SERVICE PROVIDER (GSP) CONTRACT – CONTRACT
AMENDMENT

RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors authorize the Chief Executive Officer (CEO) to execute Amendment 9 to MTS Doc. No. G1268.0-09 (in substantially the same format as Attachment A), with BP Energy Company (BP), in the amount of \$55,000 for the extension of GSP services for an additional two and a half year period.

Budget Impact

The total estimated cost of the extension of GSP services would not exceed \$55,000 and is funded through the operating budget (315014-542100, 801012-542100, 820012-542100).

DISCUSSION:

Contract Background

In February 2009, the MTS Board approved the Natural Gas Hedge Program and adopted the Natural Gas Hedge Policy to administer that program (MTS Board Policy No. 59). This program enabled MTS to purchase natural gas via a competitive-bidding process. MTS staff estimates that this program saves MTS over \$400,000 annually by allowing MTS to purchase the natural gas commodity directly from the market through GSP/BP rather than through San Diego Gas and Electric (SDG&E). Gas is still delivered from the national natural gas pipeline by SDG&E, so there is no operational impact as a result of this payment structure. The cost of the commodity is billed through the GSP/BP, and the gas used by MTS is backfilled into the national natural gas pipeline by the GSP/BP.



MTS conducted competitive-bid processes in 2009 and 2010 to select its GSP, and BP was the low bidder in each case. The 2010 agreement was for one year with 2 one-year options—the last of which was set to expire on June 30, 2013. That agreement was extended to June 30, 2020 by the Board in February 2013. Today's proposed action would extend the BP contract to December 31, 2020.

Energy Credit Background

The California Air Resources Board (CARB) created the Low Carbon Fuel Standard (LCFS) designed to reduce greenhouse gas emissions associated with the life cycle of transportation fuels used in California. Each type of fuel has been assessed a carbon intensity (CI) score. Fuel providers are required to ensure their overall CI score meets the annual CI target. The LCFS program has incentives in the form of credits that are generated, tracked, and can be traded to obligated entities. MTS is not an obligated entity, but does generate LCFS credits as a transportation provider that utilizes alternative fuels.

On the federal side, Congress enacted the Energy Policy Act of 2005, which required a mandated volume of biofuel use in the United States called the Renewable Fuel Standard (RFS). The Energy Independence and Security Act of 2007 increased the overall RFS and created sub-mandates for advanced biofuels, biomass-based diesel, and certain cellulosic biofuels. The obligated parties are petroleum refiners and importers (i.e. BP, Shell, etc.) and not end users (i.e. not MTS). Renewable Identification Numbers (RINs) are the mechanism used to make sure each of the obligated parties meet its share of all of the mandates. These RINs generated as renewable fuels are sold and can be traded like any other commodity. This allows obligated parties to purchase RINs from outside sources in order to meet their obligation.

As part of the 2013 BP contract extension, MTS was able to purchase and utilize biogas, which is natural gas that is produced from landfills or from the processing of animal waste, sewage, crop waste, and cellulosic crops. The utilization of this renewable fuel allows MTS to generate state LCFS and federal RIN energy credits. MTS has been utilizing biogas to fuel its vehicles since September 2014, and through June 30, 2019 has realized over \$20.8 million in energy credits as a result of this contract and the utilization of biogas.

The generation of energy credits brings along with it many compliance requirements from both the Environmental Protection Agency (EPA) as well as CARB. CARB reauthorized and amended the LCFS program in January 2019, with many new legislative requirements that will go into effect for calendar year 2020, most notably the requirement of external third party audits. The level of effort to comply with these regulations is still to be determined. MTS and BP have worked together over these last six years to determine the appropriate processes required to meet all legislative requirements that are in place.

Contract extension

Staff determined the current pricing to be fair and reasonable and in the best interest of the agency. Staff also determined the sharing percentages of the value of federal and state energy credits to be fair and reasonable. Any disruption to this supply will be a loss

of \$4-6 million in annual energy credit operating revenue, depending on the energy credit prices. There are other entities that can offer MTS biogas supplies, but there is typically a transition period while that project/supply would have to be brought online. Since these energy credits are so valuable, there are not many biogas projects that are generating gas and not already matched up with a potential buyer well in advance. Without a stable biogas supply, MTS cannot generate energy credits at the same level we are at today.

MTS has been satisfied with the past and current performance from BP and BP has shown the ability to perform successfully under the terms and conditions of this agreement.

Therefore, staff recommends that the MTS Board of Directors authorize the CEO to execute Amendment 9 to MTS Doc. No. G1268.0-09 with BP Energy Company (BP) for the extension of GSP services for an additional two and a half year period.

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

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

Attachment: A. Amendment 9 to MTS Doc. No. G1268.0-09.

**SECOND AMENDED AND RESTATED
TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY**

Date:

Contract: 7848916

Confirmation Number: 8543069,10026294,8238343

This Second Amended and Restated Transaction Confirmation between Seller and Buyer shall supersede and replace TC 7848916 dated June 27, 2013, first amended on April 28, 2014, second amended on March 16, 2015, third amended on April 8, 2015, fourth amended on September 25, 2015, fifth amended on May 25, 2016, and amended and restated December 11, 2017, for the Delivery Period January 1, 2018 through the end of the Delivery Period and shall be subject to the Base Contract between Seller and Buyer dated May 1, 2013 and the Biogas Supply Addendum between Seller and Buyer dated May 1, 2013 (the "Biogas Addendum").

SELLER:**BP Energy Company**

18101 Von Karman Ave, Suite 920
Irvine, CA 92612

Attn: Sean Reavis
Phone: 312-594-6777

Base Contract No. 1704331

Transporter: _____

Transporter Contract Number: _____

SELLER'S AFFILIATE:**BP Products North America Inc.**

30 S. Wacker Drive, Suite 900
Chicago, IL 60606

GOA Legal Notices:
goalegalnotices@bp.com

BUYER:**Metropolitan Transit System**

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

Attn: Mike Thompson
Phone: 619-557-4557

Base Contract No. ____ TBD _____

Transporter: _____

Transporter Contract Number: _____

Contract Price (\$/MMBtu):

- 1. Biogas Contract Price:** The Contract Price for RIN-qualified Biogas quantities delivered to Buyer by Seller at the Delivery Point shall be paid as set forth below and shall be equal to (i) the Posted Price plus (ii) \$0.02/MMBtu less (iii) the RIN Discount Allocation (which shall be converted to \$/MMBtu value utilizing the conversion of 11.727 gallons / MMBtu) plus (iv) the transfer of 100% of LCFS Credits generated from Biogas ("Seller's LCFS Credits") to Seller's Affiliate.

Biogas: The Posted Price portion of the Biogas Contract Price for Biogas quantities delivered to Buyer by Seller at the Delivery Point shall be paid to Seller by Buyer.

RINs: The RIN Discount Allocation portion of the Biogas Contract Price for RINs related to Biogas quantities delivered to Buyer by Seller shall be paid to Buyer by Seller's Affiliate.

LCFS Credits: Seller's LCFS Credits shall be transferred to Seller's Affiliate. Seller's Affiliate shall pay the Buyer's LCFS Value to Buyer as calculated below in Section 5 of the Special Conditions.

- 2. Gas Contract Price:** The Contract Price for Gas quantities delivered to Buyer by Seller at the Delivery Point shall be equal to (i) the Posted Price plus (ii) \$0.02/MMBtu plus (iii) the LCFS Credit 2.

Definitions:

- The "**Posted Price**" for daily Biogas deliveries (\$/MMBtu) shall be the SoCal Border First of the Month Index ("SoCal Border") as published by Natural Gas Intelligence ("NGI") or any successor thereto plus SoCal Backbone Transmission System Tariff ("BTS") plus Fuel. "Fuel" means the cost for incremental quantity of Gas consumed by a local distribution company, in this case, SoCal Gas, in transporting Gas and includes any provision by such SoCal Backbone Transmission System Tariff for lost and unaccounted for Gas, as determined in accordance with the approved pipeline tariff or governing documents of such pipeline or local distribution company.
- The **RIN Discount Allocation** The RIN discount allocation ("RIN Discount Allocation") shall mean, for each Month in which RINs are generated, eight percent (8%) of the RIN Price Basis as defined below. Payment of the RIN Discount Allocation as part of the Biogas Contract Price is contingent upon Seller buying Biogas sold under this Transaction Confirmation from the Biogas Supply Source cited in Paragraph 3 of the Special Conditions in this Transaction Confirmation and the production of RINs from such Biogas that is converted to a Vehicle Fuel.

(a) **RIN Discount Allocation Calculation.** RIN valuations for calculating the RIN Discount Allocation, as defined below, shall be based on RIN prices that are reflective of the D3 Cellulosic Biofuel RIN ("D3 RIN") prices during the Month in which the Seller delivers Biogas ("RIN Price Basis") as specified below. The RIN Price Basis shall be determined based on the following hierarchy: (1) the Argus D3 Index (as defined below) during the Month in which the Biogas is delivered; provided that such index is Validated (as defined below in (b) **Clarification**), (2) cash revenue realized by Seller's Affiliate from the sale of D3 RINs associated with such Month, or (3) if the Argus D3 Index is not Validated as set forth in (1) and to the extent that (2) is not achievable in whole or in part in a commercially reasonable manner, the greater of (a) ninety percent (90%) of the Argus D3 Index during the Biogas delivery Month or (b) the average of the daily posted mid-point prices for the Argus D5 Advanced Biofuel RIN Index ("Argus D5 Index") during the Biogas delivery Month.

(b) **Clarification.**

- 1) The Argus D3 Index shall be considered validated ("Validated") with respect to a Biogas delivery Month if the Argus D3 RIN Index has traded, as supported by published trades in the *Argus US Products* daily report, for any ten (10) Business Days in the twenty (20) consecutive Business Day period that immediately precedes the Advance Notice Deadline applicable to such Month. Once the Argus D3 Index is validated, then it shall remain validated for RINs generated in the then-current vintage year for a three month period starting in the month following the validation. If the Argus D3 Index is Validated with respect to a Biogas delivery Month, then the RIN Price Basis shall be equal to the daily Argus D3 RIN Price for such Biogas delivery Month based on the daily Argus D3 Index, regardless of whether there are supporting daily D3 RIN trades in the Argus US Products daily report.
- 2) If the Argus D3 Index is not Validated with respect to a Biogas delivery Month, then Seller's Affiliate shall use commercially reasonable and good faith efforts to maximize the value of the D3 RINs by selling such D3 RINs to an unaffiliated third party or by purchasing such RINs directly. The RIN Price Basis with respect to such D3 RINs sold in accordance with the preceding sentence shall be equal to the volume-weighted average cash price realized by Seller's Affiliate from the sale of its portfolio D3 RINs applicable to such Biogas delivery Month, which portfolio may include D3 RINs related to agreements with third parties.
- 3) If Seller's Affiliate is unable to sell all or a portion of the D3 RINs in accordance with clause (2) above by the end of the applicable Biogas delivery Month, then with respect to such unsold D3 RINs the RIN Price Basis shall be equal to the greater of (a) ninety percent (90%) of the Argus D3 Index calculated with respect to the Biogas delivery Month or (b) the Argus D5 Index during the Biogas delivery Month.

(c) **Changes to Pricing Publications.** If any prices or publications used to determine the RIN Price Basis are changed, discontinued or replaced in any manner that makes the determination of the RIN Price Basis impossible, the parties shall determine the applicable RIN Price Basis using the methodology in Section 14 of the Base Contract.

(d) **RIN Market and Trades.** For the avoidance of doubt, Buyer acknowledges and agrees that (i) the market for RINs may lack liquidity, (ii) Seller's Affiliate shall at all times retain control over the evaluation of potential sales of D3 RINs and the ultimate sale of D3 RINs into the market, and (iii) Buyer shall have no right to participate in or direct the sales of D3 RINs.

- The "**Buyer's LCFS Value**" shall mean the value as calculated in Section 5 of the Special Conditions below.¹
- The "**LCFS Credit 2**" shall mean the cash value of Seller's Affiliate's LCFS Credit Allocation based on the sale of Gas to Buyer divided by the Gas quantity purchased by Buyer in the applicable month.^{2,3}

¹Buyer's LCFS Value shall be paid in April, July, October and January for the preceding Calendar Quarter. A "Calendar Quarter" shall mean the periods, January 1 through March 31, April 1 through June 30, July 1 through September 20 and October 1 through December 31 during any calendar year period.

²LCFS Credit 2 shall be paid in April, July, October and January for the preceding Calendar Quarter.

³In the event that Seller's Affiliate elects to receive its share of the LCFS Credits in-kind, the LCFS Credit 2 shall no longer be an element of the Gas Contract Price. Upon such an election by the Seller's Affiliate, if the Buyer elects to have Seller's Affiliate also monetize Buyer's share of the LCFS Credits, the Gas Contract Prices shall be as follows.

Gas Contract Price = Posted Price (\$/MMBtu) + \$0.02/MMBtu

– LCFS Discount 2

"LCFS Discount 2" shall mean fifty-five percent (55%) of the Monthly Average of the Daily Midpoint prices for LCFS Credits as published by Oil Price Information Service or any successor thereto ("OPIS Index") multiplied times the total number of LCFS Credits created in the applicable month divided by the Gas quantity purchased by Buyer in the applicable month.

Delivery Period: Begin: July 1, 2013

End: [NEW End Date]

Performance Obligation: Seller will make Firm delivery of Biogas or Gas to the Delivery Point(s) throughout the Delivery Period and shall serve as Buyer's sole contracted marketer on SDG&E system.

The Biogas component of this transaction is contingent upon the operation of the Biogas Supply Source and the Buyer's Vehicle Fuel facilities which create Vehicle Fuel from Biogas received at the Delivery Points consistent with Articles III and IV of the Biogas Addendum.

Contract Quantity:

Baseload Quantity: 2,800 MMBtu/Day consisting of either all Biogas or a combination of Biogas and Gas. Baseload Quantity is defined in Paragraph 1 of the Special Conditions below. If the Biogas quantity is X MMBtu, then the Gas quantity shall be (2,800 – X) MMBtu.

Delivery Point(s):

Buyer's meters, as set forth below, at the SoCal Gas Citygate.

<u>Meter Number</u>	<u>Address</u>
01000670	1213 N Johnson Ave A, El Cajon, CA 92020
00968018	3650 Main Street, Chula Vista, CA 91911
00847747	4630 Ruffner Street, San Diego, CA 92111
00968019	3650 Main Street, Chula Vista, CA 91911
00962517	122 16th Street, San Diego, CA 92101
01052825	120 16th Street, San Diego, CA 92101

Special Conditions:

1. **Monthly Nominations and Scheduling.** On the twentieth (20th) Day of each month, Buyer shall provide a schedule of monthly nominations for each Delivery Point based on Buyer's projected demand at the Delivery Points on a daily basis (the "Baseload Quantities").

2. **Balancing:**

(a) For each month that Buyer's Gas consumption exceeds the nominated Baseload Quantity, Buyer shall purchase the incremental Gas quantity from Seller at the applicable Spot Price plus \$ 0.02/MMBtu.

(b) For each month that Buyer's Gas consumption is less than the nominated Baseload Quantity for such month, Buyer shall pay an amount to Seller equal to the difference between the nominated Baseload Quantity for such month and the actual Gas consumed at the respective Delivery Point multiplied by the applicable Spot Price plus \$0.000/MMBtu.

(c) "Spot Price" as used in (a) and (b) shall mean the Monthly Average of the Gas Daily Midpoint ("GDD Average") price as published in Gas Daily Publication or any successor thereto, Daily Price Survey, Citygates – SoCal Gas Citygate Midpoint.

(d) Seller shall provide all Gas necessary to meet Buyer's demand at the Delivery Points up to 2,800 MMBtu to the extent that Biogas is not available in sufficient volume to meet the daily demand. All management and balancing of the Biogas and Gas supply to the Delivery Points will be managed by Seller without charge to Buyer. Seller shall be responsible for any Imbalance Charges imposed by SDG&E if the delivered Biogas and Gas quantity is greater than 2,800 MMBtu.

3. **Biogas Supply Source.** Biogas delivered to the Delivery Points shall be sourced from the following Project(s). In the event that Seller needs to source Biogas from other projects not listed, Seller shall send an updated listing to Buyer listing the additional projects, which may be sent by email. Notwithstanding Section 15.4 of the Base Contract, this update to this Section 3 will be deemed accepted unless objected to by Buyer in writing within ten (10) Business Days of receipt.

Biogas Supply Source	Location	Owner	Comment(s):
Port of Morrow	Port of Morrow, Oregon	Novus Energy, LLC	none
Cedar Hills Landfill	Maple Valley, Washington	Bio Energy, LLC	Bio Energy LLC has a long term off-take contract with Puget Sound Energy (local utility)
McCarty Road Landfill	Houston, TX	GSF Energy, LLC	None
LES SWACO	Columbus, OH	LES Renewables NG, LLC	None
LES Seneca	Waterton, NY	Seneca Energy II, LLC	None
EIF KC Landfill Gas	Shawnee, KS	EIF KC Landfill Gas, LLC	None
BFI Usine de Triage Lachenaie Ltd.	Quebec	Complexo Environmental	None
Monroeville Landfill	Monroeville, PA	Monroeville LFG, LLC	None

RiverBirch Landfill	Avondale, LA	RiverBirch, LLC	None
Renewable Dairy Fuels	Fair Oaks, IN	AMP Americas, LLC	None
Rumpke Landfill	Cincinnati, OH	GSF Energy, LLC	Biogas purchased from Iogen D3 Biofuel Partners, LLC
Kolb Meyer Bioenergy NM I, LLC	Rosewell, NM	Kolb Meyer Bioenergy NM I, LLC	None
EBI Energie Inc. Biomethane Plant	Quebec	EBI Energie	None

4. LCFS Credit Sharing for Gas and Obligations with Regards to LCFS Credits Generally.

a. The LCFS Credits created by the sale of Gas under this transaction shall be shared between Buyer and Seller's Affiliate with the Buyer receiving fifty-five percent (55%) of the LCFS Credits ("Buyer's LCFS Credit Allocation") and the Seller's Affiliate receiving forty-five percent (45%) of the LCFS Credits ("Seller's Affiliate's LCFS Credit Allocation"). Seller's Affiliate shall receive the value of Seller's Affiliate's LCFS Credit Allocation from the proceeds of LCFS Credit sales by Buyer unless and until Seller's Affiliate provides written notice to Buyer of its desire to receive LCFS Credits in-kind. In the event that Seller's Affiliate elects to not participate in the LCFS Credit market, Buyer shall be entitled to one-hundred percent (100%) of the LCFS Credits that can be created under this Transaction Confirmation, (ii) the value of Seller's LCFS Credits, LCFS Credit 2, and LCFS Discount 2 shall be zero and (iii) subsections 4(b), 4(c) and 4(d) of the Special Conditions herein shall not apply.

b. Buyer is obligated to

i. create all LCFS Credits associated with the LCFS-qualified Biogas and Gas purchases that Buyer is able to create consistent with the Low Carbon Fuel Standard set forth in Title 17, California Code of Regulations.

ii. transfer Seller's LCFS Credits generated from Biogas to Seller's Affiliate;

iii. sell LCFS credits generated from Gas in this transaction (unless Seller elects to take LCFS Credits in-kind) to the extent possible and share the proceeds of such sales as set forth in (a); and

iv. retain title to the Seller's Affiliate's LCFS Credits generated from Gas that Buyer is not able to sell. No later than the fifth (5th) Business Day of each month following Gas or Biogas delivery, Buyer shall send Seller's Affiliate a statement detailing the number of LCFS Credits generated during the prior month, the number of LCFS Credits transferred to Seller's Affiliate during the prior month, the number of LCFS credits sold during the prior month, the price at which such LCFS credit were sold and the cumulative number of Seller's Affiliate's outstanding LCFS Credits retained by Buyer ("LCFS Statement"). The LCFS Statement shall be subject to audit by Seller's Affiliate. Seller's Affiliate shall work with Buyer to help facilitate and monetize LCFS credits to the extent possible so long as LCFS Credits are being actively traded and upheld in the California judicial system. Buyer and Seller's Affiliate shall settle LCFS Credits quarterly based on the LCFS Statements in the January, April, July and October invoices.

c. Buyer and Seller's Affiliate will share CARB registration and ongoing reporting costs related to LCFS Credits equally.

d. Buyer and Seller's Affiliate acknowledge that creation of LCFS Credits is contingent upon Buyers registration with CARB under the Low Carbon Fuel Standard set forth in Title 17, California Code of Regulations in §§ 95480-95490 and that LCFS Credits cannot be created in retroactively after registration is completed with CARB.

5. LCFS Value for Biogas

a. In exchange for all Seller's LCFS Credits, the Buyer shall receive a quarterly payment of "Buyer's LCFS Value" that is sum of the three Monthly LCFS Value in that quarter. "Monthly LCFS Value" is the product of (i) Monthly Biogas Quantity, (ii) Buyer LCFS Conversion Rate, (iii) Buyer LCFS Percentage, and (iv) Monthly LCFS Market Price.

b. "Monthly Biogas Quantity" shall be the actual volume of Biogas delivered to and dispensed as a qualifying vehicle fuel at Buyer's station in a given month, as required in the California Low Carbon Fuel Standard Final Regulation Order as defined under title 17 of the California Code of Regulations (CCR), sections 95480-95503 ("LCFS Regulation") that is in effect at the time of delivery. Buyer and Seller acknowledge that the LCFS Regulation may be amended, modified, or repealed by CARB, the California legislature, or other means (for example, legal challenge) and that Buyer and Seller will perform all calculations related to LCFS (including LCFS credit quantities and LCFS pathway Carbon Intensity) based on the formula for generating credits defined therein.

c. "Buyer LCFS Conversion Rate" shall be the formula found in the LCFS Regulation, section §95486.1. Generating and Calculating Credits and Deficits Using Fuel Pathways, where within the Credit generating formula,

(i) "XD" shall in all cases refer to "diesel";

(ii) CI of the fuel is defined to be the Pathway Fixed Carbon Intensity defined under this Agreement;

(iii) EdisplacedXD shall be for a single MMBtu (LHV) of fuel, defined to be 1055 MJ/MMBtu.

d. "Pathway Fixed Carbon Intensity" shall be the simple average of the Carbon Intensity of the pathways defined in Appendix 1 of this Transaction Confirmation. In the event that CARB implements changes to the approved method for calculating Pathway Carbon Intensity (e.g. a new GREET model) as required under the LCFS Regulation, then the Pathway Fixed Carbon Intensity shall be recalculated based on the new Carbon Intensity for each pathway as certified by CARB.

e. "Buyer LCFS Percentage" shall be 55%.

f. "Monthly LCFS Market Price" shall be the simple average of the daily spot price of California LCFS credits as reported daily by OPIS under the name "CA LCFS Carbon Credit", priced in \$/mt (dollars per metric ton), or its successor.

6. RIN Credit Sharing.

(a) Buyer will receive from Seller's Affiliate the value of eight percent (8%) of all RINs created by using Biogas purchased hereunder to produce Vehicle Fuel as a discount in the Biogas Contract Price as set forth above in the section, "Contract Price".

(b) Buyer and Seller's Affiliate will share the EPA registration and ongoing reporting costs related to RINs equally.

7. Extension of Delivery Period. This transaction may be extended for one (1) or two (2) additional twelve (12) month periods provided that Buyer or Seller provides written Notice to the other party hereto of such interest no later than one hundred and eighty Days prior to the end of the applicable Delivery Period.

8. Representations.

(a) Buyer represents that it is eligible to "opt-into" the LCFS program produced by the California Air Resources Board as set forth in the LCFS Regulation;

(b) Seller represents that all Biogas sold hereunder shall be Biogas produced by facilities that are properly registered under the EPA RFS for the generation of RINs and under CARB for the generation of LCFS Credits.

(c) Buyer and Seller's Affiliate each represent that it has entered into a contract with Weaver LLP to ensure that it has created documentation necessary for Biogas and RIN creation in a manner compliant with EPA requirements and with ICF Resources, Inc. for the compliant creation of the LCFS Credits.

9. Buyer and Seller and/or Seller's Affiliate's Responsibilities Regarding the Creation of RINS, LCFS Credits and Records and Documentation Related to Biogas, RINs and LCFS Credits.

(a) Buyer shall,

(i) process all Biogas purchased from Seller hereunder into Vehicle Fuel which shall be distributed to Buyer's customers through Buyer's fueling stations.

(ii) with regard to LCFS Credits, (i) consistent with the Low Carbon Fuel Standard set forth in Title 17, California Code of Regulations, create LCFS Credits associated with its Biogas and Gas purchases that Buyer is able to create; (ii) no later than the fifth (5th) Business Day of each month following delivery, deliver to Seller's Affiliate the LCFS Statement that shall be subject to audit by Seller's Affiliate and which Seller's Affiliate shall use to produce the monthly invoice.

(iii) "opt-in" as a regulated party under California Air Resources Board as set forth in the LCFS Regulation.

(iv) work with ICF Resources, Inc. to register with CARB and comply with the relevant regulatory provisions of the Low Carbon Fuel Standard set forth in the LCFS Regulation, including, but not limited to, pathway registration, LCFS credit generation, quarterly progress reporting and annual compliance reporting.

(v) work with Weaver, LLC to provide all necessary information required for registration with the EPA under the RFS program with regard to RIN creation.

(vi) provide Seller's Affiliate with all records regarding the creation of Vehicle Fuel from the Biogas purchased hereunder that is necessary under the EPA RFS to determine the number of RINs created in each month.

(vii) maintain all records relevant to the purchase of Biogas from Seller, processing of such Biogas into a Vehicle Fuel, Vehicle Fuel sales, and documentation of Vehicle Fuel production in accordance with the requirements of the EPA RFS and CARB regarding the creation and sale of LCFS Credits.

(b) Seller and/or Seller's Affiliate shall maintain all records relevant to (i) the production and purchase and sale of Biogas, (ii) Biogas transportation, distribution and (iii) the sale of the Biogas purchased hereunder as it applies to (a) the creation of RINs in accordance with the requirements of the EPA RFS and (b) LCFS Credits in accordance with the requirements of CARB.

10. Change in Regulations. Buyer, Seller, and Seller's Affiliate, in the event that the EPA amends its regulations for the creation and sale of RINs or CARB amends its regulations for the creation and sale of LCFS Credits as related to the purchase and sale of Biogas for the production of Vehicle Fuel, shall work together in good faith and attempt to amend this Transaction Confirmation accordingly to reflect the intent of the parties herein.

11. (Reserved)

12. (Reserved).

13. Seller's Affiliate.

a. Seller's Affiliate is executing this Transaction Confirmation solely for the purpose of allowing the parties to transfer the RIN value or LCFS credits generated from the use of the Biogas sold as a Vehicle Fuel pursuant to this Transaction Confirmation directly to Seller's Affiliate and to allow for payments for such RINs or LCFS credits to be made directly to or from Seller's Affiliate. The cover page of the Base Contract shall be amended to update the contact information as shown on Exhibit A.

b. Title to the Gas, Biogas and Green Attributes shall pass to Buyer as set forth in Section 8.1 of the Base Contract. Title to the LCFS Credits shall pass to Seller's Affiliate upon transfer to Seller's Affiliate's LCFS/LRT account for LCFS credits all obligations of Seller under this Transaction related to generation of LCFS Credits and any pricing associated with such LCFS Credits shall be satisfied by Seller's Affiliate.

14. Hierarchy: In the event of any inconsistency between the Base Contract including the Addendum and this Transaction Confirmation, this Transaction Confirmation shall govern.

Seller: BP Energy Company

By: _____

Name: John Armstrong

Title: Attorney-In-Fact

Date:

Seller's Affiliate: BP Products North America Inc.

By: _____

Name: Sean Reavis

Title: SVP

Date:

Buyer: San Diego Metropolitan Transit Service

By: _____

Name: Mike Thompson

Title: Director

Date:

[Biogas/Gas Transaction Confirmation]

Exhibit A
Seller's Affiliate Contact Information

SELLER'S AFFILIATE BP Products North America Inc.	PARTY NAME
30 S Wacker, Suite 900 Chicago, IL 60606	ADDRESS
ACCOUNTING INFORMATION FOR RINS AND LCFS CREDITS	
BP Products North America Inc. 30 S. Wacker Drive, Suite 900, Chicago, IL 60606 ATTN: Settlements Phone: 312-594-6951 Fax: 312-594-2165 EMAIL: producttradingsettlement@bp.com	<ul style="list-style-type: none"> ▪ INVOICES ▪ PAYMENTS ▪ SETTLEMENTS
BANK: Citibank NA ABA: 021000089 ACCT: 40648274 OTHER DETAILS:	WIRE TRANSFER NUMBERS (IF APPLICABLE)
BANK: Citibank NA ABA: 021000089 ACCT: 40648274 OTHER DETAILS:	ACH NUMBERS (IF APPLICABLE)
ADDRESS: _____ ATTN: _____	CHECKS (IF APPLICABLE)



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

Agenda Item No. 18

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 12, 2019

**Draft for
Executive Committee
Review Date: 12/5/19**

SUBJECT:

ACCOUNT BASED FARE COLLECTION SYSTEM – CONTRACT AMENDMENT

RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors authorize the Chief Executive Officer (CEO) to execute Amendment 2 to MTS Doc. No. G2091.0-18 (in substantially the same format as Attachment A), with Innovations in Transportation, Inc. (INIT), a total contract increase of \$1,093,731.49.

Budget Impact

The capital component of this project is funded by Capital Improvement Program (CIP) account # 1009004902 – Fare System Upgrades. Operations, maintenance and hosting services will be funded annually in the Fare Collection Department operating account 532010-571250. In addition, SANDAG will be paying a portion of the equipment, back office and parking solution as it relates to the deployment of this solution to the Mid-Coast corridor.

The total contract plus options amount of \$37,667,727.57 will be increased by \$1,093,731.49 for a new contract plus option amount of \$38,761,459.06.

Amendment 2 Price Breakdown	
Parking Solution -- Hardware Increase (9 additional units)	\$115,002.09
Mobile Ticketing Custom Branded Screens & Products, plus 10 Years Maintenance	\$338,139.00
Mobile Ticketing Maintenance & Hosting – Adjusted Pricing Method	\$640,590.40
AMENDMENT 2 TOTAL	\$1,093,731.49



DISCUSSION:

Description of Options

On December 13, 2018 (AI 31), the MTS Board of Directors approved a contract with INIT for design and installation a new fare collection system. The Board approval included the authorization to exercise certain options including: (A) a pay parking system (software and hardware); and (B) mobile ticketing platform with 10 years of maintenance services. Staff has exercised these options via a contract amendment.

In today's proposed action, Amendment 2 would: (i) increase the number of parking systems (hardware) from a quantity of one (1) to a quantity of ten (10); (ii) adjust the pricing associated with the Mobile Ticketing option from a commission to a fixed fee; and (iii) add enhanced MTS branding capability within the mobile ticketing application including 10 years of associated maintenance services.

Parking Solution

The Parking Software and Hardware option allows MTS to provide a pay parking solution for transit riders at parking garages. Initially, this solution will be deployed to the new Mid-Coast section of the trolley system. When the INIT contract was awarded, MTS opted for a single parking system to be developed with the understanding that it could be expanded to additional locations. It has now been determined that a total of ten (10) systems will be required for the Mid-Coast section. This increases the parking hardware option pricing from \$102,868.01 to \$217,870.10 -- an increase of \$115,002.09.

The policies, conditions, and pricing for parking at individual MTS stations will be set by later Board action. The INIT product will allow MTS to adjust the pricing and parking rules as necessary to facilitate its transit services.

Mobile Ticketing – Annual Pricing Method

The Mobile Ticketing option provided by subcontractor Bytemark will allow MTS customers to purchase products and validate their fare by using their mobile devices on the INIT readers to be installed at all MTS stations and on transit vehicles. This is made possible due to the Bytemark mobile ticketing solution being fully integrated with the INIT back-office. This feature will also improve MTS ridership reporting capabilities and accuracy. The Mobile Ticketing option in the INIT contract includes Annual Maintenance and Hosting services to ensure the solution is adequately maintained. In the current contract, this is funded through a lower Annual Maintenance and Hosting cost at \$ 777,172.00 in addition to a 3% transaction fee on fare products sold. Amendment 2 converts this pricing structure to a fixed annual fee. The initial pricing for this item did not include the value of the transaction fee. The annual cost has been modified to lock in a fixed annual cost for these services, which results in an increase of \$640,590.40 for a total 10-year cost of \$ 1,417,762.40. The commission/transaction fee has been eliminated. Eliminating the commission and transitioning to a fixed fee protects MTS from escalating costs if a significant portion of MTS's ridership transfers to the new mobile ticketing platform. In that case, the amount paid in a commission-based price structure would not reflect the actual cost for INIT to maintain the mobile ticketing platform.

Mobile Ticketing – Custom Branded Products and Maintenance

The Custom Branded Screens, Products and Maintenance option will provide the MTS Marketing Department with further flexibility on branding elements for special event products that are displayed via the Mobile Ticketing Application. These items were not part of the original contract award. INIT will deliver this item in accordance with the scope of work included in Attachment A (see pages A-2 to A-12). The cost for this option is \$338,139 and includes ten (10) years of maintenance services.

The pricing for these additional items was determined to be fair and reasonable.

Therefore, staff recommends that MTS Board of Directors authorize the CEO to execute Amendment 2 to Contract G2091.0-18 (in substantially the same format as Attachment A), with INIT, a total contract increase of \$1,093,731.49.

/s/ Paul C. Jablonski

Paul C. Jablonski
Chief Executive Officer

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

Attachment: A. Amendment 2 to MTS Doc. No. G2091.0-18

December 12, 2019

MTS Doc. No. G2091.2-18

Roland Staib
INIT Innovations in Transportation, Inc.
424 Network Station
Chesapeake, VA 23320

Subject: AMENDMENT NO. 2 TO MTS DOC. NO. G2091.0-18 (Account Based Fare Collection System)

Mr. Staib:

This shall serve as Amendment No. 2 to our agreement for the design and implementation of an Account Based Fare Collection System.

SCOPE

The scope is modified as follows:

- Increase the quantity of Parking Hardware Solution as referenced in the Technical Specification item 13.5 from one (1) to ten (10).
- Provide professional design services for the branding of the mobile application described in section 19.7.1 of the Technical Specification and as described in Attachment 1
- Provide 10 years of ongoing maintenance support for Custom Branded Screens and Products as outlined in Attachment 2
- Pricing for 10 operation and maintenance contract is adjusted to a fixed annual fee as scheduled in Attachment 3.

SCHEDULE

No changes to the contract schedule

PAYMENT

The total increase to the base contract plus option amount will be increased by \$1,093,731.49, bringing the total base contract plus option amount to \$38,761,459.06.

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

Sincerely,

Agreed:

Paul Jablonski
Chief Executive Officer

Roland Staib, INIT Innovations in Transportation

Date: _____

San Diego MTS – Option Execution

Customer: San Diego MTS
Prepared by: Erica Brown
Proposal #: 2019-399-02
Date: 11/8/2019
Validity: 60 Days

Warranty: 10 years of Maintenance
Delivery: See Below
Invoicing
Milestones: To be established before receipt of Change Order

Existing Contract G2091.0-18 Terms & Conditions apply (pending final negotiations with provider Bytemark on options selected).

Description:

After further demonstrations and discussions with INIT's proposed mobile ticketing subcontractor, Bytemark, MTS has requested pricing for options in addition to the original RFP scope.

Solution:

We are pleased to present to MTS the additional services included in the Mobile Ticketing Custom Branded Screens and Products.

There are two additional services being proposed:

1. Mobile Ticketing Custom Branded Screens and Products
2. 10 year Maintenance on the Custom Branded Screens and Products

These services are priced as firm fixed costs and are outlined below:

Pricing:

Summary

Item	Description	Qty	Price per unit USD	Price total USD
1	Mobile Ticketing Custom Branded Screens & Products	1	132,200.00	132,200.00
2	10 Years Custom Branded Screens & Products Annual Maintenance (see breakdown below)	1	205,939.00	205,939.00
Total:				\$338,139.00

Mobile Ticketing Custom Branded Screens and Products

INIT will provide, through its subcontractor Bytemark, the development necessary in the Mobile Application the flexibility to add custom branded skins for special events products that will be displayed via the mobile ticketing app. This development will take place at the same time as the implementation of the Mobile Ticketing App and will be available from day one. The total cost of this development will not exceed \$132,200.00. The full SOW proposed by Bytemark is attached separately.

10 Year Maintenance for Custom Branded Screens and Products

The 10 Year Maintenance Option includes an unlimited amount of MTS special branded products as long as INIT and Bytemark are given ten (10) business days advance notice. INIT and Bytemark will customize the "skin" based on artwork supplied by MTS. Warranty and Maintenance terms and conditions of the existing contract (G2091.0-18) will apply.

Breakdown of Custom Branded Screens and Products Maintenance:

<i>Item</i>	<i>Description</i>	<i>Qty</i>	<i>Price per unit USD</i>	<i>Price total USD</i>
1	Ongoing Maintenance - Year 1	1	17,678.00	17,678.00
2	Ongoing Maintenance - Year 2	1	18,243.50	18,243.50
3	Ongoing Maintenance - Year 3	1	18,837.60	18,837.60
4	Ongoing Maintenance - Year 4	1	19,461.60	19,461.60
5	Ongoing Maintenance - Year 5	1	20,115.50	20,115.50
6	Ongoing Maintenance - Year 6	1	20,803.20	20,803.20
7	Ongoing Maintenance - Year 7	1	21,524.70	21,524.70
8	Ongoing Maintenance - Year 8	1	22,282.60	22,282.60
9	Ongoing Maintenance - Year 9	1	23,078.20	23,078.20
10	Ongoing Maintenance - Year 10	1	23,914.10	23,914.10
GRAND TOTAL excl. Tax				\$205,939.00

Pricing Notes:

The mobile ticketing options fall outside the contract payment milestones and deliverables. A separate schedule will be established after receipt of an order. Taxes/software escrow, if applicable, have not been included.

San Diego MTS – Account Based Fare Collection System Parking Solution

MTS plans to execute the proposed option for the contract line items below. This option is described in the existing contract Exhibit A - Technical Specification Section 13.5 Parking (Option).

These services are priced as firm fixed costs and are outlined below:

Item	Description	Qty	Price per unit USD	Price total USD
11.10	Parking Software Solution	1	90,090.00	90,090.00
11.11	Parking Hardware / Installation (per entrance/exit pair)	10	12,778.01	127,780.10
Total:				\$217,870.10

Pricing Notes:

The parking option falls outside the contract payment milestones and deliverables. A separate schedule will be established after receipt of the order. Taxes/software escrow, if applicable, have not been included.

INIT Contact:

Name: Scott Walsh

Position: Director, Business Development

Phone: 757-413-9100 x327

Email: swalsh@initusa.com

Signature:


Carl Commons
Chief Sales Officer

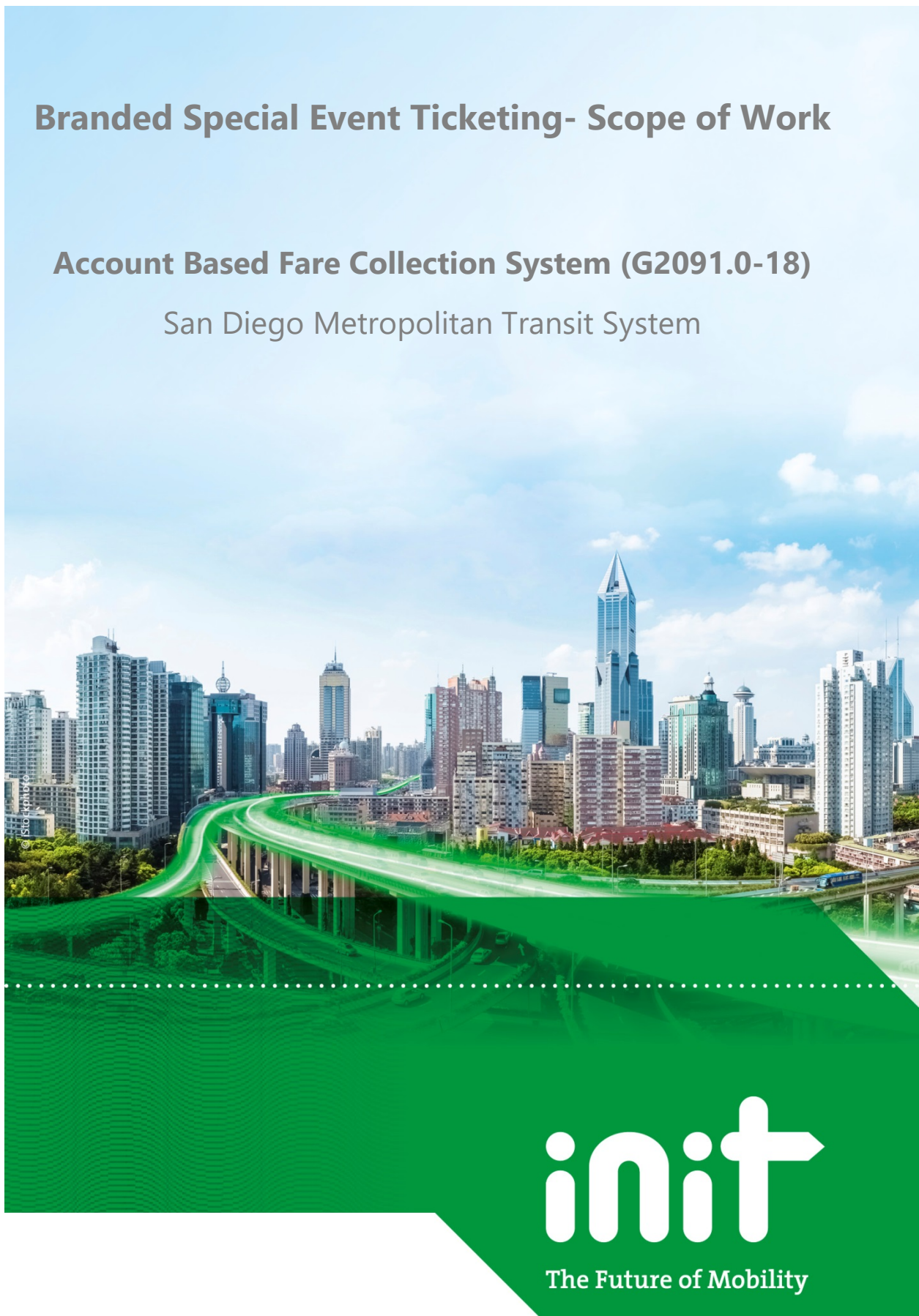


Roland Staib
President & CEO

Branded Special Event Ticketing- Scope of Work

Account Based Fare Collection System (G2091.0-18)

San Diego Metropolitan Transit System



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1 Custom Branded Screens and Products

1.1 Summary

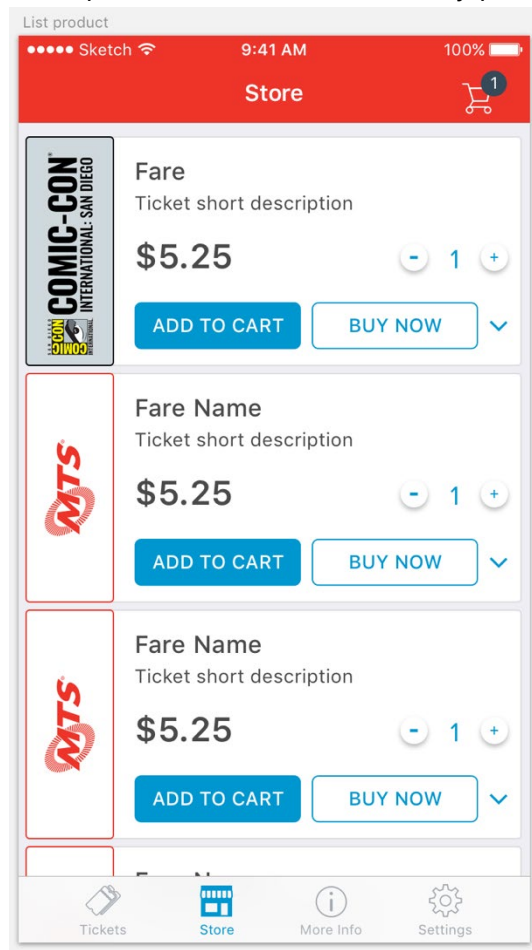
Bytemark will perform development to deliver a configurable mobile app interface that uses fare product & user account information from the INIT MOBILvario system to custom brand the display of fare products as well as mobile backgrounds (wallpaper). This new work includes INIT API integrations as well as updated mobile configurations for both iOS and Android applications. The one-time costs include development, testing, and delivery of the feature.

Bytemark will conduct ongoing maintenance to support this feature throughout the lifecycle of the contract. Maintenance costs include Bytemark support staff implementing branding changes in the mobile configuration files as requested by MTS.

Bytemark require that MTS supplies the appropriate image assets to accommodate custom branding. Bytemark will provide MTS a template and specification for the requisite assets to simplify the process. Bytemark support staff requires 10-business days notice prior to updating screens. MTS will not be limited in the amount of MTS products that can be special branded in the mobile app.

1.2 Products Branded in-Store

Once the rider enters the “Store” section of the app, the special event pass is displayed with custom branding. The example shows a Comic-Con 4-day pass with branding applied.

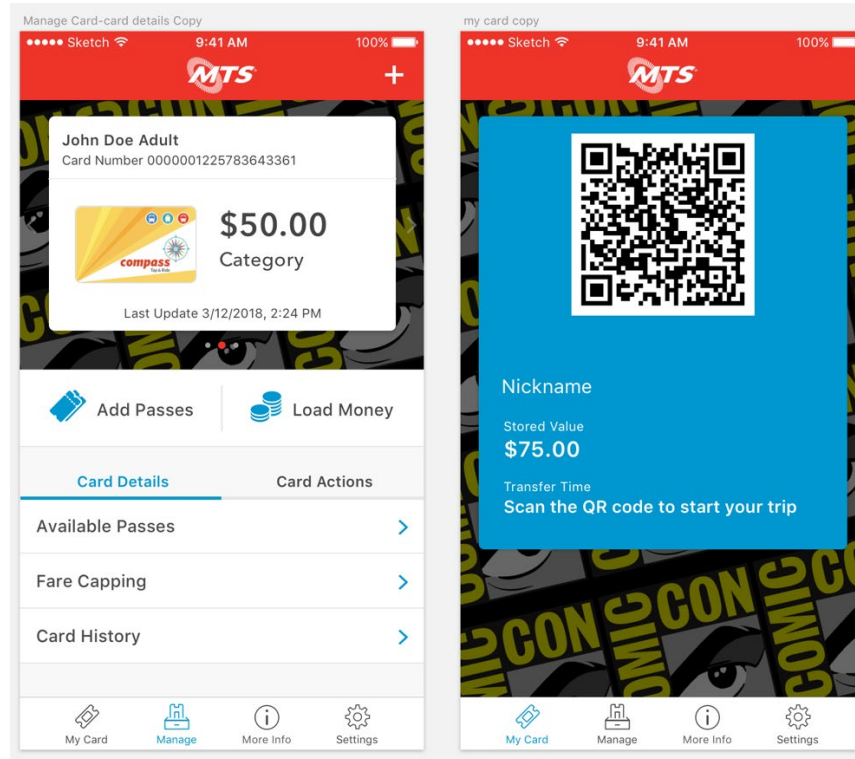


Design Concept 1

Branded special event product in store.

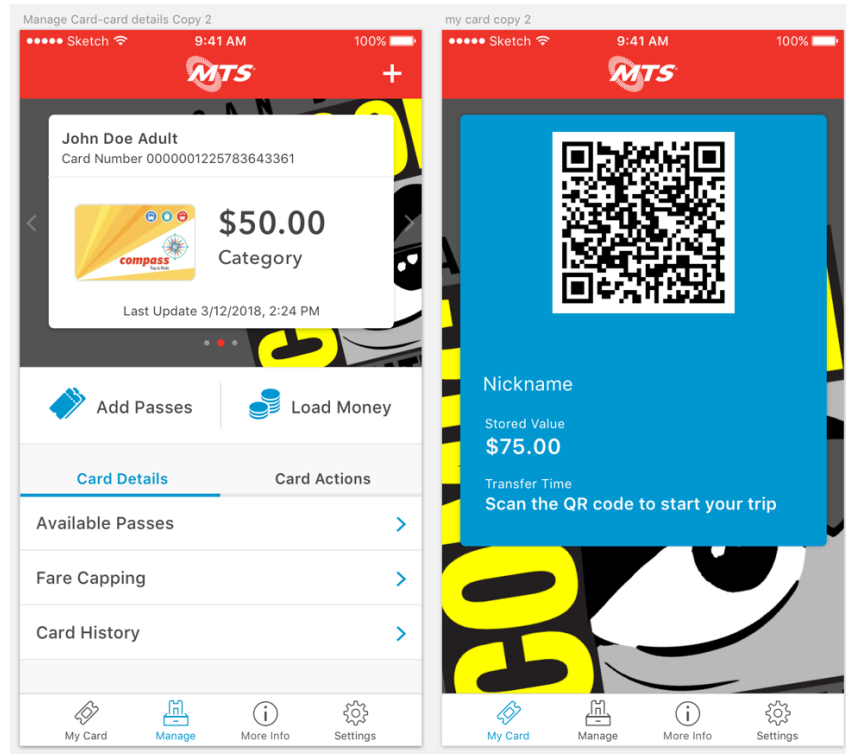
1.2.1 Wallpaper Branding

Once the pass is purchased and added to a Fare Media, the background behind the Fare Media containing the special-event pass changes to the special event branding. The examples show two possible variations of the branded background.



Design Concept 2 – Custom Designs for MTS

Wall-paper style branding that sits behind fare media card. Branding served to the user is based on the special event product they purchased.



Design Concept 3 – Custom Designs for MTS

Wall-paper style branding that sits behind fare media card. Branding served to the user is based on the special event product they purchased.

1.3 Schedule

Schedule will be established in consultation with MTS & INIT once the Option is approved. Bytemark expects to deliver this feature concurrently with the base application.

1.4 Assumptions

- Bytemark will provide a template & specs to MTS marketing team and they can create assets ad-hoc.
- Bytemark require 10-business days notice prior to updating products & screens.
- Special event branding is product specific. Example: Users with Comicon special event pass sees Comicon branding, regular users without the special event pass will not receive the branding. (MTS can push the branding to all users if they like).
- Pricing does not include custom design services from Bytemark.

Amendment 2 - Mobile Ticketing -- Modified Pricing Method

Annual Mobile Maintenance & Hosting Item	Spec Ref.	Description	INIT Proposal Response (Yrs 3-10 cover our base costs in these years)	Original OM Fixed Costs (not including commission)	Amendment 2 Additional Fixed Costs (no commission to be included)
11.05-1	17.2	Year 1	72,217.20	\$ 72,217.20	-
11.05-2	17.2	Year 2	72,217.20	\$ 72,217.20	-
11.05-3	17.2	Year 3	145,666.00	\$ 72,217.20	73,448.80
11.05-4	17.2	Year 4	145,666.00	\$ 72,217.20	73,448.80
11.05-5	17.2	Year 5	157,666.00	\$ 72,217.20	85,448.80
11.05-6	17.2	Year 6	157,666.00	\$ 83,217.20	74,448.80
11.05-7	17.2	Year 7	157,666.00	\$ 83,217.20	74,448.80
11.05-8	17.2	Year 8	169,666.00	\$ 83,217.20	86,448.80
11.05-9	17.2	Year 9	169,666.00	\$ 83,217.20	86,448.80
11.05-10	17.2	Year 10	169,666.00	\$ 83,217.20	86,448.80
1,417,762.40				\$ 777,172.00	640,590.40
All Inclusive				Original	Additional

Terms of Mobile Ticketing

Years 1 and 2 of the mobile ticketing O&M would occur at the lower O&M rate of \$72,217.20 but without commission

Years 3 through 10 of the mobile ticketing O&M would occur at the higher all-inclusive tiers without commission minus the INIT 10% mark up as per the table below

All of the non-revenue U-Pass college products will be provided without a commission – Accepted (further discussion is needed on U-Pass process and development as needed)

The PayNearMe commission on mobile ticketing would decrease from 8% to 6% - Accepted *Note: Pay Near Me option will NOT be executed at this point*



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Agenda Item No. 19

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

December 12, 2019

**Draft for
Executive Committee
Review Date: 12/5/19**

SUBJECT:

SEMIANNUAL UNIFORM REPORT OF DISADVANTAGED BUSINESS ENTERPRISE
(DBE) AWARDS AND PAYMENTS

INFORMATIONAL ONLY

Budget Impact

None.

DISCUSSION:

As a Federal Transit Administration (FTA) grantee, San Diego Metropolitan Transit System (MTS) complies with the federal regulations set forth in 49 CFR Part 26 regarding participation by DBEs in the U.S. Department of Transportation (DOT) Program.

I. Goals of MTS's DBE Program

The goals of MTS's race-neutral DBE program are:

1. to ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. to ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. to ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. to help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. to assist the development of firms that can compete successfully in the marketplace outside of the DBE program; and
7. to provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs.



II. MTS's DBE Triennial Overall Goal for FFY 2019- 2021

The DBE regulations require MTS to prepare a DBE Triennial Overall Goal. The DBE Triennial Overall Goal is established upon the number of ready, willing, and able DBE contractors within MTS's geographic market area that are available to bid on MTS's federally assisted procurements (excludes transit vehicle procurements). For the current triennial reporting period (October 1, 2018, to September 30, 2021), MTS has an aspirational overall goal of **2.9%** DBE participation on federally funded contracts.

III. Participation by certified DBEs

For purposes of reporting DBE participation to the FTA, MTS may only count participation by certified DBE contractors. In order to be certified as a DBE through the California Unified Certification Program, contractors must:

- (1) have a majority owner who is **socially and economically disadvantaged** (Native Americans, African Americans, Hispanics, Asian-Pacific, Subcontinent Asian Americans and women are currently presumed to be socially and economically disadvantaged by the DOT);
- (2) the majority owner must have a personal net worth of less than **\$1,320,000**; and
- (3) the business must be a **small business** and, for *most* types of businesses, have average annual gross receipts less than **\$23,980,000**.

Per DOT DBE Regulations, MTS **may not** count participation from certified minority owned businesses (MBE), disabled veteran owned businesses (DVBE), women owned businesses (WBE), small businesses (SB) or lesbian gay bisexual transgender owned businesses (LGBTBE) (collectively referred to as SBEs) toward meeting its DBE Triennial Overall Goal. Nonetheless, MTS encourages participation from, conducts outreach to, and tracks awards to SBEs.

IV. Race-Neutral Measures to Increase DBE and SBE Participation

A race-neutral DBE program means that there are no DBE contract specific goals and no advantages provided to interested DBE contractors when submitting bids or proposals. Successful bidders are chosen using race-neutral means, generally through a low-bid or best-value procurement process.

To increase DBE participation on MTS's federally assisted procurements, as well as SBE participation on all MTS's contracts, MTS conducts outreach to DBEs and SBEs in an effort to inform them of upcoming MTS procurements. The following are some of the race-neutral measures MTS has implemented:

1. outreach to past and current MBEs, DVBEs, WBEs, SBs and LGBTBEs to discuss the benefits of DBE certification and what qualifications are necessary to become DBE certified, as some may already qualify;
2. outreach to past and current DBEs, MBEs, DVBEs, WBEs, SBs and LGBTBEs requesting that they register on PlanetBids so they can receive automatic notification of upcoming MTS formal procurements;

3. for small purchase procurements in which MTS must seek out three (3) bids, MTS aims to advertise more of these procurement on PlanetBids so as to increase the potential of DBEs, MBEs, DVBES, WBEs, SBs or LGBTBEs learning of the procurement, if such a contractor is available to perform the work;
4. for small purchase procurements in which MTS must seek out three (3) bids, seeking at least one (1) of those bids from a DBE or SBE, if available; and
5. attend and actively promote small business conferences and programs to alert DBEs, MBEs, DVBES, WBEs, SBs or LGBTBEs of upcoming MTS contracting opportunities and to educate about MTS's procurement and DBE program.

In the last few months, MTS attended the following outreach events that provide MTS the ability to meet with Contractors and discuss MTS's DBE Program and MTS's upcoming contracting opportunities:

- Naval Facilities Engineering Command hosted by the U.S. Navy on August 13, 2019
- Meet the Primes hosted by San Diego International Airport on October 16, 2019
- Contracting Community Engagement Meeting hosted by San Diego Association of Governments (SANDAG) and North County Transit District on October 24, 2019.
- Procurement and Resource Fair hosted by SANDAG on October 30, 2019

MTS also continued to attend San Diego Public Agency Consortium bi-monthly meetings. At these meetings, San Diego County public agencies discussed upcoming planned workshops and best practices regarding their agency's DBE and SB programs.

V. Federally Funded Procurements

Only contracts awarded and paid by MTS using federal funds (or a portion of federal funds) are reported to the FTA per DOT DBE Regulations. MTS generally reserves federal funds for transit vehicle procurements, transit facility improvements, and state-of-good-repair vehicle or system preventative maintenance projects. MTS generally uses local and state funds for capital projects (e.g. construction, engineering), administrative costs and other operating expenses (e.g. marketing expenses, land management, office supplies).

VI. Summary of Semi-Annual DBE Report Achievement (Federal Funds Only)

The FTA Semi-Annual Report for April 1, 2019 to September 30, 2019 is the second of six reports in the triennial period of FFY 2019-2021.

a. Contracts Awarded

For this reporting period, MTS **achieved** its DBE Triennial Overall Goal of 2.9% for contracts awarded. MTS achieved **43.14%** DBE participation for contracts awarded.

	Federal Contract Awards/Commitments			Goal
<u>REPORTING PERIOD</u>	<u>Total Federal \$\$</u>	<u>DBE \$\$</u>	<u>DBE %</u>	<u>vs 2.9%</u>
Federal Funds: Apr 1 2019 – Sept 30 2019	\$9,005,016.32	\$3,884,727.66	43.14%	+40.24%

The main reason why MTS was able to meet its DBE Triennial Overall Goal for contracts awarded was due to a large amendment with NMS Management, a DBE, to exercise three (3) option years for janitorial services in the amount of \$4,222,955.51 (80% federally funded). In addition, a large subcontract to RL Controls, a DBE, was awarded as part of the RTMS Vehicle Upgrade Project, for \$862,973.13 (38% federally funded).

b. Contracts Completed

MTS **achieved** its DBE Triennial Overall Goal of 2.9% for contracts completed. MTS achieved **4.94%** DBE participation for contracts completed.

	Federal Contracts Completed/Total Payments			Goal
REPORTING PERIOD	Total Federal \$\$	DBE \$\$	DBE %	vs 2.9%
Federal Funds: Apr 1 2019 – Sept 30 2019	\$2,185,451.11	\$108,000.28	4.94%	+2.04%

The main reason why MTS was able to meet its DBE Triennial Overall Goal for contracts completed was for completing a contract for purchase of wood ties to B&B Diversified Materials, a DBE, for \$98,909.70 (80% federally funded). Please note, MTS decides contract performance periods based on MTS business and operational needs. Every reporting period will differ on the number, type and dollar amount of contracts closed out.

VII. Summary of Achievement Toward Meeting MTS's DBE Triennial Overall Goal for FFY 2019 – FFY 2021

MTS has completed FFY 2019. MTS achieved 23.22% DBE participation for FFY 2019 for contracts awarded, which exceeds MTS's DBE overall goal of 2.9%. Since MTS achieved its overall goal in FFY 2019, no shortfall analysis or corrective action plan is required to be submitted to the FTA.

DBE Achievement for FFY 2019- FFY 2021				
FFY	Reporting Period	Total Fed Awarded	Total DBE Awarded	DBE %
FFY 2019	Oct 1 18 to Mar 31 19	\$8,603,476.55	\$204,022.26	2.37%
FFY 2019	April 1 19 to Sept 30 19	\$9,005,016.32	\$3,884,727.66	43.14%
FFY 2020	Oct 1 19 to Mar 31 20	Not yet completed		
FFY 2020	April 1 20 to Sept 30 20			
FFY 2021	Oct 1 20 to Mar 31 21			
FFY 2021	April 1 21 to Sept 30 21			
Achievement Toward Meeting FFY 2019-2021 DBE Triennial Overall Goal of 2.9% (FFY 2019-2021 Total DBE Awarded ÷ FFY 2019-2021 Total Fed Awarded)		IN PROGRESS: 23.22% for FFY 2019 (exceeds 2.9% Goal)		

While the specific DBE participation rate for each six (6) month reporting period may fluctuate, the goal of the MTS DBE program is to achieve the 2.9% Triennial Overall DBE goal as an average for the FFY 2019-2021 triennial period. MTS will continue to monitor MTS's achievement toward meeting MTS's Triennial Goal after each completed reporting period.

VIII. Summary of DBE, WBE, MBE, DVBE, LGBTBE and SB Participation for all Contracts (Regardless of Funding Source)

Although MTS may not report to the FTA the participation of MBE, DVBE, WBE, SB and LGBTBE (collectively referred to as SBEs) for its FTA DBE Semi Annual Report, MTS does record the participation of these businesses to gauge the success of its program to foster small business participation. MTS encourages the participation of SBEs on all of its contracts, no matter the funding source.

MTS's DBE and SBE participation rates for the reporting period, using both local and federal funds, were as follows:

<u>REPORTING PERIOD</u>	All Contract Awards/Commitments (All Funding Sources)				
	<u>Total \$\$</u>	<u>DBE \$\$</u>	<u>DBE %</u>	<u>SBE \$\$</u> (MBE, DVBE, WBE, SB and LGBTBE)	<u>SBE %</u>
Total Funds: Apr 1 2019 – Sept 30 2019	\$40,005,268.47	\$6,243,119.33	15.61%	\$1,796,894.06	4.49%

When reviewing highlights of SBE achievements, MTS awarded: a five (5) year contract with Quality Sprayers, a DVBE, for weed abatement services in the amount of \$390,780.00 (80% federally funded); My Electrician, a DVBE and MBE, for VMS signs, in the amount of \$218,008.12 (80% federally funded); \$103,742.70 to Ahrens Mechanical, a DVBE, for bus wash blowers; and \$103,664.37 to Select Electric, a MBE, for LED lighting. These awards, and others, helped MTS achieve a high SBE achievement percentage this reporting period.

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

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

Attachment: A. History of Semi-Annual Reports for Contracts Awarded

MTS History of DBE Semi Annual Reports																	
Contract Awards/Commitments*																	
	Federal DBE GOAL	REPORTING PERIOD	TOTAL DOLLARS AWARDED (fed & local)	Total DBE \$\$	Total DBE %	Total SBE \$\$	Total SBE %	Total Federal \$\$	Federal DBE \$\$	Federal DBE %	Federal SBE \$\$	Federal SBE %	Total Local \$\$	Local DBE \$\$	Local DBE %	Local SBE \$	LOCAL SBE %
FFY16	3.75%	Oct 1 15 to Mar 31 16	\$ 63,883,438.52	\$ 298,902.02	0.47%	\$ 2,929,504.04	4.59%	\$ 4,094,298.13	\$ 11,859.89	0.29%	\$ 246,645.99	6.02%	\$ 59,789,140.39	\$ 287,042.13	0.48%	\$ 2,682,858.05	4.49%
		April 1 16 to Sept 30 16	\$ 32,178,592.14	\$ 976,115.34	3.03%	\$ 996,434.97	3.10%	\$ 6,418,545.41	\$ 255,760.97	3.98%	\$ 148,325.08	2.31%	\$ 25,760,046.73	\$ 720,354.37	2.80%	\$ 848,109.89	3.29%
FFY17**		Oct 1 16 to Mar 31 17	\$ 92,516,929.91	\$ 5,611,166.70	6.07%	\$ 3,735,641.71	4.04%	\$ 19,827,518.60	\$ 3,781,098.94	19.07%	\$ 196,188.57	0.99%	\$ 72,689,411.31	\$ 1,830,067.76	2.52%	\$ 3,539,453.14	4.87%
		April 1 17 to Sept 30 17	\$ 40,939,010.42	\$ 478,288.92	1.17%	\$ 1,622,764.06	3.96%	\$ 3,326,175.53	\$ 31,444.62	0.95%	\$ 405,594.52	12.19%	\$ 37,612,834.89	\$ 446,844.30	1.19%	\$ 1,217,169.54	3.24%
FFY18		Oct 1 17 to Mar 31 18	\$ 31,874,559.08	\$ 754,167.60	2.37%	\$ 3,002,750.48	9.42%	\$ 5,888,603.26	\$ 107,876.47	1.83%	\$ 716,139.92	12.16%	\$ 25,985,955.82	\$ 646,291.13	2.49%	\$ 2,286,610.56	8.80%
		April 1 18 to Sept 30 18	\$ 68,024,202.91	\$ 1,725,734.24	2.54%	\$ 4,982,014.37	7.32%	\$ 5,453,720.86	\$ 977,533.90	17.92%	\$ 267,303.01	4.90%	\$ 62,570,482.05	\$ 748,200.34	1.20%	\$ 4,714,711.36	7.54%
FFY16-18	3.75%	Oct 1, 2015 thru Sept 30, 2018 (6 semi-annual reports)	\$ 329,416,732.98	\$ 9,844,374.82	2.99%	\$ 17,269,109.63	5.24%	\$ 45,008,861.79	\$ 5,165,574.79	11.48%	\$ 1,980,197.09	4.40%	\$284,407,871.19	\$ 4,678,800.03	1.65%	\$ 15,288,912.54	5.38%
FFY19	2.9%	Oct 1 18 to Mar 31 19	\$ 73,790,097.91	\$ 606,817.10	0.82%	\$ 5,715,068.36	7.75%	\$ 8,603,476.55	\$ 204,022.26	2.37%	\$ 182,110.81	2.12%	\$ 65,186,621.36	\$ 402,794.84	0.62%	\$ 5,532,957.55	8.49%
		April 1 19 to Sept 30 19	\$ 40,005,268.47	\$ 6,243,719.33	15.61%	\$ 1,796,894.06	4.49%	\$ 9,005,016.32	\$ 3,884,727.66	43.14%	\$ 644,406.58	7.16%	\$ 31,000,252.15	\$ 2,358,991.67	7.61%	\$ 1,152,487.48	3.72%
FFY20		Oct 1 19 to Mar 31 20	\$ -	\$ -	#DIV/0!	\$ -	#DIV/0!			#DIV/0!		#DIV/0!			#DIV/0!		#DIV/0!
		April 1 20 to Sept 30 20	\$ -	\$ -	#DIV/0!	\$ -	#DIV/0!			#DIV/0!		#DIV/0!			#DIV/0!		#DIV/0!
FFY21		Oct 1 20 to Mar 31 21	\$ -	\$ -	#DIV/0!	\$ -	#DIV/0!			#DIV/0!		#DIV/0!			#DIV/0!		#DIV/0!
		April 1 21 to Sept 30 21	\$ -	\$ -	#DIV/0!	\$ -	#DIV/0!			#DIV/0!		#DIV/0!			#DIV/0!		#DIV/0!
FFY19-21	2.9%	Oct 1, 2018 thru Sept 30, 2021 (6 semi-annual reports IN PROGRESS)	\$ 113,795,366.38	\$ 6,850,536.43	6.02%	\$ 7,511,962.42	6.60%	\$ 17,608,492.87	\$ 4,088,749.92	23.22%	\$ 826,517.39	4.69%	\$96,186,873.51	\$ 2,761,786.51	2.87%	\$ 6,685,445.03	6.95%

*Transit Vehicle Procurements (buses, trolleys) from Transit Vehicle Manufacturers (TVM) are not included in this Report per DOT DBE Regulations. TVMs have their own DBE Program, Goals and Reporting requirements. Inventory procurements are also not included. Only at time an inventory item is issued from store room will the federal/local breakdown be known, not at the time of purchase. *

**In FY17, MTS began using the U.S. Small Business Administration Database, which provides a listing of Small Businesses. This Database tracks firms in which revenues and/or number of employees do not exceed the North American Industry Classification System (NAICS) code's small business size standards, which is used to determine whether a DBE is a small business or not. **



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Agenda Item No. 20

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM
BOARD OF DIRECTORS

December 12, 2019

**Draft for
Executive Committee
Review Date 12/5/19**

SUBJECT:

CONCEPTUAL COST ESTIMATING AND SCHEDULING SERVICES FOR PROPOSED
TRANSPORTATION INFRASTRUCTURE PROJECTS IN SAN DIEGO COUNTY –
WORK ORDER AMENDMENT

THIS ITEM WILL BE PROVIDED WITH BOARD MATERIALS





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Agenda Item No. 21

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM
BOARD OF DIRECTORS

December 12, 2019

**Draft for
Executive Committee
Review Date 12/5/19**

SUBJECT:

OPERATIONS BUDGET STATUS REPORT FOR OCTOBER 2019

**THIS ITEM WILL BE
PROVIDED WITH BOARD
MATERIALS**

