

## **Support Material for Agenda Item No. 7**

### **General Policy Committee Meeting**

**September 8, 2021**

**9:00 a.m.**

**MEETING ACCESSIBLE VIA ZOOM AT: <https://gosbcta.zoom.us/j/83217868085>**

#### **Teleconference**

Dial: 1-669-900-6833

Meeting ID: 832 1786 8085

### **DISCUSSION ITEMS**

#### **Administrative Matters**

##### **7. General Updates to Policies No. 11000, 31602, and 10006**

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority and the San Bernardino Associated Governments:

A. Approve modifications to Procurement and Special Risk Assessment Policy No. 11000, formerly the Contracting and Procurement Policy No. 11000, as indicated in this report and the attached.

B. Approve modifications to the Real Property Policy No. 31602, formerly the Rail Property Policy, to clarify that this policy applies to all San Bernardino County Transportation Authority (SBCTA) Real Property and to incorporate the process for leases of the Santa Fe Depot facility which was previously reflected under Policy No. 11000.

C. Approve modifications to the Authority to Act Upon Certain Claims Policy No. 10006, formerly the Authority to Act Upon Certain Claims Against SBCTA or SANBAG, to authorize the Executive Director, the Director of Special Projects, and the Risk Manager to accept, compromise and/or settle subrogation claims.

***Revised Policies No. 11000, 31602 and 10006 are attached.***

San Bernardino County Transportation Authority	<b>Policy</b>	<b>11000</b>
Adopted by the Board of Directors      January 3, 1997	Revised	<b><u>6/03/2010/06/21</u></b>
<b><u>Contracting and Procurement and Special Risk Assessment Policy</u></b>	Revision No.	<b><u>2425</u></b>

**Important Notice: A hardcopy of this document may not be the document currently in effect. The current version is always the version on the SBCTA Intranet.**

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## I. PURPOSE

This policy establishes contracting and procurement standards to guide the selection of the most qualified firms to perform services to the best advantage of the Agency- and to acquire goods at a fair and reasonable price. It provides guidance to SBCTA staff with respect to policy considerations adopted by the SBCTA Board of Directors.

In addition, it provides additional authority to the Executive Director, Director of Special Projects and Strategic Initiatives, and the Risk Manager in regards to insurance provisions.

## II. REFERENCES

Policy 10025, Guidelines for Agenda Materials.

California Government Code § 4525 et seq.; Public Contract Code; and Public Utilities Code §§ 130221–130239.

2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; (see Procurement Standards 2 CFR sec. 200.317 through 200.326).

2 CFR Chapter XII—Department of Transportation, Part 1201--Uniform Administrative Requirements, Cost Principles, and Audit Requirements

for Federal Awards; (see 2 CFR sec. 1201.317).

40 USC Chapter 11 (Brooks Act), Selection of Architects and Engineers.

23 CFR part 172, Procurement, Management, and Administration of Engineering and Design related services.

California Department of Transportation Local Assistance Procedures.

Federal Transit Administration Circular 4220.1F, Third Party Contracting Guidance.

## III. POLICY

~~All contracts and purchase orders for construction projects, leases of real property, professional, non-professional and maintenance services, and the purchase of goods shall be processed according to the following policies.~~

All procurement activity on behalf of SBCTA/SANBAG is required to demonstrate that the expenditure of funds is conducted in an honest, competitive, fair, and transparent manner that achieves the best value for money and protects SBCTA's reputation.

## IV. GENERAL

## A. Definitions

Awarding Authority means the Board, ~~or a Board Committee,~~ or the Executive Director to whom the Board delegated authority to award a contract or purchase order under this Policy or by other action of the Board.

Construction (Public Works) ~~means as defined by Public Contract Code (PCC) § 22002, means~~ construction, reconstruction, erection, alteration, renovation, demolition, painting, and repair work involving any publicly owned, leased or operated facility, building, structure, real property, street or highway, or other public improvement of any kind. ~~-Does not include routine operation, maintenance or repair of existing facilities, buildings, structures, or real property, or recurring or usual work for the preservation or protection of publicly owned or operated facilities.~~

Contract means an agreement with a third party for acquisition of Goods, Services or Construction work.

Executive Director means the Executive Director of SBCTA and shall be deemed to include any designee specified by the Executive Director to act in his or her behalf.

Goods means supplies, materials, equipment, and other movable/tangible things.

Independent Cost Estimates (ICE) means the best 'estimate' as to the cost of the Goods, services or construction work being procured. The method and degree of analysis is dependent on the complexity of the Goods, services or construction work being procured. An ICE should be prepared in advance of the receipt of any bids or proposals, amendments or change orders. The United States Department of Transportation, Federal Highways Administration and Federal Transit Administration require recipients of federal dollars to "perform a cost or price analysis in connection with every procurement action, including contract modifications..." The starting point for cost or price analysis is the development of an ICE which should be used in the evaluation of the consultant's or contractor's price proposal.

Invitation for Bids (IFB) means a competitive procurement process that requires the award be made to the lowest responsive responsible bidder whose bid conforms to all the material terms and conditions of the IFB.

Invitation for Quotes (IFQ) means a competitive procurement process which the award of a contract or purchase order will be to the lowest responsive responsible bidder whose bid conforms to SBCTA's requirements or is most advantageous to the agency based on price and other factors considered.

Non-Professional Services means janitorial, maintenance, security, advertising, printing, postal, landscape maintenance, including mowing, weeding, watering, trimming/pruning, planting, and servicing of irrigation and sprinkler systems, the maintaining or servicing of Goods, and other services that are not deemed a professional service.

Procurement ~~contract~~ Professional means ~~an agreement or purchase order with a third party~~ procurement staff responsible for ~~acquisition~~ overseeing the Procurement Solicitation.

Procurement Solicitation means Invitation for Bids (IFB), Request for Proposals (RFP), Invitation for Quotes (IFQ), or other forms of written or verbal solicitations for the procurement of Goods, Non-Professional and Professional Services, and Construction ~~projects~~ work.

Professional Services (A & E) means architectural, engineering, environmental, land surveying, construction engineering, construction project management services, or other professional services of an architectural or engineering nature that are required to be performed or approved by a person licensed, registered, or certified to provide such services.

Professional Services (Non A & E) means advisory, information technology, legal, financial, accounting, auditing, legislative advocacy, marketing, freeway service patrol, program management, and any other services which involve the exercise of professional discretion and independent

judgment based on advanced or specialized knowledge, expertise or training gained by formal studies or experience, but excludes Professional Services (A & E).

~~SBCTA Staff means full-time employees of San Bernardino Associated Governments, or upon the transfer of such employees to SBCTA pursuant to SB 1305, the full-time employees of SBCTA.~~

~~Purchase Order (PO) is a written authorization issued by a buyer committing to pay the seller for the sale of specific Goods or services to be delivered in the future.~~

~~Request for Proposal/Request for Qualifications (RFP/RFQ) means a competitive procurement process that requires evaluation of a consultant's proposal and qualifications.~~

## B. Standard Requirements

~~1. Written contracts shall be required for construction projects and for all employment contracts.~~

~~2.1. Concurrence. All Contracts~~ Legal Counsel Review. ~~All contracts~~ shall be reviewed by legal counsel ~~the Procurement Manager~~ prior to ~~presentation to approval by~~ the Board or the Executive Director. The Procurement Manager's concurrence ensures the procurement process was completed in accordance with SBCTA policies and procedures, and applicable State and/or his/her designee, for approval ~~Federal contracting laws.~~

~~3.2. Consultant Selection.~~ When procuring a consulting firm for architectural and engineering services utilizing federal funds through Caltrans, SBCTA will advertise, award and administer the project in accordance with Caltrans current Local Assistance Procedures per 23 CFR part 172 unless otherwise stated in the executed Caltrans project-specific Program Supplement.

~~4.3. Contract Provisions.~~ All ~~contracts~~ Contracts shall specify a period of performance, description of the function to be performed, total contract amount, and appropriate performance standards.

~~5.4. Contract Term.~~ ~~The~~ Unless otherwise authorized by the Board, the maximum term for ~~procurement contracts~~ Contracts or Purchase Orders awarded in accordance with this Policy shall be five years, except for Contracts or Purchase Orders for software license agreements and related maintenance and support services, which can be up to 10 years ~~unless otherwise authorized by the Board.~~

~~6.5. Federal/State Requirements.~~ When utilizing state and federal funds which require more rigorous or different procurement standards than required by ~~these policies~~ this policy, such standards will apply. SBCTA is responsible for ensuring that such standards, including those set out in 2 CFR part 200 and 2 CFR part 1201, are met and are included in appropriate ~~contracts~~ Contracts.

~~6. Independent Cost Estimates (ICE).~~ Except for purchases under \$1,000, ICE are required for all procurement actions.

~~7. Insurance.~~ SBCTA's Risk Manager is responsible for: 1) ensuring that all insurance requirements are reviewed and approved prior to the solicitation being released for all of the following procurements, meeting any of the following criteria: procurements, and 2) reviewing certificates of insurance and endorsements for compliance with Contract and Purchase Order requirements.

- ~~a. Anticipated value of \$500,000 or greater, regardless of the procurement type;~~
- ~~b. Construction projects;~~
- ~~c. Environmental services;~~
- ~~d. Rail projects;~~
- ~~e. FSP services.~~

~~8. Legal Counsel Review.~~ All Contracts shall be reviewed by legal counsel prior to approval by the Board or the Executive Director. All Contracts will be approved as to form by legal counsel prior to execution by SBCTA.

8.9. Non-Discrimination. All Contracts shall contain a standard non-discrimination clause.

10. Written Contracts. All Contracts shall be in writing and signed by authorized representatives of all parties. ~~Independent Cost Estimates (ICE). ICE are required for all procurement actions, including but not limited to all contract amendments and contract change orders.~~

~~The United States Department of Transportation, Federal Highways Administration and Federal Transit Administration require recipients of federal dollars to “perform a cost or price analysis in connection with every procurement action, including contract modifications...” The starting point for cost or price analysis is the development of an ICE which should be used in the evaluation of the consultant’s or contractor’s price proposal.~~

~~An ICE should be prepared by staff who are knowledgeable about the goods, services or construction work being procured. The ICE is the best “estimate” as to the cost of the goods, services or construction work being procured. The method and degree of analysis is dependent on the complexity of the goods, services or construction work being procured. An ICE should be prepared in advance of the receipt of any bids or proposals, amendments or change orders. The ICE is particularly critical whenever there is no price competition (e.g., for architectural and engineering procurements or where only one proposal is received), or when firms submit unusually high price proposals.~~

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## V. TYPES OF PROCUREMENTS

### A. ~~Goods and Non-Professional Services~~ – Competitive Procurement

#### 1. Informal Procurement (PUC § 130232(b))

The following procedures will generally be used when each expected procurement for ~~goods and non-professional services~~Goods is valued in excess of \$1,000, but not exceeding \$25,000:

- a. Whenever possible, informal procurements should be based on the solicitation of at least three (3) bids, either written or oral ~~(telephone survey)~~, that permit prices and terms to be compared.
- b. An ~~Invitation for Quotes (IFQ)~~ or letters may be required if the ~~goods or non-professional services~~Goods being requested require more detailed bids. ~~IFQ or letters will be issued to a limited number of prospective bidders.~~
- c. Award of a ~~purchase order~~Purchase Order or ~~contract~~Contract will be to the lowest responsive responsible bidder whose bid conforms to SBCTA’s requirements or is most advantageous to the agency based on price and other factors considered.
- d. SBCTA will document the results of all such informal procurement actions.

#### 2. Formal Procurement (PUC § 130232(a))

The following ~~policies apply for goods and non-professional services~~applies to procurements valued in excess of \$25,000:

- a. An Invitation for Bids (IFB) will be distributed and a notice inviting bids will be published at least once in a newspaper of general circulation or the equivalent. The publication shall be made at least 10 days before the date for the receipt of the bids. The competitive sealed bid method will be used.
- b. A control record will be maintained as the IFB is distributed, indicating the date, time, and/or place of distribution or notice. ~~The record shall contain the names and addresses of offerors receiving the IFB and details regarding the publication of the notice of IFB. The control record shall be used as a mailing or distribution list for the issuance of notices relative to the IFB and as a verification record in the case of vendor protests.~~

- c. Award of a ~~contract~~Contract or ~~purchase order~~Purchase Order shall be made to the lowest responsive responsible bidder whose bid conforms to all the material terms and conditions of the IFB.
- d. The Board, at its discretion, may reject any and all bids and readvertise.

### 3. Amendments

a. Contracts and ~~purchase orders for goods and non-professional services~~Purchase ~~may~~Orders may be amended to increase the not to exceed amount, quantity and/or extend the term~~of the contract or purchase order.~~

b. Contracts and ~~purchase orders for non-professional services~~Purchase Orders may be amended to add additional scope of work and compensation for additional work that was not foreseen at the time the original ~~contract~~Contract or ~~purchase order~~Purchase Order was awarded pursuant to competitive procurement, if the Awarding Authority determines it is in the best interests of SBCTA to do so. -The Awarding Authority shall consider cost-effectiveness, timeliness, prior quality of performance of services in determining if it is in the best interests of SBCTA.

c. Re-competition for required services serves to assess the competitive market conditions relative to expertise and pricing for such services and may be prudent on a periodic basis. However, where services relate to specific on-going projects or levels of unique qualifications, skills, and experience, it may be appropriate to extend such Contracts or Purchase Order without re-competition. Staff shall analyze each Contract or Purchase Order based upon the specific project needs and include justification for such recommendation in the report to the Board or Executive Director.

d. It may be prudent for staff to recommend against a renewed competitive process in the following instances:

i. When the amendments are the result of an increase in the scope of work for the same project, wherein the qualifications and experience required to perform the new work were clearly examined as part of the prior competitive process.

ii. When, on the basis of a specific finding or competitive process prior to approval of the original Contract or Purchase Order, the firm was determined to be the most qualified and responsive to undertake the work addressed by the Contract or Purchase Order amendment.

iii. Where the firm, based upon findings presented to the Board, is found to be preeminently positioned to perform the work due to its: (1) specific qualifications, (2) unique knowledge of the project, or (3) unique knowledge of the work required.

## B. Construction – Competitive Procurement

### 1. Informal Procurement

The following ~~policies will~~ generally ~~apply for~~applies to Construction procurements valued at \$25,000 or less:

- a. Whenever possible, informal procurements should be based on the solicitation of at least three (3) bids.
- b. An Invitation for Quotes (IFQ) will be issued to a limited number of prospective bidders.
- c. Award of a ~~contract~~Contract will be to the lowest responsive responsible bidder whose bid conforms to the SBCTA's requirements.
- d. SBCTA will document results of all such informal procurement actions.

### 2. Formal Procurement

The following ~~policies apply~~ applies to Construction procurements in excess of \$25,000. (PUC § 130232)

- a. An Invitation for Bids (IFB) will be distributed and a notice inviting bids will be published at least once in a newspaper of general circulation or the equivalent. The publication shall be made at least 10 days before the date for the receipt of the bids. The competitive sealed bid method will be used.
- b. A control record will be maintained as the IFB is distributed indicating the date, time, and/or place of distribution or notice. The record shall contain the names and addresses of offerors receiving the IFB and details regarding the publication of the notice of IFB. The control record shall be used as a mailing or distribution list for the issuance of notices relative to the IFB and as a verification record in the case of vendor protests.
- c. Award of a Construction ~~contract~~ Contract shall be made to the lowest responsive responsible bidder whose bid conforms to all the material terms and conditions of the IFB.
- d. Award of a Construction ~~contract~~ Contract may proceed directly to the Board without prior review or recommendation by a Board Committee if the ~~contract~~ Contract award recommended is to the lowest responsive responsible bidder.
- e. The Board, at its discretion, may reject any and all bids and ~~readvertise~~ re-advertise.

### ~~3. Amendments/Change Orders~~

- ~~a. Amendments and change orders to Construction contracts shall comply with the California Public Contract Code.~~
- ~~b. Department Directors or Designee are authorized to approve Change Orders on all Construction contracts up to the authorized contract contingency amount. Change Orders approved by the Department Directors will be presented monthly for review to the appropriate Policy Committee and/or Board.~~

## C. Professional Services (A & E) – Qualifications Based Procurement

### 1. Informal Procurement

The following ~~policies will~~ generally ~~be used for~~ applies to Professional Services (A & E) procurements valued at \$25,000 or less:

- a. An Invitation for Quotes (IFQ) will be issued to a limited number of prospective proposers.
- b. Whenever possible, informal procurements should be based on the solicitation of at least three (3) proposals.
- c. Award of a ~~purchase order or contract~~ Contract will be made to the consultant whose proposal conforms to the requirements of the IFQ and is most advantageous to the agency based on price and other factors considered.
- d. SBCTA will document results of all such informal procurement actions.

### 2. Formal Procurement

The following ~~policies will be used for~~ applies to Professional Services (A & E) procurements valued at more than \$25,000:

- a. The Request for Proposal (RFP)/Request for Qualifications (RFQ) process will be used to solicit proposals.
- ~~b. The RFP/RFQ process is a competitive procurement process that requires evaluation of a consultant's proposal and qualifications.~~
- ~~c. These contracts~~ b. These Contracts shall be awarded based upon demonstrated competence, and professional qualifications and capabilities necessary to perform the services at a fair and reasonable price. This procurement process does not require award to the lowest cost proposer.

- ~~dc.~~ Staff will maintain a control record as RFP packets are distributed indicating the date and time of distribution. The record shall contain the names and addresses of consultants receiving the RFP and attendance at pre-proposal conferences, if any.
- ~~ed.~~ Pre-proposal conferences will be held, when appropriate, to discuss the basic requirements such as instructions to the consultants, funding, ~~contract~~Contract type, evaluation criteria, and specific points that should be addressed in each proposal.
- ~~e.~~ Special consideration is required in the instances of a formal competitive process resulting in only one response. In those instances, SBCTA staff shall evaluate factors relative to the competitive process, including adequacy of notification to qualified competitors, requirements of the RFQ/RFP, the amount of time provided to respond to the RFQ/RFP, adequacy of the one proposal received, and urgency. After such an analysis, the Executive Director shall make a recommendation to either accept or reject the proposal. Each circumstance will require consideration of facts relevant to the specific solicitation and work to be performed.

### 3. Amendments

- a. Amendments to increase the cost and/or period of performance of an established scope of work are approved as a matter of prudence and necessity. These result from increased difficulty or range of work effort to accomplish the defined scope. Examples requiring such amendments include actions in response to review comments, the imposition of new state or federal regulations, various design complications, and other factors generally beyond the consultant's control and not anticipated during the initial cost proposal.
- ~~b.~~ In those instances where it has been determined that professional services are required beyond the term of the existing ~~contract~~Contract, the standard practice shall be for the ~~contract~~Contract to be reviewed prior to the end of the contracted performance period and assessed relative to (1) the scope and continued need for the function performed, (2) the adequacy of performance under the ~~contract~~Contract, and (3) other terms and conditions of the ~~contract~~Contract.
- ~~b-c.~~ In certain instances, SBCTA consultants are required to work closely with other public agency partners and SBCTA member jurisdictions. When such a professional services ~~contract~~Contract is being considered for a revised scope or extension, staff will solicit input from the representatives of those public agencies on the performance, demeanor, and timely implementation of work performed by the consultant.
- ~~c.~~ —
- ~~d.~~ Based upon the demonstrated competence and on the professional qualifications of the consultant and upon the particular project needs, ~~professional services contracts~~Professional Services Contracts may be recommended for extension or be recommended for re-competition.
- ~~d.~~ —
- ~~d-e.~~ Re-competition for required professional services serves to assess the competitive market conditions relative to expertise and pricing for such services and may be prudent on a periodic basis. However, where professional services relate to specific on-going projects or levels of unique qualifications, skills, and experience, it may be appropriate to extend such ~~contracts~~Contracts without re-competition. Staff shall analyze each ~~contract~~Contract based upon the specific project needs and include justification for such recommendation in the report to the Board or Executive Director.
- ~~e.~~ —
- ~~f.~~ It may be prudent for staff to recommend against a renewed competitive process in the following instances:
  - ~~i.~~ When the amendments are the result of an increase in the scope of work for the same project, wherein the qualifications and experience required to perform the new tasks were clearly examined as part of the prior competitive process. ~~It may be prudent for staff to recommend against a renewed competitive process in the following instances:~~
    - ~~i.~~ ~~When the amendments are the result of an increase in the scope of work for the same project, wherein the qualifications and experience required to perform the new~~



- ii. When, on the basis of a specific finding or competitive process prior to approval of the original ~~contract~~Contract, the consultant was determined to be the most qualified and responsive to undertake the work addressed by the ~~contract~~Contract amendment.
- iii. Where the consultant, based upon findings presented to the Board, is found to be preeminently positioned to perform the work due to its: (1) specific qualifications, (2) unique knowledge of the project, or (3) unique knowledge of the work required.

~~f.~~—

~~e-g.~~ The ~~Board or the~~ Executive Director ~~or Board~~ may periodically approve amendments to ~~product specific~~ professional and technical services consulting ~~contracts~~Contracts contingent upon consultant performance and negotiation. Amendments may address all ~~contract~~Contract components, but typically relate to increased cost, the period of performance to accomplish the project, or adjustments to the scope of work.

~~g.~~ ~~Department Directors or Designee are authorized to approve Contingency Amendments up to the authorized contract contingency amount approved by Board. Contingency Amendments approved by Department Directors will be presented monthly for review to the appropriate Policy Committee and/or Board.~~

#### 4. Procurement Process

~~The following procedures will be used for~~

~~Professional Services (A&E) procurements to ensure that only highly qualified firms matching SBCTA's needs will be selected.~~

~~a.~~ ~~Preparation and distribution of RFP/RFQ. Staff will prepare the scope of work and the RFP/RFQ.~~

~~b.~~ ~~Appointment of Selection Team. The Board, Policy Committees and/or SBCTA staff shall appoint a selection team. A representative of SBCTA member jurisdictions or representatives of SBCTA counterpart agencies shall be invited to participate in the selection of consultants, when appropriate. Members of the selection team shall be appointed with reference to the discipline involved and the location of the project. When possible, SBCTA staff shall participate in the entire selection process.~~

~~c.~~ ~~Responses to Queries. Numerous inquiries are typically received during the circulation period for any RFP/RFQ. Relevant information will be provided, and pre-proposal conferences will be held, when appropriate, to discuss the basic requirements such as instructions to offerors, funding, contract type, evaluation criteria, terms, scope, and the selection process. The names of the selection team are often requested. Relevant technical information will be provided, but names of the selection team shall not be made available prior to formal interviews.~~

~~d.~~ ~~Short-listing. Short-listing is the most important part of the process. Narrowing the list to a small set of qualified firms greatly reduces the likelihood of making a poor selection. Ensuring an adequate short-list is therefore very important. Members of the selection team shall review and evaluate all responses to establish a short list of the most highly qualified firms in preparation for formal interviews.~~

~~The review and evaluation will focus especially on the following points:~~

- ~~• Understanding of the project~~
- ~~• Management structure of the project team~~
- ~~• Approach~~

~~e.~~ ~~Interviews. The selection team shall convene to interview the short listed firms. Procurement staff will coordinate the interview process in questioning and discussion, but shall have no vote, and will not attempt to influence the decision. This will ensure adequate technical expertise and perspective from SBCTA's program interests.~~

~~f.~~ ~~Debriefing. An essential part of the selection process is the debriefing of firms that were either not short-listed or not selected. Members of the selection team shall designate one member to meet with unsuccessful proposers to explain the selections that have been made~~

~~and to offer recommendations for improving future proposals. Contract staff will not participate in the debriefing.~~

D. Non A & E ~~Professional Services~~ (Non A & E Professional Services and Non-Professional Services (Non A & E) – Qualifications Based Procurement

1. Informal Procurement

a. The ~~policies~~provisions of Section V.C.1 for the Informal Procurement for A & E Professional Services ~~contracts~~Contracts generally apply to Non A & E Professional Services procurements.

b. The provisions of Section V.A.1 for the Informal Procurement for Goods generally apply to Non-Professional Services procurements.

2. Formal Consultant Selection Process

The ~~policies~~provisions of Section V.C.2 for the Formal Procurement for A & E Professional Services ~~contracts~~Contracts generally apply to Non A & E ~~Professional~~-Services procurements. Award of a ~~purchase order or contract~~Contract will be made to the consultant whose proposal conforms to the requirements of the RFP and is most advantageous to the agency based on qualifications, price and other factors considered.

3. Amendments

Amendments to ~~contracts~~Contracts for Non A & E ~~Professional~~-Services shall be processed in accordance with the ~~policies contained in Section V.C.3.~~

~~4. Procurement Process~~

~~Non A & E Professional Services shall be procured in accordance with the~~ provisions contained in Section V.A.3 or V.C.3.

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## VI. EXCEPTIONS

~~4, provided however~~ A. Non-Competitive Procurements

1. A & E consultants' proposals may be ranked ~~Competitive processes are not required for short-listing~~ purchases of Goods and services under \$1,000, but the prices shall be reasonable. No ICE is required. Selection should be based upon both qualification ~~on quality and cost. To the extent practicable, purchases must be distributed equitably among qualified suppliers or vendors.~~

~~A.~~ 2. Services – Sole Source

a. In those instances when it may be necessary or prudent to enter into sole source Contracts or Purchase Orders, specific approval shall be required.

b. All sole source Contracts or Purchase Orders shall be governed by the following guidelines:

i. Sole source ~~Contracts or Purchase Orders may be recommended for approval upon a finding of appropriateness and that it is in the best interest of the agency to do so.~~

a. Contracts or Purchase Orders may be recommended for approval on a sole source selection based upon a requirement for unique qualifications, the existence of significant time constraints, substantial duplication costs, and/or in certain instances of demonstrated experience.

b. After solicitation of a number of sources, the competition is determined inadequate.

### 3. Goods – Single Source

Pursuant to Public Utilities Code § 130237, the Board may direct the purchase of any Goods

#### ~~1. Goods – Single Source~~

~~Any Goods may be purchased without observing the provisions of this policy regarding contracts, bids, advertisement or notice, without engaging in a competitive procurement process upon a finding by two-thirds (2/3) of all Board members that there is only a single source of procurement and the purchase is for the sole purpose of duplicating or replacing the supply, equipment, or material already in use. (PUC § 130237)~~

#### ~~2. Professional Services – Sole Source~~

#### 4. Uniformity Exemption

The competitive process shall not apply to purchases of software licenses and services that are required to maintain compatibility, functionality, or conformity with existing designs, products, equipment, facilities, systems, software, technologies, standardizations, proprietary product and the like, or to maintain current warranties, “only authorized distributor” circumstances, or contractual obligations deemed to be in the Agency’s best interests in the determination of the awarding authority.

~~a. In these specific instances when it may be necessary or prudent to enter into sole source contracts, specific approval shall be required.~~

~~b. All sole source contracts shall be governed by the following guidelines:~~

~~i. Sole source contracts may be recommended for approval upon a finding of appropriateness and that it is in the best interest of the agency to do so.~~

~~ii. Contracts may be recommended for approval on a sole source selection based upon a requirement for unique qualifications, the existence of significant time constraints, and/or in certain instances of demonstrated experience.~~

~~iii. Any recommendation for approval of a contractContract or Purchase Order for which a competitive process has not been completed shall contain justification for the lack of competition.~~

~~iv. Any recommendationContracts or Purchase Orders exceeding the Executive Director’s approval must be presented to the Board for sole source procurement must be approval specifically calledcalling out in the agenda itemNon-Competitive finding and shall be placed on the discussion calendar.~~

#### B. Cooperative Procurements (piggybacking)

SBCTA may contract with the vendor or supplier of any federal, state or local governmental department or agency (Public Agency) that has selected the vendor or supplier after complying with the Public Agency’s competitive procurement requirements, and if it is in the best interest of SBCTA to do so. SBCTA’s Procurement Manager will determine whether the purchase of ~~goods~~Goods and services directly from the vendor or supplier of a Public Agency is in the best interest of SBCTA based upon price, quality and whether the terms and conditions of the cooperative procurement ~~contractContract~~ meet SBCTA’s ~~necessary requirements~~procurement policy.

#### C. Emergency Procurements (PUC § 130234)

In the event of great public calamity, as defined by Public Utilities Code § 130234, the Board may declare and determine, by resolution adopted by two-thirds (2/3) vote of all its members, that public interest and necessity demand the immediate expenditure of funds to safeguard life, health, or property, and enter into a ~~contractContract~~ without observance of the provisions of this policy and/or Public Utilities Code § 130232.

#### D. Remedial Measures (PUC § 130235)

Upon determining that immediate remedial measures are necessary to avert or alleviate damage to property, or to replace, repair, or restore damaged/destroyed property in order to ensure that SBCTA’s facilities are available to serve the transportation needs of the public, and upon determining

that available remedial measures are inadequate, including the procurement of ~~goods~~Goods and services or construction in accordance with Public Utilities Code §§ 130232-130234, the Executive Director may authorize the expenditure of funds for the procurement of ~~goods~~Goods and services without observance of the provisions of this policy and/or Public Utilities Code §§ 130232-130234. The Executive Director shall submit a report to the Board explaining the necessity of any such expenditure.

E. Prototype Equipment (PUC § 130236)

Upon a finding by two-thirds (2/3) vote by all members of the Board that a proposed competitive bid or open market purchase, in accordance with Public Utilities Code §§ 130232 and 130233, does not constitute an adequate method of procurement for the operation of SBCTA facilities or equipment, the Board may direct the procurement of prototype equipment or modifications in an amount sufficient to conduct and evaluate operational testing without further observance of the provisions of this policy and/or Public Utilities Code § 130232.

F. Specialized Equipment (PUC § 130238)

The Board may, upon a finding by two-thirds (2/3) vote by all its members, direct that the procurement of (1) specialized rail transit equipment, including rail cars, and (2) computers, telecommunications equipment, fare collections equipment, microwave equipment, and other related electronic equipment and apparatus be conducted through competitive negotiation as set forth in Public Utilities Code § 130238.

G. Open Market (PUC § 130233)

If after rejecting bids received from a formal competitive procurement process, the Board determines by a majority vote that the ~~goods or non-professional services~~Goods may be purchased at a lower price in the open market, the procurement of such ~~goods~~Goods or services may proceed without further observance of the provisions of this policy regarding ~~contracts~~Contracts, bids, advertisement, or notice.

H. Design Build

Procurements may be authorized by the Board, pursuant to the Public Contract Code § 6820 et seq. or other applicable law, for the design and construction of eligible projects through design build ~~contracts~~Contracts. Such procurements shall be performed in accordance with applicable state and federal laws.

I. Utilities Services

The provisions of this policy are not required for procuring utility services including but not limited to water, sewer, electricity, natural gas, waste disposal, and telecommunications (telephone and internet).

J. Venues

The provisions of this policy are not required for the selection of venues for SBCTA's events. Venues are selected based on location, size, and other specific needs as required depending on the event.

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## **VII. PURCHASE ORDERS**

Issuance of Purchase Orders shall follow the competitive and non-competitive processes set forth in this Policy, but do not require legal counsel approval as to form or written concurrence of the Procurement Manager. Purchase Orders are authorized for the following purposes only:

A. Purchase of Goods

B. Purchase of Services under \$10,000, when the risks to SBCTA are considered low, in the discretion of the Procurement Manager and the Risk Manager.

C. Software license and related maintenance and support agreements, unless software customization is required.

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**VIII. DELEGATION OF AUTHORITY**

A. Invitations for Quotes, Requests for Proposals, Requests for Qualifications, Invitations for Bids

1. The Executive Director, ~~or his/her designee~~, is authorized to release and advertise ~~Invitations for Quotes (IFQ),~~ Requests for Proposals (RFP), Requests for Qualifications (RFQ), ~~and~~ Invitations for Bids (IFB) for proposed ~~contracts~~Contracts/projects for which funding has been approved in SBCTA's current Annual Budget and which are estimated not to exceed \$1 Million.

Board approval must be obtained prior to circulation of any RFP/RFQ/IFB if funding has not been approved in SBCTA's current Annual Budget, or if the anticipated value of the RFP/RFQ/IFB exceeds \$1 Million.

2. General Counsel is authorized to issue RFQs for the purpose of creating and maintaining panels of qualified lawyers and law firms to provide legal services.

3. The Procurement Manager or Department Director, or their designee, are authorized to release and advertise Invitations for Quotes (IFQ), for proposed Contracts or Purchase Orders estimated not to exceed \$25,000.

B. Contracts, Purchase Orders, Amendments and Contingency Amendments

1. General Policy.

- a. Except as provided in VIII.B.4.c.ii, All-all contracts, purchase orders, Contracts, Purchase Orders, and amendments, and memoranda of understanding in excess of \$100,000 require approval by the Board, unless otherwise authorized by the Board.

- b. In order to prevent delays that would result in negative impacts to projects and/or programs, staff will provide sufficient time for Policy Committees and/or the Board to review and consider staff recommendations for approval of ~~contracts~~Contracts and ~~contract~~Contract amendments. Refer to Policy 10025.

2. Board President. The Board President is the officer designated to sign ~~contracts~~Contracts on behalf of the organization, unless otherwise authorized by the Board. In the absence of the Board President, the Board Vice President is authorized to sign ~~contracts~~Contracts on behalf of the organization.

3. General Policy Committee. The General Policy Committee is authorized to approve ~~contracts~~Contracts in excess of \$100,000, CTOs in excess of \$500,000, and amendments exceeding the Executive Director's authority in the event of significant time constraints, extenuating circumstances, or emergencies when approval is required, with notification to the Board. Notification shall be made at the next regularly scheduled meeting of the Board following such approval.

4. Executive Director. The Executive Director, ~~or his/her designee~~, is authorized to approve and execute:

- a. All ~~contracts~~Contracts and ~~purchase orders~~Purchase Orders up to ~~-\$~~\$100,000.

- ~~i. With zero dollar value.~~

- ~~ii. Amendments to exercise the optional term(s) set out in contracts approved by the Board.~~

- ~~iii. Amendments that cumulatively do not exceed 50% of the original contract value or \$100,000 individually, whichever is less.~~

- ~~iv. Amendments that do not exceed contingency amounts authorized by Board.~~

- ~~e.~~b. Contract amendments and Purchase ~~order~~Order amendments:

- ~~i.~~ i. With zero dollar value.

- ii. ~~For purchase orders-Contracts or Purchase Orders originally less than \$100,000, increasing the purchase order amount up to \$100,000.~~  
~~For purchase orders originally \$100,000 or more, increasing the purchase order amount up to 4050% of the original purchase orderContract or Purchase Order value but not to exceed \$25,000.~~
  - iii. ~~dFor Contracts or Purchase Orders originally over \$100,000, amendments that cumulatively do not exceed 50% of the original Contract or Purchase Order value or \$100,000, whichever is less.~~
  - iv. ~~Amendments to extend Contract term of performance, either by exercising the optional term(s) set out in Contracts or Purchase Orders approved by the Board, or, if the Contract or Purchase Order has no such options, to extend the term up to a total five year performance period.~~
  - v. ~~For Contracts with Board-approved contingencies, releases of contingency up to, but that do not exceed, the authorized contingency amounts.~~
- c. Contract Task Orders (CTO):
- i. All CTOs up to \$500,000, not-to-exceed the available ~~contractContract~~ balance.
  - ii. CTO amendments within available ~~contractContract~~ balance:
    - With zero dollar value.
    - For CTOs originally less than \$500,000, increasing the CTO amount up to \$500,000.
    - For CTOs originally \$500,000 or more, increasing the CTO amount by up to ~~40% of the original CTO value but not to exceed \$100,000. \$250,000.~~
- ~~ed.~~ Sole source procurements for services up to \$100,000- ~~per Section VI, and sole source procurement of Goods up to a maximum amount of \$50,000 (PUC § 130232(c)).~~ Such sole source procurements shall be routinely reported to the Board.
- e. Leases of real property by SBCTA:
- i. With a term not to exceed five (5) years.
  - ii. Total rent not to exceed \$100,000 for entire lease term.
  - iii. Lease amendments within available term limit and total rent value, as set forth in i. and ii. above.
5. General Counsel. In order to address the agency's legal needs, General Counsel is authorized to directly award ~~and,~~ execute, and amend legal services agreements up to \$100,000 ~~in order to address the agency's legal needs.~~ All such agreements shall be routinely reported to the Board. ~~Award of contracts exceeding \$100,000 require Board approvalThe procurement requirements set forth in Section V.D are not applicable to legal services agreements awarded under this provision.~~
6. Department Director. The Department Director, or ~~his/her~~their designee, is authorized to approve and execute ~~Contingency Amendmentscontingency amendments~~ (SBCTA Form 305) for services Contracts and change orders for construction Contracts that do not exceed contingency amounts authorized by Board-

, or the Executive Director. Contingency amendments and change orders approved by the Department Directors will be presented monthly for review to the appropriate

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**VIII. LEASING OF REAL PROPERTY** ~~(Not Applicable to Rail Property— See Policy No. 34602)Committee and/or Board.~~

~~SBCTA may, from time to time, enter into contracts for the leasing of real property belonging to SBCTA or leased for use by SBCTA. Examples of this type contract are for office space occupied by SBCTA staff, lease of rail rights-of way owned by SBCTA not immediately required for rail operations, or other short-term project specific leases.~~

#### A. Leasing SBCTA Property

- ~~1. All lease agreements resulting from call for bids require approval of the Board.~~
- ~~2. The call for bids shall be posted in at least three public places for not less than 15 days and published for not less than two weeks in a newspaper of general circulation. The highest proposal for the proposed lease submitted in response to a call for bids shall be accepted, or all bids shall be rejected.~~
- ~~3. Leases for a period not exceeding ten years and having an estimated monthly rental of not more than \$5,000 may be excluded from the bidding procedure specified in the preceding paragraph, but shall be subject to the following requirements:
  - ~~a. Notices requesting offers to lease SBCTA property shall be posted in the SBCTA offices. Notices shall also be mailed or delivered at least 15 days prior to accepting offers to lease to any person who has filed written request for notice with SBCTA. Such requests to receive notices shall be renewed annually. Notice shall be published as provided in Government Code § 6061.~~
  - ~~b. Notices requesting offers to lease SBCTA property shall describe the property proposed to be leased, the terms of the lease, the location where offers to lease the property will be accepted, the location where leases will be executed, and any SBCTA officer authorized to execute the lease.~~
  - ~~c. The Executive Officer, or his/her designee, is authorized to approve and execute leases exempted from the bidding procedures specified in this section.~~
  - ~~d. Leases exempt from the bidding procedures are not renewable except by approval of the Board after a competitive process.~~~~

#### B. Leasing Property for SBCTA Use

~~Board approval is required on all leases of real property for use by SBCTA, except that the Executive Director, or his/her designee, is authorized to lease real property for a term not to exceed three years and for a rental not to exceed \$2,500 per month. The Executive Director, or his/her designee, is authorized to amend real property leases for improvements or alterations with a total cost not to exceed \$2,500, provided that the amendment does not extend the term of the lease and that no more than two amendments, not exceeding \$2,500 each, are made within a 12-month period.~~

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### IX. Delegation of Authority to Act Upon Special Risks or Circumstances related To Insurance Requirements In Awarded Contracts, Purchase Orders, and License/Lease Agreements

#### A. Delegation of Authority

1. Risk Manager and Director of Special Projects and Strategic Initiatives. The Risk Manager and the Director of Special Projects and Strategic Initiatives are authorized to:
  - a. Make changes to the general insurance requirements, including limits of coverage, after considering the nature of the risk exposures, prior experience, insurer(s), coverage terms and conditions, or other special circumstances, as provided in b. and c., below.
  - b. Reconsider and make changes to the insurance coverage limits that do not exceed a 50% difference above or below the originally accepted limits of insurance.
  - c. Approve deductibles and self-insured retention up to \$500,000.
2. Executive Director. The Executive Director is authorized to:
  - a. Make changes to the general insurance requirements, including limits of coverage, after considering the nature of the risk exposures, prior experience, insurer(s), coverage terms and conditions, or other special circumstances, as provided in b., c., and d., below.

- b. Reconsider and make changes to the insurance coverage limits that may exceed a 50% difference above or below the originally accepted limits of insurance.
- c. Eliminate any coverage conditions, limits, other requirements, including eliminating specific coverage(s) entirely.
- d. Approve deductibles and self-insured retention up to \$5,000,000 for utility companies, up to stated insurance requirements for government agencies, and up to \$1,000,000 for all other companies.

#### B. Special Circumstances

1. The following are special circumstances that may be grounds for changing insurance requirements:

- a. Changes in scope of services, including, but not limited to, Contracts with multiple notice to proceed and on-call providers with multiple Contract Task Orders
- b. Insurance market-related constraints, such as type of insurers or coverage available
- c. Change in company size
- d. Change in number of vehicles owned by company
- e. Changes that may trigger or eliminate requirement of worker's compensation coverage
- f. Insurance policy required is no longer applicable or insurance policy that was not previously applicable becomes applicable and must be added
- g. Insurance levels required are too high for company size and consequently not available in the market
- h. Company-secured insurance that requires a deductible or self-insured retention

#### C. Assessing Risks and Identifying Mitigating Controls

1. Some of the circumstances listed above do not change SBCTA's exposure, others do. In order to ensure that SBCTA is protected, the Risk Manager will review each request and assess the associated risk, if any, and any potential mitigating controls.

a. The review will include the following steps:

- i. Review scope of work and reassess insurance types and limits
- ii. Review vendor's insurance broker recommendations and consult with SBCTA insurance broker if necessary.
- iii. When appropriate, assess vendor's financial strength by reviewing the vendor's:
  - 1. Financial statements
  - 2. Actuary reports for self-insured program
  - 3. Third Party Administrator reputation
  - 4. Number of claims in the past five years
- iv. Review the insurers' financial strength and, when applicable, require an increase to their financial rating to mitigate additional risks.

#### D. Mechanism to Incorporate Approved Changes

1. The following will require amendments that will be approved by the Executive Director or the Board of Directors, as is appropriate under this Policy's provisions:

- a. Changes to insurance limits.
- b. Elimination of any coverage, limits, or other requirements.

2. The following changes can be done by preparing a memo that is provided to the vendor and a copy is filed with the Contract or Purchase Order:

- a. Financial rating of insurers (Financial rating lower than A-VII will require Board of Directors' approval).



b. Deductibles and self-insured retention.

c. Endorsements.

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## **X. STANDARD OF ETHICS**

- A. No SBCTA staff shall solicit, demand or accept from any person anything of a monetary value for or because of any action taken, or to be taken, in the performance of his or her duties. SBCTA staff failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by SBCTA, including possible dismissal.
- B. No SBCTA staff shall use confidential information for his or her actual or anticipated personal gain, or the actual or anticipated personal gain of any other person related to such SBCTA staff by blood, marriage, or by common commercial or financial interest. SBCTA staff failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by SBCTA, including possible dismissal.
- C. SBCTA procurements shall be conducted in accordance with SBCTA's Procurement Standards of Conduct and in compliance with the SBCTA Conflicts of Interest Policy and applicable federal and state law.

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## **XXI. REVISION HISTORY**

<b>Revision No.</b>	<b>Revisions</b>	<b>Adopted</b>
0	New Policy. Adopted by the Board of Directors	01/03/97
1	Modified Para. 11000.10	01/07/98
2	Modified Para. 11000.7.2	01/07/98
3	Deleted & replaced Para. 11000.7.3	01/07/98
4	Added Para. 11000.10 B	03/04/98
5	Modified Para. 11000.10	06/03/99
6	-Added Para. 11000.7.2.f -Modified Para. 11000.7.3.5.B -Modified Para. 11000.9.3.2	09/01/99
7	-Added new Para. 11000.5.G -Re-identified Para. 11000.5.H (was Para. 11000.5.G) and revised to add "...or the Plans and Programs Committee . . ." -Re-identified Para. 11000.5.I (was Para. 11000.5.H) -Moved Para. 11000.7.5.3 to new paragraph 11000.7.5.1.d and added "...and shall be placed on the discussion calendar." -Added Para 11000.12 REVISION HISTORY	07/05/00
8	-Revised Par. 11000.2 DEFINITIONS to REFERENCES and added Policy 10025, Guidelines for Agenda Materials. -Revised Paragraphs 11000.5.H and 11000.5.I -Re-numbered original Par. 11000.5.I to 11000.5.J -Deleted Par. 11000.10 POLICY GOVERNING DISADVANTAGED BUSINESS ENTERPRISES; re-numbered original Paragraphs 11000.11 and 11000.12 to 11000.10. and 11000.11.	01/09/02
9	Par. IX.A.1: Added additional paragraph "In certain instances, SANBAG professional services contractors are required to work closely with other public agency partners...". Re-formatted paragraph numbering to match current policy format, e.g., 11000.1 PURPOSE changed to I. PURPOSE.	07/02/03
10	Eliminated the Local Preference Policy – Paragraph VII.C; subsequent paragraphs VII.D and E renumbered to VII.C and D.	11/07/07
11	Par. IV.E.2 and 3: Increased the Executive Director's authority for approving Purchase Orders from \$25,000 to \$50,000.	12/03/08
12	Revised the "Director of Freeway Construction" to "Director of Project Delivery". Par. VII.D.2: Increased the Executive Director's authority for approving sole source procurements from \$25,000 to \$50,000. All other changes in language were made for clarity.	10/06/10
13	Par. V.K: Added authorization for SANBAG General Counsel to award and execute legal services agreements up to \$50,000. Par. VII.B.1.b: Added authorization for SANBAG General Counsel to issue RFQs.	07/11/12
14	Par. IX.C: Changed 'Director of Project Delivery' to 'SANBAG Department Directors'. Par. V.F: Changed the maximum term for standard SANBAG contracts, unless otherwise authorized by the Board of Directors, to five years (was three years).	08/01/12
15	Par. V.L: Added Requirement for Independent Cost Estimates. Adopted by Board of Directors on 10/3/12, Agenda Item 6.	10/03/12

Revision No.	Revisions	Adopted
16	Par. VII.A.2: Added Insurance Requirements. Par. VII.C: Major Projects Negotiating Guidelines removed since Policy 34504, Major Projects Program, Contract Negotiation Guidelines, was repealed on 9/5/12 (Board Agenda Item 5). Par. VII.D, Sole Source Process renamed to Par. VII.C..	11/07/12
17	Par. VII.A.1.c: Deleted "Use of electronic quotation systems operating within San Bernardino County" and replaced with language on Cooperative Procurements.	12/05/12
18	Changes approved by the Board of Directors on February 6, 2013, Agenda Item 32. Approve modifications, granting the SANBAG Executive Director or designee, contracting and/or signature authority as follows: 1. To release and advertise Requests for Proposals, Request for Quotes and Invitation for Bids, for proposed contracts for which funding has been approved in SANBAG's Annual Budget, and which are estimated not to exceed \$1,000,000. 2. To approve and execute all purchase orders and contracts up to \$100,000; and 3. To approve and execute contract amendments that meet at least one of the following criteria: a. Amendments with zero dollar value; b. Amendments to exercise the option term(s) set out in contracts approved by the SANBAG Board of Directors; or c. Amendments that cumulatively do not exceed 50% of the original contract value or \$100,000 individually whichever is less. Paragraphs IV.E.3, V.B, V.H, VII.B.1.a, VII.C.2, IX, and IX.B revised to incorporate these changes. Par. V.H: Revised to incorporate Board-approved agenda items (9/5/12 Agenda Item 7 and 11/7/12 Agenda Item 28) on the renaming and deletion of policy committees.	02/06/13
19	Change approved by the Board of Directors on May 1, 2013, Agenda Item 6. VII.B.3. Removed "In this instance of SANBAG's Major Projects contracts, the selection team shall consist of 2 Caltrans representatives and 3 representatives from member counterpart agencies, or members of the Board of Directors or their designees."	05/01/13
20	Change approved by the Board of Directors on April 9, 2014, Agenda Item 7. Par. V.F: Further identified term duration and description of procurement contracts. Par. V.H.3 Approved modification, granting the SANBAG Executive Director authority to approve and execute purchase order amendments.	04/09/14
21	Change approved by the Board of Directors on January 4, 2017, Agenda Item 6. Change SANBAG to SBCTA. Revised to reorganize sections and incorporate statutory provisions of SB1305 applicable to SBCTA. Deleted requirement for Committee approval of contract awards to low bidders. Increased General Counsel contract authority to \$100,000.	01/04/17
22	Change approved by the Board of Directors on December 6, 2017, Agenda Item 4. Incorporated language regarding 2 CFR part 200 federal requirements.	12/06/17
23	Changes approved by the Board of Directors on January 8, 2020, Agenda Item 6. Added in Executive Director CTO signature limit.	01/08/20
24	Changes approved by the Board of Directors on June 3, 2020, Agenda Item 3. Added provisions re: contingency amendments.	06/03/20
<u>25</u>	<u>Changes approved by the Board of Directors on [REDACTED], 2021, Agenda Item X. Expanded the Risk Management review, revised Leasing of Real Property, added exceptions for uniformity and Utilities, clarify the use of Purchase Orders, added provisions for changes to insurance requirements after contract award.</u>	<u>10/06/21</u>

San Bernardino County Transportation Authority	<b>Policy</b>	<b>31602</b>
Adopted by the Board of Directors July 2, 2014	Revised	<u>0310/06/1921</u>
<b>SBCTA Rail<del>Real</del> Property</b>	Revision No.	<u>12</u>

**Important Notice: A hardcopy of this document may not be the document currently in effect. The current version is always the version on the SBCTA Intranet.**

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## I. PURPOSE

~~The purpose of this Rail Property Policy is to set forth the policies, procedures~~ This policy establishes guidelines, delegations of authority, and bases for imposing fees and charges, associated with ownership, management and grants of rights of use of SBCTA Rail Property. ~~This policy shall not affect existing grants of right of use, entered into prior to the effective date of this Policy, but shall apply to amendments, extensions, terminations, assignments or other material changes to such pre-existing grants.~~ real property owned by SBCTA.

## II. REFERENCES

[California Government Code § 6066](#)  
[Policy 10006, Authority to Act Upon Certain Claims](#)  
[Policy 11000, Procurement and Special Risk Assessment](#)  
[Policy 34509, Project Development and Program Management Signatory and Approval Authority](#)

~~III The primary use for the Baldwin Park Branch right of way is for rail transit purposes. The immediate implementation of rail service is not planned, but SBCTA does not wish to permit any activity which would either preclude or make difficult the future implementation of rail service on this important and irreplaceable 20-mile corridor. Notwithstanding this, SBCTA wishes to encourage compatible uses within the right of way which further public purposes and improve the quality of life.~~

## III. DEFINITIONS

“AMTRAK” – means the National Railroad Passenger Corporation.

“BNSF” – means Burlington Northern Santa Fe Railway, or any applicable related entity or affiliate.

“Board of Directors” – means the legislative body of SBCTA.

“Board” – means the Board of Directors or such committee or other body comprised of members of the Board of Directors, as the Board of Directors may designate.

“Encroachment” – means any use of, or entry upon, any property without a written grant of right of use from SBCTA.

“Executive Director” – means the Executive Director of SBCTA and shall be deemed to include any designee specified by the Executive Director to act in his or her place.

“Grant of ~~right~~ **Right of use**” – means any permit, license, lease, or easement duly authorized, executed and issued by SBCTA in writing, that expressly authorizes a specific use of ~~Rail~~ SBCTA Property. A grant of right of use is valid only for that specific kind, quantity, time, duration, and quality of use, and only by the Permittee, as expressly set forth in the grant of right of use. Any use exceeding or differing from that set forth in the grant of right of use is an encroachment.

“Longitudinal use” – means the installation of aerial or subsurface wires, pipes, conduits, fibers or other facilities or improvements that are placed lengthwise along the right-of-way, rather than transverse (i.e., across) it.

~~“Permittee” – means the person or entity to whom the grant of right of use is issued.~~

~~“Rail Property” – means any real property in which SBCTA has any right, title or interest, related to or in connection with SBCTA’s current and future railroad and/or transit functions, operations, or projects.~~

~~“Railroad operating envelope” – means the right-of-way area within 50 feet of the centerline of any railroad tracks used or useable for railroad operations.~~

“Railroad Operator” – means any and all applicable persons or entities having any right to operate any railroad or transit service over or along any ~~Rail~~ SBCTA Property, including but not limited to BNSF, UPRR, SCRRA, and AMTRAK, any successor in interest to any of them, and any other person or entity with a present right, or a right hereafter acquired or created, to operate a railroad or transit service on ~~Rail~~ SBCTA Property.

~~“Permittee” – means the person or entity to whom the grant of right of use is issued.~~

~~“SBCTA” – means the San Bernardino County Transportation Authority.~~

~~“Railroad Operating Envelope” – means the right-of-way area within 20 feet of the centerline of any railroad tracks used or useable for railroad operations.~~

~~“SANBAG Entity(ies) – means SBCTA’s predecessor, San Bernardino Associated Governments, and its various entities, including but not limited to, the San Bernardino County Transportation Commission.”~~

~~“SBCTA” – means the San Bernardino County Transportation Authority.~~

“SBCTA Authority” – means the officer, official or body possessing or delegated authority to approve or execute the respective grants of right-of-use as set forth in this policy.

“SBCTA Property” – means any real property in which SBCTA has any right, title or interest.

“SCRRA” – means Southern California Regional Rail Authority, also known as Metrolink.

“Temporary Construction Easement” or “TCE” – means an easement granted in favor of an adjoining landowner for a limited duration of time for the purpose of carrying out construction of a project on adjoining property.

“UPRR” – means Union Pacific Railroad, or any applicable related entity or affiliate.

## III. POLICY

All grants of right of use for SBCTA Property will be authorized and managed in accordance with the following provisions. This policy shall not affect existing grants of right of use entered into prior to the effective date of this Policy, but shall apply to amendments, extensions, terminations, assignments or other material changes to such pre-existing grants.

Any SBCTA Property subject to the terms and conditions of a cooperative agreement which provides that another agency is responsible for managing and/or operating such property is exempt from the provisions of this policy. Property acquired in connection with construction of an SBCTA project, which property SBCTA will dispose of after completion of the project, are exempt from the provisions of this policy.

## V. TYPES OF GRANTS OF RIGHT OF USE

A. Easements. Easements are generally disfavored. Easements which may impact existing or future rail operations will be granted only when compelled by law or when necessary to protect SBCTA from liability. Only easements in favor of a public utility for the sole purpose of providing utility service to SBCTA property; easements needed to relocate an existing public utility easement having prior rights as against SBCTA's interest in the property, where the need for relocation was caused by a SBCTA project; and TCEs in favor of a public agency for the purpose of construction of a public project on adjoining public property and having a term of one year or less, may be approved and executed by the Executive Director. All other easements must be approved by the Board.

### A. Leases. Title to Rail Property

#### B. Transfer of Title.

1. SBCTA Property. Leases are generally disfavored but may be considered on a case-by-case basis for station areas, buildings and other property that is not within the Railroad Operating Envelope, and will not be needed for transportation purposes within three years. Leases may be approved and executed by the Executive Director where all findings and requirements of this policy have been met, the term of the lease is not more than 5 years, and the fair market rental value of the property subject of the lease, as determined according to the provisions of Section IX of this policy, does not exceed \$5,000 per month. All other leases of SBCTA Property require Board review and approval.
2. Santa Fe Depot. Notwithstanding Subsection 1 above, leasing of space within the Santa Fe Depot shall be subject to the following:
  - a. Notices requesting offers to lease shall be posted in the SBCTA offices, mailed or emailed to any person who has filed a written request with SBCTA for such notice, and published in a newspaper of general circulation as provided in Government Code § 6066. All such notices shall be posted, mailed or emailed, and published at least 15 days prior to accepting any offers to lease. All requests to receive notices of offers to lease shall be renewed annually.
  - b. Notices requesting offers to lease shall describe the property proposed to be leased, the terms of the lease, and the location where offers to lease will be accepted.
  - c. ~~The Executive Director is hereby authorized to take all actions approve and execute leases processed in accordance with this section, so long as the lease term is for 5 years or less.~~
  - d. Board approval is required for all leases exceeding 5 years, and for renewals/extensions of leases originally approved and executed by the Executive Director that extend the original lease term to longer than 5 years.

C. Licenses. Licenses are favored when the proposed use is expected to continue longer than 30 days. Licenses may be granted and executed by the Executive Director. However, where the use proposed is a longitudinal use of more than 1,000 feet in length, the license shall require Board approval.

D. Permits. Permits are favored when the proposed use is reasonably expected to continue for less than 30 days, or for a longer period if being granted to a contractor for the purpose of conducting work necessary to establish a longer-term use allowed by license agreement to another party, such as the construction of an underground pipeline or conduit crossing of the property. Permits may be approved and executed by the Executive Director. There are three kinds of permits issued by SBCTA:

1. Right of Entry Permit. A Right of Entry permit is issued where temporary access to property is needed for short-term activities such as, but not limited to: environmental studies; property surveys; and the construction, maintenance, or renovation of an improvement or facility, either on SBCTA Property pursuant to a license, lease, or easement, or on adjoining property belonging to another party.
- 4-2. Special Event Permit. A Special Event Permit is issued where the applicant will be using SBCTA Property to conduct a special event, such as, but not limited to, a party, sale, show, festival, sporting event, or filming of a motion picture or television. It shall be issued in substantially the same form as a Right of Entry Permit. However, the Executive Director is authorized to condition, add to, delete from, and/or modify the Right of Entry Permit form to address the special circumstances and/or risks presented by the particular Special Event, documents necessary or desirable to transfer any Rail Property currently held or hereafter acquired in the name of any SANBAG Entity to the San Bernardino County Transportation Authority, with the approval of the including the power to lessen or waive SBCTA's protections, with the advice and approval of General Counsel.

### B. Special Right of Entry Permit. Policy Principles And Authority To Execute Grants Of Right Of Use

3. A Special Right of Entry permit is issued when an adjoining property owner needs access to SBCTA Property for mutually beneficial purposes not involving significant risks and hazards, such as, but not limited to, lot-line fence repair, graffiti removal, vegetation removal, minor maintenance, etc. Where meeting the insurance requirements as stipulated by the Risk Manager or Director of Special Projects and Strategic Initiatives would be an economic hardship on the applicant and the Risk Manager and/or General Counsel determines that the level of risk involved does not require more protection for SBCTA, a Special Right-of-Entry Permit may be issued with a release of liability and indemnity agreement and the insurance requirements may be reduced or waived.

## VI. PRINCIPLES AND AUTHORITY TO EXECUTE GRANTS OF RIGHT OF USE

A. Limitations on Authority. No SBCTA employee, officer or agent, or any other person, has any authority to promise, commit or bind SBCTA to any grant of right of use, or to execute or issue any written grant of right of use except as specifically set forth in this policy. Any grant of right of use promised, executed or issued without strict compliance with this policy shall be void, unless authorized by a valid action of the Board. Notwithstanding any delegation of authority in this policy, no grant of right of use involving the closure of operating rail lines, for any period of time, may be granted or issued except by a valid action of the Board.

B. Approved Forms of Documents. Templates. All grants of rights of use shall be issued on the ~~form documents templates~~ approved as to form by the General Counsel. The Executive Director, with the approval of the General Counsel, shall have power to alter or amend the form ~~documents of the template~~ for a particular transaction where necessary or desirable to protect SBCTA's interests, including but not limited to the imposition of conditions as set forth in Section ~~###VII~~, subsection D below, but shall not have the power to lessen or waive SBCTA's protections, except as specifically authorized in this policy or by the Board. Any agreement to lessen or waive SBCTA's protections ~~set forth in the form documents as previously approved by Board~~ shall require Board approval and the payment of a ~~fee~~ the Appeal Fee to cover the cost of processing the request to the Board.

~~A. Easements Disfavored. Easements are generally disfavored. With respect to railroad right-of-way, easements will be granted only when compelled by law or when necessary to protect SBCTA from liability. Only easements in favor of a public utility for the sole purpose of providing utility service to SBCTA property; easements needed to relocate an existing public utility easement having prior rights as against SBCTA's interest in the property, where the need for relocation was caused by a project of SBCTA or San Bernardino Associated Governments; and TCEs in favor of a public agency for the purpose of construction of a public project on adjoining public property and having a term of one year or less, may be approved and executed by the Executive Director. All other easements may be approved only by the Board.~~

~~Leases. Leases are disfavored in operating railroad right-of-way, but may be considered on a case-by-case basis for station areas, buildings and other property that is not within the railroad operating envelope, and that will not be needed for transportation purposes within three years. Leases may be approved and executed by the Executive Director where all findings and requirements of this policy have been met, the term of the lease is not more than 5 years, and the fair market rental value of the property subject of the lease, as determined according to the provisions of Section V of this policy, does not exceed \$5,000 per month.~~

~~B.A. Licenses. Licenses are the favored document for grants of rights of use where the proposed use is expected to continue longer than 30 days. Licenses may be granted and executed by the Executive Director. However, where the use proposed is a longitudinal use of more than 1,000 feet in length, the license shall require Board approval.~~

~~C.A. **Permits.** Permits are the favored document for grants of rights of use where the proposed use is reasonably expected to continue for less than 30 days, or for a longer period if being granted to a contractor for the purpose of conducting work necessary to establish a longer term use allowed by license agreement to another party, such as the construction of an underground pipeline or conduit crossing of the property. Permits may be approved and executed by the Executive Director. There are three kinds of permits issued by SBCTA:~~

~~2. **Right of Entry Permit.** A Right of Entry permit is issued where temporary access to property is needed for short term activities such as, but not limited to: environmental studies; property surveys; and the construction, maintenance, or renovation of an improvement or facility, either on SBCTA Rail Property pursuant to a license, lease, or easement, or on adjoining property belonging to another party.~~

~~3. **Special Event Permit.** A Special Event Permit is issued where the applicant will be using Rail Property to conduct a special event, such as, but not limited to, a party, sale, show, festival, sporting event, or filming of a motion picture or television. It shall be issued in substantially the same form as a Right of Entry Permit. However, the Executive Director is authorized to condition, add to, delete from, and/or modify the Right of Entry Permit form to address the special circumstances and/or risks presented by the particular Special Event, with the advice and approval of General Counsel.~~

~~4. **Special Right of Entry Permit.** A Special Right of Entry permit is issued when an adjoining property owner needs access to SBCTA Rail Property for mutually beneficial purposes not involving significant risks and hazards, such as, but not limited to, lot-line fence repair, graffiti removal, vegetation removal, minor maintenance, etc. Where meeting the minimum insurance requirements would be an economic hardship on the applicant and the Risk Manager and/or General Counsel determines that the level of risk involved does not require more protection for SBCTA, a Special Right of Entry Permit may be issued with a release of liability and indemnity agreement and the insurance requirements may be reduced or waived.~~

**C. Extensions, Renewals and Amendments.** Any Except as provided in V.B., any extension, renewal or amendment of any grant of right of use may be granted and executed by the same level of SBCTA Authority authorized to initially grant such right of use if the extension, renewal or amendment would have qualified as an initial grant of right of use under this policy, whether or not the initial grant of right of use predates the adoption of this policy.

**D. Termination of Grant of Right of Use.** Any grant of right of use may be terminated in accordance with its terms by the same level of SBCTA Authority as is authorized to grant such right of use under this policy whether or not the grant of right of use predates the adoption of this policy.

**E. Consent to Assignment, Assumption or Sublease.** Consent to Assignment, Assumption or Sublease of any grant of right of use may be granted by the same level of SBCTA Authority as is authorized to grant such right of use under this policy, whether or not the grant of right of use predates the adoption of this policy provided that the assignee/assumer/sublessee and its proposed use meet all requirements of this policy independently of the original Permittee and all required findings for the original approval of a grant of right of use are met.

~~**D. Exceptions.** Where the Board has approved or authorized exceptions to or deviations from the requirements of this policy, the Executive Director shall have authority to execute any grant of right of use document implementing such Board approval or authorization, when approved by the General Counsel.~~

**F. Encroachment/Trespass/Nuisance.** Any encroachment is hereby declared to be a trespass and a public nuisance and the Executive Director, with the advice and approval of General Counsel, is hereby authorized to take all actions, including but not limited to the filing of court actions, necessary or appropriate to enforce SBCTA's rights and remedies, and, when, where and to the extent legally permitted, to abate or eject any and all such trespasses/nuisances. In appropriate cases, where the encroaching use would have qualified, or could be corrected to qualify, for a grant of right of use under this policy, all required findings set forth in this policy can be made, and the encroacher/ trespasser satisfactorily demonstrates trustworthiness and willingness to comply with all requirements, the encroachment/trespass may be remedied by compliance with required corrections and subsequent granting of a right of use, payment of fees and charges in accordance with and subject to all of the provisions of this policy and payment of costs incurred by SBCTA in enforcing its rights. The Executive Director is authorized to negotiate and compromise the amounts of back fees, charges owed, and costs to be collected, up to the amount of his or her ~~contract~~ authority level authorized under Policy 10006, with the advice and approval of General Counsel.

~~**E. Emergency Expenditures.** In the event of an emergency or discovery of a dangerous condition of Rail Property, the Executive Director is authorized to expend or authorize expenditures of funds from grant of right of use revenues or other available funds pursuant to SBCTA Policy 11000 Section VI.D.~~

**G. Discretionary Actions.** Wherever any grant of right of use, regardless of the level of SBCTA Authority originally approving it, provides or implies that SBCTA has any discretion to take or refrain from any action or give any notice, the Executive Director, with the advice and approval of General Counsel, is hereby authorized to exercise such discretion on SBCTA's behalf.

**H. Executive Director Approval Insurance Requirements.** In most cases, insurance will be required for all grants of right of use. All insurance requirements will be determined and approved by SBCTA's Risk Manager or Director of Special Projects and Strategic Initiatives. Modifications to the insurance requirements will be made pursuant to SBCTA Policy 11000 Section XI when applicable.

**I. Inspections.** After the grant of right of use has been approved and is being used, SBCTA may, but shall not be required to, conduct an annual or other periodic inspection of the property to verify the Permittee's compliance with the terms and conditions of the grant of right of use and that the use has not created unforeseen safety or use compatibility issues. The cost of the periodic inspection shall be included in the Annual Administrative Fee described below. However, SBCTA may inspect as frequently as it deems necessary or desirable, in its sole discretion, where the nature of the use or the results of a prior inspection indicate that it is in SBCTA's best interests, or those of the public, to do so. The Permittee shall pay a fee, set by the Board from time to time, for each such subsequent inspection within 30 days of the applicable inspection. Failure to submit to any inspection or to pay the Inspection Fee shall result in termination of the grant of right of use.

**J. Exceptions.** Where the Board has approved or authorized exceptions to or deviations from the requirements of this policy, the Executive Director shall have authority to execute any grant of right of use document implementing such Board approval or authorization, when approved by General Counsel.

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## **VII. EXECUTIVE DIRECTOR AUTHORITY.**

**A. Approval of Grant of Right of Use.** The Executive Director shall not approve, grant or execute a grant of right of use without first doing all of the following:

1. Make all of the following findings concerning the proposed use and prospective user, based upon reliable, verified information and evidence:
  - a. It is in the best interest of SBCTA to issue the grant of right of use.
  - b. The prospective user is ~~credit worthy~~creditworthy, can meet the insurance requirements of SBCTA, and demonstrates sufficient financial responsibility to fulfill all obligations under the grant of right of use.
  - c. Neither the use nor any work needed to establish the use, including but not limited to grading, excavation, boring, paving, etc., will interfere with or adversely affect any present or future City, County, Caltrans, Railroad Operator, or SBCTA transportation uses, projects or operations, or any SBCTA property or facilities, whether or not rail- or transportation-related.
  - d. Any and all required building and/or occupancy permits or other governmental authorizations have been obtained by the prospective user under the current applicable zoning regulations and code requirements.
  - e. The proposed use is not illegal, would not constitute a public or private nuisance, is not contrary to public or SBCTA policy, would not create a dangerous or unsafe condition, and is compatible with nearby property uses.
  - f. The proposed use does not create a park or recreational use of the Rail/SBCTA Property subjecting the Rail/SBCTA Property to federal Rule 4(f) requirements, as set forth in 49 U.S.C. §303, 23 U.S.C. §138, and/or Title 23 Code of Federal Regulations 774, or otherwise change the nature of the primary use of the Rail/SBCTA Property.
  - g. The proposed use conforms to SBCTA policies and requirements affecting the proposed use and the Rail/SBCTA Property, and to all applicable government permits, approvals, and regulations, and complies with any agreements affecting the Rail/SBCTA Property, including those with Railroad Operators or adjoining landowners.

- h. The proposed use is not intended to meet any city, county, state, federal, or other regulatory code requirements imposed on the tenants of adjoining or nearby property or public facility.
- i. It has been found by the responsible lead agency, or otherwise proven, to be exempt from the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA), or the requirements of CEQA and NEPA have been previously fulfilled, such that SBCTA shall have no responsibility or liability for compliance with CEQA or NEPA.
- j. It does not pose an environmental risk from hazardous materials or violate environmental laws.
- k. The fees and charges required to be paid by the prospective user constitute a fair market return on the property or comply with the SBCTA Schedule of Fees and Charges, or that SBCTA is precluded by law from charging a higher fee.

2. Verify that the prospective user has delivered to SBCTA all of the following:

- a. Valid insurance certificates documenting compliance with all applicable SBCTA and ~~Railroad~~ Operator insurance requirements, including required additional insured endorsements.
- b. Proof that all other applicable requirements of any ~~Railroad~~ Operator have been met, including but not limited to, roadway worker protections, safety training, flagging, permits, and indemnity.
- c. All required fees and charges, including use fees for the initial period of use.
- d. Documentation of CEQA/NEPA compliance, where SBCTA is not the lead agency with regards to CEQA/NEPA.

3. Verify that the form of the grant of right of use has been approved by General Counsel, and evidence of insurance has been reviewed and approved by SBCTA's Risk Manager.

**B. Conditions.** The Executive Director is empowered to impose conditions on any grant of right of use to assure that the necessary findings, standards, specifications, and other regulations will be met and that SBCTA's best interests and public safety are adequately protected.

**C. Board Approval.** Where the Executive Director believes that the facts and circumstances of the application or the use raise policy questions best decided by the Board, the application may be presented to the Board for their determination without first denying the application.

**D. Title to SBCTA Property.** The Executive Director is authorized to take all actions and execute all documents necessary or desirable to transfer any SBCTA Property currently held in the name of any SANBAG Entity to the San Bernardino County Transportation Authority, with the approval of General Counsel.

**D. Emergency Expenditures, Insurance requirements**

1. ~~Minimum requirements.~~ Except as to waivers of insurance granted for Special Right of Entry Permits as set forth above, the insurance requirements for any grant of right of use shall not be less than the following minimum insurance coverage and limits, where applicable:

- a. ~~Commercial General Liability (CGL)~~ — Not less than \$1 million per incident, \$2 million aggregate
- b. ~~Worker's Compensation~~ — Not less than \$1 million per accident for bodily injury or disease
- c. ~~Automobile Liability~~ — Not less than \$1 million per accident for bodily injury and property damage
- d. ~~Pollution Liability~~ — If hazardous materials are or may be involved, \$1 million per occurrence or claim and \$2 million aggregate.
- e. ~~Umbrella Insurance Policy~~ — Not less than \$5 million. An excess policy may be accepted after the review and recommendation of the risk manager and approval of the Executive Director.
- f. ~~If operational railroad right-of-way is involved or potentially affected, Railroad Protective Liability Insurance (RPLI)~~ — \$2 million per incident, \$6 million aggregate. CGL that is approved by the SBCTA Risk Manager and General Counsel as including equivalent coverage to the required RPLI may be used to satisfy this requirement. This requirement may be waived by the Executive Director where he or she finds, in writing, upon advice of the Risk Manager and with the advice and consent of the General Counsel, that the allowed uses and operations on the Rail Property would present no reasonable risk of a liability that would be covered by RPLI.

2. ~~These coverage requirements may be increased by the Executive Director with the advice and approval of the Risk Manager and/or General Counsel where the risks associated with a particular use warrant increased coverage. The minimum requirements may also be increased from time to time by the Executive Director upon advice of the Risk Manager and/or General Counsel to reflect changing circumstances, claims history, changes in the law, and other relevant factors.~~

3. ~~Primary and Noncontributory~~ — For any claims related to the granted right of use, the Permittee's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects SBCTA, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by SBCTA, its officers, officials, employees, or volunteers shall be excess of the Permittee's insurance and shall not contribute with it.

4. ~~Notice of Cancellation~~ — Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to SBCTA.

5. ~~Waiver of Subrogation~~ — Permittee shall grant to SBCTA a waiver of any right to subrogation which any insurer of said Permittee may acquire against SBCTA by virtue of the payment of any loss under such insurance. Permittee shall agree to obtain any endorsement that may be necessary to effect this waiver of subrogation, and this provision shall apply whether or not SBCTA has received a waiver of subrogation endorsement from the insurer.

6. ~~Self-Insured Retentions~~ — Self-insured retentions must be declared to and approved by SBCTA. SBCTA may require the Permittee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or SBCTA.

7. ~~Acceptability of Insurers~~ — All insurance policies shall be issued by insurance carriers either admitted in California or approved by the Risk Manager, and having an A.M. Best rating of A-VII or better. All policies and insurance certificates shall be in form and content acceptable to the Risk Manager and General Counsel.

8. ~~Additional Insured Status~~ — SBCTA, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Permittee, including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Permittee's insurance (at least as broad as ISO Form CG 20 10 11 85 or, if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38, and CG 20 37 if a later edition is used).

**H.A. Inspections.** ~~After the grant of right of use has been approved and is being used, SBCTA may, but shall not be required to, conduct an annual or other periodic inspection of the Rail Property to verify the Permittee's compliance with the terms and conditions of the grant of right of use and that the use has not created unforeseen safety or use compatibility issues. The cost of the periodic inspection shall be included in the Annual Administrative Fee described below. However, SBCTA may inspect as frequently as it deems necessary or desirable, in its sole discretion, where the nature of the use or the results of a prior inspection indicate that it is in SBCTA's best interests, or those of the public, to do so. The Permittee shall pay a fee, set by the Board from time to time, for each such subsequent inspection within 30 days of the applicable inspection. Failure to submit to any inspection or to pay the Inspection Fee shall result in termination of the grant of right of use.~~

**E.** In the event of an emergency or discovery of a dangerous condition of any SBCTA Property, the Executive Director is authorized to expend or authorize expenditures of funds from grant of right of use revenues or other available funds pursuant to SBCTA Policy 11000 Section VI.D.

**IV.VIII. SPECIFIC USES**

\_\_\_\_\_ These additional requirements apply to the following specific uses.

- A. Signs.** Only the Board may approve a grant of right of use for a permanent sign structure.
- B. Roads and Pathways.** Only the Board may approve a grant of right of use for a long-term (longer than sixty (60) days) road, driveway, bikeway, pathway or similar use. Additional insurance may be required by the Risk Manager.
- C. Uses Open to Invitees or the Public.** Uses open to invitees of the Permittee or to the public may be subject to additional insurance requirements by the Risk Manager, special conditioning by the Executive Director, and liability review by General Counsel prior to approval.
- D. Filming.** Permittees of grants of rights of use for purposes of filming shall not engage in or stage dangerous stunts, pyrotechnical scenes, explosions, etc. Additional insurance may be required by the Risk Manager.
- ~~D.A. Baldwin Park Branch.~~** The primary use for the Baldwin Park Branch right of way is for rail transit purposes. The immediate implementation of rail service is not planned, but SBCTA does not wish to permit any activity which would either preclude or make difficult the future implementation of rail service on this important and irreplaceable 20-mile corridor. Permittees of grants of rights of use for purposes of filming shall not engage in or stage dangerous stunts, pyrotechnical scenes, explosions, etc. Additional insurance may be required by the Risk Manager.
- E.** Notwithstanding this, SBCTA encourages compatible uses within the right of way which further public purposes and improve the quality of life.

## **VIX. FEES AND CHARGES – NOT APPLICABLE TO THE SANTA FE DEPOT**

### **A. Application Fee**

1. **Payment of Fee.** Each prospective user shall pay, at the time of filing the application, a non-refundable Application Fee in an amount set by the Board from time to time by resolution. The Application Fee shall be for the purpose of recovering the full estimated cost for all processing, reviews, and analysis of applications for, issuance of, and management of ~~Rail Property~~ grants of rights of use, including but not limited to the cost of employees' and contractors' time, attorney and engineering review, for the protection of SBCTA's interests over the term of the grant of right of use, and for all anticipated SBCTA administrative and overhead costs for the initial 12 month (or part thereof) period of use.
2. **Separate Fee for Subsequent Reviews.** If the application is rejected or withdrawn, and is resubmitted for a new review, with or without changes, after the application has been processed for submittal to the Executive Director for approval/rejection, the applicant shall separately pay the Application Fee for each such subsequent review.
3. **Complex Reviews/Additional Fees.** Where the nature of the proposed use, and/or other facts and circumstances relative to the application make it clear that the cost of the amount of time or level of expertise, including but not limited to legal and/or engineering expertise, needed to properly review the application will significantly exceed the estimated full cost recovery as set forth in the adopted Application Fee, the Executive Director may require the applicant to pay the full actual cost of processing and reviewing the application. The adopted Application Fee shall then be a deposit against such full actual cost, and the Executive Director may require the deposit of such additional amounts as are reasonably calculated to estimate the full actual cost prior to processing the application or at any time prior to approval or denial. Upon approval or denial of the application, an accounting shall be made, and any overpayment returned to the applicant, and any deficiency shall be paid to SBCTA prior to issuance of any grant of right of use. Failure to deposit any such amounts shall be grounds for denial of the application without further processing.
4. **Consent Assignment, Assumption, Subleases Fee.** -At the time of submittal of a request for Consent to an assignment or assumption of a license or lease, or a sublease, the applicant shall pay a non-refundable Application Fee.

**B. Administration Fee.** Each Permittee shall pay annually on or before the anniversary of the date of issuance of the grant of right of use, an Administration Fee in an amount set by the Board from time to time by resolution. The Administration Fee shall be for the purpose of full cost recovery for all staff time, consultant costs, legal services, overhead, inspection, insurance and compliance reviews, and other anticipated administrative costs of the grant of right of use for the following 12-month period of use.

### **C. Use Fee.**

In addition to the Administration Fee, each Permittee shall pay a Use Fee upon the issuance of the grant of right of use and each year thereafter on the anniversary of the issuance date throughout the term of the grant of right of use. In the case of leases, the Use Fee may be denominated as "Rents", and the terms "Use Fee" and "fee" or "fees" as used in this Policy where including Use Fees, shall include Rents for leases. Depending upon the type of use, the Use Fee shall be either a Fixed Use Fee or a Fair Market Use Fee.

1. **Fixed Use Fee.** The Board may approve by resolution Fixed Use Fees for certain permitted uses where the Board determines a fair market-based fee may be reasonably calculated in advance of receipt of an application for a grant of right of use.
2. **Fair Market Use Fee.** The Board may designate by resolution the imposition of Fair Market Use Fees for certain uses of ~~Rail~~SBCTA Property, and the establishment of minimum amounts for such Fair Market Use Fees. Where the Board has by resolution approved a Fair Market Use Fee for certain uses, the Executive Director shall establish the annual Fair Market Use Fee for each specific grant of right of use based upon a consideration of each of the following information sources, to the extent available, which shall be documented in the file for the grant of right of use:
  - a. appraisal data related to the acquisition of property for SBCTA projects;
  - b. rent/use fees of other nearby and comparable SBCTA grants of rights of use;
  - c. comparable sales and/or rents of adjacent properties;
  - d. right-of-way rent/use fees charged by railroads, utilities, and other private entities and public agencies (e.g., transit agencies, cities, counties and state) that have comparable rights of way near the subject ~~Rail~~SBCTA Property;
  - e. relevant value and rate information and opinions gathered from qualified local real estate professionals, such as brokers, property managers and agents; and
  - f. appraised value of neighboring properties (commonly referred to as "Across the Fence" or ATF values) as determined by a periodic appraisal of SBCTA's ROW properties.
3. Fair Market Use Fees for Transverse or Longitudinal uses shall be based on a minimum 10' wide facility corridor.
4. Where insufficient information is available upon which to base a determination of Fair Market Use Fee, or where the information that is available is inconsistent or contradictory, the Executive Director may negotiate a Fair Market Use Fee value at a rate intended to maximize SBCTA's economic return on the ~~Rail~~SBCTA Property. The Executive Director shall document the considerations used in setting or agreeing to the value.
5. Where more than one potential user is or could be interested in pursuing an exclusive grant of right of use (such as, but not limited to, a commercial parking lot, a pumpkin or Christmas tree lot or other sales outlet), the Executive Director may authorize a competitive bid or proposal process to determine which party receives a grant of right of use, and the highest bid/proposal from an acceptable applicant meeting all criteria of this policy shall be considered the Fair Market Use Fee.
6. The principles set forth in this Subsection C shall apply to Rents charged for Lease Agreements under this policy.
7. Revenue Sharing. For commercial uses generating revenue on SBCTA-~~Rail~~ Property, and where the Board has designated the use by resolution to be subject to a Fair Market Use Fee, the Executive Director may authorize or negotiate a use fee in the form of a percentage of the Permittee's earned revenue as part of, an offset to, in addition to, or in lieu of the applicable fee or rent when the Executive Director determines it is in SBCTA's best interests to do so and all other requirements of this Policy have been met.
8. Pursuant to Board Action taken October 1, 2014, the County of San Bernardino and the incorporated cities and towns located within said county are exempt from the collection of Use Fees imposed by this Policy.

**D. Extension Fee.** Each Permittee shall pay SBCTA, upon submittal of a request for an extension of a grant of right of use, an Extension Fee in an amount set by the Board from time to time by resolution. The Extension Fee shall be for the purpose of full cost recovery for all staff time, consultant costs, legal services, overhead, and document preparation of the extension.

- E. Appeal Fee.** The cost to appeal an Executive Director decision to the Board or to apply to the Board for a waiver or reduction of a requirement set by this policy shall be set by the Board from time-to-time by resolution at estimated full cost recovery. The appeal fee shall be paid by the Appellant at the time of submitting an Appeal to SBCTA. The appeal fee shall also be paid by the applicant whenever an application for a grant of right of use is referred to the Board for consideration at the request of the applicant. This fee shall be in addition to the applicable Application Fee.
- F. Adjustments.** Fees shall be adjusted annually to reflect the increase in the Consumer Price Index and, where applicable, shall be studied and adjusted periodically to reflect changes in fair market rates.
- G. Waivers.** The Executive Director may approve waivers or reductions of, or off-sets against, the Board-approved fees and charges to the extent that SBCTA receives value, consideration and/or benefit from the use or the Permittee, or that the Executive Director determines it is in the best interests of SBCTA to do so.
- H. Reporting.** The Executive Director shall report to the Board at a duly noticed public meeting at least once each year regarding all grants of right of use issued, amended, denied, and/or terminated, including all fees and charges for each, the bases on which all Fair Market Use Fees were established, and the amounts and bases for any reductions or waivers approved.

**VI**

**X. APPEALS**

**A. Executive Director Decision.**

The following decisions by the Executive Director (~~Executive Director Decision~~) are appealable by a Permittee or applicant for a grant of right of use: ~~{~~

- 1) ~~to deny.~~ Denial of an application for issuance, amendment, extension, or assignment of a grant of right of use; ~~{~~
- 2) ~~to establish.~~ Establishment of a Fair Market Use Fee; ~~{~~
- 3) ~~to terminate.~~ Termination of a grant of right of use; ~~{~~
- 4) ~~to impose.~~ Imposition of a condition; or ~~{~~
- 5) ~~to make any.~~ Any other discretionary decision permitted under this Policy.

**B. Appeal Procedures.**

An appeal of an Executive Director Decision by a Permittee or applicant shall comply with the following procedures:

1. Permittee or applicant (Appellant) shall submit a written appeal to the SBCTA Board addressed to the SBCTA Board President, 1170 West Third Street, Second Floor, San Bernardino, California 92410, within five business days of the Executive Director Decision, and shall include the Appeal Fee. The appeal shall set out in specific detail the factual basis for appeal of the Executive Director Decision and include all supporting evidence and documentation, and shall be submitted under penalty of perjury.
2. The Board President shall have authority to, in his or her sole discretion: act as the impartial Hearing Officer and hear the appeal; refer it to an impartial Hearing Officer who may be a SBCTA officer or employee, but may not be the Executive Director or any other employee who has participated in the review of the application or the decision being appealed; or refer it to the full Board, the Board Transit Committee, the Board General Policy Committee, or the Board Metro Valley Study Session, which shall then act as the Appeal Board. Such determination shall be made based upon the need for timely resolution of the appeal, complexity of the facts and circumstances or issues raised by the appeal, the nature of policy issues to be decided, and other relevant facts and circumstances.
  - a. If a Hearing Officer is used, the hearing shall be set for no more than 10 business days after receipt of the appeal, and the Appellant shall be given not less than 5 business days' notice of the time and place of the appeal hearing.
  - b. If an Appeal Board is used, the hearing shall be set for the next regular meeting of the body designated as the Appeal Board which will take place at least 15 business days after the filing of the appeal.
3. The Hearing Officer or Appeal Board shall consider only such facts, evidence and documentation as is submitted in the form of a declaration under penalty of perjury or is provided under oath at the appeal hearing.
4. The Hearing Officer or Appeal Board shall render a decision and provide notice of the decision to the Appellant within 15 business days after the conclusion of the appeal hearing. The decision of the Hearing Officer or Appeal Board shall be final.

**VIII. REVISION HISTORY**

Revision No.	Revisions	Adopted
0	Adopted.	07/02/14
1	Part I – Reaffirm Policy 31600 Baldwin Park Branch language inadvertently omitted from Policy 31602 Part II – Update definitions reflecting a change to SBCTA from SANBAG Part III Section A – Remove Form of Title as SBCTA is a singular entity. Part III Section B Subsection 12 – Reference Executive Director Authority pursuant to Policy 11000 to ensure consistency between policies. Part III Section C Subsection 1 – Change permittee to prospective user as not all requests for a grant of right of use will result in a grant of right of use, and other <u>clarifying/clarifying</u> language updates. Part III Section C Subsection 2 – Formally require prospective users to provide documentation of environmental compliance. Part III Section F – Update Insurance Minimum Requirements to close possible coverage gaps. Part V Section C Subsection 8 added reference to Board action waving fees for SANBAG member agencies. Changes approved by the Board on March 6, 2019, Agenda Item 16.	03/06/19
2	<u>Part I – revised to indicate this policy applies to all Real Property and not just Rail Property.</u> <u>Part II – added references</u> <u>Part III – revised definitions to reflect the change from Rail to Real Property</u> <u>Part V Section B Subsection 2 – added provisions for leases for Santa Fe Depot facility which were previously under Policy 11000.</u> <u>Part VII Section D minimum insurance requirements were deleted as insurance language and limits will be established for each lease or license agreement.</u> <u>Part IX Section A minor corrections.</u> <u>Overall update of terms throughout the policy and reorganize some of the clauses to simplify the policy.</u> Changes approved by the Board on October 6, 2021, Agenda Item xx.	10/06/21



San Bernardino County Transportation Authority and San Bernardino Associated Governments	<b>Policy</b>	<b>10006</b>
Adopted by the Board of Directors June 3, 2009	Revised	<del>03/04/20</del> <u>10/06/21</u>
<b>Authority to Act Upon Certain Claims Against SBCTA or SANBAG</b>	Revision No.	<del>1</del> <u>2</u>

**Important Notice: A hardcopy of this document may not be the document currently in effect. The current version is always the version on the SBCTA Intranet.**

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## I. PURPOSE

The purpose of this policy is to authorize the Risk Manager, Director of Special Projects and Strategic Initiatives and Executive Director to act upon certain claims presented to SBCTA and/or SANBAG pursuant to the Government Claims Act (Government Code sections 900 et seq.) and to authorize the Risk Manager, Director of Special Projects and Strategic Initiatives, and Executive Director to approve settlement agreements related to subrogation claims, whether made by SBCTA/SANBAG or against SBCTA/SANBAG.

## II. DEFINITIONS

~~None~~

Subrogation - the process that allows a party to collect money from a responsible party or their insurer for expenses paid after a loss.

## III. POLICY

All claims presented to SBCTA and/or SANBAG pursuant to the Government Claims Act and subrogation claims/settlements shall be handled according to this Policy, unless otherwise authorized by the Board.

## IV. DELEGATION OF AUTHORITY

### A. SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY (SBCTA)

1. Risk Manager and Director of Special Projects and Strategic Initiatives. The Risk Manager and the Director of Special Projects and Strategic Initiatives are authorized to:
  - a. Reject claims.
  - b. Accept, compromise and/or settle any claim not exceeding \$10,000.
  - c. Issue written order to the Chief Financial Officer to cause payment to be made in the amount for which a claim has been accepted, compromised and/or settled.
  - d. Accept, compromise and/or settle subrogation claims up to \$10,000.
2. Executive Director. The Executive Director is authorized to:
  - a. Reject claims.

- b. Accept, compromise and/or settle any claim not exceeding the agency's Self-Insured Retention or \$50,000, whichever is less.
- c. Issue written order to the Chief Financial Officer to cause payment to be made in the amount for which a claim has been accepted, compromised, and/or settled.

d. Accept, compromise and/or settle subrogation claims not exceeding \$50,000.

**B. SAN BERNARDINO ASSOCIATED GOVERNMENTS (SANBAG or SBCOG)**

Executive Director. The Executive Director is authorized to:

- a. Reject claims.
- b. Accept, compromise and/or settle any claim not exceeding the agency's Self-Insured Retention or \$50,000, whichever is less.
- c. Issue written order to the Chief Financial Officer to cause payment to be made in the amount for which a claim has been accepted, compromised, and/or settled.

d. Accept, compromise and/or settle subrogation claims not exceeding \$50,000.

**V. REVISION HISTORY**

Revision No.	Revisions	Adopted
0	Adopted by the Board of Directors.	06/03/09
1	Updated agency name to SBCTA. Authorized the Risk Manager, Director of Special Projects and Strategic Initiatives and the Executive Director to reject claims, and added dollar value limits for accepting, compromising, and settling claims. (Agenda Item 6)	03/04/20
<u>2</u>	<u>Grant authority to Risk Manager, Director of Special Projects and Strategic Initiatives and the Executive Director to accept or settle subrogation claims (Agenda Item XX).</u>	<u>10/06/21</u>