



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

Agenda

JOINT MEETING OF THE BOARD OF DIRECTORS
for the
Metropolitan Transit System,
San Diego Transit Corporation, and
San Diego Trolley, Inc.

May 8, 2008

9:00 a.m.

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

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

**ACTION
RECOMMENDED**

- 1. Roll Call
- 2. Approval of Minutes - April 24, 2008 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 turn off cell phones and pagers
during the meeting



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

CONSENT ITEMS

6. MTS: Investment Report Receive
Action would receive a report for information.

CLOSED SESSION

24. None.

NOTICED PUBLIC HEARINGS

25. None.

DISCUSSION ITEMS

30. MTS: MTS Access/ADA Suburban Paratransit Option Years Approve
Action would authorize the Chief Executive Officer (CEO) to execute one option year for each of the following contracts with First Transit, Inc.: (1) Americans with Disabilities (ADA) suburban/flex-paratransit services (MTS Doc. No. B0338.4-03); and (2) MTS Access services (MTS Doc. No. B0368.4-03).
31. MTS: Construction and Maintenance Agreement for Park Boulevard Pedestrian Bridge Approve
Action would authorize the CEO to execute the Construction and Maintenance Agreement for the Park Boulevard Pedestrian Bridge and the related easements and right-of-entry permits.
32. MTS: Increased Authorization for Legal Services Approve
Action would authorize the CEO to enter into a contract amendment MTS Doc. No. G1111.1-07) with the Law Offices of Wheatley Bingham & Baker for legal services and ratify prior amendments entered into under the CEO's authority.

REPORT ITEMS

45. MTS: Status of Fare Increase Receive
Action would receive a report on the initial results of the fare-related changes that MTS introduced on January 1, 2008.
60. Chairman's Report Information
61. Audit Oversight Committee Chairman's Report Information
62. Chief Executive Officer's Report Information
63. Board Member Communications

64. Additional Public Comments Not on the Agenda
If the limit of 5 speakers is exceeded under No. 3 (Public Comments) on this agenda, additional speakers will be taken at this time. If you have a report to present, please furnish a copy to the Clerk of the Board. Subjects of previous hearings or agenda items may not again be addressed under Public Comments.
65. Next Meeting Date: May 22, 2008
66. Adjournment

**METROPOLITAN TRANSIT DEVELOPMENT BOARD
ROLL CALL**

MEETING OF (DATE): 5/8/08

CALL TO ORDER (TIME): 9:01 a.m.

RECESS: _____

RECONVENE: _____

CLOSED SESSION: _____

RECONVENE: _____

PUBLIC HEARING: _____

RECONVENE: _____

ORDINANCES ADOPTED: _____

ADJOURN: 9:45 a.m.

BOARD MEMBER	(Alternate)	PRESENT (TIME ARRIVED)	ABSENT (TIME LEFT)
ATKINS	<input type="checkbox"/> (Hueso) <input type="checkbox"/>		<input checked="" type="checkbox"/>
CLABBY	<input checked="" type="checkbox"/> (Selby) <input type="checkbox"/>		
EMERY	<input checked="" type="checkbox"/> (Cafagna) <input type="checkbox"/>		
EWIN	<input checked="" type="checkbox"/> (Allan) <input type="checkbox"/>		
FAULCONER	<input type="checkbox"/> (Hueso) <input type="checkbox"/>		<input checked="" type="checkbox"/>
MAIENSCHIN	<input type="checkbox"/> (Hueso) <input type="checkbox"/>		<input checked="" type="checkbox"/>
MATHIS	<input checked="" type="checkbox"/> (Vacant) <input type="checkbox"/>		
MCCLELLAN	<input checked="" type="checkbox"/> (Hanson-Cox) <input type="checkbox"/>		
MCLEAN	<input checked="" type="checkbox"/> (Bragg) <input type="checkbox"/>		
MONROE	<input checked="" type="checkbox"/> (Downey) <input type="checkbox"/>		
RINDONE	<input checked="" type="checkbox"/> (McCann) <input type="checkbox"/>		
ROBERTS	<input checked="" type="checkbox"/> (Cox) <input type="checkbox"/>		
RYAN	<input type="checkbox"/> (B. Jones) <input type="checkbox"/>		<input checked="" type="checkbox"/>
YOUNG	<input checked="" type="checkbox"/> (Hueso) <input type="checkbox"/>		9:41 a.m. during AI 63
ZARATE	<input type="checkbox"/> (Parra) <input type="checkbox"/>		<input checked="" type="checkbox"/>

SIGNED BY THE OFFICE OF THE CLERK OF THE BOARD

Gail Williams

CONFIRMED BY OFFICE OF THE GENERAL COUNSEL

JOINT MEETING OF THE BOARD OF DIRECTORS FOR THE
METROPOLITAN TRANSIT SYSTEM (MTS),
SAN DIEGO TRANSIT CORPORATION (SDTC), AND
SAN DIEGO TROLLEY, INC. (SDTI)

April 24, 2008

MTS
1255 Imperial Avenue, Suite 1000, San Diego

MINUTES

FINANCE WORKSHOP

1. Roll Call

Chairman Rindone called the meeting to order at 8:14 a.m. A roll call sheet listing Board member attendance is attached.

2. MTS: FY 2009 Budget Development

Mr. Paul Jablonski, MTS CEO, stated that FY 2009 was going to be a challenging year because MTS was facing a \$6.5 million deficit. He stated that MTS has lost about \$22 million in funding for operations in the last 11 months. He stated that he visited with state legislators in Sacramento on Monday, and that the tenor in Sacramento is very grim. He said that he hoped the operating element of the state budget would stay intact but that spillover funds are still very much at risk. He reported that MTS recently purchased 26 articulated buses using Proposition 1B funding of \$20 million and had to pay \$1.5 million in sales tax. He added that discussions with the delegation included why the state is bonding for funding only to have recipients of the funding pay sales tax. He stated that it might not be possible to get a broad exemption from sales tax but maybe an exemption for expenditures that use bond funding could be obtained.

Ms. Atkins suggested that staff provide Board members with three bullet points defining what MTS is asking for from the state legislature. She stated that Board members should be writing legislators regarding these items to ensure that MTS's message is being carried forward. She stated that legislators are under a lot of strain to make decisions regarding funding for very important items like funding for schools, and MTS may get forgotten. She stated that they need to be reminded that many people need to use transit to get to doctor appointments, school, and work. Mr. Jablonski stated that he would provide Board members with the requested points and the appropriate contact information. Mr. Rindone requested that a sample letter also be included.

Mr. Larry Marinesi, MTS Budget Manager, reviewed a breakdown of revenues and expenses, energy distribution, fuel-price projections for CNG and diesel, the impact of each on operations, and historical energy rates for the last four years. He also covered the four categories that have been reviewed for balancing the budget. Mr. Jablonski pointed out that only one of the categories, Service Adjustments, impacts MTS riders and was considered last of all of the options. Mr. Marinesi presented savings in each of these categories over a five-year period.

Ms. Sharon Cooney, MTS Director of Government Affairs and Community Relations, provided the Board with a brief review of a short-term funding proposal by SANDAG for continuation of the Sorrento Valley Coaster Connection (SVCC) for nine months. She stated that this has become necessary because the Air Pollution Control District (APCD) will no longer be providing funding for this service. In response to a question from Ms. Atkins, Ms. Cooney responded that MTS has a very good chance of being able to swap Jobs Access Reverse Commute urban funding for rural funding to help make this proposal work. She added that SANDAG is working with the employers in Sorrento Valley to develop some type of shuttle program.

Mr. Rob Schupp, Director of Marketing and Communications, reviewed options for a new shelter advertising contract that could potentially generate up to \$800,000 in additional revenue and would result in having improved shelters on the system. He reported that, in addition to the options presented, MTS wants to explore the option of taking over ownership of the shelters. He stated that staff wants to work with cities that currently prohibit advertising on shelters to drop that prohibition.

Mr. Jablonski stated that the Personnel Adjustments category comprises the largest element of the proposed actions. He stated that the hiring freeze implemented in 2006 on certain open positions will be continued for those positions for at least the next year. He added that merit increases, albeit reduced, are being recommended for continuation because of previous actions MTS has taken regarding programs that benefit employees. He stated that merit increases have averaged four percent for the last couple of years and that this action will save \$2.6 million and will represent 40 percent of the solution. In response to a question from Mr. Monroe, Mr. Telfer explained that performance incentive bonuses are one-time payments while merit increases raise an employee's salary level. In response to a question from Mr. Ewin, Mr. Jablonski stated that only a handful of employees are at the top of their salary range. He added that the Board approved an adjustment to salary ranges of three percent last year but no adjustment has been approved for this year.

Ms. Cooney then reviewed the five options for increasing trolley fares, which require a SANDAG-approved amendment to the TransNet II ordinance. She stated that bus fare increases were implemented in January 2008 as a result of the Regional Fare Study, and trolley fares are Phase II of that study. She reported that the Executive Committee favored a \$2.50 fare with unlimited transfers (two-hour time frame) and a downtown fare of \$1.75. Ms. Cooney stated that the first public hearing on fare adjustments for trolley as well as for the Coaster will be held May 30. In response to a question from Ms. Atkins, Ms. Cooney stated that the consultant favored a \$2.25 fare with no free transfers (passengers could purchase a Day Pass if they need to transfer) because it would be consistent with bus fares, and it would generate the same revenue as the \$2.50 fare that allows transfers. She added that trolley fare increases would be implemented by September. Mr. Jablonski added that MTS favors a nonzone fare system because it makes the process more expeditious and is easier to enforce. He reminded the Board that 75 percent of MTS's riders currently use a monthly pass.

Ms. Cooney then explained the service adjustments being considered and reported that Tier I adjustments would have minimal impact on the system. She added that many of the Tier I adjustments would be recommended anyway. She reported that Tier II would involve cutting the span and/or frequency of service and focuses on weekends when riders have other options. She stated that any of the adjustments that affect more than 25 percent of a particular route would require a public hearing prior to approval and implementation.

Mr. Marinesi reported that MTS is currently \$2 million under budget for FY 2008 and may be able to reduce reserve usage for budget balancing purposes to \$3.5 million by the end of the year. He then reviewed the calendar for the budgetary process going forward from this point.

Mr. Monroe stated that he felt MTS was earning too little revenue on its vendor contracts. Mr. Tereschuck stated that the Coaster gets the same percentage on its vendor contracts that MTS does. Mr. Monroe stated that he would like to have MTS's vendor contracts brought back to the Board for discussion. Staff explained for Mr. Monroe how the fuel projections were developed.

Mr. Monroe stated that he would like to see a breakdown of the SVCC shuttle routes that serve the Coaster and the employees in Sorrento Valley. Ms. Cooney stated that the Planning Department has that information and will be presenting it before any action is taken regarding this service. She added that SANDAG is working on a more demand-responsive type of service. Mr. Rindone stated that the SANDAG Board disagreed with MTS figures regarding the subsidy amount for this service and asked that staff bring a clarification back to the Board.

Mr. Monroe stated that he didn't think that an organization could effectively identify variances in individual performance and that merit increases should be given in equal amounts across the board to all employees. He stated that this approach fosters teamwork attitudes.

Mr. Monroe stated that the age for qualifying for senior fares should not be increased one year at a time as proposed but all at once, especially given the financial crisis that MTS is facing. He stated that he was advised during the Executive Committee that this would be a politically unpopular action.

Action Taken

Mr. McLean moved to receive a report on the FY 2009 operating budget report and direct staff to begin implementation of measures proposed during staff's presentation to reduce MTS's \$6.5 million budget deficit for FY 2009. Mr. Monroe moved to second the motion, and the vote was 11 to 0 in favor.

3. Public Comment

There were no public comments under this section of the agenda.

4. Adjournment

Chairman Rindone adjourned the Finance Workshop at 9:14 a.m.

BOARD MEETING

1. Roll Call

Chairman Mathis called the Board meeting to order at 9:14 a.m. A roll call sheet listing Board member attendance is attached.

2. Approval of Minutes

Mr. Young moved to approve the minutes of the April 10, 2008, MTS Board of Directors meeting. Mr. Emery seconded the motion, and the vote was 11 to 0 in favor.

3. Public Comment

There were no public comments.

CONSENT ITEM:

6. MTS: Job Access and Reverse Commute Grant (AG 210.9)

Recommend that the Board of Directors approve Resolution No. 08-6 (Attachment A of the agenda item) authorizing the CEO to submit applications for fiscal year 2006 Job Access and Reverse Commute for Nonurban (Rural) areas – Federal Transit Administration funding 5316.

Action on Recommended Consent Item

Mr. Emery moved to approve Consent Agenda Item No. 6. Ms. Atkins seconded the motion, and the vote was 11 to 0 in favor.

NOTICED PUBLIC HEARINGS:

There were no noticed public hearings.

CLOSED SESSION:

24. Closed Session Items (ADM 122)

The Board convened to Closed Session at 9:15 a.m.

- a. MTS: CONFERENCE WITH LEGAL COUNSEL ANTICIPATED LITIGATION SIGNIFICANT EXPOSURE TO LITIGATION Pursuant to California Government Code Section 54956.9(a): Case Names Unspecified (Disclosure Would Jeopardize Negotiations)
- b. SDTC: CONFERENCE WITH LABOR NEGOTIATORS Pursuant to California Government Code Section 54957.6. Agency-Designated Representative – Jeff Stumbo. Employee Organization – Amalgamated Transit Union, Local 1309.

The Board reconvened to Open Session at 10:13 a.m.

Oral Report of Final Actions Taken in Closed Session

Ms. Tiffany Lorenzen, MTS General Counsel, reported the following:

- a. The Board received a report from General Counsel.
- b. The Board received a report from agency negotiators and outside counsel.

DISCUSSION ITEMS:

30. MTS: Trolley Wraps (MKPC 620.9)

Mr. Rob Schupp, Director of Marketing and Communications, reviewed the proposal for allowing additional trolley wraps. He reported that not only will this proposal provides an opportunity to

created themed "Green" trolley wraps to communicate the environmental benefits of using public transportation, but it will create sponsorship revenues and improve the look of trolleys that need painting. He reviewed MTS's current three-month "for earth" campaign and provided a history of trolley wraps. Mr. Schupp also presented depictions of three different wrap options. He stated that sponsorship information would be incorporated into the particular wrap selected.

Chairman Mathis stated that trolley cars that are currently wrapped are only on the Blue Line. He stated that wrapping U-2 cars will result in having wrapped cars on all three lines. In response to a question from Mr. Ewin, Mr. Schupp stated that the wraps are guaranteed to last for one year. Mr. Lewis stated he favored ideas that would offset the need to raise fares. He also stated that he would like to see the Board approve a flat fare for the trolley and thanked staff for being creative in its approach to addressing the budget deficit. In response to a question from Mr. Emery, Mr. Schupp reported that five trolleys are currently reserved for the wrap program and approval of this proposal would add another five.

Mr. Emery stated that he preferred the solid-green trolley because it would fall in line with the Board's intention when it created the solid-red trolley. He stated the design should be something simple and clean. Chairman Mathis favored a theme that was more interesting. In response to a question from Mr. Ewin, Mr. Schupp reported that MTS's complete logo would be displayed along with its web site address on each wrap. In response to a question from Mr. Rindone, Mr. Schupp stated that wraps can be removed at any time, and the program can also be revisited at any time.

Mr. Rindone stated that the current solid-red trolley is a very recognizable symbol, and he was reluctant to approve a wrap program. He stated that it was because of this reason that he would only support a six-month wrap program. He stated that he felt the program should be brought back to the Board at the end of six months. Chairman Mathis stated that there are 124 trolleys that are not wrapped and reminded the Board that MTS is trying to identify itself as part of the Green movement. He stated that this is an important consideration. Mr. Monroe expressed his support of the solid-green trolley wrap. Mr. Ewin added that having a trolley wrap that generates revenue is better than having a faded trolley running on the system.

Mr. Jablonski pointed out that a memo on MTS Earth Fair activities was placed at the table for each Board member. He stated that it was a very successful event for MTS.

Action Taken

Ms. Atkins moved to approve wrapping five additional trolleys with "green" imagery, MTS ridership messages, and limited corporate branding by third parties as official wrap sponsors with a six-month update to the Board. Mr. Ewin seconded the motion, and the vote was 12 to 0.

31. MTS: Senior and Disabled Lift Replacement Project – Fund Transfer and Contract Award (CIPs 11216, 11221, 11148)

This item was deferred.

Action Taken

No action was taken.

32. MTS: Fare Box Support Equipment – SANDAG MOU and Fund Transfer
(CIP's 11198, 11146, 11187, 11233, 11235, 11197)

Mr. Elliot Hurwitz, MTS Contract Services Administrator, reported that approval of this proposed transfer would allow the purchase of additional farebox support equipment for the South Bay, East County, and Chula Vista divisions. He explained that the funding would come from projects that having funds remaining and are being closed out and from the existing project for these items.

Action Taken

Mr. Emery moved to (1) execute a memorandum of understanding between the San Diego Association of Governments and MTS to transfer capital project funds for fare box support equipment (in substantially the same form as shown in Attachment A of the agenda item); and (2) transfer funds from various MTS projects to Capital Improvement Program 11198 (MTS Contract Services SBMF Miscellaneous Equipment) for fare box support equipment (see Attachment B of the agenda item). Mr. Young seconded the motion, and the vote was 12 to 0 in favor.

33. MTS: Pension Obligation Bonds (OPS 960.6)

Mr. Cliff Telfer, MTS Chief Financial Officer, reminded the Board that MTS issued about \$77.5 million in taxable pension obligation bonds in 2004. He stated that about half of these bonds were variable-rate demand bonds at a rate of 1.87 percent and the other half were fixed. He stated that in August, MTS executed a swap to achieve a synthetic fixed rate of 4.424 percent for these bonds. He stated that the bond market has since developed liquidity problems, and MTS is experiencing a leakage problem of \$50,000 to \$60,000 per month.

Mr. Keith Curry, Public Financial Management (PFM) explained that staff would like to replace MBIA, MTS's POB insurer, with a letter of credit to reduce the market's impact on MTS's variable rate bonds. Mr. Curry explained that problems have developed because rating agencies are increasing the capital charge requirements on bond insurers and have reduced the ratings on some bond insurance providers as a result. He reported that Fitch Ratings have downgraded MBIA from AAA to AA but not Moody's and Standard & Poors. He stated that MTS's bonds have begun to experience a dislocation in terms of rate as a result of these actions. He stated that when he presented this item to the Executive Committee on April 17, 2008, these bonds were 163 basis points over the swap rate. He stated that the bonds are currently 77 basis points over the swap rate now. He stated that once a letter of credit is entered into, the insurer could be dropped or the policy could be put into a trust. He stated that PFM monitors the market situation on a daily basis, and, if it starts to appear that MBIA is righting itself, the recommended transaction may not need to be pursued. He stated the UBS staff members do not see this market problem going away in the near term. He also stated that if MTS were to remarket the bonds into a traditional fixed-rate mode, it would incur a swap termination cost of approximately \$2.3 million. He stated that it would be more cost effective to continue the swap until its expiration in 2012 and consider a fixed-rate remarketing at that time. He stated that entering into an interest-rate swap in August saved approximately \$500,000. Mr. Curry advised the Board that final documents will be brought back to the Board in June for approval.

In response to a question from Mr. Mathis, Mr. Curry reported that the risk to MTS would be if the documents are approved and signed, and the market rights itself the next day.

In response to a question from Mr. Young, Mr. Curry stated that the bond insurer, MBIA, is supposed to have a stronger rating than its client, MTS. He stated that because MBIA does not have a better rating now, a credit enhancement is being pursued through a letter of credit with Dexia Bank. He stated that a letter of credit is more stable and pays for any default on the bonds. He also stated that the cost for the credit enhancement is less than the cost of the market disruption. In response to another question from Mr. Young, Mr. Curry explained that the cost of the letter of credit will be 60 basis points or \$250,000 to \$300,000 for each year with the cost fixed for five years. Mr. Telfer stated that UBS, the bank that holds and sells the POBs, has taken these bonds into their inventory when there were no customers to purchase them. He stated that if they decided to stop doing that, MTS would have to go back to Dexia and pay a bank rate closer to ten percent.

In response to a question from Mr. Rindone, Mr. Curry confirmed that MTS has no option-rate bonds. Mr. Curry also stated that Dexia is one of the largest, strongest European international banks. Mr. Curry confirmed for Mr. Rindone that there could be a potential rate adjustment at the end of the five-year period covered by the letter of credit but that it was likely the rates will be lower. He stated that MTS would also have the option of converting to a fixed rate at that time. He also advised Mr. Rindone that bond insurance agreements are irrevocable, and the agreement with MBIA, for which MTS has paid, will be preserved. Mr. Telfer confirmed for Mr. Monroe that the additional cost incurred by this transaction will be taken from the general fund and will be somewhat offset by pension costs that have been under budget. In response to a question from Mr. Monroe, Mr. Curry stated that MTS's situation is different from that of North County Transit and County of San Diego because they have option-rate bonds, which MTS does not have.

Action Taken

Mr. Ewin moved direct the Chief Financial Officer to work with Public Financial Management to replace MBIA, MTS's pension obligation bond insurer, with a letter of credit to reduce the impact on MTS's variable rate caused by the current liquidity problems within the bond markets. Mr. Emery seconded the motion, and the vote was 9 to 1, with Mr. Young casting the dissenting vote.

REPORT ITEMS:

45. MTS: Year-to-Date Operations Budget Status Report Through February 2008 (FIN 310)

Mr. Marinesi provided the Board with a brief report on the budget status for FY 2008 through February 2008. He reported that MTS was \$1.578 million under budget for this period.

Action Taken

Mr. Monroe moved to receive the MTS Year-to-Date Operations Budget status Report through February 2008. Mr. Ewin seconded the motion, and the vote was 9 to 0 in favor.

60. Chairman's Report

Chairman Mathis made no report.

61. Audit Oversight Committee Chairman's Report

Mr. Ewin, Chairman of the Audit Oversight Committee, reported that each Board member was faxed the draft minutes for the April 17, 2008, Audit Oversight Committee meeting.

62. Chief Executive Officer's Report

The CEO made no report.

63. Board Member Communications

Presentation to Imperial Beach Council: Mr. McLean thanked Ms. Cooney for making a presentation to the Imperial Beach City Council regarding MTS's Capital Improvement Program and security developments.

64. Additional Public Comments on Items Not on the Agenda

There were no additional public comments.

65. Next Meeting Date

The next regularly scheduled Board meeting is Thursday, May 8, 2008.

66. Adjournment

Chairman Mathis adjourned the meeting at 11:22 a.m.



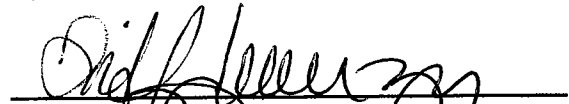
Chairperson
San Diego Metropolitan Transit System

Filed by:



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

Approved as to form:



Office of the General Counsel
San Diego Metropolitan Transit System

Attachment: A. Roll Call Sheet

gail.williams/minutes

METROPOLITAN TRANSIT DEVELOPMENT BOARD
FINANCE WORKSHOP

ROLL CALL

MEETING OF (DATE): 4/24/08

CALL TO ORDER (TIME): 8:14 a.m.

RECESS: _____

RECONVENE: _____

CLOSED SESSION: _____

RECONVENE: _____

ORDINANCES ADOPTED: _____

ADJOURN: 9:14 a.m.

BOARD MEMBER	(Alternate)	PRESENT (TIME ARRIVED)	ABSENT (TIME LEFT)
ATKINS	<input checked="" type="checkbox"/> (Hueso) <input type="checkbox"/>		
CLABBY	<input checked="" type="checkbox"/> (Selby) <input type="checkbox"/>		
EMERY	<input checked="" type="checkbox"/> (Cafagna) <input type="checkbox"/>		
EWIN	<input checked="" type="checkbox"/> (Allan) <input type="checkbox"/>		
FAULCONER	<input type="checkbox"/> (Hueso) <input type="checkbox"/>		<input checked="" type="checkbox"/>
LEWIS	<input checked="" type="checkbox"/> (Hanson-Cox) <input type="checkbox"/>		
MAIENSCHIN	<input checked="" type="checkbox"/> (Hueso) <input type="checkbox"/>		
MATHIS	<input checked="" type="checkbox"/> (Vacant) <input type="checkbox"/>		
MCLEAN	<input checked="" type="checkbox"/> (Janney) <input type="checkbox"/>		
MONROE	<input checked="" type="checkbox"/> (Downey) <input type="checkbox"/>		
RINDONE	<input checked="" type="checkbox"/> (McCann) <input type="checkbox"/>		
ROBERTS	<input type="checkbox"/> (Cox) <input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
RYAN	<input type="checkbox"/> (B Jones) <input type="checkbox"/>		<input checked="" type="checkbox"/>
YOUNG	<input checked="" type="checkbox"/> (Hueso) <input type="checkbox"/>		
ZARATE	<input type="checkbox"/> (Parra) <input type="checkbox"/>		<input checked="" type="checkbox"/>

SIGNED BY THE OFFICE OF THE CLERK OF THE BOARD

Gail McKeever

CONFIRMED BY OFFICE OF THE GENERAL COUNSEL

Andreas

NOT TURNED IN TO ACCOUNTING FOR THE PAYMENT OF FEES. ONLY THE ROLL CALL FOR THE FULL BOARD MEETING ON THIS DATE WAS TURNED IN FOR PAYMENT OF FEES.

METROPOLITAN TRANSIT DEVELOPMENT BOARD
ROLL CALL

MEETING OF (DATE): 4/24/08

CALL TO ORDER (TIME): 9:14 a.m.

RECESS: _____

RECONVENE: _____

CLOSED SESSION: 9:15 a.m.

RECONVENE: 10:13 a.m.

PUBLIC HEARING: _____

RECONVENE: _____

ORDINANCES ADOPTED: _____

ADJOURN: 11:22 a.m.

BOARD MEMBER	(Alternate)	PRESENT (TIME ARRIVED)	ABSENT (TIME LEFT)
ATKINS	<input checked="" type="checkbox"/> (Hueso) <input type="checkbox"/>		10:39 a.m. during AI 33
CLABBY	<input checked="" type="checkbox"/> (Selby) <input type="checkbox"/>		
EMERY	<input checked="" type="checkbox"/> (Cafagna) <input type="checkbox"/>		
EWIN	<input checked="" type="checkbox"/> (Allan) <input type="checkbox"/>		
FAULCONER	<input type="checkbox"/> (Hueso) <input type="checkbox"/>		<input checked="" type="checkbox"/>
LEWIS	<input checked="" type="checkbox"/> (Hanson-Cox) <input type="checkbox"/>		
MAIENSCHHEIN	<input checked="" type="checkbox"/> (Hueso) <input type="checkbox"/>		
MATHIS	<input checked="" type="checkbox"/> (Vacant) <input type="checkbox"/>		
MCLEAN	<input checked="" type="checkbox"/> (Bragg) <input type="checkbox"/>		
MONROE	<input checked="" type="checkbox"/> (Downey) <input type="checkbox"/>		
RINDONE	<input checked="" type="checkbox"/> (McCann) <input type="checkbox"/>		
ROBERTS	<input type="checkbox"/> (Cox) <input checked="" type="checkbox"/>	9:18 a.m. during AI 24	
RYAN	<input type="checkbox"/> (B. Jones) <input type="checkbox"/>		<input checked="" type="checkbox"/>
YOUNG	<input checked="" type="checkbox"/> (Hueso) <input type="checkbox"/>		11:19 a.m. during AI 45
ZARATE	<input type="checkbox"/> (Parra) <input type="checkbox"/>		<input checked="" type="checkbox"/>

SIGNED BY THE OFFICE OF THE CLERK OF THE BOARD

Gail Williams

CONFIRMED BY OFFICE OF THE GENERAL COUNSEL

Jeff Weisger



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

Agenda

Item No. 6

JOINT MEETING OF THE BOARD OF DIRECTORS
for the
Metropolitan Transit System,
San Diego Transit Corporation, and
San Diego Trolley, Inc.

FIN 300

May 8, 2008

SUBJECT:

MTS: INVESTMENT REPORT

RECOMMENDATION:

Receive a report for information.

Budget Impact

None.

DISCUSSION:

Attachment A is a report of MTS investments as of March 2008. The report is broken down into two columns—the first column relates to investments restricted for capital support or debt service, and the second column is the unrestricted portion.

As the schedule shows, the overwhelming bulk of investments are restricted primarily for debt service related to the payments on the 1989/1990 and 1995 Lease and Leaseback transactions. The second column (unrestricted assets) provides the working capital for MTS operations for employee payroll and vendors' goods and services.

Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Tom Lynch, 619.557.4538, tom.lynch@sdmts.com

MAY8-08.6.INVESTMENT RPT.LMUSENGO.doc

Attachment: A. Investment Report



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



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

Agenda

Item No. 30

JOINT MEETING OF THE BOARD OF DIRECTORS
for the
Metropolitan Transit System,
San Diego Transit Corporation, and
San Diego Trolley, Inc.

OPS 980.8

May 8, 2008

SUBJECT:

MTS: MTS ACCESS/ADA SUBURBAN PARATRANSIT OPTION YEAR

RECOMMENDATION:

That the Board of Directors to authorize the Chief Executive Officer (CEO) to execute one option year for each of the following contracts with First Transit, Inc.:

1. Americans with Disabilities (ADA) suburban/flex-paratransit services (in substantially the same format as Attachment A - MTS Doc. No. B0338.4-03); and
2. MTS Access services (in substantially the same format as Attachment B - MTS Doc. No. B0368.4-03).

Budget Impact

Contractual annual rate increase of 3% for ADA paratransit services.

DISCUSSION:

MTS currently has two contracts with First Transit, Inc. to provide MTS Access and ADA Suburban Paratransit Services. Operating funding for these services is provided by local Transportation Development Act (TDA) and TransNet revenue sources. The base term of both five-year contracts expired on June 30, 2005, and a three-year extension was approved by the Board of Directors on February 24, 2005.

The MTS Access contract provides transportation services for Americans with Disabilities Act (ADA) paratransit for the City of San Diego excluding San Ysidro and



some midcounty communities. Meanwhile, the ADA suburban/flex suburban paratransit contract provides transportation services for ADA Paratransit operations in Mid-County (Poway, Rancho Bernardo, and Rancho Penasquitos), East County (Lemon Grove, La Mesa, El Cajon, Santee, and some unincorporated communities), and the South Bay communities.

First Transit has continued to ensure that MTS's ADA paratransit operations experience record productivity levels and high levels of service. In fiscal year 2007, record-high levels in both productivity and on-time performance were achieved. The former is measured via passengers carried per hour, which averaged 2.17. Each 1/10 passenger carried per hour represents approximately \$300,000 in subsidy. Reciprocally, on-time performance moved over 95% in fiscal year 07 with one of the tightest margin-of-error windows in the nation for an operation of this size. MTS has a ten-minute margin of error while most agencies have between a 30- and 40-minute window to be considered "on time."

MTS staff has continued to make a sustained concerted effort to outreach to the community via open discussion forums, committee announcements; e.g. Accessible Services Advisory Committee meetings (ASAC), and the dissemination of new public information specifically describing operating parameters. MTS staff informed ASAC of the staff decision to exercise an option period. ASAC suggested that MTS staff do an outreach session soliciting input regarding how services can be improved, which was subsequently organized and hosted by San Diego Center for the Blind. MTS and First Transit staffs will continue working closely with the disabled community to ensure service parameter awareness and improve in every possible way.

Cost Analysis

The current purchased transportation budget for MTS Access and ADA suburban paratransit is \$8,809,204. The proposed extension unit price increase of 3% is within the Consumer Price Index and is favorable to MTS (as shown in the market rate comparison chart below).

Peer Review / Rate Comparison (Aggregate Average as of 12/27/2007)

Agency	Rate Per Hour
MTS	\$48.76
Los Angeles MTA (Access Services)	\$74.14
Gold Coast Transit	\$42.07
Samtrans	\$37.44
East Bay Bart & AC Transit (Oakland)	\$73.88

Based on the analysis, staff has determined that the cost to exercise this option is fair and reasonable.

Current and Proposed Rates

Contract	FY 08	FY 09
ADA Suburban/Flex Suburban Fixed Monthly Rate	\$146,570	\$150,967
ADA Suburban Variable Hourly Rate Mini-Van	24.19	24.92
ADA Suburban Variable Hourly Rate Mini-Bus	25.12	25.88
MTS Access Variable Hourly Rate	49.86	51.36

Over the next several months, Contract Services staff will be working with the Procurement Department to rebid the contract. Staff anticipates it will take approximately 8 to 12 months to rebid the contract. Staff will also include a piggyback provision in the procurement in the event that other transit agencies wish to participate in the procurement.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Susan Hafner, 619.595.3084, susan.hafner@sdmts.com

MAY8-08.30.MTS ACCESS ADA PARATRANSIT.MCALDER.doc

Attachments: A. Draft MTS Doc. No. B0338.4-03
B. Draft MTS Doc. No. B0368.4-03

**San Diego Metropolitan Transit System
Investment Report
3/31/2008**

	<u>Restricted</u>	<u>Unrestricted</u>	<u>Avg. Rate of Return</u>
Cash and Cash Equivalents	\$ <u>8,565,855</u>	<u>38,338,497</u>	0.71%
Investments - Working Capital	<u>-</u>	<u>59,371,615</u>	3.77%
Cash - Restricted for Capital Support	\$ <u>5,589,483</u>	<u>-</u>	N/A
Investments - Restricted for Debt Service	<u>121,122,791</u>	<u>-</u>	N/A
Total Cash and Investments	\$ <u><u>135,278,129</u></u>	\$ <u><u>97,710,112</u></u>	

Controller: _____ Date: _____

May 8, 2008

DRAFT

MTS Doc. No. B0338.4-03
OPS 980.8

Mr. Nick Promponas
Senior Vice President
First Transit, Inc.
7581 Willow Drive, Suite 103
Tempe, AZ 85283

Dear Mr. Promponas:

Subject: AMENDMENT NO. 4 TO MTS DOC. NO. B0338.0-03 FOR ADA SUBURBAN
PARATRANSIT SERVICES

This letter shall serve as our agreement for professional services as further described below.

SCOPE OF SERVICES

Continue to provide Americans with Disabilities Act (ADA) paratransit services pursuant to the original terms and conditions of the contract during the option year.

SCHEDULE

Work shall begin July 1, 2008, and continue through June 30, 2009.

PAYMENT

Payment shall be based upon the original contract rates under the option years of the price proposal of the original contract. The total cost for the option year of service is expected to be approximately \$3,712,505.

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

Sincerely,

Accepted:

Paul C. Jablonski
Chief Executive Officer

Nick Promponas
First Transit, Inc.

MAY8-08.30.AttA.MTS ACCESS
ADA SUBURBAN.MCALDER

Date: _____

May 8, 2008

DRAFT

MTS Doc. No. B0368.4-03
OPS 980.8

Mr. Nick Promponas
Senior Vice President
First Transit, Inc.
7581 Willow Drive, Suite 103
Tempe, AZ 85283

Dear Mr. Promponas:

Subject: AMENDMENT NO. 4 TO MTS DOC. NO. B0368.0-03 FOR MTS ACCESS SERVICES

This letter shall serve as our agreement for professional services as further described below.

SCOPE OF SERVICES

Continue to provide Americans with Disabilities Act (ADA) paratransit services pursuant to the original terms and conditions of the contract during the option year.

SCHEDULE

Work shall begin July 1, 2008, and continue through June 30, 2009.

PAYMENT

Payment shall be based upon the original contract rates under the option years of the price proposal of the original contract. The total cost for the option year of service is expected to be approximately \$5,688,098.

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

Sincerely,

Accepted:

Paul C. Jablonski
Chief Executive Officer

Nick Promponas
First Transit, Inc.

MAY8-08.30.AttB.MTS ACCESS ADA
SUBURBAN.MCALDER.doc

Date: _____



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

Agenda

Item No. 31

JOINT MEETING OF THE BOARD OF DIRECTORS
for the
Metropolitan Transit System,
San Diego Transit Corporation, and
San Diego Trolley, Inc.

SDAE 700 (PC 91009)

May 8, 2008

SUBJECT:

MTS: CONSTRUCTION AND MAINTENANCE AGREEMENT FOR PARK
BOULEVARD PEDESTRIAN BRIDGE

RECOMMENDATION:

That the Board of Directors direct the Chief Executive Officer (CEO) to execute the Construction and Maintenance Agreement for the Park Boulevard Pedestrian Bridge, and the related easements and right-of-entry permits, in substantially the same format as Attachment A.

Budget Impact

Costs associated with the construction and maintenance of the bridge as well as compensation for the easements will be paid by the City of San Diego. The MTS easement area is a total of 646 square feet. The San Diego and Arizona Eastern (SD&AE) easement is a total of 1,500 square feet. An appraisal was performed by a mutually acceptable appraiser; the total market rate compensation paid to MTS and SD&AE would be \$29,000. MTS staff time is also being reimbursed.

DISCUSSION:

The Centre City Development Corporation (CCDC) and the City of San Diego (City) are proposing to construct a large pedestrian bridge from the south convention center parking structure on the corner of Harbor Drive and Park Boulevard to the ballpark. CCDC is the lead agency for this project. The pedestrian bridge will cross two sets of



Metropolitan Transit System (MTS) is comprised of the Metropolitan Transit Development Board (MTDB) a California public agency, San Diego Transit Corp., and San Diego Trolley, Inc., in cooperation with Chula Vista Transit and National City Transit. MTS is Taxicab Administrator for eight cities. MTDB is owner of the San Diego and Arizona Eastern Railway Company. MTDB Member Agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.

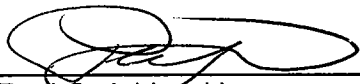
freight tracks owned by Burlington Northern Santa Fe Railroad (BNSF) and three sets of light rail tracks owned by MTS and SD&AE.

As part of the project CCDC and the City have been negotiating with staff to prepare a Construction and Maintenance Agreement for the Park Boulevard Pedestrian Bridge (CMA). The CMA will govern the construction of the bridge by CCDC and City contractors, as well as minor and major maintenance of the bridge to be performed by the City and/or its contractors. The proposed final draft of the agreement is included with this agenda item as Attachment A.

In addition, there are several easements required from SD&AE and MTS to accommodate the north abutment and the bridge superstructure. The SD&AE Board approved granting a bridge, pedestrian, and vehicular-access easement to the City on May 22, 2007. An additional easement is required from the MTS property to complete the entitlements. (The easements are attached as Exhibit B to the CMA Agreement.)

Highlights of the agreement are as follows:

1. MTS and SD&AE grant to the City the right to construct, operate, and maintain the Park Boulevard Pedestrian Bridge (Bridge) in exchange for \$29,000.
2. City must maintain the Bridge at its sole cost and expense.
3. City agrees to indemnify and hold harmless MTS and its subsidiaries for any damages caused by the City or its contractors. MTS agrees to indemnify the City for any damages caused by the negligence of MTS. Each party will be responsible for its own defense in the event that both parties are alleged to have been negligent.
4. City will maintain appropriate insurance coverage and require any contractor to do the same throughout the duration of the CMA.
5. The agreement may only be terminated if the City fails to perform its obligations.
6. There is a dispute resolution provision incorporated on page 10 of the CMA.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Tiffany Lorenzen, 619.557.4512, tiffany.lorenzen@sdmts.com

MAY8-08.31.PARKBLVDPEDBRIDGE.TLOREN.doc

Attachment: A. Construction and Maintenance Agreement for Park Boulevard Pedestrian Bridge

**CONSTRUCTION AND MAINTENANCE AGREEMENT FOR THE PARK
BOULEVARD PEDESTRIAN BRIDGE**

THIS CONSTRUCTION AND MAINTENANCE AGREEMENT (“CMA”) is made and entered into this _____ day of _____, 2008, by and between the SAN DIEGO METROPOLITAN TRANSIT SYSTEM (“MTS”), a California public agency, the SAN DIEGO AND ARIZONA EASTERN RAILWAY (SD&AE), a Nevada non-profit corporation (collectively the “Railroad”), and the CITY OF SAN DIEGO, a municipal corporation (“CITY”) (collectively the “Parties”).

RECITALS

WHEREAS, Railroad is the owner of certain railroad right-of-way assets (the “ROW”) located in the City of San Diego. The ROW is in active use by heavy and light-rail operators; and

WHEREAS, CITY proposes to construct the Park Boulevard Pedestrian Bridge (the “Bridge”) at separated grade above the Railroad tracks in substantial compliance with schematic plans attached hereto as Exhibit “A”; and

WHEREAS, the Parties agree that CITY will construct and maintain the Bridge and CITY will reimburse Railroad for all Railroad staff expenses, consultant expenses, and other direct expenses accrued in reviewing, approving, and constructing the Bridge and in preparing this CMA and any other agreements relating to the Bridge, including but not limited to easements for the Bridge and a Right of Entry Permit that allows the CITY’s contractor to enter into the ROW to construct the Bridge;

NOW, THEREFORE, IT IS AGREED:

1. **Easement.** Railroad agrees to grant to CITY easements upon certain portions of the ROW in the City of San Diego, County of San Diego, described in Exhibit “B” and depicted in Exhibit “C” solely for the purpose of constructing, maintaining and operating the Bridge, in strict accordance with the provisions of this CMA. These easements will be granted subject to the prior, continuing, and future rights and obligations of Railroad (including its licensees, successors and assigns) to use the ROW for railroad purposes and other consistent uses, including, but not limited to, existing and future transportation activities, utilities, communication systems, pipeline facilities and appurtenances in, upon, over, across and along the ROW, and there is expressly reserved unto Railroad, and its respective successors and assigns, the right (consistent with the rights herein granted) to construct, reconstruct, maintain, operate, and use any and all existing and future facilities and appurtenances related to the above-referenced uses.

2. **Use.** If CITY shall use the Bridge and/or ROW for any purpose other than as stated in Section 1 above, or fail to act in accordance with the provisions of this CMA, or act in a manner which interferes with the use of the ROW by Railroad (including its licensees, successors and assigns), then Railroad (or its successors and assigns) shall provide CITY with a timely written notice of any claim of default, meet and confer with CITY regarding the claim of default, and allow CITY a reasonable opportunity to cure the default so long as CITY proceeds expeditiously to cure the default. If CITY fails to cure the default in a timely manner, Railroad may exercise its remedies at law or equity against CITY. It is expressly understood and agreed by Railroad that CITY shall use the Bridge without interference or damage to the catenary wires, pipelines, electric transmission lines, telephone lines, telegraph lines, communications systems and other facilities of like character, existing or constructed during the term of this CMA over, under, along and across the Bridge and/or ROW. CITY hereby agrees that it will indemnify and save harmless Railroad from and against any and all liability for any such interference or damage by the CITY or its contractors or agents as more expressly set forth below in paragraph 8.

3. **Limitations.**

(a) **Limitations on Use.**

- (i) CITY shall comply with all applicable terms, conditions, directives and requirements of Railroad's policies regarding rights-of-way and other MTS ordinances, rules and regulations. CITY shall comply with all applicable laws and regulations of the federal, state, county, local governments and all administrative agencies thereof which may have jurisdiction over CITY's construction, maintenance and operation of the Bridge.
- (ii) No use, construction, or maintenance by CITY or on CITY's behalf on the Bridge will interfere with any type of railroad operations on the ROW.
- (iii) CITY shall not leave any personal property or equipment on the ROW unattended at any time.

(b) **Limitations on Easements.** The easements and permission to be granted are without warranty of title of any kind, expressed or implied, and are subject to and subordinate to all prior licenses, leases, easements, restrictions, reservations, conditions, covenants, encumbrances, right-of-ways, liens and claims of title which may in any manner encumber the ROW.

4. **Maintenance of Bridge.** CITY shall maintain at its expense the Bridge and appurtenances constructed pursuant to the terms of this CMA and which are over, under, along and across the ROW. In performing its maintenance obligations in accordance with this Paragraph 4, the CITY and/or its contractors, agents and assigns shall notify Railroad 72 hours prior to any entry onto the ROW for any purpose (except for emergency maintenance and

repairs, in which case CITY shall notify Railroad as soon as is possible under the circumstances) and will comply with Railroad's rules and regulations concerning use of and work within the ROW, and the instructions of Railroad's representatives in relation to the proper manner of protecting Railroad's tracks and traffic moving thereon, pole lines, signals, and other property of Railroad, or its tenants or licensees, at or in the vicinity of any maintenance work, and shall perform such work at such times as shall not endanger or interfere with safe and timely operation of Railroad's track and other facilities.

5. **Right of Entry Permit.** The exercise of any and all rights provided by this CMA is subject to the requirement that the CITY and/or its contractors and agents first obtain a Right of Entry Permit ("ROE Permit") from Railroad prior to entry onto the ROW for the construction or maintenance of the Bridge. The ROE Permit requires that the CITY and/or its contractors and agents procure and maintain in force at all times during the construction contract, the insurance described in this CMA. Railroad shall timely process any applications required to obtain the Permits, and shall not unreasonably deny or delay the issuance of such Permit. The CITY and/or its contractors and agents will comply with all Railroad policies, rules and regulations as stated in the ROE Permit, and the instructions of Railroad's representatives in relation to the proper manner of protecting the railroad tracks and traffic moving thereon, catenary lines, pull lines, signals and other property of Railroad, or their respective tenants or licensees, during the period of construction of the Bridge and shall perform the work at such times and in such a manner so as not to endanger or interfere with the safe and timely operation of the railroad track and other facilities.

6. **Durable Maintenance ROE Permit.** Notwithstanding the foregoing, Railroad hereby grants to City a Durable Maintenance ROE Permit to allow CITY to enter onto the bridge deck enclosure area for routine maintenance of the pedestrian access area of the bridge, including, but not limited to, activities such as trash removal, cleaning of pedestrian walkway, cleaning of pedestrian guardrail, and similar maintenance activities. The Durable Maintenance ROE Permit shall remain effective throughout the life of this Agreement and be subject to all of the terms of this CMA, including but not limited to the indemnity and insurance provisions. Entry onto the ROW by individuals or entities other than the CITY (such as contractors, agents, and non-CITY employees) or entry onto the ROW by CITY for work outside of the bridge deck enclosure area, shall require a separate ROE Permit as specified in paragraph 5.

7. **Notice.** The exercise of any and all rights provided to CITY by this CMA is also subject to the notice requirements set forth in the ROE Permits for the construction and maintenance of the Bridge, prior to entry onto the ROW for any purpose.

8. **Indemnification.**

(a) CITY

CITY shall indemnify, defend and hold harmless MTS, its Board, officers, directors, agents, and employees, Rail America, the San Diego and Imperial Valley Railroad ("SD&IV"), the San Diego and Arizona Eastern Railway (SD&AE), San Diego Trolley, Inc. (SDTI), San

Diego Transit Corporation (SDTC) any other entity performing maintenance work on the ROW, any other entity providing passenger rail operation services for MTS or SD&AE on the ROW, and any other entity providing dispatch services to MTS or SD&AE for the ROW, their officers, directors, agents and employees (“Railroad Indemnitees”), from any and all liability, loss, expense (including reasonable attorneys’ fees and other defense costs), demands, suits, liens, damages, costs, claims, including, but not limited to, third party claims, claims for bodily injury, death, personal injury, or property damage, that are incurred by or asserted against the Railroad Indemnitees arising out of or connected with this CMA, the maintenance of any device or appurtenance implemented under this CMA, and any negligent acts or omissions on the part of the CITY, its Council, officers, agents, contractors, or employees. The requirements as to the types and limits of the insurance coverage to be maintained by the CITY as required by section 9, and any approval of the insurance by MTS and SD&AE, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CITY pursuant to this CMA, including but limited to, the provisions concerning indemnification.

(b) RAILROAD

Railroad agrees to indemnify, defend and hold harmless the CITY and its City Council members, officers, agents, volunteers, contractors, and employees (“City Indemnitees”), from any and all liability, loss, expense (including reasonable attorneys’ fees and other defense costs), demands, suits, liens, damages, costs, claims, including but not limited to, claims for bodily injury, death, personal injury, or property damage, that are incurred by or asserted against the CITY Indemnitees arising out of or connected with any negligent acts or omissions on the part of Railroad, their Boards, officers, agents, contractors, or employees, under or in connection with any work, authority or jurisdiction delegated to Railroad under this CMA.

(c) CONCURRENT NEGLIGENCE

In the event of an act or acts of concurrent negligence which results in the filing of a demand, claim, or complaint against the Parties, each party shall defend and represent itself such that each party shall bear its own costs and attorney’s fees.

9. **Insurance.** The CITY, at its sole cost and expense, shall procure and maintain the following insurance:

(a) General Liability

- (i) The CITY shall be self-insured for its general liability coverage up to \$5 million. The CITY shall participate in large risk pool CSAC-EIA/CPEIA coverage which provides excess coverage from \$5 million to \$15 million, or in a similar program of insurance providing these limits and scope of coverage. The CITY may determine from time to time to increase the amount of self-insurance coverage. If the CITY makes a determination to increase the self-insurance amount, the large risk pool coverage

will apply over the self-insurance amount. The CITY must declare the self-insurance amount, if it differs from the amount set forth above, which must be acceptable to MTS. If the increased self-insurance amount is not acceptable to MTS, the CITY will purchase insurance coverage for this CMA, as MTS may require, to reduce the self-insurance amount to a level acceptable to MTS and reasonable to the CITY.

- (ii) The coverage described above shall cover bodily injury (including death) and property damage liability, owned and non-owned equipment, and blanket contractual liability.
- (iii) The policies shall not have endorsement limitations relating to operations on or near railroad property.
- (iv) 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), San Diego Transit Corporation (SDTC), and their directors, officers, agents, and employees as additional insureds as their interests may appear.

(b) Automobile Liability

- (i) The CITY shall be self-insured for its automobile liability coverage up to \$5 million. The CITY shall participate in large risk pool CSAC-EIA/CPEIA coverage which provides excess coverage from \$5 million to \$15 million, or in a similar program of insurance providing these limits and scope of coverage. The CITY may determine from time to time to increase the amount of self-insurance coverage. If the CITY makes a determination to increase the self-insurance amount, the large risk pool coverage will apply over the self-insurance amount. The CITY must declare the self-insurance amount, if it differs from the amount set forth above, which must be acceptable to MTS. If the increased self-insurance amount is not acceptable to MTS, the CITY will purchase insurance coverage for this CMA, as MTS may require, to reduce the self-insurance amount to a level acceptable to MTS and reasonable to the CITY.
- (ii) The insurance shall indemnify against loss from liability imposed by law for damages on account of bodily injury, property damage, and personal injury. The automobile coverage shall cover all owned, non-owned and hired automobiles.

(c) **Workers Compensation.** CITY shall cover or insure under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the Right-of-Way, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. CITY shall provide employers' liability insurance in the amount of not less than two million dollars per accident for bodily injury and disease. By its signature hereunder, CITY certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and it will comply with such provisions in connection with any work performed on the Site. Any persons providing services with or on behalf of the CITY shall be covered by workers' compensation (or qualified self-insurance.) CITY waives any rights of subrogation against MTS, SD&AE, or any of their subsidiaries, and the policy form must permit and accept such waiver.

(d) **Railroad Protective Insurance.** CITY shall remove any exclusions relating to performance of operations within the vicinity of any railroad, bridge, trestle, track, roadbed, tunnel, underpass, or crossing from its General Liability Coverage for both the self insured and excess policies or purchase a separate Railroad Protective Liability policy.

(e) For any claims arising out of or connected with this CMA regarding the maintenance of any device or appurtenance implemented under this CMA, and any negligent acts or omissions on the part of the CITY, its Council, officers, agents, contractors, or employees, or the CITY's operations or activities, CITY's insurance shall be primary insurance to MTS, SDTI, SDTC, SD&AE, SD&IV, and their directors, officers, employees, contractors, agents or authorized volunteers. Any insurance, self-insurance or other coverage maintained by MTS, SDTI, SDTC, SD&AE, SD&IV, and their directors, officers, employees, agents or authorized volunteers shall not contribute to it. All policies and coverages shall contain a provision for 30 days written notice by the Insurer(s) to the MTS Contracts Specialist of any cancellation or material reduction of coverage. A ten-day notice is required for non-payment of premium.

(f) The CITY shall insure that every contractor or subcontractor retained to perform the construction or maintenance of the Bridge, who enters upon, uses, or performs any work upon the ROW by or on behalf of CITY shall provide to MTS evidence of insurance as follows:

- (i) **Commercial General Liability.** At all times during this contract and, with respect to Products and Completed Operations Liability, for 12 months following the acceptance of the work by MTS, Contractor agrees to maintain Commercial General Liability Insurance for bodily injury and property damage in an occurrence form and with insurance companies acceptable to MTS with minimum policy limits of \$5 million dollars (per occurrence) for any general contractor and \$3 million dollars (per occurrence) for any sub-contractors. Commercial General Liability Insurance must include coverage for the following:

- Premises/Operations Liability
- Aggregate Limits per Project
- Products/Completed Operations Liability
- No Explosion, Collapse, and Underground (XCU) exclusion
- Contractual Liability, with respect to this agreement
- Personal Injury Liability
- Broad Form Property Damage
- Independent Contractors

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), San Diego Transit Corporation (SDTC), the City of San Diego (CITY), and their directors, officers, agents, and employees as additional insureds as their interests may appear. All general liability coverages required under this Section 9(f) are PRIMARY and that any insurance of MTS, SDTI, SD&AE, SD&IV, SDTC, and the CITY shall be excess and noncontributory (endorsement required).

Automobile Liability. At all times during this contract, Contractor agrees to maintain Automobile Liability Insurance for bodily injury and property damage including coverage for all owned, nonowned, and hired vehicles at a minimum policy limit of \$5 million dollars. 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), San Diego Transit Corporation (SDTC), the City of San Diego (CITY), and their directors, officers, agents, and employees as additional insureds as their interests may appear.

- (ii) Workers' Compensation/Employer Liability. At all times during this contract, Contractor agrees to maintain Workers' Compensation and Employers' Liability Insurance in compliance with the applicable statutory requirements at a minimum policy limit of \$1 million dollars. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, SDTC, and the CITY and the policy form must permit and accept such waiver.
- (iii) Railroad Protective Insurance. Remove any exclusions relating to performance of operations within the vicinity of any railroad, bridge, trestle, track, roadbed, tunnel, underpass, or crossing from

its General Liability Coverage, or purchase a separate Railroad Protective policy in the amount of \$5,000,000 in the name of MTS.

- (iv) 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.

10. **Co-operation in Defense of Claims.** The Parties agree to co-operate in good faith to seek a prompt disposition, by way of dismissal or summary judgment, of any claim or litigation alleging liability of any party to this MOU, based on the construction, maintenance or operation of the Bridge.

11. **Default; Termination.**

(a) In the event that CITY fails to perform any obligation under this CMA, CITY shall pay all costs and expenses incurred by Railroad in obtaining performance of such obligations, including costs of suit and reasonable attorney's fees. If CITY uses the ROW for any purpose not expressly authorized by this CMA or fails to act strictly in accordance with the terms and conditions of this CMA, and if such default is not corrected within 30 days' notice from Railroad to CITY, Railroad may prevent CITY from entering the ROW until the default is corrected. If Railroad determines that any default by CITY does or has the potential to cause a danger to the ROW, light rail vehicle operations, or railroad operations, and CITY fails or refuses to timely correct the default, Railroad may perform such work as is reasonable and necessary to remedy the danger, and CITY shall reimburse Railroad for all costs and damages so incurred for correcting the default. If CITY fails or refuses to correct any default after such notice, or refuses to timely reimburse Railroad for the work required to remedy the danger, Railroad may, upon thirty (30) days additional notice and in addition to any other remedy provided by law, terminate this CMA and prevent CITY from entering the ROW thereafter.

(b) In the event Railroad fails to perform any of its obligations under this CMA, CITY shall give Railroad written notice of the nature of the default and the steps required to remedy the default. If the default is not cured within thirty (30) days of the delivery of CITY's notice, CITY may proceed to enforce its rights and protect its interests under this CMA. Railroad shall pay all costs and expenses incurred by CITY in obtaining performance of the obligations, and protecting CITY's interests hereunder, including costs of suit and reasonable attorney's fees. In no case will any enforcement action modify the ownership or operation of the ROW.

(c) Termination of this CMA shall not release either party from any liability or obligation hereunder resulting from an event which occurred before termination.

12. **Notices.** All notices to be given under this CMA shall be in writing and either:

(a) Sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered upon actual receipt or one (1) business day after deposit with this courier, whichever occurs first; or

(b) Sent by telecopy or similar means, if a copy of the notice is also sent by United States Mail, in which case notice shall be deemed delivered on transmittal by facsimile provided that a transmission report is generated reflecting the accurate transmission of the notice, as follows:

Metropolitan Transit System/San Diego and Arizona Eastern Railway
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101
Attn: Manager of Real Estate Assets
Tel: 619-595-4903 Fax: 619-744-5986

City of San Diego
William Anderson, Deputy Chief Operating Officer
202 C Street, Suite 900
San Diego, CA 92101
Tel: 619-236-6361 Fax: 619-236-7344

Copy to:

City of San Diego
Carol Leone
Deputy City Attorney
1200 Third Avenue
Suite 1100
San Diego, CA 92101
Tel: 619-533-5800 Fax: 619-533-5866

Centre City Development Corporation
William Yee, Project Manager
225 Broadway
11th Floor
San Diego, CA 92101
Tel: 619-533-7140 Fax: 619-236-9148

These addresses may be changed by written notice to the other Parties provided that no notice of a change of address shall be effective until actual receipt by the Parties of the notice. Copies of notices, if any are so indicated, are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

13. **Waiver.** Any party's failure to enforce or exercise its rights with respect to any provision hereof shall not be construed as a waiver of such rights or of such provision.

14. **Laws, Venue, and Attorneys' Fees.** This CMA shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this CMA, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any claim, legal action or proceeding between the parties arising under or concerning this CMA, the prevailing party(ies) shall be entitled to reasonable attorneys' fees and expenses as part of the judgment resulting there from.

15. **Dispute Resolution.**

(a) The Parties agree that they shall first meet, through their senior staff representatives, to attempt to informally resolve any dispute that arises under this CMA.

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

(c) Any dispute not resolved through the mediation required by paragraph (b) of this Section, may proceed to litigation unless the Parties agree in writing to submit the dispute to binding arbitration.

IN WITNESS WHEREOF, the parties hereto have caused this CMA to be executed by and through their respective officers duly authorized on the date written below their signatures.

METROPOLITAN TRANSIT SYSTEM

CITY OF SAN DIEGO

By: _____
Paul C. Jablonski, Chief Executive Officer

By: _____
William Anderson, Deputy Chief Operating Officer

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Office of General Counsel

By: _____
Deputy City Attorney

SAN DIEGO & ARIZONA EASTERN RAILWAY

By: _____
Paul C. Jablonski, President

APPROVED AS TO FORM:

By: _____
Of Counsel

List of Exhibits

- A. Bridge Schematic Plans
- B. Legal Description and Plat Map for MTS Easement
- C. Legal Depiction and Plat Map for SDAE Easement

Exhibit B

LEGAL DESCRIPTION
BRIDGE & PEDESTRIAN AND NON-VEHICULAR ACCESS EASEMENT
IN APN 535-570-13, 15

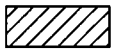
THOSE PORTIONS OF LOTS E, F IN BLOCK 158 AND LOT L IN BLOCK 162 IN HORTON'S ADDITION IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF BY L.L. LOCKLING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AS DEED BOOK 13, PAGE 522; TOGETHER WITH ALL OF COMMERCIAL STREET LYING BETWEEN SAID BLOCKS LYING WITHIN THE FOLLOWING DESCRIBED LAND: THAT LAND CONVEYED TO THE SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD BY DEED RECORDED DECEMBER 29, 1988 AS FILE NO. 88-673763 OF OFFICIAL REORDS, BEING PORTION OF PARCEL C25, D1-24 OF SAID DEED, ALL AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINES OF PARK BOULEVARD AND 7TH AVENUE, AS DEDICATED TO PUBLIC USE ON PARCEL MAP NO. 18855, FILED DECEMBER 7, 2001 IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AS SAID CENTERLINES ARE SHOWN AND MONUMENTED ON SAID PARCEL MAP; THENCE NORTH 45°24'05" EAST 133.16 FEET ALONG SAID CENTERLINE OF PARK BOULEVARD; THENCE LEAVING SAID CENTERLINE SOUTH 44°35'55" EAST 72.00 FEET TO A POINT IN THE EAST-ERLY RIGHT-OF-WAY LINE OF SAID PARK BOULEVARD, SAID POINT BEING ON AN ARC HAVING A RADIUS OF 580.00 FEET, CONCAVE NORTHWESTERLY, A RADIAL LINE TO WHICH POINT BEARS SOUTH 74°48'23" EAST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 21°01'45" AN ARC DISTANCE OF 212.88 FEET TO A POINT IN THE NORTHEASTERLY LINE OF THE ABOVE-DESCRIBED SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD LAND, BEING THE **TRUE POINT OF BEGINNING**, SAID POINT BEING ALSO IN THE ARC OF A 2914.93 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY, A RADIAL LINE TO WHICH BEARS NORTH 39°55'01" WEST; THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE AND SAID ARC THROUGH A CENTRAL ANGLE OF 00°16'23", A DISTANCE OF 13.89 FEET; THENCE LEAVING SAID NORTHEASTERLY LINE SOUTH 40°16'47" WEST 20.01 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF SAID SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD LAND; THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE NORTH 56°18'53" WEST, A DISTANCE OF 31.49 FEET; THENCE LEAVING SAID SOUTHWESTERLY LINE NORTH 47°19'04" EAST 23.62 FEET TO A POINT IN THE ABOVE-DESCRIBED NORTHEASTERLY LINE OF SAID SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD LAND; THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE AND SAID ARC THROUGH A CENTRAL ANGLE OF 00°17'06", A DISTANCE OF 14.50 FEET TO THE **TRUE POINT OF BEGINNING**.

AREA: 0.015 ACRES, MORE OR LESS

GARY A. LINTVEDT, LS 4593
MY LICENSE EXPIRES 9/30/06

DATE



BRIDGE & PEDESTRIAN AND NON-VEHICULAR
ACCESS EASEMENT PARCEL 'A'
AREA: 646 SF (0.015 AC)

BASIS OF BEARINGS:

CENTERLINE OF PARK BLVD
PER P.M. 18855
I.E. NORTH 45°24'05" EAST

APN:

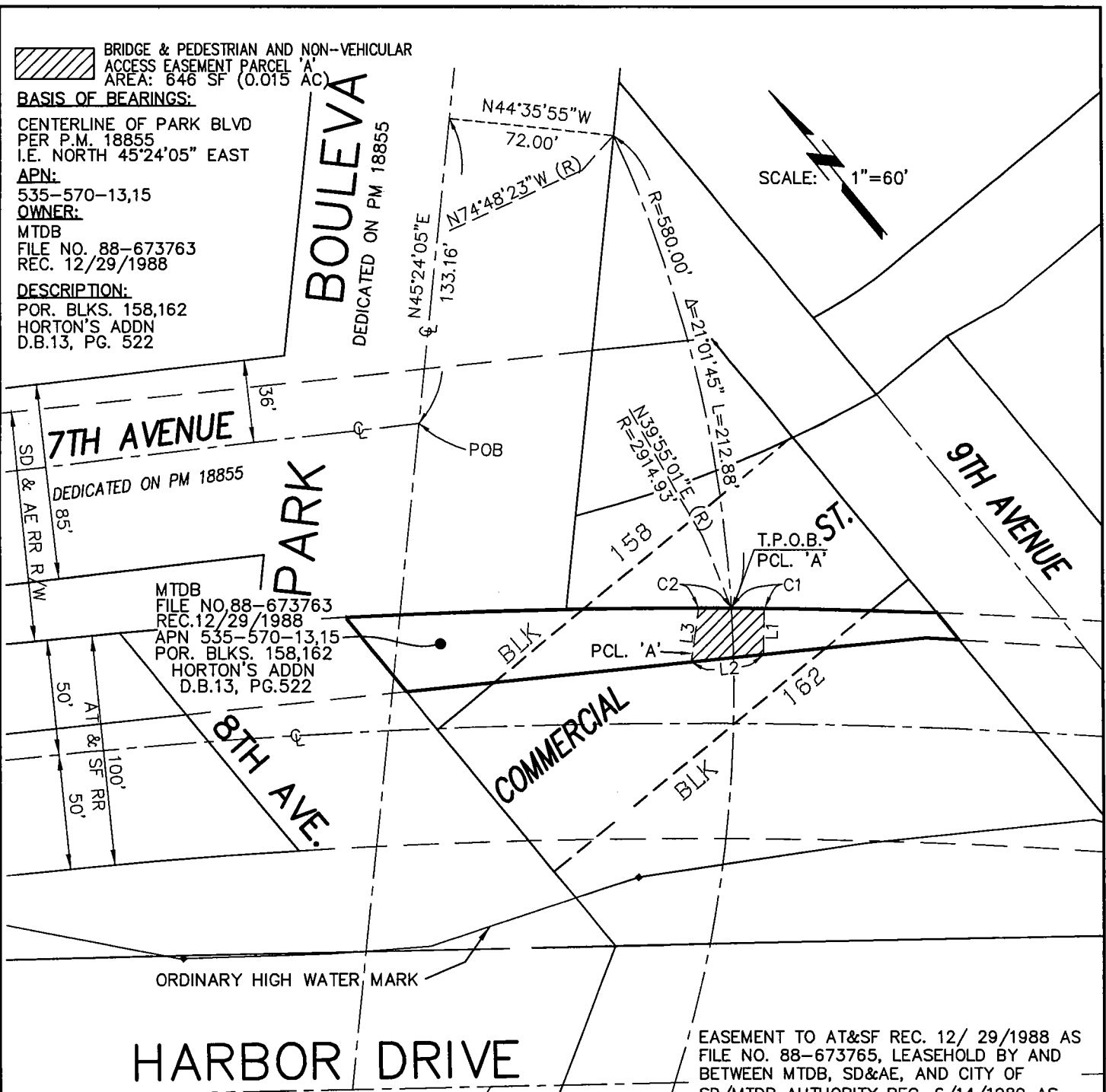
535-570-13,15

OWNER:

MTDB
FILE NO. 88-673763
REC. 12/29/1988

DESCRIPTION:

POR. BLKS. 158,162
HORTON'S ADDN
D.B.13, PG. 522



MTDB
FILE NO. 88-673763
REC. 12/29/1988
APN 535-570-13,15
POR. BLKS. 158,162
HORTON'S ADDN
D.B.13, PG.522

HARBOR DRIVE

(SDUPD DOC. 71)

DEDICATED PER RESOLUTION NO. 227

LINE DATA

NUMBER	BEARING	DIST.
L1	N40°16'47"E	20.01'
L2	N56°18'53"W	31.49'
L3	N47°19'04"E	23.62'

CURVE DATA

NUMBER	RADIUS	DELTA	LENGTH
C1	2914.93'	00°16'23"	13.89'
C2	2914.93'	00°17'06"	14.50'

EASEMENT TO AT&SF REC. 12/ 29/1988 AS
FILE NO. 88-673765, LEASEHOLD BY AND
BETWEEN MTDB, SD&AE, AND CITY OF
SD/MTDB AUTHORITY REC. 6/14/1989 AS
FILE NO. 89-312804, AND SUBLEASE
BETWEEN CITY OF SD AND CITY OF SD/MTDB
AUTHORITY REC. 6/14/1989 AS FILE NO.
89-312805, ALL AFFECT MTDB PARCEL (APN
535-570-13, 15).

**BRIDGE & PEDESTRIAN AND NON-VEHICULAR
ACCESS EASEMENTS**

DATE: 06/07/08 W.O. 12386 DRFT: SD CHK'D BY: BAS




LINTVEDT, McCOLL
& ASSOCIATES

- PLANNING
- CIVIL ENGINEERING
- LAND SURVEYING

2810 Camino Del Rio South, Suite 200, San Diego, CA 92108 (619)294-4440 Fax(619)294-4442

386ESMT3A

MTS DOC. NO. _____

 RIGHT OF ENTRY PERMIT AREA
PARCEL 'B'
AREA: 5,932 SF (0.136 AC)

BASIS OF BEARINGS:

CENTERLINE OF PARK BLVD
PER P.M. 18855
I.E. NORTH 45°24'05" EAST

APN:

535-570-13,15

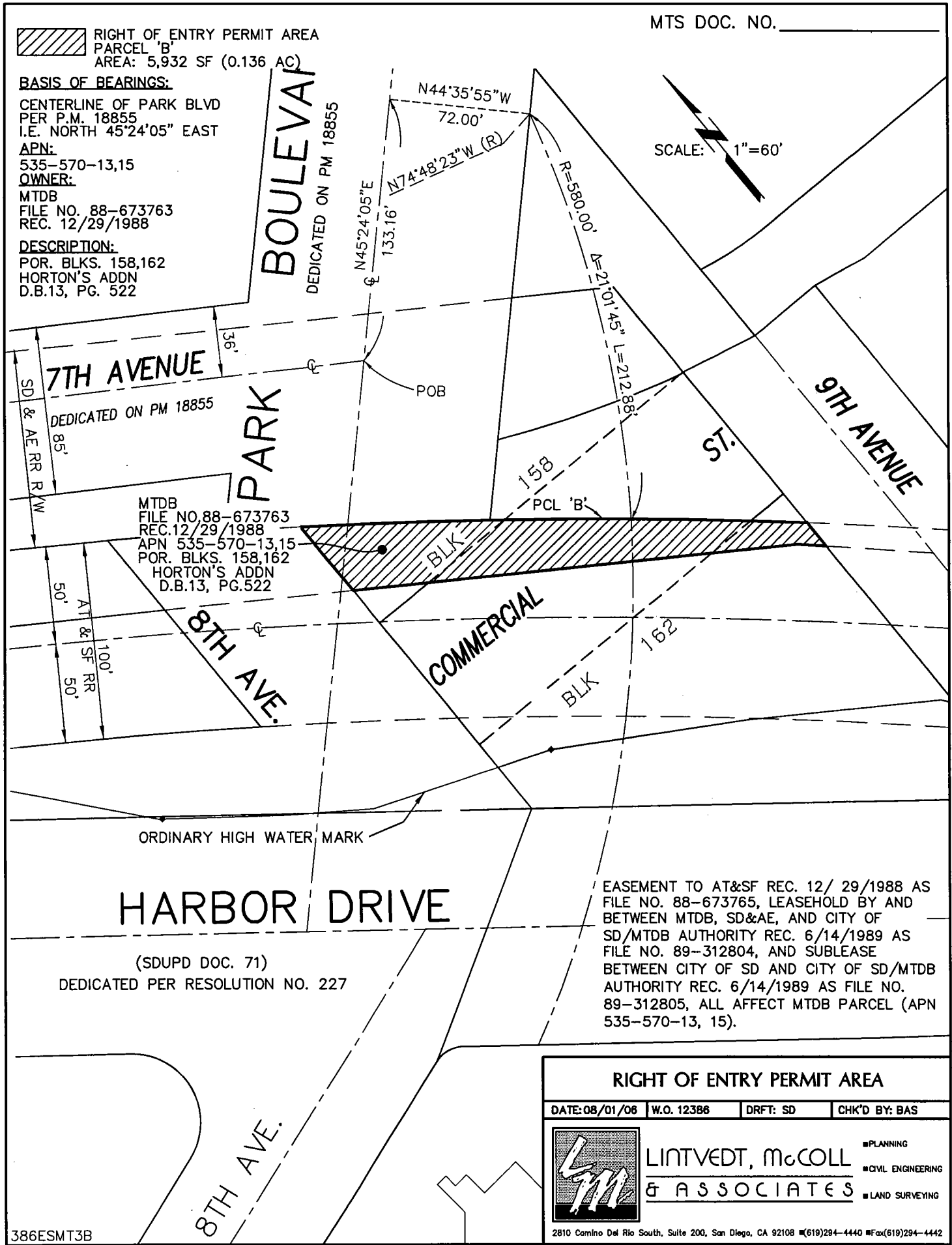
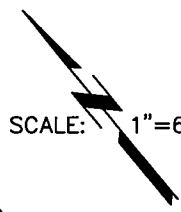
OWNER:

MTDB
FILE NO. 88-673763
REC. 12/29/1988

DESCRIPTION:

POR. BLKS. 158,162
HORTON'S ADDN
D.B.13, PG. 522

SCALE: 1"=60'



MTDB
FILE NO. 88-673763
REC. 12/29/1988
APN 535-570-13,15
POR. BLKS. 158,162
HORTON'S ADDN
D.B.13, PG. 522

HARBOR DRIVE

(SDUPD DOC. 71)
DEDICATED PER RESOLUTION NO. 227

EASEMENT TO AT&SF REC. 12/ 29/1988 AS
FILE NO. 88-673765, LEASEHOLD BY AND
BETWEEN MTDB, SD&AE, AND CITY OF
SD/MTDB AUTHORITY REC. 6/14/1989 AS
FILE NO. 89-312804, AND SUBLEASE
BETWEEN CITY OF SD AND CITY OF SD/MTDB
AUTHORITY REC. 6/14/1989 AS FILE NO.
89-312805, ALL AFFECT MTDB PARCEL (APN
535-570-13, 15).

RIGHT OF ENTRY PERMIT AREA

DATE: 08/01/06 W.O. 12386 DRFT: SD CHK'D BY: BAS



LINTVEDT, McCOLL
& ASSOCIATES

- PLANNING
- CIVIL ENGINEERING
- LAND SURVEYING

2810 Camino Del Rio South, Suite 200, San Diego, CA 92108 (619)284-4440 Fax(619)294-4442

386ESMT3B

Exhibit C

LEGAL DESCRIPTION
BRIDGE & PEDESTRIAN AND NON-VEHICULAR ACCESS EASEMENT
IN APNs 535-563-18 AND 535-570-18

PARCEL 'A'

ALL OF PARCEL 18 OF PARCEL MAP NO. 18855, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 7, 2001.

AREA: 0.106 ACRES, MORE OR LESS

PARCEL 'B'

THOSE PORTIONS OF LOTS E, F, G AND H IN BLOCK 158 OF HORTON'S ADDITION IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AS DEED BOOK 13, PAGE 522; TOGETHER WITH ALL OF COMMERCIAL STREET ADJOINING SAID LAND ON THE SOUTH THAT WOULD REVERT TO SAID LAND BY OPERATION OF LAW, ALL LYING WITH THE 100' RIGHT OF WAY OF THE SAN DIEGO AND ARIZONA EASTERN RAILWAY COMPANY DESCRIBED IN DEED RECORDED IN BOOK 414 PAGE 211 OF DEEDS, AND EXCEPTING THEREFROM ALL OF SAID LAND LYING WITHIN PARCEL MAP NO. 18855, ALL AS PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINES OF PARK BOULEVARD AND 7TH AVENUE, AS DEDICATED TO PUBLIC USE ON PARCEL MAP NO. 18855, FILED DECEMBER 7, 2001 IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AS SAID CENTERLINES ARE SHOWN AND MONUMENTED ON SAID PARCEL MAP; THENCE NORTH 45°24'05" EAST 133.16 FEET ALONG SAID CENTERLINE OF PARK BOULEVARD; THENCE LEAVING SAID CENTERLINE SOUTH 44°35'55" EAST 72.00 FEET TO A POINT IN THE EASTERLY RIGHT-OF-WAY LINE OF SAID PARK BOULEVARD, SAID POINT BEING ON AN ARC HAVING A RADIUS OF 580.00 FEET, CONCAVE NORTHWESTERLY, A RADIAL LINE TO WHICH POINT BEARS SOUTH 74°48'23" EAST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 15°05'09" AN ARC DISTANCE OF 152.71 FEET TO A POINT IN THE NORTHEASTERLY LINE OF THE ABOVE-DESCRIBED SAN DIEGO AND ARIZONA EASTERN LAND, BEING THE **TRUE POINT OF BEGINNING**, SAID POINT BEING ALSO IN THE ARC OF A 538.22 FOOT RADIUS CURVE, CONCAVE NORTHERLY, A RADIAL LINE TO WHICH BEARS SOUTH 18°24'30" WEST; THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE AND SAID ARC THROUGH A CENTRAL ANGLE OF 01°27'08", A DISTANCE OF 13.64 FEET; THENCE LEAVING SAID NORTHEASTERLY LINE SOUTH 32°41'00" WEST 65.45 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF SAID SAN DIEGO AND

ARIZONA EASTERN LAND, SAID POINT BEING ALSO IN THE ARC OF A 2914.93 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY, A RADIAL LINE TO WHICH BEARS NORTH $40^{\circ}11'23''$ EAST; THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE AND SAID ARC THROUGH A CENTRAL ANGLE OF $00^{\circ}33'29''$, A DISTANCE OF 28.39 FEET; THENCE LEAVING SAID SOUTHWESTERLY LINE NORTH $37^{\circ}47'48''$ EAST 56.13 FEET TO A POINT IN THE ABOVE-DESCRIBED NORTHEASTERLY LINE OF SAID SAN DIEGO AND ARIZONA EASTERN LAND; THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE AND SAID ARC THROUGH A CENTRAL ANGLE OF $01^{\circ}05'40''$, A DISTANCE OF 10.28 FEET TO THE **TRUE POINT OF BEGINNING**.

AREA: 0.036 ACRES, MORE OR LESS

GARY A. LINTVEDT, LS 4593
MY LICENSE EXPIRES 9/30/06

DATE

 BRIDGE & PEDESTRIAN AND NON-VEHICULAR ACCESS EASEMENT PARCEL 'A'
AREA: 4,639 SF (0.106 AC)

 BRIDGE & PEDESTRIAN AND NON-VEHICULAR ACCESS EASEMENT PARCEL 'B'
AREA: 1,557 SF (0.036 AC)

BASIS OF BEARINGS:

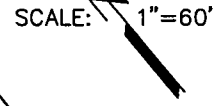
CENTERLINE OF PARK BLVD PER P.M. 18855
I.E. NORTH 45°24'05" EAST

APN:
535-563-18 & 535-570-18

OWNER:
SD&AE RWY CO.

DESCRIPTION:
PARCEL 18 OF PM 18855
& POR. BLK. 158 HORTON'S
ADDN D.B.13, PG. 522

SCALE: 1"=60'



BOULEVA
DEDICATED ON PM 18855

N45°24'05"E
133.16'

N44°35'55"W
72.00'

N7A°48'23"W (R)

PCL 11
PM 18855
APN 535-563-11

PCL 'A'

T.P.O.B.
PCL 'A'

SD&AE RWY CO.
DB405, PG411
REC. 2/1/1907
APN 535-563-18
PCL 18
PM 18855

SD&AE RWY CO.
DB414, PG211
REC. 6/6/1907
APN 535-570-18
POR. BLK. 158
HORTON'S ADDN
D.B.13, PG.522

PCL 'B'

9TH AVENUE

7TH AVENUE

SD & AE RR R/W
85'
DEDICATED ON PM 18855

PARK

8TH AVE.

COMMERCIAL

SEE DETAIL ON SHEET 2

ORDINARY HIGH WATER MARK

HARBOR DRIVE

(SDUPD DOC. 71)
DEDICATED PER RESOLUTION NO. 227

120'

BRIDGE & PEDESTRIAN AND NON-VEHICULAR ACCESS EASEMENTS

DATE: 07/27/08 W.O. 12386 DRFT: SD CHK'D BY: BAS



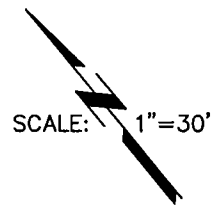
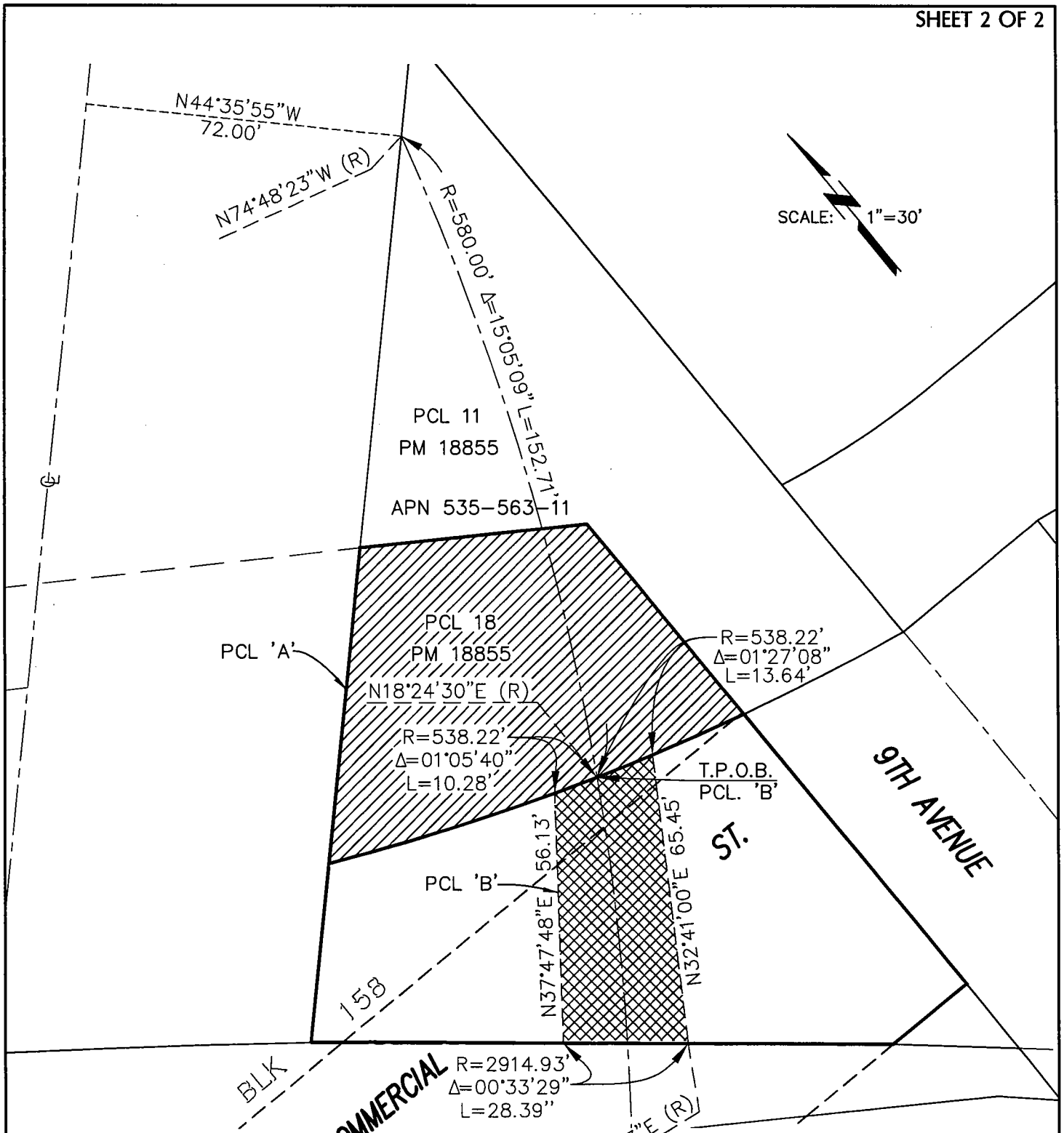
**LINTVEDT, McCOLL
& ASSOCIATES**

- PLANNING
- CIVIL ENGINEERING
- LAND SURVEYING

2810 Camino Del Rio South, Suite 200, San Diego, CA 92108 (619)294-4440 Fax(619)294-4442

386ESMT1A-B

8TH AVE.



DETAIL PARCEL 'B'

BRIDGE & PEDESTRIAN AND NON-VEHICULAR ACCESS EASEMENTS

DATE: 07/27/08 W.O. 12386 DRFT: SD CHK'D BY: BAS



LINTVEDT, McCOLL
& ASSOCIATES

- PLANNING
- CIVIL ENGINEERING
- LAND SURVEYING

 BRIDGE & PEDESTRIAN AND NON-VEHICULAR ACCESS EASEMENT PARCEL 'A'
AREA: 4,639 SF (0.106 AC)

 BRIDGE & PEDESTRIAN AND NON-VEHICULAR ACCESS EASEMENT PARCEL 'B'
AREA: 1,557 SF (0.036 AC)



RIGHT OF ENTRY PERMIT AREA
PARCEL 'C'
AREA: 12,095 SF (0.278 AC)

BASIS OF BEARINGS:

CENTERLINE OF PARK BLVD
PER P.M. 18855
I.E. NORTH 45°24'05" EAST

APN:

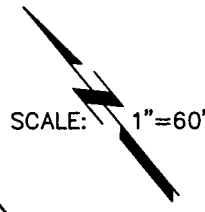
535-563-18 & 535-570-18

OWNER:

SD&AE RWY CO.

DESCRIPTION:

PARCEL 18 OF PM 18855
& POR. BLK. 158 HORTON'S
ADDN D.B.13, PG. 522



SCALE: 1"=60'

BOULEVA
DEDICATED ON PM 18855

PARK

7TH AVENUE
DEDICATED ON PM 18855

9TH AVENUE

8TH AVE.

COMMERCIAL

HARBOR DRIVE

(SDUPD DOC. 71)
DEDICATED PER RESOLUTION NO. 227

SD&AE RWY CO.
DB405, PG411
REC. 2/1/1907
APN 535-563-18
PCL 18
PM 18855

SD&AE RWY CO.
DB414, PG211
REC. 6/6/1907
APN 535-570-18
POR. BLK. 158
HORTON'S ADDN
D.B.13, PG.522

BLK
158

BLK
162

ORDINARY HIGH WATER MARK

8TH AVE.

RIGHT OF ENTRY PERMIT AREA

DATE: 08/01/08 W.O. 12388 DRFT: SD CHK'D BY: BAS



**LINTVEDT, McCOLL
& ASSOCIATES**

- PLANNING
- CIVIL ENGINEERING
- LAND SURVEYING

2810 Camino Del Rio South, Suite 200, San Diego, CA 92108 (619)294-4440 Fax (619)294-4442



Metropolitan Transit System

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

Agenda

Item No. 32

JOINT MEETING OF THE BOARD OF DIRECTORS
for the
Metropolitan Transit System,
San Diego Transit Corporation, and
San Diego Trolley, Inc.

LEG 491 (PC 50633)

May 8, 2008

SUBJECT:

MTS: INCREASED AUTHORIZATION FOR LEGAL SERVICES

RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to enter into a contract amendment (in substantially the same form as Attachment A - MTS Doc. No. G1111.1-07) with the Law Offices of Wheatley Bingham & Baker for legal services and ratify prior amendments entered into under the CEO's authority.

Budget Impact

Not to exceed \$75,000 for Law Offices of Wheatley Bingham & Baker. Recommended amounts are contained within FY 2008 budget.

DISCUSSION:

On January 18, 2007, the Board approved a list of qualified attorneys for general liability and workers' compensation for use by MTS, San Diego Trolley, Inc. (SDTI), and San Diego Transit Corporation (SDTC) (hereinafter referred to as the Agencies) staffs on an as-needed basis. Thereafter, MTS began to contract with approved attorneys for various amounts depending upon current and anticipated needs.

Pursuant to Board Policy No. 52 (Procurement of Goods and Services), the CEO may enter into contracts with service providers for up to \$100,000. The Board must approve all agreements in excess of \$100,000. Mr. Bingham has multiple cases that are scheduled to proceed to trial, and the total cost of their legal services will exceed the CEO's authority.



Metropolitan Transit System (MTS) is comprised of the Metropolitan Transit Development Board (MTDB) a California public agency, San Diego Transit Corp., and San Diego Trolley, Inc., in cooperation with Chula Vista Transit and National City Transit. MTS is Taxicab Administrator for eight cities. MTDB is owner of the San Diego and Arizona Eastern Railway Company. MTDB Member Agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.

Wheatley Bingham & Baker are currently under contract with the Agencies for \$100,000. Attorney Roger Bingham has successfully defended the Agencies in a number of tort liability cases. Pending invoices for recent and current services are anticipated to exceed current contract authority due to legal defense costs.

The CEO has approved contracts up to the \$100,000 authority level. Staff is requesting that the Executive Committee forward a recommendation to the Board for approval of MTS Doc. No. G1111.1-07 with Wheatley Bingham & Baker for legal services and ratification of prior contracts/amendments entered into under the CEO's authority.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: James Dow, 619.557.4562, jim.dow@sdmts.com

MAY8-08.32.LEGAL SVCS.JDOW.doc

Attachment: A. MTS Doc. No. G1111.1-07

DRAFT

May 22, 2008

MTS Doc. No. G1111.1-07
LEG 491 (PC 50633)

Mr. Roger Bingham
Wheatley Bingham & Baker
1201 Camino del Mar, Suite 201
Del Mar, CA 92014-2569

Dear Mr. Bingham:

Subject: AMENDMENT NO. 1 TO MTS DOC. NO. G1111.0-07: LEGAL SERVICES – GENERAL
LIABILITY

This letter will serve as Amendment No. 1 to MTS Doc. No. G1111.0-07. This contract amendment authorizes additional costs not to exceed \$75,000 for professional services. The total value of this contract, including this amendment, is \$175,000. Additional authorization is contingent upon MTS approval.

If you agree with the above, please sign below and return the document marked "original" to the Contracts Specialist at MTS. The other copy is for your records.

Sincerely,

Accepted:

Paul C. Jablonski
Chief Executive Officer

Roger Bingham
Wheatley Bingham & Baker

Date: _____

MAY8-08.32.AttA.LEGAL SVCS
WHEATLEY BINGHAM.JDOW.doc



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

Agenda

Item No. 45

JOINT MEETING OF THE BOARD OF DIRECTORS
for the
Metropolitan Transit System,
San Diego Transit Corporation, and
San Diego Trolley, Inc.

SRTP 875

May 8, 2008

SUBJECT:

MTS: STATUS REPORT ON FARE INCREASE

RECOMMENDATION:

That the Board of Directors receive a report on the initial results of the fare-related changes that MTS introduced on January 1, 2008.

Budget Impact

None at this time.

DISCUSSION:

MTS implemented a new fare structure on January 1, 2008, that primarily impacts bus fares and fare policies. Elements of the new fare structure include:

- raising the \$1.75 local fare to \$2.00 (and to \$2.25 on January 1, 2009);
- increasing the price of the Regional Monthly Pass from \$60 to \$64 (and to \$68 on January 1, 2009);
- increasing the price of the Premium Regional Monthly Pass from \$84 to \$90;



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

- increasing the price of the Senior/Disabled/Medicare Monthly Pass from \$15 to \$16 and the Youth Monthly Pass from \$30 to \$32 (and to \$17 and \$34, respectively, on January 1, 2009);
- eliminating free transfers (except between trolley lines) and retaining the \$5.00 Day Pass; and
- introducing a Premium Regional Day Pass that is priced at \$11 and entitles the purchaser to unlimited rides on all regular and premium MTS services.

During the first quarter of implementation of these fare changes (January–March 2008), ridership on the bus system increased by 207,000 or 1.6% when compared to the same period in 2007; and by 297,000 or 1.4% on the MTS system overall. System fare revenue increased by \$1.859 million or 16.9% during the January–February period (March revenue totals are not available yet). A detailed description of the impacts of the changes by fare component will be presented at the Board meeting.

These fare changes were implemented as the first phase of the regional fare study that is being conducted by the San Diego Association of Governments with participation by MTS and NCTD. The second phase of the fare study, if approved, will incorporate rail services (Trolley, SPRINTER, and COASTER) into the new regional fare structure. Implementation of the second phase of the study is planned for January 1, 2009; however, budgetary considerations for FY 2009 could advance the implementation date. The purpose of both phases of the regional fare study is to simplify the fare structure and to maintain or increase fare revenue without adversely impacting ridership levels.



Paul C. Jablonski
Chief Executive Officer

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Agenda

Item No. 62

Chief Executive Officer's Report

ADM 121.7 (PC 50101)

May 8, 2008

In accordance with Board Policy No. 52, Procurement of Goods and Services, attached are listings of contracts, purchase orders, and work orders that have been approved within the CEO's authority (up to and including \$100,000) for the period April 15, 2008, through April 28, 2008.

gail.williams/agenda item 62



CONTRACTS

Doc #	Organization	Subject	Amount	Day	Complete
G0856.6-03	GIRO, INC	ALLOW WINDOWS GUI SHAKE-UP BIDDING	\$15,290.00	4/13/2008	12/23/2007
G1180.0-08	EARTHWORKS	2008 GO GREEN PARTNERSHIP W/ BALBOA PARK	\$10,000.00	4/21/2008	4/20/2008
L0586.0-08	ARB, INC	JOINT ROE PERMIT NCTD SEWER UPGRADES	\$1,200.00	4/21/2008	6/30/2008
B0501-0-08	MAGTEC	NONDISCLOSURE AGREEMENT FOR GPS CTLS BUS	\$0.00	4/29/2008	
G0247.2-94	DEPARTMENT OF THE NAVY	8TH ST TROLLEY SATATION LICENSE	\$600.00	4/29/2008	3/31/2013
G1155.2-08	TELLIARD CONSTRUCTION	CHANGE ORDER/EXTRA WORK	\$4,519.78	4/29/2008	5/8/2008
G1157.1-08	ELECTRO SPECIALTY SYSTEMS	CONTRACT AMEND NO 1 FOR CHANGES IN CAMERA	\$12,901.65	4/29/2008	
G1181.0-08	HOUSE OF HOSPITALITY	2008 GO GREEN PARTNERSHIP W/ BALBOA PARK	\$15,000.00	4/29/2008	12/31/2008
G1184.0-08	PRIMARY DESIGN INC	12TH & IMPERIAL BANNER ADS	\$3,250.00	4/29/2008	4/30/2009
L0803.2-07	SANDAG	AMEND 2 MTS/SANDAG MOU EXT COMPLETION	\$0.00	4/29/2008	9/30/2008
S200-08-358	NASLAND ENGINEERING	ROE PERMIT GENERAL LAND SURVEYING	\$0.00	4/29/2008	3/31/2009
T0053.4-91	CITY OF EL CAJON	EXTEND CURRENT AGREEMENT TO REGULATE	\$0.00	4/29/2008	6/30/2013
YCO.003.07	SELECT TRANSIT PRODUCTS	BRAKES	\$36,500.25	7/6/2008	

PURCHASE ORDERS

DATE	PO NUMBER	Organization	Subject	AMOUNT	PM	DBE	PW	TYPE	FTA
4/21/2008	2266	KANTOLA PRODUCTIONS	FEAR OF FEEDBACK DVD	\$509.21	ARC	N	N	N	N
4/21/2008	2267	ASSOCIATED POSTERS	BUS KINGS	\$1,012.00	JAA	N	N	N	N
4/21/2008	2268	SOFTCHOICE CORPORATION	MS ENTERPRISE AGREEMENT	\$5,549.97	ER	N	N	N	N
4/21/2008	2269	CDW GOVERNMENT INC	NORTEL ETHERNET ROUTING SWITCH	\$13,003.28	DB	N	N	N	N
4/21/2008	2270	CDW GOVERNMENT INC	PANASONIC TOUGHBOOK	\$5,595.30	RT	N	N	N	N
4/28/2008	2271	SHRED FORCE	DESTRUCTION OF OLD CORP FILES	\$994.00	CA	N	N	N	N

WORK ORDERS

Doc #	Organization	Subject	Amount	DBE	Status	Day	Complete	FTA
G1127.0-08.14	BUREAU VERITAS	GEN ENG SVC TO ASSIST IN MVE RECORD	\$8,673.00		EXEC	4/17/2008	12/31/2008	Y