Governments SANBAG Working Together

San Bernardino Associated Governments

1170 W. 3rd Street, 2nd Floor, San Bernardino, CA 92410
Phone: (909) 884-8276 Fax: (909) 885-4407
www.sanbag.ca.gov

TRANSPORTATION MEASURE I

•San Bernardino County Transportation Commission •San Bernardino County Transportation Authority
•San Bernardino County Congestion Management Agency •Service Authority for Freeway Emergencies

AGENDA

Major Projects Committee

July 13, 2006, 9:00 a.m.

Location:
SANBAG Offices
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410
The Super Chief Room

Major Projects Committee Membership

Chair
John Pomierski, Mayor
City of Upland

Vice-Chair
Grace Vargas, Mayor
City of Rialto

Paul Biane, Supervisor
County of San Bernardino

Dennis Hansberger, Supervisor
County of San Bernardino

Josie Gonzales, Supervisor
County of San Bernardino

Gary Ovitt, Supervisor
County of San Bernardino

Dennis Yates, Mayor
City of Chino

Gwenn Norton-Perry, Mayor Pro Tem
City of Chino Hills

Deirdre Bennett, Mayor
City of Colton

Mark Nuaimi, Mayor
City of Fontana

Bea Cortes, Mayor Pro Tem
City of Grand Terrace

Larry McCallon, Council
City of Highland

Robert Christman, Council
City of Loma Linda

Paul M. Eaton, Mayor
City of Montclair

Alan Wapner, Mayor Pro Tem
City of Ontario

Diane Williams, Mayor Pro Tem
City of Rancho Cucamonga

Pat Gilbreath, Mayor Pro Tem
City of Redlands

Pat Morris, Mayor
City of San Bernardino

Richard Riddell, Mayor
City of Yucaipa

San Bernardino Associated Governments (SANBAG) is a council of governments formed in 1973 by joint powers agreement of the cities and the County of San Bernardino. SANBAG is governed by a Board of Directors consisting of a mayor or designated council member from each of the twenty-four cities in San Bernardino County and the five members of the San Bernardino County Board of Supervisors.

In addition to SANBAG, the composition of the SANBAG Board of Directors also serves as the governing board for several separate legal entities listed below:

The San Bernardino County Transportation Commission, *which is responsible for short and long range transportation planning within San Bernardino County, including coordination and approval of all public mass transit service, approval of all capital development projects for public transit and highway projects, and determination of staging and scheduling of construction relative to all transportation improvement projects in the Transportation Improvement Program.*

The San Bernardino County Transportation Authority, *which is responsible for administration of the voter-approved half-cent transportation transactions and use tax levied in the County of San Bernardino.*

The Service Authority for Freeway Emergencies, *which is responsible for the administration and operation of a motorist aid system of call boxes on State freeways and highways within San Bernardino County.*

The Congestion Management Agency, *which analyzes the performance level of the regional transportation system in a manner which ensures consideration of the impacts from new development and promotes air quality through implementation of strategies in the adopted air quality plans.*

As a ***Subregional Planning Agency****, SANBAG represents the San Bernardino County subregion and assists the Southern California Association of Governments in carrying out its functions as the metropolitan planning organization. SANBAG performs studies and develops consensus relative to regional growth forecasts, regional transportation plans, and mobile source components of the air quality plans.*

Items which appear on the monthly Board of Directors agenda are subjects of one or more of the listed legal authorities. For ease of understanding and timeliness, the agenda items for all of these entities are consolidated on one agenda. Documents contained in the agenda package are clearly marked with the appropriate legal entity.

San Bernardino Associated Governments
County Transportation Commission
County Transportation Authority
Service Authority for Freeway Emergencies
County Congestion Management Agency

Major Projects Committee

July 13, 2006
9:00 a.m.

LOCATION:

Santa Fe Depot
1170 W. 3rd Street, 2nd Floor, San Bernardino
The Super Chief Room

CALL TO ORDER - 9:00 a.m.
(Meeting chaired by Mayor John Pomierski.)

I. Agenda Notices/Modifications
II. Announcements

Notes/Action

1. Possible Conflict of Interest Issues for the SANBAG Major Projects Meeting of July 13, 2006 **Pg. 7**

Note agenda item contractors, subcontractors and agents which may require member abstentions due to conflict of interest and financial interests. Member abstentions shall be stated and recorded on the appropriate item in the minutes summary for each month.

Consent Calendar

Consent Calendar items shall be adopted by a single vote unless removed by Board member request. Items pulled from the consent calendar will be brought up at the end of the agenda.

2. Major Projects Attendance Roster **Pg. 11**

A quorum shall consist of a majority of the membership of each SANBAG Policy Committee, except that all County Representatives shall be counted as one for the purpose of establishing a quorum.

3. Approval of the June Meeting Minutes **Pg. 13**

Notes/Action

Consent Calendar Cont'd

4. **Construction Change Orders to Ongoing SANBAG Construction Contracts with Yeager/Skanska, Inc.** **Pg. 21**

   Review and Ratify Change Orders. TN 82407000. **Darren Kettle**

5. **Construction Change Orders to Ongoing SANBAG Construction Contracts with Brutoco Engineering & Construction, Atkinson Contractors LP, and Atkinson/MCM JV, and Tony's Multi-Service Firm, Inc.** **Pg. 25**

   Review and Ratify Change Orders. TN 82407000. **Darren Kettle**

Discussion Calendar

6. **Professional Services Agreement No. 06-018 with Peckar and Abramson for legal services for Route 71 Landscape Project litigation** **Pg. 37**

   Approve amendment no. 1 to Agreement 06-018 with Peckar and Abramson increasing the not to exceed amount by $100,000 for a total not to exceed amount of $200,000. **Darren Kettle**

7. **Lease Agreement C07025 for construction field office space for I-215 5th Street Bridge Project** **Pg. 47**

   Approve Lease Agreement C07025 with Mountain Business Park/Pacific Day Capital for 1,909 square feet for two years at an initial rate of $1.25 per square foot for construction field office space for the Interstate 215 5th Street Bridge Project. **Darren Kettle**

8. **Request for Qualifications (RFQ) No. C07026 for State Street/University Parkway Grade Separation Construction Management** **Pg. 69**

   Authorize staff to release Request for Qualifications (RFQ) No. C07026 for State Street/University Parkway Grade Separation Construction Management. **Darren Kettle**

Notes/Action

9. **Major Projects Contract Negotiation Guidelines policy** **Pg. 105**

   Discuss and provide guidance on revision to Major Project Contract Negotiation Guidelines. **Darren Kettle**

10. **Measure I 2010-2040 Major Freeway Project – Project Development Advancement** **Pg. 107**

    Authorize staff to develop necessary legal/finance instruments to use current Measure I funds to "finance" project development activities for two Measure I 2010-2040 Major Freeway Projects, the Devore Interchange Project and the Interstate 10 High Occupancy Lane (HOV) project, to be repaid from Measure I 2010-2040 revenues. **Darren Kettle**

11. **Acronym Listing** **Pg. 111**

12. **Additional Items from Committee Members**

13. **Brief Comments by General Public**

14. **Director's Comments**

ADJOURNMENT

The next Major Projects Meeting is August 10, 2006.

Meeting Procedures and Rules of Conduct

Meeting Procedures
The Ralph M. Brown Act is the state law which guarantees the public's right to attend and participate in meetings of local legislative bodies. These rules have been adopted by the Board of Directors in accordance with the Brown Act, Government Code 54950 et seq., and shall apply at all meetings of the Board of Directors and Policy Committees.

Accessibility
The SANBAG meeting facility is accessible to persons with disabilities. If assistive listening devices or other auxiliary aids or services are needed in order to participate in the public meeting, requests should be made through the Clerk of the Board at least three (3) business days prior to the Board meeting. The Clerk's telephone number is (909) 884-8276 and office is located at 1170 W. 3rd Street, 2nd Floor, San Bernardino, CA.

Agendas – All agendas are posted at 1170 W. 3rd Street, 2nd Floor, San Bernardino at least 72 hours in advance of the meeting, Staff reports related to agenda items may be reviewed at the SANBAG offices located at 1170 W. 3rd Street, 2nd Floor, San Bernardino and our website: www.sanbag.ca.gov.

Agenda Actions – Items listed on both the "Consent Calendar" and "Items for Discussion" contain suggested actions. The Board of Directors will generally consider items in the order listed on the agenda. However, items may be considered in any order. New agenda items can be added and action taken by two-thirds vote of the Board of Directors.

Closed Session Agenda Items – Consideration of closed session items *excludes* members of the public. These items include issues related to personnel, pending litigation, labor negotiations and real estate negotiations. Prior to each closed session, the Chair will announce the subject matter of the closed session. If action is taken in closed session, the Chair may report the action to the public at the conclusion of the closed session.

Public Testimony on an Item – Members of the public are afforded an opportunity to speak on any listed item. Individuals wishing to address the Board of Directors or Policy Committee Members should complete a "Request to Speak" form, provided at the rear of the meeting room, and present it to the Clerk prior to the Board's consideration of the item. A "Request to Speak" form must be completed for *each* item an individual wishes to speak on. When recognized by the Chair, speakers should be prepared to step forward and announce their name and address for the record. In the interest of facilitating the business of the Board, speakers are limited to three (3) minutes on each item. Additionally, a twelve (12) minute limitation is established for the total amount of time any one individual may address the Board at any one meeting. The Chair or a majority of the Board may establish a different time limit as appropriate, and parties to agenda items shall not be subject to the time limitations.

The Consent Calendar is considered a single item, thus the three (3) minute rule applies. Consent Calendar items can be pulled at Board member request and will be brought up individually at the specified time in the agenda allowing further public comment on those items.

Agenda Times – The Board is concerned that discussion take place in a timely and efficient manner. Agendas may be prepared with estimated times for categorical areas and certain topics to be discussed. These times may vary according to the length of presentation and amount of resulting discussion on agenda items.

Public Comment – At the end of the agenda, an opportunity is also provided for members of the public to speak on any subject within the Board's authority. *Matters raised under "Public Comment" may not be acted upon at that meeting. "Public Testimony on any Item" still apply.*

Disruptive Conduct – If any meeting of the Board is willfully disrupted by a person or by a group of persons so as to render the orderly conduct of the meeting impossible, the Chair may recess the meeting or order the person, group or groups of person willfully disrupting the meeting to leave the meeting or to be removed from the meeting. Disruptive conduct includes addressing the Board without first being recognized, not addressing the subject before the Board, repetitiously addressing the same subject, failing to relinquish the podium when requested to do so, or otherwise preventing the Board from conducting its meeting in an orderly manner. *Please be aware that a NO SMOKING policy has been established for meetings. Your cooperation is appreciated!*

Governments
SANBAG
Working Together

San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715
Phone: (909) 884-8276 Fax: (909) 885-4407 Web: www.sanbag.ca.gov

TRANSPORTATION MEASURE I

■ San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM 1

Date: July 13, 2006

Subject: Information Relative to Possible Conflict of Interest

***Recommendation*:** Note agenda items and contractors/subcontractors, which may require member abstentions due to possible conflicts of interest.

Background: In accordance with California Government Code 84308, members of the SANBAG Board may not participate in the any action concerning a contract where they have received a campaign contribution of more than $250 in the prior twelve months from an entity or individual, except for the initial award of a competitively bid public works contract. This agenda contains recommendations for action relative to the following contractors:

Item No.	Contract No.	Principals & Agents	Subcontractors
4A	04-005	Yeager/Skanska *Alex Medyn*	Sudhakar Company Statewide Safety & Sign Dywidag Systems Int'l CGO RMD Moore Electric Alcorn Fence L. Johnson Erosion Control

*

Approved

Major Projects Committee

Date: July 13, 2006

Moved: *Second:*

In Favor: *Opposed:*

Witnessed: _____

5A	04-018	Brutoco Engineering & Construction *Mike Murphy*	Ortiz – A.C. Alcorn Fencing Anderson Drilling Modern Alloys JV Landclearing Pavement Recycling ACL Moore Signs & Lighting Pacific Restoration Harbor Co. Reycon Sudhakar Avar-Campbell Franklin Reinf. Steel
5B	05-014	Atkinson Contractors *Scott Lynn* *Kent Reiman*	All American Asphalt Modern Alloys Diversified Landscaping JV Land Clearing Valley Concrete Placing Coffman Specialties Alcorn Fence Coral Construction Sudhakar Company Dywidag Systems Highlight Electric Regional Steel Anderson Drilling
5C	05-005	Atkinson Contractors *Scott Lynn* *Kent Reiman* MCM *H McGovern*	All American Asphalt Modern Alloys Diversified Landscaping JV Land Clearing Valley Concrete Placing Coffman Specialties Alcorn Fence Coral Construction Sudhakar Company Dywidag Systems Highlight Electric Regional Steel

5D	06-001	Atkinson Contractors *Scott Lyon* *Kent Reiman*	West Coast Demo Penhall Moore Electric CGO Construction United Steel Placers Superior Gunite ACL Reycon Diversified Landscape Modern Alloys Statewide Safety Sudhakar Anderson Drilling DSI Ulmer Industries CTM Ortiz Asphalt Paving Alcorn Fence
5E	06-016	Tony's Multi Service Firm *Manuel Blanco*	Rock Structures High-Light Electric W.S.S. Construction Diversified Landscape Traffic Signs
5F	06-017	Tony's Multi Service Firm *Manuel Blanco*	Rock Structures T.E. Roberts, Inc. Construction Area Signs High-Light Electric
6	06-018	Peckar and Abramson *Mary Salamone, Partner*	None
7	C07025	Mountain Business Park/Pacific Day Capital *Dan Moore*	None

Financial Impact: This item has no direct impact on the SANBAG budget.

Reviewed By: This item is prepared monthly for review by SANBAG Board and Committee members.

This page left blank.

AGENDA ITEM 2

MAJOR PROJECTS COMMITTEE ATTENDANCE ROSTER – 2006

Name	Jan.	Feb.	Mar.	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Paul Eaton	X	CANCELLED	X		X							
John Pomierski			X	X	X	X						
Paul Biane	X		X	X		X						
Kelly Chastain	X		X	X	X	X						
Robert Christman			X	X	X	X						
Bea Cortes	X		X	X	X	X						
Pat Gilbreath	X		X	X	X	X						
Josie Gonzales			X	X		X						
Dennis Hansberger			X									
Larry McCallon			X	X	X							
Pat Morris	(Judith Valles) X		X	X	X	X						
Gwenn Norton-Perry												
Mark Nuaimi			X		X							
Gary Ovitt	X		X	X								
Richard Riddell	X		X	X	X	X						
Grace Vargas (Ed Scott)	X		X			X						
Alan Wapner	X		X	X		X						
Diane Williams	X		X	X		X						
Dennis Yates	X					X						

X- indicates member attended meeting.

Portal/Agendas/MPCATT06.DOC

AGENDA ITEM 2

MAJOR PROJECTS COMMITTEE ATTENDANCE ROSTER – 2005

Name	Jan.	Feb.	Mar.	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Paul Eaton	X	X	X	X	cancelled	X	cancelled	X	cancelled	X	X	X
John Pomierski	X	X	X								X	X
Paul Biane	X	X		X		X				X		
Kelly Chastain	X	X	X			X		X		X	X	X
Robert Christman		X	X	X		X		X		X		
Bea Cortes			X	X				X		X	X	X
Pat Gilbreath	X	X	X	X		X		X		X	X	X
Josie Gonzales	X		X	X		X				X		X
Dennis Hansberger	X	X	X							X	X	
Larry McCallon		X						X		X		X
Gwenn Norton-Perry								X			X	X
Mark Nuaimi		X						X		X		
Gary Ovitt	X	X	X	X								X
Richard Riddell	X	X	X	X		X		X			X	X
Judith Valles		X	X					X			X	X
Grace Vargas (Ed Scott)	X			X		X		(X)		X		X
Alan Wapner		X		X		X						
Diane Williams		X	X	X		X		X		X		X
Dennis Yates	X	X	X	X						X	X	X

X- indicates member attended meeting.
Crossed out box indicates member is no longer a Board Member. ** - indicates new member

Portal/Agendas/MPCATT05.DOC

Governments SANBAG Working Together

San Bernardino Associated Governments

1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715
Phone: (909) 884-8276 Fax: (909) 885-4407 Web: www.sanbag.ca.gov

TRANSPORTATION MEASURE I

- San Bernardino County Transportation Commission
- San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency
- Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 3

Date: July 13, 2006

Subject: Major Projects Committee June meeting minutes

Recommendation:* Approve minutes for the June Major Projects Committee meeting.

Background: See attached.

Financial Impact: No financial impact. TN 81507000.

Reviewed By: This item will be reviewed by the Major Projects Committee on July 13, 2006.

Responsible Staff: Darren Kettle, Director of Freeway Construction

*

Approved

Major Projects Committee

Date: July 13, 2006

Moved: Second:

In Favor: Opposed: Abstained:

Witnessed: _____

MPC0607X-DMK.DOC
81507000

Governments SANBAG Working Together

San Bernardino Associated Governments

1170 W. 3rd Street, 2nd Floor, San Bernardino, CA 92410
Phone: (909) 884-8276 Fax: (909) 885-4407
www.sanbag.ca.gov

TRANSPORTATION MEASURE I

•San Bernardino County Transportation Commission •San Bernardino County Transportation Authority
•San Bernardino County Congestion Management Agency •Service Authority for Freeway Emergencies

AGENDA

Major Projects Committee

June 15, 2006, 9:00 a.m.

Location:
SANBAG Offices
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410
The Super Chief Room

Major Projects Committee Attendance

Chair
John Pomierski, Mayor
City of Upland

Vice-Chair
Grace Vargas, Mayor
City of Rialto

Paul Biane, Supervisor
County of San Bernardino

Josie Gonzales, Supervisor
County of San Bernardino

Dennis Yates, Mayor
City of Chino

Kelly Chastain, Council
City of Colton

Bea Cortes, Mayor Pro Tem
City of Grand Terrace

Robert Christman, Council
City of Loma Linda

Alan Wapner, Mayor Pro Tem
City of Ontario

Diane Williams, Mayor Pro Tem
City of Rancho Cucamonga

Pat Gilbreath, Mayor Pro Tem
City of Redlands

Pat Morris, Mayor
City of San Bernardino

Richard Riddell, Mayor
City of Yucaipa

San Bernardino Associated Governments
County Transportation Commission
County Transportation Authority
Service Authority for Freeway Emergencies
County Congestion Management Agency

Major Projects Committee

June 15, 2006
9:00 a.m.

LOCATION:

Santa Fe Depot
1170 W. 3rd Street, 2nd Floor, San Bernardino
The Super Chief Room

CALL TO ORDER - 9:00 a.m.
(Meeting chaired by Mayor John Pomierski.)

I. Agenda Notices/Modifications
II. Announcements

		Notes/Action
1. Possible Conflict of Interest Issues for the SANBAG Major Projects Meeting of June 15, 2006	**Pg. 9**	Please see each item for conflicts.
Note agenda item contractors, subcontractors and agents which may require member abstentions due to conflict of interest and financial interests. Member abstentions shall be stated and recorded on the appropriate item in the minutes summary for each month.		

Consent Calendar

Consent Calendar items shall be adopted by a single vote unless removed by Board member request. Items pulled from the consent calendar will be brought up at the end of the agenda.

2. Major Projects Attendance Roster	**Pg. 13**	
A quorum shall consist of a majority of the membership of each SANBAG Policy Committee, except that all County Representatives shall be counted as one for the purpose of establishing a quorum.		
3. Approval of the April and May Meeting Minutes	**Pg. 15**	MOTION: Gilbreath SECOND: Chastain Motion carried.

		Notes/Action
Consent Calendar Cont'd		
4. **Construction Change Orders to Ongoing SANBAG Construction Contracts with Yeager/Skanska, Inc.**	**Pg. 25**	Information only. No action was taken.
Review and Ratify Change Orders. TN 0636800. **Darren Kettle**		
5. **Construction Change Orders to Ongoing SANBAG Construction Contracts with Brutoco Engineering & Construction, Atkinson Contractors LP, and Atkinson/MCM JV, and Tony's Multi-Service Firm, Inc.**	**Pg. 27**	MOTION: Gilbreath SECOND: Chastain ABSTAINED: Biane Wapner Motion carried.
Review and Ratify Change Orders. TN 0636800. **Darren Kettle**		
Discussion Calendar		
6. **New Elections for Chair and Vice Chair of the Major Projects Committee**	**Pg. 39**	
Conduct Elections. **John Pomierski**		
Mayor Yates nominated Mayor Pomierski for Chair.		MOTION: Yates SECOND: Gonzales Motion carried.
Councilmember Chastain nominated Mayor Vargas for Vice Chair.		MOTION: Chastain SECOND: Biane Motion carried.
7. **Amendment No. 1 Contract No. 04-016 with Tetra Tech, Inc. for Interstate 10/Tippecanoe Interchange Project Development.**	**Pg. 40**	MOTION: Gilbreath SECOND: Vargas Motion carried.
Approve Amendment No. 1 to Contract 04-016 with Tetra Tech, Inc. for preliminary engineering and environmental clearance on the I-10/Tippecanoe interchange and Evans Street north projects extending the period of performance and modifying the scope of services. TN 84207000 **Darren Kettle**		

			Notes/Action
8.	**Contract No.07-008 with DMJM+Harris for construction engineering support on I-215, 5th Street Overcrossing** Approve Contract No. 07-008 with DMJM+Harris for construction engineering support on I-215, 5th Street Overcrossing in the amount of $100,000 as detailed in the Financial Impact Section. TN 83807000 **Darren Kettle**	**Pg. 60**	MOTION: Morris SECOND: Gilbreath ABSTAINED: Biane Motion carried.
9.	**Professional Services Contract with Jacobs Engineering to provide Construction Management Services for the Interstate 215 5th Street Bridge Projects** Approve Agreement No. 06-043 with Jacobs Engineering to provide construction management services for the Interstate 215 5th Street Bridge project in the amount of $3,290,925 as detailed in the Financial Impact Section. TN 83807000 **Darren Kettle**	**Pg. 95**	MOTION: Gilbreath SECOND: Gonzales Motion carried.
10.	**Request for Qualifications (RFQ) No. C0719 for professional engineering services for preparation of a Project Study Report (PSR) for State Route 30/210 – Victoria Avenue Interchange.** Approve release of RFQ C0719 for professional engineering services for preparation of a PSR for State Route 30/210 – Victoria Avenue Interchange. **Darren Kettle**	**Pg. 143**	MOTION: Christman SECOND: Gonzales Motion carried.
11.	**City of Montclair request for SANBAG to act as Lead Agency for the construction of the Ramona Avenue Grade Separation project.** Approve SANBAG acting as lead agency for the construction of the Ramona Avenue Grade Separation Project in the City of Montclair and direct staff to prepare a Cooperative Agreement for future Board consideration. **Darren Kettle**	**Pg. 188**	MOTION: Christman SECOND: Vargas Motion carried.
12.	**Alameda Corridor East Grade Separation Project Cost Increases and Funding Update** Information Item. Receive and File **Darren Kettle** Councilmember Williams arrived to the meeting.	**Pg. 192**	Information only.

			Notes/Action
13.	**Cooperative Agreement No. 06-036 Amendment No. 2 with City of Yucaipa for the construction of the Live Oak Canyon/Interstate 10 Freeway Interchange Project, and Cooperative Agreement C07020 with Caltrans for construction of the Live Oak Canyon/Interstate 10 Interchange Project.** 1. Approve Amendment No. 2 to Cooperative Agreement No. 06-036 with the City of Yucaipa for the Live Oak Canyon/Interstate 10 Freeway Interchange Project to provide additional construction funding in the amount of $5,371,000 from the city of Yucaipa to supplement TCRP construction funding. 2. Approve Cooperative Agreement C07020 with Caltrans for the Reconstruction of Live Oak Canyon/interstate 10 Freeway Interchange Project. **Darren Kettle**	**Pg. 196**	MOTION: Riddell SECOND: Cortes Motion carried.
14.	**Construction and Maintenance Agreement with Burlington Northern, Santa Fe Railroad (BNSF) and Caltrans for the Interstate 215 5th Street Overcrossing Project** Approve Agreement No. 07-016 with BNSF and Caltrans to construct a new bridge over existing BNSF tracks as part of SANBAG's construction of I-215, 5th Street Overcrossing, fund BNSF flagging and inspection services in estimated amount of $789,731, and receive BNSF contribution towards the project in the amount of $1,245,657. TN 83807000 **Darren Kettle**	**Pg. 223**	MOTION: Biane SECOND: Chastain Motion carried.
15.	**Professional Services Agreement No. 05-016 for legal services with the law firm of Best, Best, and Krieger** 1. Authorize Executive Director to approve an $75,000 increase to the not to exceed amount of Agreement No. 05-016 with Best, Best, and Krieger (BB&K) for a total not to exceed amount of $150,000; and 2. Approve budget amendment to the SANBAG 2006/07 fiscal year budget to increase Task Number 82407000 as detailed in the Financial Impact Section. TN 82407000 **Darren Kettle**	**Pg. 274**	MOTION: Gilbreath SECOND: Riddell ABSTAINED. Biane Wapner Motion carried.
16.	**Measure I 2010-2040 Strategic Plan Project Cost Estimates and Revenue Generation Support Material** Information only. **Darren Kettle**	**Pg. 275**	Information only.

			Notes/Action
17.	**State Street/University Parkway Railroad Grade Separation – Hearing to Consider Resolutions of Necessity** 1. Request that acting as the County Transportation Commission, the SANBAG Board Conduct public hearing to consider condemnation of real property required for the State Street/University Parkway Grade Separation project in the City of San Bernardino and County of San Bernardino and, 2. Adopt Resolutions of Necessity authorizing condemnation of real property declaring the following: a. The public interest and necessity require the project described in the proposed Resolution of Necessity. RESOLUTION NO. _____ b. The project is planned and/or located in the manner that will be most compatible with the greatest public good and the least private injury. c. The property to be acquired is necessary for the project. d. An offer required by Section 7267.2 of the Government Code has been made to the owner of record. (2/3rd required) **Darren Kettle**	**Pg. 344**	MOTION: Gilbreath SECOND: Morris Motion carried.
18.	**Amendment No. 3 to Purchase order No. 0432 to P&D Consultants for construction management services for the route 71 Landscape Project.** Approve Amendment No. 3 to Purchase Order No. 0432 with P&D Consultants increasing the amount by $50,000 to provide Construction Management Services for Route 71 Landscaping completion project. **Darren Kettle**	**Pg. 347**	MOTION: Pomierski SECOND; Vargas Motion carried.
19.	**Acronym Listing**	**Pg. 349**	
20.	**Additional Items from Committee Members**		
21.	**Brief Comments by General Public**		
22.	**Director's Comments**		

ADJOURNMENT @ 9:55 a.m.

The next Major Projects Meeting is July 13, 2006.

Governments
SANBAG
Working Together

San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715
Phone: (909) 884-8276 Fax: (909) 885-4407 Web: www.sanbag.ca.gov

TRANSPORTATION MEASURE I

■ San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 4

Date: July 13, 2006

Subject: Construction Change Orders to On-going SANBAG Construction Contracts with Yeager/Skanska

Recommendation:* Review and ratify change orders.

Background: **This item addresses only on-going construction contracts with Yeager/Skanska, Inc.**

As directed by SANBAG Board action on September 1, 1999, the status of construction change orders (CCO's) is presented below:

A. CN 04-005 with Yeager/Skanska, Inc. for construction of State Route 210 Segment 10 early project: CCO No. 33 (no cost CCO for added days) and CCO No. 34 ($95,772 increase for additional costs due to delay) have been approved since the last Major Projects Committee action.

Financial Impact: This item imposes no financial impact, as all CCO's are within previously approved contingency amounts. TN 82407.

Reviewed By: This item will be reviewed by the Major Projects Committee on July 13, 2006.

Responsible Staff: Darren Kettle, Director of Freeway Construction

Approved
Major Projects Committee

Date: July 13, 2006

Moved: Second:

In Favor: Opposed: Abstained:

Witnessed: _____

MPC0607A-DMK.DOC

22

SEGMENT 10 EARLY PROJECT
CONTRACT No. 04-005

San Bernardino Associated Governments
CONTRACT CHANGE ORDER and CONTINGENCY BALANCE LOG

(Updated: 07/06/2006)

CCO NO.	DESCRIPTION	PAY MTD	TIME EXT.	CCO AMOUNT	%	TO DATE AMOUNT	CONTINGENCY BALANCE	R.E. SIGN.	CONTRACTOR TO	CONTRACTOR FROM	CT	CT FROM	SANBAG TO	SANBAG FROM	DATE APPROVED	STATUS/ REMARKS
	*CONTINGENCY & SUPPLEMENTAL WORK BUDGET >>>						$1,106,162.60							Contract Bid Amount >>		$6,591,416.50
1	MAINTAIN ROADWAY, TRAFFIC, SIGNS, ...	EWFA	0	$25,000.00				08/05/03	08/05/03	08/06/03	08/05/03	09/10/04	08/07/03	08/11/03	08/11/03	Approved & Implemented
(S)				$25,000.00	0.38%	$25,000.00	$ 1,081,162.50		08/11/03	<< Approved Copies						
2	APPRENTICESHIP TRAINING	EWUP	0	$13,200.00				08/11/03	08/12/03	08/13/03	08/12/03	09/09/03	08/14/03	08/18/03	08/18/03	Approved & Implemented
				$13,200.00	0.20%	$38,200.00	$ 1,067,962.50		08/20/03	<< Approved Copies						
3	~~DEMO EXIST'G FACIL. NOT INCLUDED IN PLANS~~	—	0	~~$0.00~~				—	—	—	—	—	—	—	N/A	RESCINDED: 08/29/03
				$0.00	0.00%	$38,200.00	$ 1,067,962.50		N/A	<< Approved Copies						
4	CONST TEMP DOUBLE 36" CMP DS UNDER INTERIM HIGHLAND	EWFA	DEF: Ref. To 4-S1	$85,000.00			*Revised >>*	~~09/23/03~~ 11/19/03	~~09/24/03~~ 11/19/03	11/19/03	11/19/03	09/10/04	11/19/03	11/21/03	11/20/03	Approved & Implemented
				$85,000.00	1.29%	$123,200.00	$ 982,962.50		11/21/03	<< Approved Copies						
5	POTHOLE FOR EXISTING UTILITIES	EWFA	0	$15,000.00			*Revised >>*	~~09/24/03~~ 11/19/03	~~09/24/03~~ 11/19/03	11/19/03	11/19/03	09/10/04	11/19/03	11/21/03	11/20/03	Approved & Implemented
				$15,000.00	0.23%	$138,200.00	$ 967,962.50		11/21/03	<< Approved Copies						
6	REVISE DS # 2B & 2C	EWFA ITEMS	0	$50,000.00 -$75,140.50			*Revised >>*	~~10/23/03~~ 11/20/03	~~10/23/03~~ 11/25/03	12/03/03	01/28/04	09/10/04	12/08/03	12/10/03	12/09/03	Approved & Implemented
				-$25,140.50	-0.38%	$113,059.50	$ 993,103.00		12/10/03	<< Approved Copies						
7	CONSTRUCT DS #s 2& 8 FROM THE MAINLINE	EWFA ACIS ITEMS	DEF: Ref. To 7-S2	$125,000.00 $3,015.00 $71,020.99			*3rd Revised >>*	~~10/28/03~~ 12/02/03	~~10/28/03~~ 12/02/03	12/03/03	12/08/03	09/10/04	12/04/03	12/17/03	12/09/03	Approved & Implemented
				$199,035.99	3.02%	$312,095.49	$ 794,067.01		12/17/03	<< Approved Copies						
8	INSTALL TEMP POWER FROM GALWAY TO HIGHLAND AT RIVERSIDE AVE.	EWLS	0	$7,875.00				10/28/03	11/17/03	11/25/03	11/20/03	09/10/04	11/25/03	11/25/03	11/25/03	Approved & Implemented
				$7,875.00	0.12%	$319,970.49	$ 786,192.01		11/25/03	<< Approved Copies						
9	DELETE FINAL PAY FOR BID ITEM #48, MINOR CONC.	NO COST	0					11/24/03	11/25/03	12/09/03	12/09/03	09/10/04	12/08/03	12/10/03	12/09/03	Approved & Implemented
				$0.00	0.00%	$319,970.49	$ 786,192.01		12/10/03	<< Approved Copies						
10	MAINTAIN EXIST & TEMP. ELECTRICAL SYSTEMS	EWFA	0	$10,000.00				11/19/03	12/17/03	12/24/03	01/05/04	09/10/04	01/05/04	01/05/04	01/05/04	Approved & Implemented
(S)				$10,000.00	0.15%	$329,970.49	$ 776,192.01		01/05/04	<< Approved Copies						
11	EXTEND THE POWER CONDUIT TO THE POWER SOURCE	EWFA	0	$5,000.00				12/09/03	12/10/03	12/16/03	12/09/03	09/10/04	12/17/03	12/18/03	12/17/03	Approved & Implemented
				$5,000.00	0.08%	$334,970.49	$ 771,192.01		12/17/03	<< Approved Copies						
12	REVISE PED. CROSSING, ELECT. & POWER POLES FOR INTERIM	EWFA ITEMS	0	$10,000.00 $22,189.00				01/06/04	01/07/04	01/22/04	01/28/04	09/10/04	01/22/04	02/02/04	02/02/04	Approved & Implemented
				$32,189.00	0.49%	$367,159.49	$ 739,003.01		02/02/04	<< Approved Copies						
13	~~SCE & SBC RELOCATION PAYMENT~~	—	0					~~01/19/04~~	—	—	—	—	—	—	N/A	VOIDED:
				$0.00	0.00%	$367,159.49	$ 739,003.01		N/A	<< Approved Copies						
14	MODIFY DRAINAGE SYSTEM 2E	ITEMS	DEF: Ref. To 14-S1	$12,490.00			*Revised >>*	~~02/03/04~~ 02/23/04	~~02/03/04~~ 02/23/04	03/09/04	03/04/04	09/10/04	03/10/04	03/11/04	03/11/04	Approved & Implemented
				$12,490.00	0.19%	$379,649.49	$ 726,513.01		03/11/04	<< Approved Copies						
15	BURIED MAN MADE OBJECTS	EWFA		$20,000.00				02/11/04	02/16/04	02/23/04	03/02/04	09/10/04	02/24/04	03/01/04	03/02/04	Approved & Implemented
				$20,000.00	0.30%	$399,649.49	$ 706,513.01		03/03/04	<< Approved Copies						
7-S1	ADDITIONAL FUNDS TO CCO 7	EWFA	0	$90,000.00				02/01/04	<<<< Not Required >>>		-	-	02/05/04	03/09/04	03/09/04	Approved & Implemented
				$90,000.00	1.37%	$489,649.49	$ 616,513.01		03/03/04	<< Approved Copies						
16	DELETE DRAINAGE SYSTEM 3	ITEMS	0	-$246,216.40				04/07/04	04/08/04	06/10/04	04/08/04	04/13/04	06/10/04	06/15/04	06/15/04	Approved & Implemented
				-$246,216.40	-3.74%	$243,433.09	$ 862,729.41		06/15/04	<< Approved Copies						

SEGMENT 10 EARLY PROJECT
CONTRACT No. 04-005

San Bernardino Associated Governments
CONTRACT CHANGE ORDER and CONTINGENCY BALANCE LOG

(Updated: 07/06/2006)

CCO NO.	DESCRIPTION	PAY MTD	TIME EXT.	CCO AMOUNT	%	TO DATE AMOUNT	CONTINGENCY BALANCE	R.E. SIGN.	CONTRACTOR TO	CONTRACTOR FROM	CT	CT FROM	SANBAG TO	SANBAG FROM	DATE APPROVED	STATUS/ REMARKS
17	DEMO, REMOVE & DISPOSE "RALPHS" SIGN LOCATED @ RIVERSIDE & GALWAY	EWLS	0	$16,325.00				04/30/04	05/04/04	05/10/04	05/06/04	09/10/04	05/10/04	05/10/04	05/10/04	Approved & Implemented
				$16,325.00	0.25%	$259,758.09	$ 846,404.41		05/10/04	<< Approved Copies						
18	SUBSTITUTE ASTM A615 OR A615M REINF. FOR A706/A706M	NO COST	0	$0.00				05/04/04	05/04/04	05/18/04	05/06/04	09/10/04	05/18/04	06/01/04	05/31/04	Approved & Implemented
				$0.00	0.00%	$259,758.09	$ 846,404.41		06/01/04	<< Approved Copies						
19	RELOCATE, REPAIR EXIST UTILS IN REMOVAL OF RALPH'S SIGN; CONST RW 1195	EWFA	DEF	$30,000.00			Revised >>	~~05/24/04~~ 05/24/04	~~05/24/04~~ 06/01/04	~~06/01/04~~ 06/29/04	06/02/04	09/10/04	07/02/04	07/08/04	07/08/04	Approved & Implemented
				$30,000.00	0.46%	$289,758.09	$ 816,404.41		07/08/04	<< Approved Copies						
16-S1	ZERO COMPENSATION FOR ELIMINATING ITEMS 67, 70 & 77	ACLS	0	$0.00			Revised >>	~~06/11/04~~ 07/20/04	~~06/16/04~~ 07/27/04	08/16/04	-	-	08/16/04	08/17/04	08/16/04	Approved & Implemented
				$0.00	0.00%	$289,758.09	$ 816,404.41		08/17/04	<< Approved Copies						
20	NOPC # 3 & 4 RESOLUTION	ACLS	0	$11,218.00				07/14/04	07/21/04	08/20/04	08/26/04	09/10/04	08/24/04	08/26/04	08/26/04	Approved & Implemented
				$11,218.00	0.17%	$300,976.09	$ 805,186.41		08/26/04	<< Approved Copies						
21	SECT 10-1.42, "REINFORCEMENT", MODIFY SPECIAL PROVISIONS	NO COST	0	$0.00				07/14/04	07/21/04	08/16/04	09/08/04		08/16/04	08/18/04	08/18/04	Approved & Implemented
				$0.00	0.00%	$300,976.09	$ 805,186.41		08/18/04	<< Approved Copies						
22	PROVIDE ELECTRICAL CONDUIT AND MODIFY S/E CURB ALIGNMENT AT EASTON & RIVERSIDE INTERSECTION	EWFA	0	$8,000.00			Revised >>	~~10/05/04~~ 10/29/04	~~10/10/04~~ 10/29/04	11/29/04	11/10/04		11/29/04	11/30/04	11/30/04	Approved & Implemented
				$8,000.00	0.12%	$308,976.09	$ 797,186.41		11/30/04	<< Approved Copies						
4-S1	TIME ADJUSTMENT OF 27 WORKING DAYS DUE TO CCO 4	NO COST	27	$0.00			Revised >>	~~09/23/04~~ 11/18/04	~~09/30/04~~	Refused to sign	10/03/04		11/18/04	11/18/04	11/18/04	UNILATERAL APPROVAL
				$0.00	0.00%	$308,976.09	$ 797,186.41		11/18/04	<< Approved Copies						
7-S2	TIME ADJUSTMENT OF 0 WORKING DAYS DUE TO CCO 7	NO COST	0	$0.00			Revised >>	~~09/23/04~~ 11/18/04	~~09/30/04~~	Refused to sign	10/03/04		11/18/04	11/18/04	11/18/04	UNILATERAL APPROVAL
				$0.00	0.00%	$308,976.09	$ 797,186.41		11/18/04	<< Approved Copies						
14-S1	TIME ADJUSTMENT OF 0 WORKING DAYS DUE TO CCO 14	NO COST	0	$0.00			Revised >>	~~09/23/04~~ 01/18/04	~~09/30/04~~	Refused to sign	10/03/04		11/18/04	11/18/04	11/18/04	UNILATERAL APPROVAL
				$0.00	0.00%	$308,976.09	$ 797,186.41		11/18/04	<< Approved Copies						
23	TIME ADJUSTMENT OF 155 WORKING DAYS DUE TO UTILITY DELAYS	NO COST	155	$0.00			Revised >>	~~09/23/04~~ 11/18/04	~~09/30/04~~	Refused to sign	10/03/04		11/18/04	11/18/04	11/18/04	UNILATERAL APPROVAL
				$0.00	0.00%	$308,976.09	$ 797,186.41		11/18/04	<< Approved Copies						
24	ADDITIONAL WEED ABATEMENT AT THE RALPHS' SHOPPING CENTER	EWFA	0	$3,000.00				10/05/04	10/10/04	10/19/04	11/05/04		10/21/04	10/26/04	10/26/04	Approved & Implemented
				$3,000.00	0.05%	$311,976.09	$ 794,186.41		10/27/04	<< Approved Copies						
25	SIDEWALK, CURB AND GUTTER MODIFICATIONS TO CUL-DE-SACS	ITEMS EWFA	0	$66,220.00 $5,000.00			2x Revised >>	~~10/14/04~~ 02/25/05	~~10/27/04~~ 02/25/05	03/10/05	11/10/04		03/10/05	03/16/05	03/16/05	Approved & Implemented
				$71,220.00	1.08%	$383,196.09	$ 722,966.41			<< Approved Copies						
26	ADJUST ABUT 3 WINGWALLS OF RIVERSIDE AVE OC	EWFA	11	$4,000.00			Revised >>	~~12/01/04~~ 12/20/04	~~12/02/04~~ 12/20/04	12/21/04	12/02/04		12/21/04	12/23/04	12/23/04	Approved & Implemented
				$4,000.00	0.06%	$387,196.09	$ 718,966.41		12/27/04	<< Approved Copies						
27	ADDITIONAL ELECTRICAL WORK FOR TRAFFIC SWITCH	ACAP	0	$6,599.40				12/15/04	12/20/04		12/20/04		12/28/04	12/28/04	12/28/04	Approved & Implemented
				$6,599.40	0.10%	$393,795.49	$ 712,367.01		12/28/04	<< Approved Copies						
	DELETE RETAINING WALL 1195	ITEMS	0	-$38,158.50				12/16/04	12/17/04	01/11/05	12/17/04		01/11/05	01/13/05	01/13/05	Approved & Implemented
				-$38,158.50	-0.58%	$355,636.99	$ 750,525.51		01/13/05	<< Approved Copies						

SEGMENT 10 EARLY PROJECT
CONTRACT No. 04-005

San Bernardino Associated Governments
CONTRACT CHANGE ORDER and CONTINGENCY BALANCE LOG

(Updated: 07/06/2006)

CCO NO.	DESCRIPTION	PAY MTD	TIME EXT.	CCO AMOUNT	%	TO DATE AMOUNT	CONTINGENCY BALANCE	R.E. SIGN.	CONTRACTOR TO	CONTRACTOR FROM	CT	CT FROM	SANBAG TO	SANBAG FROM	DATE APPROVED	STATUS/ REMARKS
29	AC PRICE INDEX FLUCTUATION	ACUP	0	$6,025.00				~~04/29/05~~					~~05/25/05~~		05/26/05	UNILATERAL APPROVAL
							Revised >>	05/23/05	N/A	N/A			05/25/05	05/26/05		
				$6,025.00	0.09%	$361,661.99	$ 744,500.51		<< Approved Copies							
30	DELETE ABUT 1 SLOPE PAVING AND TYPE 60 D & E BARRIERS	ITEM5	0	-$34,050.00				12/29/04	12/30/04	02/17/05			02/18/05	02/22/05	02/22/05	Approved & Implemented
							Revised >>	02/02/05	02/02/05							
				-$34,050.00	-0.52%	$327,611.99	$ 778,550.51		02/23/05	<< Approved Copies						
31	STORM DAMAGE REPAIR WORK	EWFA	25	$10,000.00				~~02/14/05~~	~~02/15/05~~		~~02/15/05~~		~~03/24/05~~		05/26/05	UNILATERAL APPROVAL
							Revised >>	05/23/05	N/A	N/A			05/25/05	05/26/05		
				$10,000.00	0.15%	$337,611.99	$ 768,550.51			<< Approved Copies						
32	ADJUSTMENT IN COMPENSATION FOR CONTRACT ITEM NO.83 (Dispute Item)	ACLS		$8,321.21				08/16/05	08/17/05	09/23/05	08/17/05	08/30/05	09/30/05	10/07/05	10/07/05	Approved & Implemented
				$8,321.21	0.13%	$345,933.20	$ 760,229.30		10/17/05	<< Approved Copies						
33	TIME ADJUSTMENT OF 34 WORKING (CAL.) DAYS - RESOLUTION OF LIQ. DAMAGES CLAIM	NO COST	34	$0.00				05/01/06	05/03/06	05/09/06	???		~~05/01/06~~	~~05/02/06~~	05/23/06	Approved & Implemented
													05/10/06	05/24/06		
				$0.00	0.00%	$345,933.20	$ 760,229.30		05/24/06	<< Approved Copies						
34	CLAIM RESOLUTION: ADD'L BONDS, RMD'S MATERIAL COST INCREASE, ITEM ADJUSTMENTS	ACLS	0	$95,772.89				05/03/06	05/03/06	05/09/06	???		~~05/03/06~~	~~05/02/06~~	05/23/06	Approved & Implemented
									(Via FedEx)				05/10/06	05/24/06		
				$95,772.89	1.45%	$441,706.09	$ 664,456.41		05/24/06	<< Approved Copies						
35	CLAIM RESOLUTION: BALANCE OF CLAIM TRESOLUTION	ACLS		$325,019.00				06/22/06	06/22/06	06/30/06			~~06/22/06~~	~~06/22/06~~		TO SANBAG - For Approval 7/5/06
													07/06/06			
				$325,019.00	4.93%	$766,725.09	$ 339,437.41			<< Approved Copies						
	ITEM & CCO BALANCE: OVERRUN(-) / UNDERRUN(+)					>>>>>>>>>>>>>>>>>	$ (334,492.64)									
	TOTAL TO DATE >>>>>>>		252	$345,933.20	11.63%		$ 4,944.77	<<< Balance Inclusive of Item & CCO Overrun								

Total Approved CCO>>	$441,706.09
Approved CCOs>>	1 to 32
Pending CCOs>>	-$95,772.89

NOTES: * Includes Supplemental Funds & SANBAG Furnished Materials

(For use towards the job completion)

SUMMARY OF NET BALANCE FOR COMPLETED ITEMS & CCO WORK

ITEM NO.	$ Overrun	$ Balance	CCO NO.	$ Overrun	$ Balance	Total Overrun
		$2,140.51			($336,633.15)	-$334,492.64
	This Amount ($ Balance) is taken from the Summary of Completed ITEMS OF WORK in the Project Status form.			This Amount ($ Balance) is taken from the Summary of Completed CCOs in the Project Status form.		As of SF Est.22 (11/4/05-3/21/05)

Governments SANBAG Working Together

San Bernardino Associated Governments

1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715
Phone: (909) 884-8276 Fax: (909) 885-4407 Web: www.sanbag.ca.gov

TRANSPORTATION MEASURE I

■ San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 5

Date: July 13, 2006

Subject: Construction Change Orders to On-going SANBAG Construction Contracts with **Brutoco Engineering & Construction, Atkinson Contractors LP, Atkinson/MCM JV, and Tony's Multi-Service Firm, Inc.**

Recommendation:* Review and ratify change orders.

Background: **This item addresses on-going construction contracts with Brutoco Engineering & Construction, Inc, Atkinson Contractors LP, Atkinson/MCM JV, and Tony's Multi-Service Firm, Inc.**

As directed by SANBAG Board action on September 1, 1999, the status of construction change orders (CCOs) is presented below:

A. CN 04-018 with Brutoco Engineering & Construction for construction of I-10 Truck Climbing Lane project: No new CCOs have been approved since the last Major Projects Committee action.

B. CN 05-014 with Atkinson Contractors, LP for construction of SR-210 Segments 9/10/11 Mainline project: CCO No. 27 Supplemental No. 1 ($45,000 increase for maintenance turn around Seg 11), and CCO No. 52 ($1,328 increase for sign posts to metal from wood) have been approved since the last Major Projects Committee action.

Approved
Major Projects Committee

Date: July 13, 2006

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

C. CN 05-005 with Atkinson Contractors/MCM JV for construction of SR-210 Segment 11 Early project: No new CCOs have been approved since the last Major Projects Committee action.

D. CN 06-001 with Atkinson Contractors, LP for construction of I-10 Median Mixed-Flow Lane project: No new CCOs have been approved since the last Major Projects Committee action.

E. CN 06-016 with Tony's Multi-Service Firm, Inc. for construction of SR-210 Segment 1 Landscaping: No new CCOs have been approved since the last Major Projects Committee action.

F. CN 06-017 with Tony's Multi-Service Firm, Inc. for construction of SR-210 Segment 2 Landscaping: No new CCOs have been approved since the last Major Projects Committee action.

Financial Impact: This item imposes no financial impact, as all CCOs are within previously approved contingency amounts. TN 82407 and TN 86007.

Reviewed By: This item will be reviewed by the Major Projects Committee on July 13, 2006.

Responsible Staff: Darren Kettle, Director of Freeway Construction

SEGMENTS 9, 10, 11 MAINLINE
Contract No. 05-014

San Bernardino Associated Governments
CONTRACT CHANGE ORDER and CONTINGENCY BALANCE LOG

(Updated: 07/06/2006)

CCO NO.	DESCRIPTION (S) = With Supplemental $	PAY MTD	TIME EXT.	CCO AMOUNT	%	TO DATE AMOUNT	CONTINGENCY BALANCE	R.E. SIGN.	CONTRACTOR TO	CONTRACTOR FROM	CT/FHWA Concurrence TO	CT/FHWA Concurrence FROM	SANBAG Approval TO	SANBAG Approval FROM	DATE APPROVED	STATUS/ REMARKS
	*CONTINGENCY & SUPPLEMENTAL WORK BUDGET >>>					$11,062,039.52									Contract Bid Amount >>	$99,383,665.18
1 (S)	MAINTAIN ROADWAY AND TRAFFIC CONTROL ...	EWFA	0	*$45,000.00*				1/27/05	1/27/05	2/2/05	1/28/05	5/20/05	2/4/05 2/8/05	2/10/05	**2/10/05**	Approved & Implemented
				$45,000.00	0.05%	$45,000.00	$ 11,017,039.52		2/10/05	<< Approved Copies						
1 S1	ADDITIONAL FUNDS FOR CCO 1	EWFA	0	*$45,000.00*				6/24/05	n/a	n/a	n/a	n/a	6/30/05	7/6/05	**7/6/05**	Approved & Implemented
				$45,000.00	0.05%	$90,000.00	$ 10,972,039.52		7/6/05	<< Approved Copies						
1 S2	ADDITIONAL FUNDS FOR CCO 1	EWFA		*$100,000.00*				10/12/05	11/8/05	N/A	4/5/06 (Follow Up)		10/12/05	10/12/05	**11/4/05**	Approved & Implemented
				$100,000.00	0.10%	$190,000.00	$ 10,872,039.52		11/8/05	<< Approved Copies						
1 S3	ADDITIONAL FUNDS FOR CCO 1	EWFA		*$115,000.00*				3/30/06	N/A	N/A	4/5/06		4/3/06	4/5/06	**4/5/06**	Approved & Implemented
				$115,000.00	0.12%	$305,000.00	$ 10,757,039.52		4/5/06	<< Approved Copies						
2	MAINTAIN EXISTING AND TEMPORARY ELECTRICAL SYSTEM	EWFA	0	*$50,000.00*				1/27/05	1/27/05	2/2/05	1/28/05	5/20/05	2/4/05 2/8/05	2/10/05	**2/10/05**	Approved & Implemented
				$50,000.00	0.05%	$355,000.00	$ 10,707,039.52		2/10/05	<< Approved Copies						
2 S1	ADDITIONAL FUNDS	EWFA		*$65,000.00*				10/27/05	N/A	N/A	N/A	N/A	10/27/05	11/21/05	**11/21/05**	Approved & Implemented
				$65,000.00	0.07%	$420,000.00	$ 10,642,039.52		11/21/05	<< Approved Copies						
3 (S)	FEDERAL APPRENTICESHIP TRAINING	ACUP	0	*$49,920.00*				2/2/05	2/2/05	2/15/05	2/1/05	5/20/05	2/15/05 2/16/05	2/17/05	**2/17/05**	Approved & Implemented
				$49,920.00	0.05%	$469,920.00	$ 10,592,119.52		2/17/05	<< Approved Copies						
4	ACACIA CUL-DE-SAC	EWFA ITEM	0	*$5,000.00* *$33,149.00*				3/4/05	3/16/05	3/22/05	3/7/05	5/20/05	3/22/05	3/28/05	**3/29/05**	Approved & Implemented
				$38,149.00	0.04%	$508,069.00	$ 10,553,970.52		3/29/05	<< Approved Copies						
5	CUT, TRIM, REMOVE & DISPOSE OLEANDERS & MISC. SHRUBS ALONG ...	EWFA	0	*$35,000.00*				2/7/05	2/8/05	2/15/05	2/8/05	5/20/05	2/15/05 2/16/05	2/17/05	**2/17/05**	Approved & Implemented
				$35,000.00	0.04%	$543,069.00	$ 10,518,970.52		2/17/05	<< Approved Copies						
5 S1	ADDITIONAL FUNDS FOR CCO 5	EWFA	0	*$38,000.00*				4/17/06	N/A	N/A	4/19/06 (Courtesy)		4/17/06	4/19/06	**4/19/06**	Approved & Implemented
				$38,000.00	0.04%	$581,069.00	$ 10,480,970.52		4/19/06	<< Approved Copies						
6	STRIPING PLANS FOR HIGHLAND DETOUR	EWFA ITEM	0	*$15,000.00* *$16,000.00*				3/4/05	3/16/05	3/22/05	3/7/05	5/20/05	3/22/05	3/28/05	**3/29/05**	Approved & Implemented
				$31,000.00	0.03%	$612,069.00	$ 10,449,970.52		3/29/05	<< Approved Copies						
7	REVISED PLAN SHEETS (CLARIFICATIONS)	NCNC	0	*$0.00*				2/15/05	2/17/05	3/8/05	2/18/05	5/20/05	3/8/05	3/16/05	**3/16/05**	Approved & Implemented
				$0.00	0.00%	$612,069.00	$ 10,449,970.52		3/16/05	<< Approved Copies						
8	MAN- MADE BURIED OBJECTS	EWFA	0	*$30,000.00*				3/7/05	3/16/05	3/22/05	3/8/05	5/20/05	3/22/05	3/28/05	**3/29/05**	Approved & Implemented
				$30,000.00	0.03%	$642,069.00	$ 10,419,970.52		3/29/05	<< Approved Copies						
8 S1	ADDITIONAL FUNDS	EWFA	0	*$45,000.00*				5/25/05	N/A	N/A	N/A	N/A	5/23/05	5/26/05	**5/25/05**	Approved & Implemented
				$45,000.00	0.05%	$687,069.00	$ 10,374,970.52		5/31/05	<< Approved Copies						
8 S2	ADDITIONAL FUNDS	EWFA	0	*$40,000.00*				11/21/05	N/A	N/A	N/A	N/A	11/22/05	11/29/05	**11/29/05**	Approved & Implemented
				$40,000.00	0.04%	$727,069.00	$ 10,334,970.52		11/30/05	<< Approved Copies						
9	MAINTAIN UTILITY FACILITIES	EWFA	0	*$30,000.00*				3/7/05	3/16/05	3/22/05	3/8/05	5/20/05	3/22/05	3/28/05	**3/29/05**	Approved & Implemented
				$30,000.00	0.03%	$757,069.00	$ 10,304,970.52		3/29/05	<< Approved Copies						

SEGMENTS 9, 10, 11 MAINLINE
Contract No. 05-014

San Bernardino Associated Governments
CONTRACT CHANGE ORDER and CONTINGENCY BALANCE LOG

(Updated: 07/06/2006)

CCO NO.	DESCRIPTION (S) = With Supplemental $	PAY MTD	TIME EXT.	CCO AMOUNT	%	TO DATE AMOUNT	CONTINGENCY BALANCE	R.E. SIGN.	CONTRACTOR TO	CONTRACTOR FROM	CT/FHWA Concurrence TO	CT/FHWA Concurrence FROM	SANBAG Approval TO	SANBAG Approval FROM	DATE APPROVED	STATUS/ REMARKS
9 S1	ADDITIONAL FUNDS	EWFA		*$40,000.00*				9/26/05	N/A	N/A	N/A	N/A	9/26/05	9/28/05	**9/28/05**	Approved & Implemented
				$40,000.00	0.04%	$797,069.00	$ 10,264,970.52		9/28/05	<< Approved Copies						
9 S2	ADDITIONAL FUNDS	EWFA														IN PROCESS - HOLI UNTIL ELEC. WORI COMPLETE
				$0.00	0.00%	$797,069.00	$ 10,264,970.52									
10	REMOVE TEMPORARY LIGHTING ALONG HIGHLAND	EWFA	0	*$30,000.00*				3/21/05	3/22/05	3/28/05	3/22/05 & Email	3/24/05	3/28/05	3/31/05	**3/30/05**	Approved & Implemented
				$30,000.00	0.03%	$827,069.00	$ 10,234,970.52		3/31/05	<< Approved Copies						
11	GRAFFITTI REMOVAL	EWFA	0	*$10,000.00*				3/31/05	4/1/05	4/4/05	4/4/05	5/16/05	4/4/05	4/5/05	**4/5/05**	Approved & Implemented
				$10,000.00	0.01%	$837,069.00	$ 10,224,970.52		4/6/05	<< Approved Copies						
12	REVISED DRAINAGE PLANS - SEGMENT 11	ITEM	0	*$63,410.40*				4/7/05	4/11/05	5/6/05	4/11/05	5/16/05	5/9/05	5/18/05	**5/18/05**	Approved & Implemented
				$63,410.40	0.06%	$900,479.40	$ 10,161,560.12		5/18/05	<< Approved Copies						
13	ADJUSTMENT TO VARIOUS ELECTRICAL BID ITEMS	ACLS														Meeting held on 12/1/05. Awaiting Contractor's cost
				$0.00	0.00%	$900,479.40	$ 10,161,560.12			<< Approved Copies						
14	ADDITIONAL BNSF INSURANCE COVERAGE	ACLS	0	*$20,152.67*				5/27/05	6/3/05	6/30/05	6/5/05 email		7/5/05	7/6/05	**7/6/05**	Approved & Implemented
				$20,152.67	0.02%	$920,632.07	$ 10,141,407.45		7/6/05	<< Approved Copies						
15	ELECTRICAL SERVICE CONNECTION FEES	EWFA	0	*$30,000.00*				5/3/05	5/3/05	5/6/05	5/6/05		5/9/05	5/18/05	**5/18/05**	Approved & Implemented
				$30,000.00	0.03%	$950,632.07	$ 10,111,407.45		5/18/05	<< Approved Copies						
15 S1	ADDITIONAL FUNDS	EWFA	0	*$150,000.00*												IN PROCESS - On Hold for additional scope
				$150,000.00	0.15%	$1,100,632.07	$ 9,961,407.45			<< Approved Copies						
16	MODIFY VULCAN EAST DRIVEWAY	EWFA	0	*$15,000.00*				7/15/05	7/21/05		7/22/05		8/5/05	8/9/05	**8/9/05**	Approved & Implemented
				$15,000.00	0.02%	$1,115,632.07	$ 9,946,407.45		8/10/05	<< Approved Copies						
16 S1	ADDITIONAL FUNDS	EWFA		*$15,000.00*				9/21/05	N/A	N/A	N/A	N/A	9/21/05	9/26/05	**9/26/05**	Approved & Implemented
				$15,000.00	0.02%	$1,130,632.07	$ 9,931,407.45		9/26/05	<< Approved Copies						
16 S2	ADDITIONAL FUNDS	EWFA		*$30,000.00*				12/7/05	N/A	N/A	N/A	N/A	12/7/05	12/12/05	**12/12/05**	Approved & Implemented
				$30,000.00	0.03%	$1,160,632.07	$ 9,901,407.45		12/13/05	<< Approved Copies						
17 (S)	SWPPP MAINTENANCE SHARING	EWFA	0	*$40,000.00*				5/3/05	5/3/05	5/6/05	5/17/05		5/9/05	5/18/05	**5/18/05**	Approved & Implemented
				$40,000.00	0.04%	$1,200,632.07	$ 9,861,407.45		5/18/05	<< Approved Copies						
18	REVISION TO N LINE PROFILE	NCNC	0	*$0.00*				5/17/05	5/26/05	6/1/05	5/26/05 email		6/1/05	6/3/05	**6/2/05**	Approved & Implemented
				$0.00	0.00%	$1,200,632.07	$ 9,861,407.45		6/6/05	<< Approved Copies						
19	ILLICIT DUMPING	EWFA	0	*$30,000.00*				4/15/05	6/9/05	6/13/05	6/10/05 email		6/13/05	6/15/05	**6/15/05**	Approved & Implemented
				$30,000.00	0.03%	$1,230,632.07	$ 9,831,407.45		6/16/05	<< Approved Copies						
20	AYALA PIPE EXTENSION	EWFA	0	*$15,000.00*				5/27/05	6/3/05	6/9/05	6/2/05 email		6/9/05	6/15/05	**6/15/05**	Approved & Implemented
				$15,000.00	0.02%	$1,245,632.07	$ 9,816,407.45		6/16/05	<< Approved Copies						

SEGMENTS 9, 10, 11 MAINLINE

Contract No. 05-014

San Bernardino Associated Governments
CONTRACT CHANGE ORDER and CONTINGENCY BALANCE LOG

(Updated: 07/06/2006)

CCO NO.	DESCRIPTION ($) = With Supplemental $	PAY MTD	TIME EXT.	CCO AMOUNT	%	TO DATE AMOUNT	CONTINGENCY BALANCE	R.E. SIGN.	CONTRACTOR TO	CONTRACTOR FROM	CT/FHWA Concurrence TO	CT/FHWA Concurrence FROM	SANBAG Approval TO	SANBAG Approval FROM	DATE APPROVED	STATUS/ REMARKS
21	SBCFCD MAINTENANCE TURN-AROUND- SEGMENT 9	EWFA	0	*$15,000.00*				7/14/05	7/15/05	7/22/05	7/15/05		7/22/05	7/26/05	**7/26/05**	Approved & Implemented
				$15,000.00	0.02%	$1,260,632.07	$ 9,801,407.45		7/27/05	<< Approved Copies						
22	PROVIDE PEPPER AVE ACCESS - Segment 10	ITEM	0	*$11,331.36*				5/23/05	5/25/05	6/17/05	5/26/05 email		6/17/05	6/23/05	**6/23/05**	Approved & Implemented
				$11,331.36	0.01%	$1,271,963.43	$ 9,790,076.09		7/11/05	<< Approved Copies						
22 S1	ADDITIONAL FUNDS	EWFA		*$2,000.00*				8/18/05	8/22/05	8/31/05	9/8/05		9/8/05	9/19/05	**9/19/05**	Approved & Implemented
				$2,000.00	0.00%	$1,273,963.43	$ 9,788,076.09		9/19/05	<< Approved Copies						
23	DRAINAGE DETAILS & INCREASED PIPE SIZES IN SEGMENT 9	ITEM		*$7,446.00*				~~8/18/05~~ ~~10/3/05~~	~~9/9/05~~	~~9/30/05~~	~~9/9/05~~		~~8/18/05~~ ~~10/4/05~~	~~12/6/05~~	**1/9/06**	Approved & Implemented
							Revised >>>	12/5/05	12/6/05	12/16/05	12/6/05	12/14/05	12/16/05	1/9/06		
				$7,446.00	0.01%	$1,281,409.43	$ 9,780,630.09		1/9/06	<< Approved Copies						
24	SEGMENT 11 DRAINAGE REVISION	ITEM EWFA	0	*$12,852.80* *$2,500.00*				6/6/05	6/17/05	6/30/05	6/17/05 email		7/5/05	7/6/05	**7/6/05**	Approved & Implemented
				$15,352.80	0.02%	$1,296,762.23	$ 9,765,277.29		7/6/05	<< Approved Copies						
25	ADDITIONAL DRAINAGE WORK / MODIFY NEW & EXISTING DRAINAGE FACILITIES	EWFA	0	*$30,000.00*				6/16/05	6/17/05	6/28/05	6/17/05 email		7/5/05	7/6/05	**7/6/05**	Approved & Implemented
				$30,000.00	0.03%	$1,326,762.23	$ 9,735,277.29		7/6/05	<< Approved Copies						
25 S1	ADDITIONAL FUNDS	EWFA														Hold for additional drainage work.
				$0.00	0.00%	$1,326,762.23	$ 9,735,277.29									
26	MODIFICATIONS TO THE INTERSECTIONS OF LILAC/CASMALIA AND LILAC/TAHOE	EWFA	0	*$55,000.00*			*Revised >>>*	10/28/05	11/22/05	12/5/05	11/22/05		~~10/31/05~~ 12/6/05	12/7/05	**12/7/05**	Approved & Implemented
				$55,000.00	0.06%	$1,381,762.23	$ 9,680,277.29		12/7/05	<< Approved Copies						
27	SBCFCD MAINTENANCE TURN-AROUND- SEGMENT 11	EWFA	0	*$10,000.00*			*2nd Issuance>>>*	7/18/05 12/1/05	~~7/29/05~~ 12/1/05	12/5/05	7/29/05	8/17/05	12/6/05	12/7/05	**12/7/05**	Approved & Implemented
				$10,000.00	0.01%	$1,391,762.23	$ 9,670,277.29		12/7/05	<< Approved Copies						
27 S1	ADDITIONAL FUNDS	EWFA	0	*$45,000.00*				5/9/06	N/A	N/A			5/9/06	6/26/06	**6/26/06**	Approved & Implemented
				$45,000.00	0.05%	$1,436,762.23	$ 9,625,277.29		6/26/06	<< Approved Copies						
28	SEGMENT 10 BRIDGE WELDED STEEL CASING PAYMENT	EWLS	0	*$52,932.24*				~~12/5/05~~ 12/7/05	12/8/05	12/16/05	12/8/05	12/14/05	~~12/5/05~~ 12/16/05	~~12/8/05~~ 1/9/06	**1/9/06**	Approved & Implemented
				$52,932.24	0.05%	$1,489,694.47	$ 9,572,345.05		1/9/06	<< Approved Copies						
29	SEGMENT 10 EARLY PUNCHLIST ITEMS @ RIVERSIDE AND EASTON	EWFA ADJ	0	*$40,000.00* *-$9,799.99*				4/7/06	4/14/06	5/3/06	4/14/06		~~4/10/06~~ 5/3/06	4/13/06 5/9/06	**5/8/06**	Approved & Implemented
				$30,200.01	0.03%	$1,519,894.48	$ 9,542,145.04		5/9/06	<< Approved Copies						
30	SEGMENT 9 & 10 EARLY SOUNDWALL COMPLETION	ITEM EWFA	0	*$26,897.40* *$120,000.00*				2/28/06	3/10/06	4/3/06	~~3/10/06~~ 4/19/06		~~3/8/06~~ 4/3/06	~~3/10/06~~ 4/17/06	**4/17/06**	Approved & Implemented. CO Transm-Revised p
									Revised Transmittal >>							
				$146,897.40	0.15%	$1,666,791.88	$ 9,395,247.64		4/17/06	<< Approved Copies						
31	MSE WALL CHANGE	ITEM ACLS	0	*$96,331.00* *-$21,238.00*			*Revised Memo >>>*	8/15/05	8/17/05	9/14/05	~~8/17/05~~ 10/4/05		~~9/15/05~~ 10/4/05	10/7/05	**10/7/05**	Approved & Implemented
				$75,093.00	0.08%	$1,741,884.88	$ 9,320,154.64		10/7/05	<< Approved Copies						
31 S1	MSE WALL ADDITONAL CHANGES	ITEM EWFA	0	*-$27,335.00* *$41,820.00*				1/18/06	1/26/06				1/18/06	1/26/06		IN PROCESS
				$14,485.00	0.01%	$1,756,369.88	$ 9,305,669.64									
32	SEG 10 EARLY PUNCHLIST: RELOC WVWD & SBC UTILITIES @ RIVERSIDE AND GALWAY INTERS.	EWLS EWFA	0	*$58,499.35* *$5,000.00*				3/24/06	3/29/06	4/11/06	~~3/29/06~~ 5/3/06		~~3/24/06~~ 4/14/06	~~3/29/06~~ 4/19/06	**4/19/06**	Approved & Implemented; Revised Trans - 05/2/06.
									Revised Transmittal Per CT >>							
				$63,499.35	0.06%	$1,819,869.23	$ 9,242,170.29		4/19/06	<< Approved Copies						

29

SEGMENTS 9, 10, 11 MAINLINE
Contract No. 05-014

San Bernardino Associated Governments
CONTRACT CHANGE ORDER and CONTINGENCY BALANCE LOG

(Updated: 07/06/2006)

CCO NO.	DESCRIPTION ($) = With Supplemental $	PAY MTD	TIME EXT.	CCO AMOUNT	%	TO DATE AMOUNT	CONTINGENCY BALANCE	R.E. SIGN.	CONTRACTOR TO	CONTRACTOR FROM	CT/FHWA Concurrence TO	CT/FHWA Concurrence FROM	SANBAG Approval TO	SANBAG Approval FROM	DATE APPROVED	STATUS/ REMARKS
32 S1	CONSTRUCT RETAINING WALL 1195 @ N/W RIVERSIDE & GALWAY	EWFA		*$100,000.00*				6/8/06	6/23/06	7/5/06	6/22/06		~~6/8/06~~	6/22/06		TO ATKN & CT 6/2
				$100,000.00	0.10%	$1,919,869.23	$ 9,142,170.29			<< Approved Copies						
32 S2	INTERSECTION SIGNALIZATION & DRIVEWAY DESIGN															Awaiting Contractor's Cost Estimate 08-30-05
				$0.00	0.00%	$1,919,869.23	$ 9,142,170.29			<< Approved Copies						
33	REVISE FIBER OPTIC CONDUIT SYSTEM 103C IN SEGMENTS 9 & 11	ITEM		*$6,500.00*				3/20/06	3/21/06	5/3/06	3/21/06	4/6/06	~~3/20/06~~	~~3/21/06~~	5/31/06	Approved & Implemented
		ADJ		*$132,604.94*									5/3/06	5/31/06		
				$139,104.94	0.14%	$2,058,974.17	$ 9,003,065.35		5/31/06	<< Approved Copies						
34	DRAINAGE SYSTEM 5A ALIGNMENT MODIFICATION	ITEM		*$25,956.00*				3/21/06	4/19/06	5/3/06	4/19/06		~~3/21/06~~	~~4/19/06~~	5/8/06	Approved & Implemented
		ACLS		*$115,920.00*									5/3/06	5/9/06		
				$141,876.00	0.14%	$2,200,850.17	$ 8,861,189.35		5/9/06	<< Approved Copies						
35	ADD WB AUXILIARY LANE & SIGN STRUCTURE CHANGES	ITEM		*$5,177.34*				3/27/06	3/29/06		3/29/06	4/6/06	~~3/27/06~~	3/29/06		FORWARDED TO ATKN & CALTRANS 3/29/06
		ACLS		*$22,691.00*												
				$27,868.34	0.03%	$2,228,718.51	$ 8,833,321.01			<< Approved Copies						
36	PARTIAL OPENING OF 210 FWY - SIERRA TO ADLER	EWFA	0	*$45,000.00*				9/15/05	9/16/05	9/22/05	9/16/05		9/22/05	9/26/05	9/26/05	Approved & Implemented
				$45,000.00	0.05%	$2,273,718.51	$ 8,788,321.01		9/26/05	<< Approved Copies						
37	MBGR PER 2004 STANDARD SPECS	NCNC	0	*$0.00*				1/3/06	1/19/06	4/3/06	1/19/06		~~1/4/06~~	~~1/18/06~~	4/5/06	Approved & Implemented
				$0.00	0.00%	$2,273,718.51	$ 8,788,321.01		4/5/06	<< Approved Copies			4/3/06	4/5/06		
38	CACTUS STREET MODIFICATIONS	EWFA	0	*$20,000.00*				2/21/06	3/13/06	4/3/06	3/13/06	4/6/06	~~2/22/06~~	~~3/10/06~~	4/5/06	Approved & Implemented
		ITEM		*$58,004.78*									4/3/06	4/5/06		
				$78,004.78	0.08%	$2,351,723.29	$ 8,710,316.23		4/5/06	<< Approved Copies						
39	PEDESTRIAN OPENINGS - 27TH & CALIFORNIA	ACLS	0	*$6,559.08*				10/19/05	10/25/05	11/14/05	10/25/05		10/19/05	11/21/05	11/21/05	Approved & Implemented
				$6,559.08	0.01%	$2,358,282.37	$ 8,703,757.15		11/21/05	<< Approved Copies						
40	HIGHLAND / EASTON PROFILE REVISION	ITEM	0	*$4,547.58*				11/15/05	11/17/06	2/17/06	11/17/05		~~11/15/05~~	~~11/17/06~~	2/28/06	Approved & Implemented
		EWFA		*$5,000.00*									2/20/06	3/1/06		
				$9,547.58	0.01%	$2,367,829.95	$ 8,694,209.57		3/1/06	<< Approved Copies						
40 S1	CITY OF RIALTO WATERLINE RELOCATION ON EASTON	EWLS		*$87,492.15*				3/17/06	3/23/06	5/3/06	3/27/06	4/6/06	~~3/17/06~~	~~3/23/06~~	5/8/06	Approved & Implemented
				$87,492.15	0.09%	$2,455,322.10	$ 8,606,717.42		5/9/06	<< Approved Copies			5/3/06	5/9/06		
41	INCLUDE FIBER OPTIC AS MOH	NCNC	0	*$0.00*				9/27/05	9/28/05	9/28/05	9/28/05		9/28/05	9/28/05	9/28/05	Approved & Implemented
				$0.00	0.00%	$2,455,322.10	$ 8,606,717.42		9/28/05	<< Approved Copies						
42	DELETE PORTIONS OF IRRIGATION CROSSOVERS SEG 9 AND EDGE DRAIN SEG 10	ITEM	0	*-$24,050.00*				10/28/05	11/15/05	11/30/05	11/15/05		~~10/28/05~~	~~11/15/05~~	1/9/06	Approved & Implemented
				-$24,050.00	-0.02%	$2,431,272.10	$ 8,630,767.42		1/9/06	<< Approved Copies			11/30/05	1/9/06		
43	CACTUS CHANNEL BASIN EROSION CONTROL FOR SBCFCD	EWAP		*$103,227.83*				~~5/12/06~~ 5/25/06	6/23/06	6/28/06	6/23/06		~~5/12/06~~			TO HL & DK 6/29 P.M.
				$103,227.83	0.10%	$2,534,499.93	$ 8,527,539.59			<< Approved Copies			~~5/25/06~~ 6/29/06	~~6/23/06~~		
44	DELETE QC/QA FOR ASPHALT CONCRETE	ACUP	0	*-$74,103.15*				1/5/06	1/11/06	2/28/06	10/28/05	12/20/05	~~1/5/06~~	~~1/11/06~~	3/15/06	Approved & Implemented
				-$74,103.15	-0.07%	$2,460,396.78	$ 8,601,642.74		3/16/06	<< Approved Copies			3/2/06	3/16/06		
45	SIGN STRUCTURE SPECS CHANGE	ITEM	0	*$137,697.10*				~~11/28/05~~ ~~2/20/06~~ 3/1/06	~~12/2/05~~ ~~3/1/06~~ 3/14/06	3/14/06	~~12/2/05~~ 3/16/06		~~11/29/05~~ ~~2/20/06~~ 3/17/06	~~3/14/06~~ 3/27/06	3/21/06	Approved & Implemented
		EWAP		*$585,480.00*												
		ACLS		*$8,962.80*												
				$732,139.90	0.74%	$3,192,536.68	$ 7,869,502.84		3/27/06	<< Approved Copies						

SEGMENTS 9, 10, 11 MAINLINE
Contract No. 05-014

San Bernardino Associated Governments
CONTRACT CHANGE ORDER and CONTINGENCY BALANCE LOG

(Updated: 07/06/2006)

CCO NO.	DESCRIPTION (S) = With Supplemental $	PAY MTD	TIME EXT.	CCO AMOUNT	%	TO DATE AMOUNT	CONTINGENCY BALANCE	R.E. SIGN.	CONTRACTOR TO	CONTRACTOR FROM	CT/FHWA Concurrence TO	CT/FHWA Concurrence FROM	SANBAG Approval TO	SANBAG Approval FROM	DATE APPROVED	STATUS/ REMARKS
46	RETAINING WALL CONCRETE GUTTERS	ACUP		*$48,307.00*				5/31/06	6/1/06	6/14/06	6/1/06		~~5/31/06~~ 6/14/06	~~6/1/06~~ 6/26/06	6/26/06	Approved & Implemented
				$48,307.00	0.05%	$3,240,843.68	$ 7,821,195.84		6/26/06	<< Approved Copies						
47	REVISIONS TO DRAINAGE SYSTEM 7															Atkinson to concure with cost proposal
				$0.00	0.00%	$3,240,843.68	$ 7,821,195.84			<< Approved Copies						
48	CAJON OH BENT 2 ALTERNATIVE PILE	ITEM EWFA		*-$70,560.00* *$90,654.24*				3/7/06	3/8/06	4/25/06	3/8/06	4/6/06	~~3/7/06~~ 4/25/06	~~3/8/06~~ 5/3/06	5/3/06	Approved & Implemented
				$20,094.24	0.02%	$3,260,937.92	$ 7,801,101.60		5/3/06	<< Approved Copies						
49	EXTEND EXISTING ADAMS ST. STORM DRAIN (OASIS) TO EAST OF UPRR RAILWAY	ITEM		*$22,308.00*				6/19/06	6/23/06	6/30/06	6/23/06		~~6/19/06~~	6/23/06		TO ATKN & CT 6/
				$22,308.00	0.02%	$3,283,245.92	$ 7,778,793.60			<< Approved Copies						
50	CACTUS V-DITCH AND OUTLET STRUCTURE	ITEM														IN PROCESS
				$0.00	0.00%	$3,283,245.92	$ 7,778,793.60			<< Approved Copies						
51	SLOPE PAVING - PEPPER, LILAC & 27TH	ITEM														IN PROCESS
				$0.00	0.00%	$3,283,245.92	$ 7,778,793.60			<< Approved Copies						
52	LOCAL STREET SIGNS- METAL POSTS IN LIEU OF WOOD	ACUP		*$1,328.25*				6/1/06	6/2/06	6/13/06	6/2/06		~~6/1/06~~ 6/14/06	~~6/2/06~~ 6/26/06	6/26/06	Approved & Implemented
				$1,328.25	0.00%	$3,284,574.17	$ 7,777,465.35		6/26/06	<< Approved Copies						
53	SOUNDWALL MASONRY BLOCK SPEC CHANGE	NCNC		*$0.00*				5/11/06	5/16/06	5/19/06	5/11/06	5/17/06	~~5/11/06~~ 5/19/06	~~5/16/06~~ 5/24/06	5/23/06	Approved & Implemented
				$0.00	0.00%	$3,284,574.17	$ 7,777,465.35		5/25/06	<< Approved Copies						
54	PREPARE SLOPES @ CACTUS CHANNEL FOR EROSION CONTROL	EWAP		*$102,760.65*				5/25/06	6/23/06	6/28/06	6/23/06		~~5/25/06~~ 6/29/06	~~6/23/06~~		TO HL & DK 6/29 P.M.
				$102,760.65	0.10%	$3,387,334.82	$ 7,674,704.70			<< Approved Copies						
55	SEG 9 REPAIR DRAINAGE FACILITY AT SW125N & SEG 10 DS 8F	ITEM ACLS		*$75,600.00* *$8,142.01*				~~5/23/06~~ 6/26/06	6/29/06		6/29/06		~~5/23/06~~ ~~6/26/06~~	6/29/06		TO ATKN & CT 6/
				$83,742.01	0.08%	$3,471,076.83	$ 7,590,962.69			<< Approved Copies						
56	ADJUST. FOR CONCRETE GUTTER IN EXCESS OF 125% EE (SEG 10 & 11)	ACUP ITEM		*-$41,415.00* *$132,000.00*				6/19/06	6/23/06	6/30/06	6/23/06		~~6/19/06~~	6/23/06		TO ATKN & CT 6/
				$90,585.00	0.09%	$3,561,661.83	$ 7,500,377.69			<< Approved Copies						
57	LILAC DRAINAGE MODIFICATIONS			*$0.00*												IN PROCESS
				$0.00	0.00%	$3,561,661.83	$ 7,500,377.69			<< Approved Copies			<< Approved Copies			
58	RETAINING WALL 150 BARRIER CLOSURE	EWLS		*$2,674.08*				6/16/06	6/23/06	6/30/06	6/23/06		~~6/16/06~~	6/23/06		TO ATKN & CT 6/
				$2,674.08	0.00%	$3,564,335.91	$ 7,497,703.61			<< Approved Copies						
59	SEWER RELOCATION @ SEGMENT 11 BASIN 5			*$0.00*												IN PROCESS
				$0.00	0.00%	$3,564,335.91	$ 7,497,703.61			<< Approved Copies						
				$0.00												IN PROCESS
				$0.00	0.00%	$3,564,335.91	$ 7,497,703.61			<< Approved Copies						
				$0.00												IN PROCESS
				$0.00	0.00%	$3,564,335.91	$ 7,497,703.61			<< Approved Copies						
				$0.00												IN PROCESS

SEGMENTS 9, 10, 11 MAINLINE

Contract No. 05-014

San Bernardino Associated Governments

CONTRACT CHANGE ORDER and CONTINGENCY BALANCE LOG

(Updated: 07/06/2006)

CCO NO.	DESCRIPTION (S) = With Supplemental $	PAY MID.	TIME EXT.	CCO AMOUNT	%	TO DATE AMOUNT	CONTINGENCY BALANCE	R.E. SIGN.	CONTRACTOR TO	CONTRACTOR FROM	CT/FHWA Concurrence TO	CT/FHWA Concurrence FROM	SANBAG Approval TO	SANBAG Approval FROM	DATE APPROVED	STATUS/ REMARKS
				$0.00	0.00%	$3,564,335.91	$ 7,497,703.61			<< Approved Copies						
				$0.00												IN PROCESS
				$0.00	0.00%	$3,564,335.91	$ 7,497,703.61			<< Approved Copies						
ITEM & CCO BALANCE: OVERRUN(-)/UNDERRUN(+)						>>>>>>>>>>>>>>>>>	$ (614,250.84)									
TOTAL TO DATE >>>>>>>>			0	$3,564,335.91	3.408%		$ 7,060,453.86	<<< Balance Inclusive of Item & CCO Overrun								

Total Approved CCO>>	$2,866,685.00
Approved CCOs>>	
Pending CCOs>>	$697,650.91

NOTES: * Includes Supplemental Funds & SANBAG Furnished Materials

**

SUMMARY OF OVERRUNS FOR ACTIVE ITEMS & CCO WORK

ITEM NO.		$ Overrun	$ Balance
			-$327,334.80
A13		-$5,860.00	
A19		-$2,540.00	
A20		-$3,078.00	
A84			
A86			
A94		-$70.00	
B02		-$17,600.00	
B11		-$7,120.00	
B12		-$16,880.00	
B13		-$9,723.60	
B26		-$148,783.04	
B34		-$22.42	
B90		-$4,070.00	
B93		-$12,167.50	
B95		-$11,734.60	
B98		-$3,864.00	
B106		-$33,280.00	
B110		-$48,000.00	
B158		-$1,100.00	
C57		-$1,441.64	

CCO NO.	$ Overrun	$ Balance	Total Overrun
		-286,916.04	-$614,250.84
1,1S1,1S2	-42,019.31		As of Est. 18 (6/30/06)
2,2S1			
3			
4			
5			
6			
7			
8,8S1			
9,9S1	-36,307.95		
10			
11			
12			
13			
14			
15	-49,907.71		
16,16S1			
17	-20,062.59		
18			
19	-5,854.02		
20	-1,387.84		
21			
22,22S1	-3,244.61		
23			
24	-2,866.99		
25	-88,369.47		
27			
38	-36,397.11		
40	-498.44		

SEGMENT 11 EARLY PROJECT
CONTRACT No. 05-005

San Bernardino Associated Governments
CONTRACT CHANGE ORDER and CONTINGENCY BALANCE LOG

(Updated: 07/06/2006)

CCO NO.	DESCRIPTION (S) = With Supplemental $	PAY MTD	TIME EXT.	CCO AMOUNT	%	TO DATE AMOUNT	CONTINGENCY BALANCE	R.E. SIGN.	CONTRACTOR TO	CONTRACTOR FROM	CT / FHWA Concurrence TO	CT / FHWA Concurrence FROM	SANBAG Approval TO	SANBAG Approval FROM	DATE APPROVED	STATUS/ REMARKS
	*CONTINGENCY & SUPPLEMENTAL WORK BUDGET >>>						$3,326,514.00								Contract Bid Amount >>	$31,921,138.75
1	MAINTAIN ROADWAY AND TRAFFIC CONTROL ...	EWFA	0	*$20,000.00*				3/29/05	1/31/05	4/4/05	4/4/05 & Email		4/4/05	4/6/05	4/5/05	Approved & Implemented
(S)				**$20,000.00**	0.06%	$20,000.00	$ 3,306,514.00		4/6/05	<< Approved Copies						
1 S1	ADDITIONAL FUNDS	EWFA		*$40,000.00*				11/18/05	N/A	N/A	N/A	N/A	11/18/05	11/29/05	11/29/05	Approved & Implemented
				$40,000.00	0.13%	$60,000.00	$ 3,266,514.00		11/30/05	<< Approved Copies						
2	MAINTAIN EXISTING AND TEMPORARY ELECTRICAL SYSTEM	EWFA	0	*$20,000.00*				3/29/05	1/31/05	4/4/05	4/4/05 & Email	5/16/05	4/4/05	4/6/05	4/5/05	Approved & Implemented
				$20,000.00	0.06%	$80,000.00	$ 3,246,514.00		4/6/05	<< Approved Copies						
2 S1	ADDITIONAL FUNDS	EWFA		*$60,000.00*				12/21/05	N/A	N/A	N/A	N/A	12/22/05	1/9/06	1/9/06	Approved & Implemented
				$60,000.00	0.19%	$140,000.00	$ 3,186,514.00		1/9/06	<< Approved Copies						
3	FEDERAL APPRENTICESHIP TRAINING	ACUP	0	*$14,400.00*				4/6/05	4/7/05	4/11/05	4/20/05	5/16/05	4/11/05	4/21/05	4/21/05	Approved & Implemented
(S)				**$14,400.00**	0.05%	$154,400.00	$ 3,172,114.00		4/21/05	<< Approved Copies						
4	REMOVE ADDITIONAL TREES & CLEAR / GRUB TO FACILITATE UTILITY RELOCATION	EWFA	0	*$15,000.00*				4/6/05	4/7/05	4/11/05	4/20/05	5/16/05	4/11/05	4/21/05	4/21/05	Approved & Implemented
				$15,000.00	0.05%	$169,400.00	$ 3,157,114.00		4/21/05	<< Approved Copies						
4 S1	ADDITIONAL FUNDS	EWFA	0	*$15,000.00*				7/6/05	N/A	N/A	N/A	N/A	7/25/05	7/26/05	7/26/05	Approved & Implemented
				$15,000.00	0.05%	$184,400.00	$ 3,142,114.00		7/27/05	<< Approved Copies						
5	SWPPP MAINTENANCE	EWFA	0	*$40,000.00*				5/9/05	5/9/05	5/11/05	5/17/05		5/11/05	5/18/05	5/17/05	Approved & Implemented
(S)				**$40,000.00**	0.13%	$224,400.00	$ 3,102,114.00		5/18/05	<< Approved Copies						
6	MAINTAIN EXISTING UTILITY FACILITIES	EWFA	0	*$15,000.00*				8/11/05	8/17/05	9/14/05	~~8/17/05~~ 9/7/05		9/15/05	9/19/05	9/19/05	Approved & Implemented
				$15,000.00	0.05%	$239,400.00	$ 3,087,114.00		9/19/05	<< Approved Copies						
6 S1	ADDITIONAL FUNDS	EWFA		*$85,000.00*				~~10/14/05~~ 10/19/05	N/A	N/A	N/A	N/A	~~10/14/05~~ 10/19/05	10/25/05	10/25/05	Approved & Implemented
				$85,000.00	0.27%	$324,400.00	$ 3,002,114.00		10/25/05	<< Approved Copies						
7	HIGHLAND-DELMANN WATER MADISON DRIVEWAY	EWFA ITEM		*$12,990.00* *$6,010.00*			*Revised >>*	~~1/27/06~~ 5/12/06	~~1/31/06~~ 5/25/06	~~5/8/06~~ 6/5/06	1/31/06		~~1/27/06~~ ~~5/15/06~~	~~1/31/06~~ ~~5/25/06~~	6/8/06	Approved & Implemented
				$19,000.00	0.06%	$343,400.00	$ 2,983,114.00			<< Approved Copies			6/6/06	6/26/06		
8	CONFINED SPACE ATTENDANT	EWFA		*$10,000.00*				6/6/05	6/6/05	6/10/05	6/10/05 email	8/1/05	6/10/05	6/15/05	6/15/05	Approved & Implemented
				$10,000.00	0.03%	$353,400.00	$ 2,973,114.00		6/15/05	<< Approved Copies						
8 S1	ADDITIONAL FUNDS	EWFA		*$20,000.00*				11/21/05	N/A	N/A	N/A	N/A	11/21/05	11/29/05	11/29/05	Approved & Implemented
				$20,000.00	0.06%	$373,400.00	$ 2,953,114.00		11/30/05	<< Approved Copies						
9	STATE STREET PILE DEPTH REVISION / PRE-DRILLING	ITEM EWLS		*$2,905.00* *$61,675.00*				7/19/05	7/21/05	8/5/05	7/22/05	8/1/05	8/5/05	8/9/05	8/9/05	Approved & Implemented
				$64,580.00	0.20%	$437,980.00	$ 2,888,534.00		8/10/05	<< Approved Copies						
10	MAN MADE BURIED OBJECTS	EWFA		*$15,000.00*				8/15/05	8/17/05		8/17/05		9/15/05	9/19/05	9/19/05	Approved & Implemented
				$15,000.00	0.05%	$452,980.00	$ 2,873,534.00		9/19/05	<< Approved Copies						
10 S1	ADDITIONAL FUNDS	EWFA		*$20,000.00*				12/22/05	N/A	N/A	N/A	N/A	12/22/05	1/9/06	1/9/06	Approved & Implemented
				$20,000.00	0.06%	$472,980.00	$ 2,853,534.00		1/9/06	<< Approved Copies						
11	STATE STREET OPEN CHANNEL CABLE RAILING (SSSD)	EWAP		*$7,693.72*				12/8/05	12/8/05	12/19/06	12/9/05	12/14/05	~~12/8/05~~ 1/4/06	~~12/8/05~~ 1/18/06	1/18/06	Approved & Implemented

SEGMENT 11 EARLY PROJECT
CONTRACT No. 05-005

San Bernardino Associated Governments
CONTRACT CHANGE ORDER and CONTINGENCY BALANCE LOG

(Updated: 07/06/2006)

CCO NO.	DESCRIPTION (S) = With Supplemental $	PAY MTD	TIME EXT.	CCO AMOUNT	%	TO DATE AMOUNT	CONTINGENCY BALANCE	R.E. SIGN.	CONTRACTOR TO	CONTRACTOR FROM	CT / FHWA Concurrence TO	CT / FHWA Concurrence FROM	SANBAG Approval TO	SANBAG Approval FROM	DATE APPROVED	STATUS/ REMARKS
12	ELECTRICAL SERVICE CONNECTION FEES	EWFA	0	**$7,693.72** *$15,000.00*	0.02%	$480,673.72	$ 2,845,840.28 *Revised >>*	~~8/15/05~~ 9/15/05	1/19/06 ~~8/17/05~~ 9/15/05	<< Approved Copies 9/21/05	8/17/05		9/22/05	9/28/05	**9/27/05**	Approved & Implemented
12 S1	ADDITIONAL FUNDS	EWFA		**$15,000.00**	0.05%	$495,673.72	$ 2,830,840.28		9/28/05	<< Approved Copies						IN PROCESS
13	TRAFFIC SIGNAL LOOPS @ HIGHLAND/MACY & HIGHLAND/CALIFORNIA	EWFA		**$0.00** *$35,000.00*	0.00%	$495,673.72	$ 2,830,840.28	3/23/06	3/27/06	4/11/06	4/6/06		~~3/22/06~~ 4/13/06	~~3/27/06~~ 4/19/06	**4/19/06**	Approved & Implemented
14	REMOVE AND REPLACE MUSCOY WATER LINE NORTH OF HIGHLAND	EWFA EWLS		**$35,000.00** *$10,000.00* *$62,779.42*	0.11%	$530,673.72	$ 2,795,840.28	9/21/05	4/19/06 9/28/05	<< Approved Copies 9/28/05	~~9/28/06~~ 10/4/05 - Due to Memo Change per CT		9/21/05	9/28/05	**9/28/05**	Approved & Implemented
14 S1	ADDITIONAL MMWD UTILITY WORK ON STATE STREET	EWLS		**$72,779.42** *$23,758.92*	0.23%	$603,453.14	$ 2,723,060.86	11/16/05	9/28/05 11/22/05	<< Approved Copies 12/5/05	11/23/05		~~11/16/05~~ 12/6/05	~~11/22/05~~ 12/7/05	**12/7/05**	Approved & Implemented
15	REVISED MBGR STANDARD PLAN	NCNC		**$23,758.92** *$0.00*	0.07%	$627,212.06	$ 2,699,301.94	1/3/06	12/7/05 1/19/06	<< Approved Copies 4/3/06	1/19/06		~~1/4/06~~ 4/3/06	~~1/19/06~~ 4/5/06	**4/5/06**	Approved & Implemented
16	PEDESTRIAN OPENINGS (CREDIT) - STATE STREET BRIDGE	ADJ		**$0.00** *-$3,602.00*	0.00%	$627,212.06	$ 2,699,301.94	11/22/05	4/5/06 12/1/05	<< Approved Copies 12/22/05	12/1/05	12/14/05	~~11/29/05~~ 12/22/05	~~12/1/05~~ 1/9/06	**1/9/06**	Approved & Implemented
17	LOCAL STREET NAME SIGNS & NORM JOHNSON WAY CHANGE	EWUP ACUP		**-$3,602.00** *$5,595.72* *$8,915.00*	-0.01%	$623,610.06	$ 2,702,903.94	4/5/06	1/9/06 4/14/06	<< Approved Copies 4/20/06	4/14/06		~~4/6/06~~ 4/20/06	~~4/13/06~~ 5/3/06	**5/3/06**	Approved & Implemented
18	MADISON/GARDENA KEYSTONE WALL AND MIXIN DRIVEWAY	EWFA		**$14,510.72** *$13,500.00*	0.05%	$638,120.78	$ 2,688,393.22	12/14/05	5/3/06 12/28/05	<< Approved Copies 1/11/06	12/28/05		~~12/14/05~~ 1/11/06	1/18/06	**1/18/06**	Approved & Implemented
19	ADJUSTMENT TO VARIOUS ELECTRICAL BID ITEMS	ADJ		**$13,500.00**	0.04%	$651,620.78	$ 2,674,893.22		1/19/06	<< Approved Copies						IN PROCESS
20	SOUNDWALL 196			**$0.00**	0.00%	$651,620.78	$ 2,674,893.22			<< Approved Copies						IN PROCESS
21	CAJON OH BENT 2 ALTENATIVE PILE	ITEM ADJ		**$0.00** *$2,865.00* *$16,931.24*	0.00%	$651,620.78	$ 2,674,893.22	3/7/06	<< Approved Copies 3/8/06	4/11/06	3/8/06	4/6/06	~~3/7/06~~ 4/13/06	~~3/8/06~~ 4/19/06	**4/19/06**	Approved & Implemented
22	SIGN STRUCTURE SPEC CHANGE	ITEM EWFA ADJ		**$19,796.24** *-$24,876.50* *$20,160.00* *$2,362.50*	0.06%	$671,417.02	$ 2,655,096.98 *Revised >>* *Revised >>*	~~3/9/06~~ ~~6/5/06~~ 7/5/06	4/19/06 ~~3/13/06~~ ~~6/8/06~~	<< Approved Copies	~~3/13/06~~ ~~6/8/06~~	~~4/6/06~~ ~~6/21/06~~	~~3/10/06~~ ~~6/5/06~~ 7/5/06	~~3/10/06~~ ~~6/8/06~~		IN PROCESS
23	TCE ISSUES AT 20TH STREET: BLOCK WALL	EWFA		**-$2,354.00** *$20,000.00*	-0.01%	$669,063.02	$ 2,657,450.98	3/29/06	<< Approved Copies 4/3/06	4/11/06	4/3/06		~~3/29/06~~ 4/13/06	~~4/3/06~~ 4/19/06	**4/20/06**	Approved & Implemented
24	MODIFICATIONS TO SSSD @ BASELINE: ADD'L RSP, HEADWALL & 600mm AP	EWFA		**$20,000.00** *$30,000.00*	0.06%	$689,063.02	$ 2,637,450.98	6/1/06	4/19/06 6/6/06	<< Approved Copies 6/14/06	6/6/06	6/21/06	~~6/1/06~~ 6/14/06	~~6/5/06~~ 6/26/06	**6/26/06**	Approved & Implemented
	STATE STREET ADDT'L SLOPE	ITEM		**$30,000.00** *$43,050.00*	0.09%	$719,063.02	$ 2,607,450.98	5/11/06	<< Approved Copies 5/19/06	6/23/06	5/19/06	?	~~5/11/06~~	~~5/16/06~~		TO HL, DK FOR

SEGMENT 11 EARLY PROJECT
CONTRACT No. 05-005

San Bernardino Associated Governments
CONTRACT CHANGE ORDER and CONTINGENCY BALANCE LOG

(Updated: 07/06/2006)

CCO NO.	DESCRIPTION (S) = With Supplemental $	PAY MTD	TIME EXT.	CCO AMOUNT	%	TO DATE AMOUNT	CONTINGENCY BALANCE	R.E. SIGN.	CONTRACTOR TO	CONTRACTOR FROM	CT / FHWA Concurrence TO	CT / FHWA Concurrence FROM	SANBAG Approval TO	SANBAG Approval FROM	DATE APPROVED	STATUS/ REMARKS
25	STATE STREET ADDITIONAL SCOPE PAVING						*Revised Transmital >>*	n/a	n/a		6/21/06		6/23/06			APPROVAL 6/23
				$43,050.00	0.13%	$762,113.02	$ 2,564,400.98			<< Approved Copies						15201I
26	MODIFICATIONS TO TIE BACK WALL "L"															IN PROCESS
				$0.00	0.00%	$762,113.02	$ 2,564,400.98			<< Approved Copies						
	ITEM & CCO BALANCE: OVERRUN(-)/UNDERRUN(+)				>>>>>>>>>>>>>>>>>		$ (275,181.91)									
	TOTAL TO DATE >>>>>>>		0	$762,113.02	2.39%		$ 2,289,219.07	<<< Balance Inclusive of Item & CCO Overrun								

Total Approved CCO>>	$721,417.02
Approved CCOs>>	
Pending CCOs>>	$40,696.00

NOTES * Includes Supplemental Funds & SANBAG Furnished Materials

**

SUMMARY OF OVERRUNS FOR ACTIVE ITEMS & CCO WORK

ITEM NO.		$ Overrun	$ Balance	CCO NO.	$ Overrun	$ Balance	Total Overrun
			-$235,379.10			-$39,802.81	-$275,181.91
8		-$314.10		1	-$5,684.54		As of Est. 16 (5/20/06)
18		-$1,292.80		2	-$33,755.79		
20		-$360.00		3			
29		-$1,100.00		4			
30		-$2,340.00		5			
42		-$180,064.06		6			
66		-$14,034.15	CCO 21	7			
69		$0.00	CCO 21	8,8S1	-$362.48		
71		-$9,087.30		10			
121		-$13,701.79		11			
140		-$4,429.00					
B1		-$2,082.40					

(For use totwards the job completion)

07/06/2006

This page left blank.

Governments SANBAG Working Together

San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715
Phone: (909) 884-8276 Fax: (909) 885-4407 Web: www.sanbag.ca.gov

TRANSPORTATION MEASURE I

■ San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 6

Date: July 13, 2006

Subject: Professional Services Amendment No. 1 to Agreement No. 06-018 with Peckar and Abramson for legal services for Route 71 Landscape Project litigation

Recommendation:* Recommend approval of Amendment No. 1 to Agreement 06-018 with Peckar and Abramson increasing the not to exceed amount by $100,000 for a total not to exceed amount of $200,000. TN 81807000

Background: **This is an amendment to an existing contract**. In September 2005, the Board approved contract 06-018 with Peckar and Abramson for legal services for Route 71 Landscape project litigation. SANBAG had filed a lawsuit against the Contractor on the 71 Landscape Project in July 2005 and since that time SANBAG's legal team has undertaken and extensive discovery effort. Between developing the legal strategy for the lawsuit and the discovery efforts the contract amount has been depleted. Later this summer SANBAG will be a party to mediation in this matter and additional contract funds will be necessary to fund the ongoing legal activity.

Financial Impact: This item is consistent with the SANBAG 2006/07 fiscal year budget. The cost of this contract increases the not to exceed amount to $200,000. TN 8180700

Reviewed By: This item will be considered by the Major Projects Committee on July 13, 2006.

Responsible Staff: Darren Kettle, Director of Freeway Construction

*

Approved
Major Projects Committee

Date: *July 13, 2006*

Moved: *Second:*
In Favor: *Opposed:* *Abstained:*

Witnessed: _____

MPC0607D-DMK.DOC
TN 81807000
Attachment: A06-018.DOC

Agreement No. 06-018

by and between

San Bernardino County Transportation Authority

and

Peckar & Abramson

for

71 Legal Services

FOR ACCOUNTING PURPOSES ONLY

☒ Payable ☐ Receivable | Vendor Contract # _____ | Retention: ☐ Yes ☐ No | ☒ Original ☐ Amendment

Notes:

Original Contract:	$ 100,000	Previous Amendments Total:	$ _____
		Previous Amendments Contingency Total:	$ _____
Contingency Amount:	$ _____	Current Amendment:	$ _____
		Current Amendment Contingency:	$ _____

Contingency Amount requires specific authorization by Task Manager prior to release.

Contract TOTAL → $ **100,000**

Please include funding allocation for the original contract or the amendment ↘

Task	Cost Code	Funding Sources	Amounts
1 0627300	5553	1 MIVMPF	$ 100,000
2 _____	_____	2 _____	$ _____
3 _____	_____	3 _____	$ _____

Original Board Approved Contract Date: 9/7/05 Contract Start: 9/7/05 Contract End: N/A

New Amend. Approval (Board) Date: Amend. Start: Amend. End:

If this is a multi-year contract/amendment, please allocate costs among fiscal years:

Fiscal Year: 05/06	Fiscal Year: _____	Fiscal Year: _____
$ 100,000	$ _____	$ _____

Is this consistent with the adopted budget? ☐Yes XNo

If no, has the budget amendment been submitted? ☒Yes ☐No

CONTRACT MANAGEMENT

Please mark an "X" next to all that apply:

☐ Intergovernmental ☒ Private ☐ Non-Local ☐ Local ☐ Partly Local

Disadvantaged Business Enterprise: ☐No ☐Yes _____%

Task Manager: **Darren Kettle** | Contract Manager: **Chuck Wisdom**

Task Manager Signature 7-7-06 Date

Contract Manager Signature Date

Chief Financial Officer Signature 7/7/06 Date

Filename: Form 28 04/04

SANBAG CONTRACT No. 06-018

By and Between

SANBAG/SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

And

PECKAR & ABRAMSON

For

LEGAL SERVICES FOR ROUTE 71 LANDSCAPE PROJECT

THIS CONTRACT is entered into in the State of California by and between San Bernardino Associated Governments/San Bernardino County Transportation Authority, hereinafter collectively referred to as "SANBAG", and Peckar & Abramson, hereinafter called "Attorneys".

WHEREAS, SANBAG has determined that it is in the best interest of SANBAG to retain Attorneys to advise and assist in the representation of SANBAG in administrative actions and civil actions (and the threat of same) in connection with the Route 71 Landscape Project and such other matters as may be assigned; and,

WHEREAS, Attorneys have special skills, knowledge, experience and expertise in the area of construction litigation necessary to effectively to advise, assist, litigate, and otherwise represent SANBAG on such matters;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. **Representation of SANBAG.**

a. SANBAG hereby retains the services of Attorneys to advise, represent and assist in the representation of SANBAG, its officers and employees in the matters referred to above in the first WHEREAS clause, and to provide such other advice, services and representation on other matters as may be assigned by SANBAG.

b. In the performance of all services under this Agreement, Attorneys shall be, and acknowledge that Attorneys are, in fact and law, independent contractors and not an agent or employee of SANBAG. Attorneys have and retain the right to exercise full supervision and control of the manner and methods of providing services to SANBAG under this Agreement. Attorneys retain full supervision and control over the employment, direction, compensation and discharge of all persons assisting Attorneys in the provision of services under this Agreement. With respect to Attorneys' employees, if any, Attorneys shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax

withholding and payment of employee taxes, whether federal, state or local, and compliance with any and all other laws regulating employment.

2. **Performance of Services and Hourly Rates.**

a. Attorneys shall be compensated for services performed under this Contract at the following hourly rates:

Mary A. Salamone	$295.00
John C. Pytel	$175.00
Paralegal	$110.00

Associates shall be billed at Attorneys' hourly rate for government clients for the assigned associate. Any changes to the above rates shall require advance approval of the SANBAG Board. Fees under this contract shall not exceed $100,000 unless prior approval is obtained from the SANBAG Board.

b. Attorneys shall only assign persons to perform services under this Contract who are approved by SANBAG and when feasible, Attorneys will use lower compensated personnel in order to reduce the costs of services to SANBAG. Mary A. Salamone shall be the lead attorney, supervise all Attorneys' work under this Contract, and be the point of contact between the Attorneys and SANBAG on all matters under this Contract. SANBAG Counsel may approve other attorneys or other persons to work under this Contract.

c. Attorneys shall not, without the consent of SANBAG, communicate any information they reasonably believe is confidential information, whether designated in writing or identified in this Contract as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that they protect their own confidential information, unless such disclosure is required in response to a validly issued subpoena or other process of law. Upon completion of this Contract, the provisions of this paragraph shall continue to survive.

d. Attorneys shall prepare and submit case reports or other status reports and recommendations in the form and manner as requested by SANBAG

3. **Coordination of Services.** Attorneys shall consult with SANBAG through SANBAG Counsel concerning all substantive positions and procedural steps to be taken by Attorneys in the course of advice and representation pursuant to this Contract.

4. **Billing.** Attorneys shall submit monthly statements to SANBAG Counsel for fees and costs for services performed under this Contract. Such monthly statements shall indicate the services performed, the person(s) performing the services and provide an accounting of work time spent, and costs and expenses for which payment is requested under this Contract. Fees will be charged in one-twelfth hour increments. Subject to Paragraph 10, SANBAG's Legal Billing Review, SANBAG shall pay Attorneys' fees and expenses within a reasonable time after receipt of billings. Attorneys agree and understand that SANBAG is paying on an hourly basis and will not pay for items that are charged on a "value billing" basis. For purposes of this Contract, value billing is defined as billing time or fees for a task on any basis other than the actual time that was worked by the

biller. Attorneys understand that SANBAG employees are public servants that do not require client development and Attorneys shall not charge SANBAG for any client development costs.

5. **Term and Termination.** This Contract shall commence on the date it is approved by the SANBAG Board and terminate as follows: SANBAG reserves the right in its sole discretion to terminate this Contract at any time SANBAG deems necessary or advisable upon ten (10) days notice to the Attorneys. In order that SANBAG may have sufficient time to obtain replacement counsel, Attorneys reserve the right in its sole discretion to terminate this Contract at any time Attorneys deems necessary or advisable upon thirty (30) days notice to SANBAG. Upon receipt or giving of such notice of termination, Attorneys shall provide no further services to SANBAG without specific request or authorization of SANBAG. Services of Attorneys hereunder shall not be deemed terminated until Attorneys have had an opportunity to, and upon receipt or giving of such notice of termination Attorneys are hereby authorized to, obtain leave of court to withdraw from any court proceeding concerning which Attorneys are attorney of record for SANBAG. In the event of any termination of this Contract, Attorneys shall immediately provide SANBAG with all materials, documents and work product related to services performed under this Contract that have not previously been provided to SANBAG. All such materials, documents and work product related to services performed under this Contract are and shall remain the property of SANBAG. Unless otherwise directed by SANBAG, Attorneys may retain copies of such items.

6. **No Assignment.** The experience, skill and expertise of Attorneys are of the essence to this Contract. Attorneys shall not assign (whether by assignment or novation) this Contract or delegate their duties hereunder in whole or in part or any right of interest hereunder without the prior consent of SANBAG.

7. **Amendment.** This Contract may be amended or modified only by agreement signed by the SANBAG Board and the Attorneys, and a failure on the part of either party to enforce any provision of this Contract shall not be construed as a waiver of the right to compel enforcement of such provision or provisions.

8. **Prior Approval.** Unless otherwise instructed, Attorneys must obtain the prior approval of SANBAG concerning the following:

   a. Retention of any consultant or expert witness to assist with this matter;

   b. Making any settlement proposal on SANBAG's behalf;

   c. Filing any action, response or motion;

   d. Scheduling any deposition;

   e. Undertaking research of more than twelve (12) hours on any particular issue; and,

   f. Any expense item exceeding Five Hundred Dollars ($500.00).

9. **Copies of Work Attorneys Will Provide to SANBAG.** Attorneys must promptly provide SANBAG with copies of all:

a. Pleadings and legal memoranda prepared in connection with any SANBAG matter hereunder;

b. Court rulings; and,

c. Significant correspondence, reports and information related to any SANBAG matter hereunder.

10. **SANBAG's Legal Billing Review.** SANBAG shall have the right to review and audit all billing statements prior to or after payment to Attorneys. This review may include, but not be limited to:

a. The determination that the hourly fee charged is consistent with this Contract's approved hourly rate schedule;

b. The determination that the multiplication of the hours billed times the approved rate schedule dollars is correct;

c. The determination that the bill is clearly divided into billing rate categories based on hours worked on each activity for each day by each attorney and costs which Attorneys have advanced to witnesses, consultants and experts, depositions, transcript expenses, and other chargeable expenses; and,

d. The determination that each item charged is the usual, customary, and reasonable charge for the particular item. If SANBAG determines an item charged is greater than usual, customary, or reasonable, or is duplicative, ambiguous, excessive, or inappropriate, SANBAG shall either return the bill to Attorneys with a request for explanation or adjust the payment accordingly, and give notice to Attorneys of the adjustment.

e. SANBAG and its authorized representatives shall have the absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have the absolute right to monitor the performance of Attorneys in the delivery of services provided under this Contract. Attorneys shall cooperate with SANBAG and its authorized representatives in the implementation, monitoring and evaluation of this Contract and comply with any and all reporting requirements established by SANBAG. All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by SANBAG and its authorized representatives for a period of three years after final payment under the Contract or until all pending SANBAG audits are completed, whichever is later.

11. **Costs and Expenses.**

a. **Reimbursable ordinary costs and expenses.** Attorneys may charge a 3 (three) percent Administrative fee to SANBAG in lieu of actual costs and expenses incurred for the following: Local and long distance telephone charges; office supplies; support staff; local area travel and meal expenses; parking; Westlaw, Lexis or other online charges for case research; postage; shipping; faxes; photocopying; rent; utilities; word processing; in-house courier.

b. **Reimbursable extraordinary costs and expenses** shall include charges for which Attorneys have obtained SANBAG's prior approval. Such expenses shall be limited to:

1. Consultants;
2. Expert witnesses;
3. Out of local area travel;
4. Investigative services; and,
5. Any expense item exceeding Five Hundred Dollars ($500.00).

12. **SANBAG Counsel's Authority.** Except as specifically limited herein to the SANBAG Board of Directors or otherwise, SANBAG Counsel shall have the authority to exercise all SANBAG rights and authority under this Contract.

13. **Notices.** All notices, demands, requests, consents, approvals, amendments, changes in assignments or other required communications shall be in writing, and delivered in person or sent by certified mail, postage prepaid, addressed as follows:

Attorneys:

Mary A. Salamone, Esq.
Peckar & Abramson
555 South Hope Street
Suite 1655
Los Angeles, CA 90071

SANBAG:

Jean-Rene Basle, SANBAG Counsel
County Government Center
385 North Arrowhead Avenue
San Bernardino, California 92415-0140

or at such other address or to such other persons as either of the parties may from time to time designate by notice given as herein provided. Notice given by mail as required above shall be deemed delivered three (3) business days after mailing.

14. **Conflicts.**

a. Attorneys shall not undertake the representation of any client in the pursuit of any claim against SANBAG without first obtaining a waiver and consent from SANBAG. Attorneys shall disclose any conflict circumstance to SANBAG and obtain any needed approval or waiver by SANBAG and its officers. Any document evidencing such disclosure and any document evidencing such approval or waiver shall be deemed to be a part of this Contract.

b. Attorneys have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. Attorneys agree that they are unaware of any financial or economic interest of any public officer or employee of SANBAG relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, SANBAG may immediately terminate this Agreement by giving notice thereof. Attorneys shall comply with the requirements of Government Code section 87100 et seq. during the term of this Agreement.

15. **Hold Harmless and Insurance**.

a. Indemnification - Attorneys agree to indemnify, defend with counsel approved by SANBAG and hold harmless SANBAG and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by SANBAG on account of any claim therefore, except where such indemnification is prohibited by law.

b. Insurance - Without in anyway affecting the indemnity herein provided and in addition thereto, Attorneys shall secure and maintain throughout the Contract the following types of insurance with limits as shown or a state-approved self-insurance program with similar coverage:

1. Workers' Compensation - A program of Workers' Compensation insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with $250,000 limits covering all persons providing services on behalf of that party and all risks to such persons under this Contract.

2. Errors and Omissions Liability Insurance - Combined single limits of $1,000,000 for bodily injury and property damage and $3,000,000 in the aggregate, or Professional Liability - Professional liability insurance with limits of at least $1,000,000 per claim or occurrence.

d. Waiver of Subrogation Rights - Attorneys shall require the carriers of the above-required coverages to waive all rights of subrogation against SANBAG, its officers, employees, agents, volunteers, contractors and subcontractors.

e. Policies Primary and Non-Contributory - All of the above-required policies, except for the Workers' Compensation, are to be primary and noncontributory with any insurance or self-insurance programs carried or administered by SANBAG.

h. Failure to Have Insurance - Should Attorneys fail to have in effect the required coverage at any time during this Contract, SANBAG may give notice to Attorneys to immediately suspend all activities and/or notice to reinstate or acquire the affected coverage. Should Attorneys fail to reinstate or acquire the affected coverage within ten (10) days of SANBAG's notice to reinstate or acquire such coverage, SANBAG may terminate this Contract, reinstate or acquire the affected coverage, and Attorneys shall reimburse SANBAG for the necessary cost at SANBAG's option. If Attorneys do not

reimburse SANBAG within ten (10) days after demand by SANBAG, SANBAG shall have the right to withhold from future amounts due under this Contract or otherwise due to Attorneys the sum SANBAG has expended until SANBAG is reimbursed in full.

16. **Arbitration.** Arbitration shall be limited to any controversy or claim between the parties concerning Attorneys' billing for professional fees, costs and expenses, and shall be arbitrated under the system and procedures established for such arbitration pursuant to California Business and Professions Code sections 6200 et seq. Judgment upon the arbitrator's award may be entered in any court having jurisdiction thereof. Such arbitration award will be final and binding upon the parties hereto.

17. **Legal Fees, Costs and Expenses.** If any arbitration or legal action is instituted to enforce or declare any party's rights hereunder, each party, regardless of which party is the prevailing party, must bear its own costs, expenses and attorneys' fees. This paragraph shall not apply to those costs, expenses and attorneys' fees directly arising from any third party legal action against a party hereto and payable under paragraph 15, **Hold Harmless and Insurance**.

18. **Jury Trial Waiver.** Attorneys and SANBAG hereby waive their respective right to trial by jury and agree to accept trial by judge alone for any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either Attorneys against SANBAG or SANBAG against Attorneys on any matter whatsoever arising out of, or in any way connected with, this Contract, the relationship of Attorneys and SANBAG, Attorneys' work performance hereunder, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

19. **Venue.** The parties acknowledge and agree that this Contract was entered into and intended to be performed primarily in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law, statute (including but not limited to Code of Civil Procedure section 394), or rule of court that would allow them to request or demand a change of venue. If any third party brings an action or claim concerning this Contract, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

20. **Law.** This Contract shall be construed and interpreted in accordance with the laws of the State of California without reference to any choice of laws provision.

21. **Contract.** The above terms and conditions constitute the complete agreement between the parties hereto. This Contract was jointly prepared by both parties and the language in all parts of this Contract shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be hereunto subscribed by their respective proper officers thereunto duly authorized.

SAN BERNARDINO COUNTY TRANSPORTATION SANBAG

By: _____
Dennis Hansberger, President

Date: _____

PECKAR & ABRAMSON

By: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Jean-Rene Basle
SANBAG Counsel

Date: _____

Governments SANBAG Working Together

San Bernardino Associated Governments

1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715
Phone: (909) 884-8276 Fax: (909) 885-4407 Web: www.sanbag.ca.gov

TRANSPORTATION MEASURE I

■ San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 7

Date: July 13, 2006

Subject: Lease Agreement C07025 for construction field office space for I-215 5th Street Bridge Project

Recommendation:* Approve Lease Agreement C07025 with Mountain Business Park/Pacific Day Capital for 1,909 square feet for two years at an initial rate of $1.25 per square foot for construction field office space for the Interstate 215 5th Street Bridge Project. TN 83807000

Background: **This is a new lease agreement for construction field office space for the I-215 5th Street Bridge Project.** The location for the field office for the Interstate 215 5th Street project is adjacent to SANBAG's existing field office for the SR 210 Project. The term of this lease is a period of two years at which point it is anticipated that the construction management team from the SR 210 project will "down-size" making space available for the I-215 construction management team. The space is conveniently located on Little Mountain Road immediately adjacent to the SR 210 and I-215. Agreement No. 06-049 with Mountain Business Park/Pacific Day Capital includes a lease term of five years at $1.25 per square foot with an escalation rate set at the consumer price index. The monthly rate for the first year for 1,909 square feet of space is $2,386.25. The rate for the second year shall be adjusted by the Urban Consumer Price Index plus a pro rata share of common area expenses.

Financial Impact: This item is consistent the FY 2006/07 Budget. Task No. 83807000

Reviewed By: This item will be reviewed by the Major Projects Committee on July 13, 2006.

Responsible Staff: Darren Kettle, Director of Freeway Construction

*

Approved
Major Projects Committee

Date: *July 13, 2006*

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*
Witnessed: _____

MPC0607E-DMK.DOC
TN 83807000
Attachment: A06018.DOC

SANBAG Contract No. C07025

by and between

the San Bernardino County Transportation Authority

and

Mountain Business Park/Pacific Day Capital

for

Construction Field Office Space

FOR ACCOUNTING PURPOSES ONLY

☒ Payable ☐ Receivable	Vendor Contract # _____ Vendor ID _____	Retention: ☐ Yes _____ % ☐ No	☒ Original ☐ Amendment

Notes:

Original Contract:	$ 60,134	Previous Amendments Total:	$ _____
		Previous Amendments Contingency Total:	$ _____
Contingency Amount:	$ _____	Current Amendment:	$ _____
		Current Amendment Contingency:	$ _____

Contingency Amount requires specific authorization by Task Manager prior to release.

Contract TOTAL → $ **60,134**

↓ Please include funding allocation for the original contract or the amendment.

Task	Cost Code	Funding Sources	Grant ID	Amounts
83807000	_____	MIVMP/TCRP	_____	$ 21,476
83808000	_____	MIVMP/TCRP	_____	$ 30,783
83809000	_____	MIVMP/TCRP	_____	$ 7,875
_____	_____	_____	_____	$ _____

Original Board Approved Contract Date: 8/2/06 Contract Start: _____ Contract End: 9/30/08

New Amend. Approval (Board) Date: _____ Amend. Start: _____ Amend. End: _____

If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:

Approved Budget Authority →	Fiscal Year: _____ $ _____	**Future Fiscal Year(s) – Unbudgeted Obligation →**	$ _____

Is this consistent with the adopted budget? ☒Yes ☐No

If yes, which Task includes budget authority? 83807000

If no, has the budget amendment been submitted? ☐Yes ☐No

CONTRACT MANAGEMENT

Please mark an "X" next to all that apply:

☐ Intergovernmental ☒ Private ☐ Non-Local ☒ Local ☐ Partly Local

Disadvantaged Business Enterprise: ☒No ☐Yes _____%

Task Manager: **Darren Kettle**	Contract Manager:

Task Manager Signature 7.7.06 Date

Contract Manager Signature Date

Chief Financial Officer Signature Date

Filename: cssc07025-dmk.doc

Form 28 06/06

AIR COMMERCIAL REAL ESTATE ASSOCIATION
STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - GROSS

DRAFT

1. **Basic Provisions ("Basic Provisions").**

1.1 **Parties:** This Lease **("Lease")**, dated for reference purposes only June 23, 2006, is made by and between MBP, LLC and Factine, L.P. as tenants in common **("Lessor")** and San Bernardino Associated Governments **("Lessee")**, (collectively the **"Parties"**, or individually a **"Party"**).

1.2(a) **Premises:** That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 2700 N. Little Mountain Drive, located in the City of San Bernardino, County of San Bernardino, State of California, with zip code 92405, as outlined on Exhibit A attached hereto **("Premises")** and generally described as (describe briefly the nature of the Premises): approximately 1,909 gross square feet commonly known as Building B, Suite 104.

In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises ("**Building**") and to the Common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof, or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the " **Project**." (See also Paragraph 2)

1.2(b) **Parking:** 5 unreserved vehicle parking spaces. (See also Paragraph 2.6)

1.3 **Term:** 2 years and 0 months **("Original Term")** commencing August 1, 2006 **("Commencement Date")** and ending July 31, 2008 **("Expiration Date")**. (See also Paragraph 3)

1.4 **Early Possession:** See Addendum **("Early Possession Date")**. (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** $ 2,386.25 per month **("Base Rent")**, payable on the 1st day of each month commencing August 1, 2006. (See also Paragraph 4)

☑ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted.

1.6 **Lessee's Share of Common Area Operating Expenses:** seven point two percent (7.2 %) **("Lessee's Share")**.

Lessee's Share has been calculated by dividing the approximate square footage of the Premises by the approximate square footage of the Project. In the event that that size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 **Base Rent and Other Monies Paid Upon Execution:**

(a) **Base Rent:** $ 2,386.25 for the period one calendar month.

(b) **Common Area Operating Expenses:** $ 0.00 for the period NA.

(c) **Security Deposit:** $ 2,386.25 **("Security Deposit")**. (See also Paragraph 5)

(d) **Other:** $ 0.00 for _____.

(e) **Total Due Upon Execution of this Lease:** $ 4,772.25.

1.8 **Agreed Use:** only office use commonly associated with the management and administration of transporation infastructure construction and maintenance. (See also Paragraph 6)

1.9 **Insuring Party.** Lessor is the **"Insuring Party"**. (See also ~~Paragraph 8~~)

1.10 **Real Estate Brokers:** (See also Paragraph 15)

(a) **Representation:** The following real estate brokers (the **"Brokers"**) and brokerage relationships exist in this transaction (check applicable boxes):

☐ None. represents Lessor exclusively (**"Lessor's Broker"**);

☐ None. represents Lessee exclusively (**"Lessee's Broker"**); or

☐ None. represents both Lessor and Lessee (**"Dual Agency"**).

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of 0 or NA % of the total Base Rent for the brokerage services rendered by the Brokers).

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by None. **("Guarantor")**. (See also Paragraph 37)

1.12 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

☑ an Addendum consisting of Paragraphs _____ through _____;

☑ a site plan depicting the Premises;

☑ a site plan depicting the Project;

☐ a current set of the Rules and Regulations for the Project;

INITIALS _____ INITIALS _____

©1998 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

☐ a current set of the Rules and Regulations adopted by the owners' association;
☐ a Work Letter;
☐ other (specify): _____

2. **Premises**.

2.1 **Letting**. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating Rent, is an approximation which the Parties agree is reasonable and any payments based thereon are not subject to revision whether or not the actual size is more or less. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease**.

2.2 **Condition**. Lessor shall deliver that portion of the Premises contained within the Building (" **Unit**") to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs (" **Start Date**"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems (" **HVAC**"), loading doors, sump pumps, if any, and all other such elements in the Unit, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Unit. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls - see Paragraph 7).

2.3 **Compliance**. Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes that were in effect at the time that each such improvement, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances in effect on the Start Date (**"Applicable Requirements"**). Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building (**"Capital Expenditure"**), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor and Lessee shall allocate the obligation to pay for the portion of such costs reasonably attributable to the Premises pursuant to the formula set out in Paragraph 7.1(d); provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements**. Lessee acknowledges that: (a) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (b) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, and (c) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant**. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 **Vehicle Parking**. Lessee shall be entitled to use the number of Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "**Permitted Size Vehicles**."

INITIALS

INITIALS

©1998 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

50

Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

(a) Lessee shall not permit orallow any vehicles that belongto or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lesseepermits orallows any of theprohibited activities describedin this Paragraph2.6, thenLessor shallhave the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 **Common Areas - Definition**. The term **"Common Areas"** is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights**. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations**. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations (**"Rules and Regulations"**) for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 **Common Areas - Changes**. Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areasfor maintenance purposes so long as reasonable access tothe Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areaswhile engaged in making additional improvements, repairsor alterations to the Project, or any portion thereof; and

(f) To doand performsuch otheracts andmake suchother changesin, tooor withrespect tothe Common Areas andProject as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. **Term.**

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such early possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession as agreed, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of the delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. Except as otherwise provided, if possession is not tendered to Lessee by the Start Date and Lessee does not terminate this Lease, as aforesaid, any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession of the Premises is not delivered within 4 months after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent.**

4.1. **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent (**"Rent"**).

4.2 **Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's prorata Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease after the calendar year in which the Lease is executed the increase in such expense over those expenses for the calendar year in which the Lease was executed, in accordance with the following provisions:

(a) **"Common Area Operating Expenses"** are defined, for purposes of this Lease, as all costs incurred by Lessor relating to the ownership and operation of the Project, including, but not limited to, the following:

INITIALS

INITIALS

©1998 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

(i) The operation, repair and maintenance, in neat, clean, good order and condition, but not the replacement (see subparagraph (e)), of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire sprinkler systems.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) Trash disposal, pest control services, property management, security services, owner's association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.

(iv) Reserves set aside for maintenance and repair of Common Areas and Common Area equipment.

(v) Any increase above the Base Real Property Taxes (as defined in Paragraph 10).

(vi) Any "Insurance Cost Increase" (as defined in Paragraph 8).

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii) Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Project.

(ix) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month.

(x) Any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses incurred during the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) Except as provided in paragraph 4.2(a)(viii), Common Area Operating Expenses shall not include the cost of replacing equipment or capital components such as the roof, foundations, exterior walls or Common Area capital improvements, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.

(f) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

4.3 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any statement or invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of $25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults ~~under this Lease, Lessor~~ may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 14 days after the expiration or termination of this Lease, if Lessor elects to apply the Security Deposit only to unpaid Rent, and otherwise within 30 days after the Premises have been vacated pursuant to Paragraph 7.4(c) below, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use.**

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, ~~or any other legal use which is reasonably comparable thereto~~, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Building or the mechanical or

INITIALS

©1998 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

INITIALS

electrical systems therein, and/or is not significantly more burdensome to the Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term **"Hazardous Substance"** as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. **"Reportable Use"** shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense,comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee taking possession, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or $100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or $100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to such Requirements, without regard to whether said Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors

INITIALS

INITIALS

©1998 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's **"Lender"** (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance condition (see Paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of written request therefor.

7. **Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.**

7.1 **Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

~~(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, (iii) clarifiers, and (iv) any other equipment, if reasonably required by Lessor. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.~~

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (ie. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term **"Trade Fixtures"** shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term **"Alterations"** shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. **"Lessee Owned Alterations and/or Utility Installations"** are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action,

INITIALS

INITIALS

©1998 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

54

Lessee shall pay Lessor's attorneys' fees and costs.

7.4 **Ownership; Removal; Surrender; and Restoration**.

(a) **Ownership**. Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal**. By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration**. Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. **Insurance; Indemnity**.

8.1 **Payment of Premium Increases**.

(a) As used herein, the term **"Insurance Cost Increase"** is defined as any increase in the actual cost of the insurance applicable to the Building and/or the Project and required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), (**"Required Insurance"**), over and above the Base Premium, as hereinafter defined, calculated on an annual basis. Insurance Cost Increase shall include, but not be limited to, requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. The term Insurance Cost Increase shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. If the parties insert a dollar amount in Paragraph 1.9, such amount shall be considered the **"Base Premium."** The Base Premium shall be the annual premium applicable to the 12 month period immediately preceding the Start Date. If, however, the Project was not insured for the entirety of such 12 month period, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the Start Date, assuming the most nominal use possible of the Building. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of $2,000,000 procured under Paragraph 8.2(b).

(b) Lessee shall pay any Insurance Cost Increase to Lessor pursuant to Paragraph 4.2. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

8.2 **Liability Insurance**.

(a) **Carried by Lessee**. Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an annual aggregate of not less than $2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an **"insured contract"** for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor**. Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 **Property Insurance - Building, Improvements and Rental Value**.

(a) **Building and Improvements**. Lessor shall may obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee under Paragraph 8.4. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $1,000 per occurrence.

(b) **Rental Value**. Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises**. Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements**. Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

INITIALS INITIALS

©1998 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

8.4 **Lessee's Property; Business Interruption Insurance**.

(a) **Property Damage**. Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) **Business Interruption**. Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **No Representation of Adequate Coverage**. Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies**. Insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least A-, VI, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation**. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity**. Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability**. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance**. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. **Damage or Destruction**.

9.1 **Definitions**.

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total. Notwithstanding the foregoing, Premises Partial Damage shall not include damage to windows, doors, and/or other similar items which Lessee has the responsibility to repair or replace pursuant to the provisions of Paragraph 7.1.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises which requires repair, remediation, or restoration.

9.2 **Partial Damage - Insured Loss**. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible

INITIALS

INITIALS

©1998 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss**. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 **Total Destruction**. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, at Lessor's option this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 **Damage Near End of Term**. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 **Abatement of Rent; Lessee's Remedies**.

(a) **Abatement**. In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies**. If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments**. Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

9.8 **Waive Statutes**. Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

DRAFT

10. **Real Property Taxes**.

10.1 **Definitions**.

(a) **"Real Property Taxes."** As used herein, the term **"Real Property Taxes"** shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

(b) **"Base Real Property Taxes."** As used herein, the term **"Base Real Property Taxes"** shall be the amount of Real Property Taxes, which are assessed against the Premises, Building, Project or Common Areas in the calendar year during which the Lease is executed. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 **Payment of Taxes**. Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph

INITIALS INITIALS

©1998 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

4.2.

10.3 **Additional Improvements**. Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase ~~in Real Property Taxes if~~ assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment**. If the Building is not separately assessed, ~~Real Property~~ Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements ~~included~~ within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes**. Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services**. ~~Lessee~~ Lessor shall pay for all water, gas, heat, light, power, ~~telephone,~~ trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting**.

12.1 **Lessor's Consent Required**.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, **"assign or assignment"**) or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, ~~or series~~ of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a ~~formal~~ assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. **"Net Worth of Lessee"** shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a diminimus portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 **Terms and Conditions Applicable to Assignment and Subletting**.

(a) Regardless of Lessor's consent, no assignment or subletting shall : (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's ~~Default or~~ Breach.

(c) Lessor's consent to any assignment or subletting ~~shall~~ not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 **Additional Terms and Conditions Applicable to Subletting**. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

INITIALS

INITIALS

©1998 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. **Default; Breach; Remedies**.

13.1 **Default; Breach.** A **"Default"** is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee.

(c) The commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a **"debtor"** as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 **Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover

INITIALS

INITIALS

©1998 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 **Inducement Recapture**. Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as **"Inducement Provisions"**, shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 **Late Charges**. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or $100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 **Interest**. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest (" **Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor**.

(a) **Notice of Breach**. Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor**. In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. **Condemnation**. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively **"Condemnation"**), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Unit, or more than 25% of Lessee's Reserved Parking Spaces, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. **Brokerage Fees**.

~~15.1 **Additional Commission**. In addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule of the Brokers in effect at the time of the execution of this Lease.~~

~~15.2 **Assumption of Obligations**. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.~~

INITIALS

©1998 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

INITIALS

15.3 **Representations and Indemnities of Broker Relationships**. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. **Estoppel Certificates**.

(a) Each Party (as **"Responding Party"**) shall within 10 days after written notice from the other Party (the **"Requesting Party"**) execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current **"Estoppel Certificate"** form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor**. The term **"Lessor"** as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Except as provided in Paragraph 15, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability**. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days**. Unless otherwise specifically indicated to the contrary, the word " **days**" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability**. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence**. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer**. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party. The liability (including court costs and attorneys' fees), of any Broker with respect to negotiation, execution, delivery or performance by either Lessor or Lessee under this Lease or any amendment or modification hereto shall be limited to an amount up to the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

23. **Notices**.

23.1 **Notice Requirements**. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice**. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers**. No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship**.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) *Lessor's Agent*. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: *To the Lessor*: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. *To the Lessee and the Lessor*: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A

INITIALS INITIALS

©1998 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) *Lessee's Agent*. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. *To the Lessee*: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. *To the Lessee and the Lessor*: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) *Agent Representing Both Lessor and Lessee*. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Buyer and Seller agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover**. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies**. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement**. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law**. This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance**.

30.1 **Subordination**. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, **"Security Device"**), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as **"Lender"**) shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment**. In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Devise to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor.

30.3 **Non-Disturbance**. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a **"Non-Disturbance Agreement"**) from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing**. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees**. If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of

INITIALS

INITIALS

©1998 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

62

Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach ($200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs**. Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions**. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. **Signs**. Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. **Termination; Merger**. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents**. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor**.

37.1 **Execution**. The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association,.

37.2 **Default**. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. **Quiet Possession**. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options**. If Lessee is granted an option, as defined below, then the following provisions shall apply.

39.1 **Definition. "Option"** shall mean: (a) the right to extend the term of or renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 **Options Personal To Original Lessee**. Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options**. In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options**.

(a) Lessee shallhave no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time withinwhich an Option may be exercised shall not be extended or enlarged by reason of Lessee's inabilityto exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstandingLessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Security Measures**. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

41. **Reservations**. Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

42. **Performance Under Protest**. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. **Authority; Multiple Parties; Execution**.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this

INITIALS INITIALS

©1998 - AIR COMMERCIAL REAL ESTATE ASSOCIATION FORM MTG-4-5/05E

Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. **Offer.** Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. **Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.**

48. **Mediation and Arbitration of Disputes.** An Addendum requiring the Mediation and/or the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ☐ is ☑ is not attached to this Lease.

49. **Americans with Disabilities Act.** Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: Playa Del Rey, California	Executed: San Bernardino, CA
On: June 23, 2006	On: June 23, 2006
By LESSOR:	**By LESSEE:**
MBP, LLC and Factine, L.P. as Tenants in Common	San Bernardino Associated Governments
By:	By:
Name Printed: Greg Cullen	Name Printed:
Title: General Manger, MBP, LLC	Title:
By:	By:
Name Printed: Ronald Franco	Name Printed:
Title: President, Vested Management, General Partner, Factine, L.P.	Title:
Address: MBP, LLC: 6641 Esplanade, Playa Del Rey, CA 90293 Factine, L.P.: PO Box 5287, Culver City, CA, 90231	Address:
Telephone: (310) 745-1983	Telephone: (909) 875-6029
Facsimile: (310) 745-1984	Facsimile: ( )
Federal ID No. MBP, LLC: 95-4868264	Federal ID No.

INITIALS

INITIALS

©1998 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

BROKER:
None.

Att:
Title:
Address:

Telephone:( )
Facsimile:( )
Federal ID No.

BROKER:
None.

Att:
Title:
Address:

Telephone: ( )
Facsimile:( )
Federal ID No.

These forms are often modified to meet changing requirements of law and needs of the industry. Always write or call to make sure you are utilizing the most current form: AIR COMMERCIAL REAL ESTATE ASSOCIATION, 700 South Flower Street, Suite 600, Los Angeles, CA 90017. (213) 687-8777.

(c)Copyright 1998 By AIR Commercial Real Estate Association.
All rights reserved.
No part of these works may be reproduced in any form without permission in writing.

DRAFT

DRAFT

ADDENDUM
TO
SAN BERNARDINO ASSOCIATED GOVERNMENTS
LEASE AGREEMENT

DRAFT

1. Base Rent: The first year Base Rent shall be $1.25 per square foot for the first 12-month period ("Year 1"). The Base Rent shall increase in the second year ("Year 2") by a percentage amount equivalent to the average trailing twelve month Urban Consumer Price Index (the "CPI Charge") as reported by the Bureau of Labor Statistics.

2. Any Tenant Improvement Allowances contained in this Lease are conditioned on the Lessee not breaching or defaulting any of the terms of the Lease. The Tenant Improvement Allowances shall be retroactively terminated and the Lessee shall be liable to Lessor for all Tenant Improvement Allowances and costs, leasing commissions and other costs associated with the Lease incurred by Lessor.

3. Tenant Improvement Allowances: As an Inducement Provision for Lessee to lease the Premises pursuant to the terms of this Lease Agreement, the Lessor shall provide the following Tenant Improvements:
(i) new carpet (26 oz, web backed) and baseboard - neutral colors to be selected by Lessee subject to Lessor approval:
(ii) patch holes and walls and paint to match existing color;
(iii) vertical blinds per building A-110 standard;
(iv) refinish doors to match Suite B-101;
(v) check and repair any non-operating lights, outlets and switches.

4. Lessor to remodel bathrooms (not including men's and women's locker rooms, commonly known as suites 105 and 107) main entry and hallways to Building A standard.

5. Early Move In Date: Lessee and Lessor to mutually agree on early move in date prior to Commencement Date. Lessee acknowledges that upon such early move in, the Premises' Tenant Improvements may not be complete. Lessor shall be granted full access to continue work until such Improvements are completed and approved by the duly governing agencies as may be required. The rental rate during the early move in period shall be $1.25 per square foot, full service gross, and shall be based on the gross square footage occupied by Lessee.

6. Commencement Date: The Commencement Date per Lease Paragraph 1.3 shall be the date the City of San Bernardino gives final inspection sign off of all built out improvements in the to be prepared architectural and engineering tenant improvement plans.

7. Heating and Air Conditioning: Heating and air conditioning ("HVAC") will be provided by lessor to the Premises from 7:00 AM to 5:00 PM Monday through Friday and Saturday 9:00 AM to 1:00 PM (hereinafter "Regular Business Hours"). Heating shall be set to a maximum of 68 degrees Fahrenheit. Cooling shall be set to a minimum of 74 degrees Fahrenheit. Any additional use of the HVAC by lessee after Regular Business Hours shall be required in writing by Lessee to Lessor in at least 48-hours in advance. The rate for such after Regular Business Hours use for the first calendar year shall be $15.00 for every 2 hours of use, with a 2-hour minimum. The rate is subject to stop loss provisions set forth in Lease Paragraph 4.2. Lessee agrees to pay Lessor for all additional utility charges resulting from using HVAC system after Regular Business Hours. Lessor will prepare a written invoice for the extra charges and Lessee agrees to pay Lessor within seven (7) business days after receipt of said invoice.

8. Insurance: Lessee must provide proof of General Liability Insurance naming MBP, LLC and Factine, L.P. as Tenants in Common as "Additional Insured" in the amounts set forth in Lease Paragraph 8.2 before occupancy will be granted to the Premises. In the event that General Liability Insurance is not provided by the sooner of the Early Move In Date or Commencement Date of the Lease, Lessee access will not be permitted to the Premises until such insurance is provided.

9. Lessee Improvements: Any Lessee Improvements to the Premises shall be at the Lessee's expense and subject to the Lessor's written approval. Improvements that modify the existing floor space with additional partitioning or with new walls may adversely affect the current fire sprinkler system, heating and air

INITIALS INITIALS

©1998 - AIR COMMERCIAL REAL ESTATE ASSOCIATION FORM MTG-4-5/05E

conditioning system and electrical system. If the any of said systems require modification, Lessee shall be responsible for payment of such modifications as well as obtaining any duly governing authority approvals.

Initials:
Lessee: _____

_____

DRAFT

Lessor: _____

DRAFT

DRAFT

_____
INITIALS

_____
INITIALS

©1998 - AIR COMMERCIAL REAL ESTATE ASSOCIATION

This page left blank.

Governments SANBAG Working Together

San Bernardino Associated Governments

1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715
Phone: (909) 884-8276 Fax: (909) 885-4407 Web: www.sanbag.ca.gov

TRANSPORTATION MEASURE I

- San Bernardino County Transportation Commission
- San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency
- Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 8

Date: July 13, 2006

Subject: Request for Qualifications (RFQ) No. C07026 for State Street/University Parkway Grade Separation Construction Management

Recommendation:* Authorize staff to release Request for Qualifications (RFQ) No. C07026 for State Street/University Parkway Grade Separation Construction Management

Background: **This action will lead to the award of a new consultant contract for construction related services.** As part of the Traffic Congestion Relief Program (TCRP) established by Assembly Bill 2928 of 2000, SANBAG was the designated recipient of $95 million for Alameda Corridor East railroad grade separation projects. The State Street/University Parkway at the BNSF tracks at the city limit of San Bernardino and the community of Muscoy is one of the five projects identified for funding from the TCRP. Since the renewed availability of Proposition 42/Traffic Congestion Relief Funds, SANBAG has made steady progress towards the start of construction on the State Street/University Parkway Grade Separation. The SANBAG Board has made the necessary findings that the project is Categorically Exempt under the California Environmental Quality Act and the design is in final review.

As SANBAG proceeds to the construction phase of this project it is first necessary to secure the services of a full service construction management team to include, construction management, materials testing, and construction staking and surveying.

*

Approved

Major Projects Committee

Date: July 13, 2006

Moved: Second:

In Favor: Opposed: Abstained:

Witnessed: _____

MPC0607G-DMK.DOC
TN 87107000
Attachment: A07024SOS.DOC

Staff has attached a draft RFQ for a full service construction management team. The attached RFQ is SANBAG's "boiler plate" RFQ with language similar to that used in previous SANBAG issued RFQs.

Financial Impact: This action, by itself, imposes no financial impact. The future award of a consultant services contract has been anticipated in the FY 2006/07 budget. Staff will budget future year costs as necessary in future year budgets. The funding source for construction management activities is Prop. 42/TCRP funds. TN 87107000.

Reviewed By: This item will be reviewed by the Major Projects Committee on July 13, 2006.

Responsible Staff: Darren Kettle, Director of Freeway Construction

Draft

Contract C07-024 ATTACHMENT "A"

SCOPE OF SERVICES
CONSTRUCTION MANAGEMENT, MATERIALS TESTING, CONSTRUCTION SURVEYING
State Street/University Parkway Grade Separation Project

INDEX

A. DESCRIPTION OF SERVICES

B. PERFORMANCE REQUIREMENTS

C. DUTIES AND RESPONSIBILITIES

1. Pre-construction Services
2. Bid Process
3. Project Administration
4. Construction Coordination
5. Construction Inspection
6. Project Support
7. Cost and Schedule
8. Change Orders and Claims
9. Safety
10. Project Close Out

D. DELIVERABLES

E. EQUIPMENT AND MATERIALS TO BE PROVIDED BY CONSULTANT

F. MATERIALS TO FURNISHED BY AGENCY

G. STANDARDS

H. LIMITATIONS TO AUTHORITY

I. THIRD PARTY RELATIONSHIPS

J. CONSTRUCTION SITE SAFETY

K. BASIS FOR SURVEY AND MONUMENT MARKING

L. PERSONNEL QUALIFICATIONS

A. DESCRIPTION OF SERVICES

The San Bernardino Associated Governments (SANBAG) will utilize the services of CONSULTANT to support the construction activities as described below. The scope of services is for the State Street/University Parkway Grade Separation, which is anticipated to go out to bid in the first quarter of 2007. CONSULTANT will provide construction management, materials testing, and construction surveying for the project. A description of the project is given below.

STATE STREET/UNIVERSITY PARKWAY GRADE SEPARATION PROJECT

State Street is an arterial road in the County of San Bernardino with an at-grade crossing of BNSF railroad tracks just north of Cajon Boulevard. On the north side of the at-grade crossing the road is in the City of San Bernardino city limits and becomes University Parkway and continues north past an interchange with I-215 up to Cal State San Bernardino. The proposed project will realign the roadway to the southeast and grade separate the roadway and railroad crossing such that the roadway goes over the BNSF tracks and adjacent Cajon Boulevard. A new bridge will go over the tracks and Cajon with sloped embankments on the north side of the tracks and MSE walled embankment on the south side of Cajon. To accommodate the realignment, there will be some local street realignment south of Cajon Boulevard and a widening/realignment of Short Street to facilitate a connection between State Street and Cajon. This work is being developed by SANBAG in cooperation with the City of San Bernardino and the County of San Bernardino. The project limits of the corridor improvement extend from Hallmark Parkway on the north through the City of San Bernardino to Blake Street in the County of San Bernardino on the south. SANBAG is responsible for design and construction of this project on behalf of the City and County and will turn over the project to those agencies upon completion of construction. The new bridge, embankments and local street work will be constructed over an approximately 18 to 24 month period.

The total value of construction for this grade separation work is approximately $18 Million (State TCRP Funding will be utilized).

The State Street/University Parkway Grade Separation Projects, as described by the plans and specifications, shall include construction of roadways, bridges, drainage facilities, and retaining walls. CONSULTANT shall provide qualified construction management and inspection, materials testing and construction surveying personnel to perform a wide variety of construction management, support and contract administration duties as outlined in this Scope of Services for the Project.

The SANBAG Contract Manager for this contract will be:

Mr. Darren Kettle
Director of Freeway Construction

SANBAG has selected Fluor Daniel as Program Manager for the Measure I Valley Major Projects. This Project is part of that program. As part of the overall SANBAG/Fluor Program Management staff, SANBAG has also designated a Construction Manager to coordinate all construction activities. The CONSULTANT shall report to and receive direction from SANBAG through the Contract Manager, or his designees. The SANBAG Construction Manager is responsible for coordination of all SANBAG construction activities and for coordinating the efforts of the total construction team. The SANBAG Project Managers will be the main contact and primary source of information between SANBAG, cities, outside agencies, supporting consultants and the public for the individual construction projects.

B. PERFORMANCE REQUIREMENTS

Construction Management: CONSULTANT shall furnish a Project Manager to coordinate CONSULTANT operations with SANBAG. The Project Manager shall be responsible for all matters related to CONSULTANT personnel and operations. It is recommended that, in addition to a Project Manager, a single point of contact or Senior Resident Engineer be assigned to direct and coordinate construction activities under this contract. Other Resident Engineers or Assistants may be assigned to specific segments or project responsibilities as needed. Resident Engineers shall be Civil Engineers, registered in the State of California. The Resident Engineers shall be in responsible charge of construction activity within his/her segment.

The number of CONSULTANT personnel assigned to the project will vary throughout the duration of the contract. CONSULTANT personnel will be assigned, in varying levels of responsibility, as needed by the CONSULTANT to meet the project schedule, project requirements, and construction activities. The duration of the assignments may vary from a minimum of one (1) week to the full term of the Project. CONSULTANT personnel shall be made available within one (1) week from written notification by SANBAG to a maximum of six (6) weeks after local agency acceptance of the Project.

Resumes of personnel must be submitted to SANBAG for review and approval prior to assignment to the Project. SANBAG and CONSULTANT will jointly determine the quality and quantity of services that are required by CONSULTANT personnel. Personnel selected for assignment by CONSULTANT shall be made available for personal interviews prior to acceptance by SANBAG. If, in the opinion of SANBAG, an individual lacks adequate experience, the individual may be rejected or may be accepted on a trial basis until such time the individual's ability to perform the required services has been demonstrated. If, at any time, the performance of CONSULTANT personnel is unsatisfactory to SANBAG, SANBAG may release him/her by written notice and may request another qualified person be assigned.

If CONSULTANT personnel are on leave of absence, the Project Manager shall provide approved, equally qualified replacement personnel until the assigned personnel returns to the Project.

The typical workday includes all hours worked by the construction Contractor. If necessary, overtime for CONSULTANT personnel may be required. The construction Contractor's operations may be restricted to specific hours during the week, which shall become the normal workday for CONSULTANT personnel. The Project Manager, with concurrence from SANBAG, shall have the authority to increase, decrease, or eliminate CONSULTANT personnel work hours dependent on the schedule and requirements of the construction Contractor. All overtime required by CONSULTANT personnel shall be approved and authorized by SANBAG prior to each occurrence.

CONSULTANT personnel shall be knowledgeable of and comply with all applicable local, state, and federal regulations. CONSULTANT personnel shall cooperate and consult with SANBAG, State, and City officials during the course of the Project. CONSULTANT personnel shall perform duties as may be required to assure that construction is being performed in accordance with the Project plans and specifications. CONSULTANT personnel shall keep accurate and timely records and document all work performed by the Contractor and CONSULTANT.

CONSULTANT personnel shall assist in monitoring compliance with:

1. Labor standards and related wage determination decisions of the Secretary of Labor

2. Safety and accident prevention provisions for the Project

3. Equal opportunity provisions for the Project.

All services required hereunder shall be performed in accordance with California Department of Transportation guidelines, regulations, policies, procedures, manuals, and standards, except as noted in the special provisions.

Materials Testing: The number of field testing personnel assigned to the project will vary throughout the duration of the construction contract. CONSULTANT personnel will be assigned as needed by the Resident Engineers to meet the schedule of the construction contractor.

It is anticipated that at least one field technician will be required throughout the construction contract period. At times, additional technicians may be required to provide support for on-going construction activities. CONSULTANT will be notified sufficiently in advance of changed project requirements. The duration of assignments could vary from a minimum of a few days to the full term of the project. CONSULTANT personnel will be available within one (1) day of written notification by SANBAG.

It is the intent of SANBAG to maintain a consistency of material testing quality throughout each phase of the project. CONSULTANT is therefore encouraged to provide, where ever and whenever possible, the same field personnel for the duration of construction. It is also important that the senior technician(s) assigned to the project become and be completely familiar with the prior testing requirements and assignments for the entire project.

Resident Engineers will have the authority to increase, reduce, or eliminate CONSULTANT's hours dependent on the schedule and requirements of the construction contractor. On days when work is not performed by the construction contractor, such as rainy or unsuitable weather days, CONSULTANT will not provide services unless authorized by the Resident Engineer. When possible, the Resident Engineer will provide 8 hours advance notice if CONSULTANT services are not required.

CONSULTANT will also furnish a Project Manager to coordinate CONSULTANT's operations with Caltrans and SANBAG. The Project Manager will be responsible for all matters related to the CONSULTANT's personnel and operations. Personnel qualifications and responsibilities are listed in the last section of the Scope of Services.

Resumes of personnel must be submitted to SANBAG for review and approval prior to assignment to a project. SANBAG and CONSULTANT will have the responsibility of determining the quality and quantity of work performed by CONSULTANT's personnel. If, at any time, the level of performance is below expectations, SANBAG may release a field person and request that another be assigned as needed.

If a member of CONSULTANT's personnel is on a leave of absence, CONSULTANT's project manager will provide an equally qualified replacement employee until the original member returns to work. The replacement employee will meet all the requirements of a permanently assigned employee.

All personnel will be knowledgeable of, and comply with, all applicable local, Caltrans, and federal regulations; cooperate and consult with SANBAG and local agency officials during the course of the contract; and perform other duties as may be required to assure that the construction is being

performed in accordance with the project plans and specifications. CONSULTANT's personnel will keep records and document the work as directed by SANBAG's Resident Engineers.

CONSULTANT will assist in obtaining compliance with the labor standards provisions of the projects and the related wage determination decisions of the Secretary of Labor.

CONSULTANT personnel will assist SANBAG and local agencies in obtaining compliance with the safety and accident prevention provisions of the projects. Local agencies will retain jurisdictional control for traffic control.

CONSULTANT will assist SANBAG in obtaining compliance with the equal opportunity provisions of the projects.

All services required hereunder will be performed in accordance with Caltrans regulations, policies, procedures, manuals, and standards.

Construction Surveying: CONSULTANT will furnish surveying crew(s) to perform construction surveys for the projects. The number of survey crew(s) assigned to the project will vary throughout the duration of the construction contract. It is anticipated that a minimum of one (1) survey crew will be required throughout the construction. Additional crews may be required to provide support for construction activities. CONSULTANT will be notified in advance of a change in project requirements. The duration of assignments could vary from a minimum of a few days to the full term of the project. CONSULTANT personnel will be assigned as needed by the Resident Engineer(s) to meet the schedule of the construction contractor.

It is the intent of SANBAG to maintain a consistency of construction survey quality throughout each phase of the project. Therefore, CONSULTANT is encouraged to provide the same field personnel for the duration of construction. It is important that the Field Party Chief(s) assigned to the project be completely familiar with the survey requirements and the assignments for the project.

Resident Engineers will have the authority to increase, reduce, or eliminate CONSULTANT hours dependent on the schedule and the requirements of the construction contractor. On days when work is not performed by the construction contractor, such as rainy or unsuitable weather days, CONSULTANT will not provide services unless authorized by the Resident Engineer. When possible, the Resident Engineer will provide 24 hours advance notice if CONSULTANT services are not required.

Construction surveying will not be performed when conditions such as weather, traffic, and other factors prevent safe and efficient operation.

Resumes of CONSULTANT personnel and certification must be submitted to SANBAG for review. CONSULTANT personnel must be approved by SANBAG prior to assignment to a project. SANBAG and CONSULTANT will have the responsibility of determining the quality and quantity of work performed by CONSULTANT personnel. If, at any time, the level of performance by CONSULTANT personnel is below expectations, SANBAG may release the survey crew member and request that another be assigned (as needed).

If CONSULTANT's survey crew personnel assigned to the project is on a leave of absence, the Project Manager will provide an equally qualified replacement(s) until the original employee(s)

returns to work. The replacement will be required to meet all the requirements of the permanently assigned employee.

CONSULTANT personnel will:

- Be knowledgeable of, and comply with all, applicable local, Caltrans, state, and federal regulations.
- Cooperate and consult with SANBAG officials during the course of the contract.
- Perform duties as may be required to assure construction is performed in accordance with the project plans and specifications.
- Keep records and document work as directed by the SANBAG Resident Engineer(s).

All services required hereunder will be performed in accordance with Caltrans regulations, policies, procedures, manuals, and standards.

C. DUTIES AND RESPONSIBILITIES

It is noted and acknowledged that the Projects will be executed under separate construction contracts as described in the Project Description. Where the terms "Project" and "Contractor" are used herein, they shall apply to both projects and Contractors.

1. Pre-construction Services

a. Plan Review

CONSULTANT shall review construction contract documents prior to construction. Tasks include review of plans, specifications, technical reports, resident engineers' files, and associated items in order to verify completeness and consistency throughout the Project. At minimum, CONSULTANT shall check for quantity discrepancies, potential conflicts, constructability, and consistency between plans, specifications and pay items.

b. Schedule

CONSULTANT shall review the proposed Project schedule, compare it to the Project plans and specifications, and provide recommendations to SANBAG, as appropriate, to ensure efficiency of Contractor and CONSULTANT operations and safe and expeditious completion of the Project.

c. Budget

CONSULTANT shall review the Project estimate and provide recommendations to SANBAG, as appropriate, to ensure efficient utilization of funds and control of project costs.

2. Bid Process

a. Bid Documents

CONSULTANT shall assist SANBAG, as requested, with the following tasks:

1. Review of bid documents
2. Preparation of bid tabulations

b. Pre-construction Meetings

CONSULTANT shall assist SANBAG in conducting one or more, pre-construction meetings with all involved parties on the Project. Parties may include, but are not limited to, the Contractor, the design engineer, cities, utility companies, and developers.

c. Contract Award

CONSULTANT shall assist SANBAG, as requested, with the following tasks:

1. Review of bid for completeness and responsiveness

2. Perform bid analysis

3. Development of contractor payment schedules, and other procedural items.

4. Checking Contractor references, licenses, insurance, and sureties.

5. Coordination with prospective Contractor for award of construction contract(s).

All processes will be consistent with procedures outlined by the California Department of Transportation for Special Funded Programs and Local Assistance Procedure Manuals.

3. Project Administration

a. CONSULTANT shall administer project construction contracts using Caltrans Construction Manual as a guideline.

b. CONSULTANT shall conduct regular project coordination meetings with Contractors, SANBAG, local agencies, and design engineer, as appropriate.

c. CONSULTANT shall prepare Contractor progress payments and maintain payment records and supporting documentation. All progress payments shall be reviewed by SANBAG for approval.

d. CONSULTANT shall establish and maintain Project records. Project record keeping shall include, but are not limited to, correspondence, memoranda, contract documents, change orders, claims, SANBAG and engineer directives, meeting minutes, shop drawings, supplementary drawings, and requests for payment.

CONSULTANT shall maintain a record of the names, addresses, and telephone and fax numbers of the Contractors, subcontractors, and principal material suppliers.

e. CONSULTANT shall establish and maintain a filing system for each Project using the Caltrans Construction Manual as a guideline.

f. CONSULTANT shall monitor Contractors' construction schedules on an ongoing basis and alert SANBAG to conditions that may lead to delays in completion of the Project.

g. CONSULTANT shall prepare and submit a monthly Activity Summary Report for each segment. The activity report shall include construction activity, accomplishments, and status of project budget and schedule.

h. CONSULTANT shall review and ensure compliance with environmental requirements.

i. CONSULTANT shall participate in partnering sessions with the Contractors, SANBAG, and Local Agencies, as required.

j. CONSULTANT shall assure that the Project meets all provisions of the Caltrans Quality Assurance Program Manual.

k. CONSULTANT shall review Contractors' certified payroll records and assist SANBAG with labor compliance.

l. CONSULTANT shall assure that the Project meets all provisions of the Caltrans Storm Water Pollution Prevention Plan (SWPPP).

m. CONSULTANT shall assure that the Project meets all applicable regulations of the Air Quality Management District (AQMD).

4. Construction Coordination

a. CONSULTANT shall provide a minimum of one qualified Senior Resident Engineer and other qualified Resident Engineers, as needed to effectively manage the Project.

b. CONSULTANT shall act as a prime point of contact between Contractor, SANBAG, CONSULTANT's construction surveyor, CONSULTANT's materials inspector, and utility companies. CONSULTANT may, when requested by SANBAG, act as point of contact between design engineers, cities, and the public.

c. CONSULTANT shall maintain regular contact with SANBAG's Construction Manager.

d. CONSULTANT shall coordinate utility relocations with utility companies and their designees, as well as the utility inspector.

e. CONSULTANT shall review Project plans and special provisions for possible errors and deficiencies prior to construction of any specific element and report such findings to SANBAG. Should SANBAG determine that changes are necessary, CONSULTANT shall assist in implementation and processing of change orders in accordance with contract documents.

f. CONSULTANT shall provide all required monitoring, coordination, and tracking of construction progress to ensure the Project proceeds on schedule and according to the order of work in the plans and special provisions. CONSULTANT shall expedite work, as required, to maintain schedule in conjunction with the overall construction staging program.

g. CONSULTANT shall coordinate review of shop drawings and Requests for Information (RFI) with the Construction Manager. CONSULTANT shall log and track all submittals and requests.

h. CONSULTANT shall provide a qualified SWPPP coordinator who shall review contractor prepared Storm Water Pollution Prevention Plans (SWPPP) and coordinate approval with SANBAG. CONSULTANT shall cooperate with monitoring agency inspections and field reviews.

i. CONSULTANT shall coordinate the implementation of SANBAG approved changes with the Construction Manager and the design engineer.

j. CONSULTANT shall review and approve falsework and shoring plans.

k. CONSULTANT shall review and approve Traffic Control Plans.

l. CONSULTANT shall coordinate all Project construction activities with other on-going projects within and adjacent to the Project limits.

5. Construction Inspection

a. CONSULTANT shall coordinate all required inspections necessary for the Project. CONSULTANT shall ensure that appropriate City and local agency personnel are notified and present as required throughout the Project. CONSULTANT shall notify SANBAG immediately regarding any directives, recommendations, notices, etc. received from agencies other than SANBAG.

b. CONSULTANT shall perform daily on-site observations of the progress and quality of construction to determine if the work being performed is in general conformance with the contract documents, all applicable laws, codes, and ordinances.

c. CONSULTANT shall exercise reasonable care and diligence to discover and promptly report to SANBAG any and all defects or deficiencies in the materials or workmanship used in the Project.

d. CONSULTANT personnel assigned to the Project shall be thoroughly familiar with Caltrans Standard Specifications, Caltrans Standard Plans, and the Standard

Specifications for Public Works Construction (Greenbook). CONSULTANT personnel shall have the ability to read and interpret construction plans and specifications. CONSULTANT personnel shall also have knowledge of State of California Construction Safety Orders (CalOSHA) and traffic control practices as specified in the Work Area Traffic Control Handbook (WATCH). In addition, CONSULTANT personnel shall be familiar with the construction requirements of Caltrans Storm Water Pollution Prevention Program.

e. Assignments to be performed by CONSULTANT personnel shall include, but are not limited to, the following:

1. Paving and subgrade inspection, structures and foundation inspection, signing and striping inspection, quantity calculations, checking grade and alignment, construction traffic control, and duties that may be required to determine that construction of the Project is being performed in accordance with the contract documents.

2. Identifying actual and potential problems associated with the Project and recommending sound engineering solutions.

3. Maintaining awareness of safety and health requirements. Monitoring Contractors' compliance with applicable regulations and construction contract provisions for the protection of the public and Project personnel.

4. Preparing complete and accurate daily reports, calculations, project records, payment quantity documents, reports, and correspondence related to Project activities.

5. Preparing construction sketches, drawings, and cross-sections, as necessary.

6. Assisting in the preparation of as-built plans.

7. Providing inspections for environmental compliance.

8. Maintaining awareness of water discharge requirements. Monitoring Contractors' compliance with applicable regulations and construction contract provisions required by Caltrans.

9. Monitoring Contractors' compliance with applicable regulations required by AQMD.

10. Other duties as may be required or reasonably requested.

6. Project Support

a. Construction Surveys

CONSULTANT shall perform construction surveying services, field calculations, and home office calculations to support construction of the projects. CONSULTANT may be

requested to review available survey data, construction plans, and right-of-way plans to confirm compatibility and to identify discrepancies prior to and during construction of proposed projects. The Resident Engineer will assign survey work to the CONSUTLTANT by issuing a "Request for Survey Services". Requests may include, but not be limited to, the following types of surveys and related services:

I. Construction Surveys

CONSULTANT shall assist the Resident Engineer in all phases of construction staking and calculations as needed.

a. Survey calculations and adjustments shall be performed with established and computed coordinates based on the California Coordinate System.

b. Cross-section data collection shall be performed by conventional and terrain line interpolation survey methods.

c. Survey data will include topography, cross-section, and other survey data in computer formats compatible with the Caltrans computer survey and design systems.

d. Prepare and maintain survey documents. Survey documents include survey field notes, maps, drawings, and other survey documents.

e. Perform construction staking, including but not limited to:

- Utility relocations.
- Clearing limits.
- Slope staking.
- Storm drain, sanitary sewer, and irrigation systems.
- Drainage structures.
- Curbs, gutters, and sidewalk.
- Horizontal and vertical control for structures and portions of structures (bents, abutments, wingwalls, etc.).
- Rough grade.
- Finish grade.

f. Monitor for settlement if required.

g. Global Positioning Satellite (GPS) equipment shall be made available if required by SANBAG.

II. Grid Grades

Grid grade data shall provide pavement elevations at the station line, the left edge of pavement, the right edge of pavement, and the right edge of travel way at 25 foot intervals for travel lanes.

III. Open Ended Traverses and Profile Data Sheets

Separate open-ended traverse calculations and point maps shall depict plan data for

station lines, utility lines, wall layout lines, and abutment/bent alignment. Specific information to be shown will be part numbers, coordinates, bearings, and curve data.

Profile data sheets are required for all profiles shown on the plans identifying vertical design elements such as grade, point of intersection (PI) location, beginning of vertical curve (BVC) location, end of vertical curve (EVC) location, and curve length.

IV. Three Line Profiles

Separate profile plots are required for the left edge of pavement, the right edge of pavement, and the edge of shoulder for all travel lanes.

V. Right of Way Lines

a. Existing right of way and easements will be established from Local Agency's record information and existing monumentation.

- Right of way monumentation shall be renewed and restored in accordance with Section 10.4 of the Caltrans "Survey Manual" and the State of California Land Surveyor's Act.

- Corner records and records of surveys shall be prepared and filed in accordance with Chapter 10 of the "Caltrans Surveys Manual" and the State of California Land Surveyor's Act.

- Perpetuate existing monumentation.

Includes restoring, renewing, referencing, and resetting existing boundary related monumentation. In addition, stake areas where construction disturbs the existing right of way, preparing and filing required maps and records.

b. New right of way and easements will be established from plans, right of way maps, utility drawings, and Local Agency record information, and existing monumentation.

- Right of Way Surveys

Includes research and preparation filing of required maps and records. In addition, locate and set monuments for right or way and easement lines, staking for right of way and easement fences.

- Final monumentation

Includes setting of centerline points of control upon completion of construction.

VI. Special Design – Data Surveys

Includes drainage, utility, and surveys required for special field studies.

VII. Control Survey

Includes project control surveys, aerial mapping control surveys, horizontal and vertical control surveys. In addition control surveys will include restoration, renewal, reference, relocation, and resetting of existing control monumentation. The CONSULTANT will be required to provide horizontal and vertical control at the end of each bridge.

VIII. Topographic Surveys

Topographic surveys will normally be compiled by ground survey methods only. CONSULTANT will provide all necessary Project related surveys and construction staking, including horizontal and vertical control, right of way, and easements. CONSULTANT shall coordinate all staking and verify accuracy. CONSULTANT shall ensure timely coordination of all staking requests from the Contractor.

b. Materials Testing and Geotechnical Services

CONSULTANT will provide experienced personnel, equipment, and facilities to perform various construction materials sampling and testing. Laboratory and field materials testing will be used to insure that structure and roadway construction work conforms to California State Department of Transportation (Caltrans) standards, specifications, and special provisions for material quality and workmanship.

All field and laboratory testing is to be performed in accordance with California Test Methods as specified in the Caltrans "Manual of Test".

CONSULTANT will be responsible for the accuracy and completeness of all test data compilation and results.

c. Public Relations

SANBAG may retain a public relations firm to implement a public awareness program for both grade separation projects. SANBAG shall coordinate public awareness for the grade separation projects directly in conjunction with the local agencies. The SANBAG Public Information Officer (PIO) will manage all public awareness activities for these Projects. CONSULTANT shall cooperate with SANBAG's PIO and its public relations firm in the dissemination of appropriate Project information as appropriate. Should CONSULTANT Resident Engineers receive complaints from the public or other entities, he/she shall promptly notify SANBAG's PIO. CONSULTANT shall maintain a log of all complaints and inquiries. When appropriate, CONSULTANT shall direct the Contractor to remedy complaints in a timely manner.

d. Permits

CONSULTANT shall review each segment for permit compliance and coordinate with SANBAG, the design engineer, and other SANBAG consultants to insure that necessary permits are obtained. CONSULTANT shall assist SANBAG in the coordination, timely processing and verification of approval for all permits.

CONSULTANT shall maintain permits and permit documentation on site.

7. Cost and Schedule

a. CONSULTANT shall monitor and track the following:

1. Contract pay item quantities and payments
2. Contract change orders
3. Supplemental work items
4. Agency furnished materials
5. Contingency balance
6. Project budget

b. CONSULTANT shall review and monitor Contractor's schedule and inform SANBAG of any significant changes or deviations in the schedule.

c. CONSULTANT shall provide and maintain a Project staffing plan of field office personnel. In cooperation with SANBAG, the staffing plan shall be periodically updated to reflect Project progress and needs.

8. Contract Change Orders and Claims

a. CONSULTANT shall receive and evaluate requests for changes and/or substitutions by the Contractor. Contract Change Orders submitted to SANBAG shall be accompanied by CONSULTANT recommendations. Where applicable, CONSULTANT shall convey proposed changes to design engineer, or other project consultants. If the requested changes are accepted, CONSULTANT shall negotiate and prepare appropriate Contract Change Orders.

b. CONSULTANT shall attempt to avoid all unnecessary Contract Change Orders. When a Contract Change Order is necessary, CONSULTANT shall consult with SANBAG prior to its preparation. Unless directed otherwise by SANBAG, the preferred method of payment for Contract Change Orders should be as follows

1. Agreed Price

2. Adjustment in compensation to a bid item

3. Time and materials or Force Account

c. CONSULTANT shall attempt to identify all potential claims, track and monitor unresolved claims, and implement claims avoidance processes.

d. CONSULTANT shall assist SANBAG, as requested, in the identification, resolution, and final disposition of claims filed by the Contractor or third parties against SANBAG or the Project.

9. Safety

In addition to the requirements specified elsewhere in this contract, the following shall also apply:

a. CONSULTANT shall implement and conduct a comprehensive safety program including regular tail-gate safety meetings for CONSULTANT personnel. CONSULTANT shall provide monthly CONSULTANT status of safety reports.

b. CONSULTANT shall comply with State of California Construction Safety Orders and provisions of the Caltrans Construction Manual.

c. CONSULTANT shall provide appropriate safety training for all CONSULTANT field personnel.

d. CONSULTANT shall provide all necessary safety equipment as required for CONSULTANT personnel.

10. Project Close Out

a. CONSULTANT shall prepare a list of items to be completed and/or corrected by the Contractor for final completion of the Project.

b. CONSULTANT shall collect and furnish as-built information to the design engineer for preparation of as-built drawings including pre-stress drawings and pile logs, as applicable.

c. CONSULTANT shall review and verify completeness of as-built drawings.

d. CONSULTANT shall conduct a final walk-through with SANBAG, Local Agencies, Contractors, and design engineers.

e. CONSULTANT shall prepare final construction reports including the Project Completion Report.

f. CONSULTANT shall prepare and deliver to SANBAG all project files.

g. CONSULTANT shall assist SANBAG and Contractor in obtaining final release of all project permits.

D. DELIVERABLES

1. Inspector daily reports, extra work diaries, and Resident Engineers' daily diaries

2. Monthly Project Activity Summary Reports

3. Monthly Contractor progress payments, back-up documentation, and Contractor payment records.

4. Contractor final payment documents, delivered to SANBAG no later than ten (10) working days after acceptance by SANBAG of the completed construction projects

5. Project Completion Report

6. All project files, project reports, correspondence, memoranda, shop drawings, project logs, change order data, claims and claim reports, and Contractor payment records

7. Certified payrolls and fringe benefit statements for all employees, CONSULTANT and Contractor, who are subject to the State and/or Federal prevailing wage rates

8. All material test results will be provided in accordance with the Caltrans Standard Specifications and Special Provisions, and the Caltrans "Manual of Test". Failing tests will be immediately reported to the SANBAG Resident Engineer or Structures Representative. All test results will be recorded on the appropriate forms as prescribed in the Caltrans "Manual of Test". The test documents will be legible and show the identity of the tester where appropriate. A notebook containing all results will be kept per Caltrans requirements.

9. Unless otherwise specified in the survey request, the deliverables shall conform to the following:

   a. Survey points, lines, and monuments shall be established, marked, identified, and referenced as required by survey request and requirements herein.

   b. Survey notes, drawings, calculations, and other survey documents and information shall be completed as required by the survey request and the requirements herein.

   c. All original survey documents resulting from this contract, including original field notes, adjustment calculations, final results, and appropriate intermediate documents, shall be delivered to the Resident Engineer and shall become the property of SANBAG. A copy of all survey documents furnished by SANBAG shall be retained by CONSULTANT for future reference.

   When the survey is performed with a total station survey system, the original field notes shall be a hard copy in a readable format of the data (observations) as originally collected and submitted by the survey party. The hard copy shall be signed by the Party Chief. If the Party Chief is not licensed, the person in "responsible charge" will be required to sign.

   d. Deliverables to the Resident Engineer shall follow the format specified below:

- Horizontal Control
- Alpha numeric hard copy point listing with adjusted California Coordinate System northing and eastings and the appropriate descriptions.
- Vertical Control
- Alpha numeric hard copy benchmark listing with adjusted elevations compatible with the design datum.
- Topography
- Alpha numeric hard copy listing, hard copy drawing, and computer aided drawing and design (CADD) digital drawing. The CADD drawing shall be provided on magnetic tape or disks in Intergraph IGDS version 8.8 format. Tapes and disks shall

be compatible with Caltrans computer system. Topography symbology shall conform to the Caltrans "Drafting and Plan Manual".

- Cross – Section Data

Data collection method used to collect cross-section data and the coding (feature description) of terrain data for cross-sections shall conform to the survey request requirements. Deliverables shall depend on the data collection method as follows:

1. Conventional Cross – Sections (each cross – section):

For each cross - section and alpha numeric listing, a hard copy drawing, and a computer formatted file compatible with the Caltrans computer system. Computer formatted cross – sections shall be provided on magnetic tapes or disks compatible with the Caltrans computer system.

2. Terrain Line Interpolation Cross – Section Data (each terrain line interpolation survey):

Terrain line interpolation cross – sections shall include an alpha numeric listing, a hard copy plan view drawing of the terrain lines, and a computer input file. The computer input file shall be provided on magnetic tape or disks and shall be in a format compatible with the Caltrans Terrain Line Interpolation computer program.

e. Data Collector Data

If specifies in the survey request, the raw data from the data collector shall be provided in a format conforming to the survey request requirements

f. Other

As specified in the survey request.

E. <u>EQUIPMENT AND MATERIALS TO BE PROVIDED BY CONSULTANT</u>

1. CONSULTANT shall provide all necessary equipment including software, materials, supplies, miscellaneous tools, and safety equipment required for its personnel to perform the services accurately, efficiently, and safely. Only those items listed in Attachment B, CONSULTANT Cost Proposal, shall be reimbursed by SANBAG.

2. CONSULTANT personnel shall be provided with vehicles suitable for the location and nature of the work involved. Vehicles shall be equipped with locking tool boxes and detachable flashing yellow lights.

3. CONSULTANT personnel shall be provided with a mobile radio, cellular phone, or other means to assure full-time communication. If a radio system is to be used, CONSULTANT shall provide a base station at the field office.

4. CONSULTANT personnel shall be provided with all applicable standard plans, specifications, and other standards as appropriate (see item G below).

5. For Materials Testings, CONSULTANT and its staff will be fully equipped at all times to perform the services required, including but not limited to the following:

a. An on-site mobile laboratory or laboratory in close proximity to the project will be required. The type and location of the lab should be such that it can meet the needs of the project in an efficient, time effective manner. The type and location of the lab should be such that it can meet the needs of the project in an efficient, time effective manner. The laboratory is to be fully staffed, equipped, and supplied to conduct all required soils, materials, and concrete breaking tests in a timely manner.

b. CONSULTANT's personnel will be provided with radio equipped vehicles suitable for the location and nature of work involved. Radio equipment will be capable of communicating on the 47.08 MHz channel. Upon completion of this contract, the consultant will remove the capability of operating on the 47.08 MHz channel. CONSULTANT vehicles will have flashing lights, visible from the rear, with a driver control switch. Vans without side windows will not be used. SANBAG furnished magnetic logos will be affixed to each side of the vehicle at all times the vehicle is being used for the work under this contract.

Each vehicle is to be fully contained with all necessary equipment and supplies necessary to perform the field sampling and tests required.

c. Field personnel will be provided with all necessary safety equipment to permit work to be performed safely and efficiently within operating highway and construction zone environments.

d. All equipment to be calibrated as per Section 3-10 and 3-11 of Caltrans' Quality Assurance Program Manual.

6. For construction surveying, CONSULTANT and staff shall have adequate equipment and supplies to complete the required survey work. Equipment and supplies shall, include, but not be limited to:

a. Survey vehicles:

Survey vehicles will be suitable to perform the required work in varying terrain and conditions encountered on the project. Vehicles shall be fully equipped with all necessary tools, instruments, supplies, and safety equipment required to perform the work accurately, efficiently, and safely. Vehicles shall be equipped with a flashing yellow beacon light.

b. Data Processing Systems:

Data processing systems shall include hardware and software to:

- Performing survey and staking calculations from the design plans and specifications;
- Reduce survey data collected with conventional and total station survey systems;
- Perform network adjustments for horizontal and vertical control surveys;
- Format survey data to be compatible with the Caltrans computer survey and data system.

c. Drafting equipment and supplies.

d. Digital calculators.

e. Hand tools as appropriate for the requested survey work.

f. Traffic cones (minimum 25). Traffic cones shall be 28 inches in height (minimum).

g. Traffic control devices as required to perform the requested survey work. Traffic control devices include signs, sign bases, flags, and hand held signs.

h. Leveling instruments and equipment:
- Self-leveling level. Precision: standard deviation in one mile of double run leveling 0.005 feet or less.
- Suitable level rods for the work to be performed.

i. Distance measuring instruments and equipment:
- Electronic distance measurer (EDM). Precision: standard deviation 3 mm plus 3 PPM, or less; Range: Minimum one mile under average atmospheric conditions.
- Prisms, sufficient to perform the required work.
- Tapes; steel, cloth.

j. Angle measuring instruments and equipment:
- Theodolite for non-control surveys; Precision: direct circle reading to three seconds, or equivalent, horizontal and vertical.
- Targets as required to perform the work.

k. When required for efficient survey operations, total station survey systems consisting of an electronic angle measuring instrument, EDM, and electronic data collector shall be provided. The angle measuring instruments and EDM shall conform to the requirements for the equipment previously listed.

l. Radio or cellular communications equipment for communication between field office and field crews.

m. Caltrans manuals, standards, forms, and other policies and procedures to be followed to perform the required work.

F. MATERIALS TO BE FURNISHED BY SANBAG

1. SANBAG will provide copies of all Project construction documents including plans, special provisions, reports, designer prepared resident engineer files, and contracts.

2. SANBAG will provide copies of all previously secured permits and Project authorizations.

3. SANBAG will provide office space, Consultant will provide telephones, desks, chairs, computers, and appropriate office equipment.

4. Caltrans manuals and standards as listed in Section G, Standards, forms and other policies and procedures to be followed by CONSULTANT personnel in the performance of the services. Manuals and standards furnished by Caltrans are for CONSULTANT use only and will be returned at the end of the contract period or when no longer needed by a CONSULTANT employee.

5. Appropriate forms for recording test data in accordance with Caltrans practices and procedures outlined in the "Manual of Test".

6. Magnetic SANBAG logos to be affixed to CONSULTANT vehicles.

G. STANDARDS

All construction inspection, surveys, materials sampling and testing, and contract administration shall be in accordance with the Project bid documents, special provisions, plans, and current Caltrans manuals including:

1. Construction Manual and its revisions

2. Bridge Construction Records and Procedures Manual

3. Quality Assurance Program Manual

4. Manual of Traffic Controls for Construction and Maintenance Work Zones

5. Caltrans Standard Specifications and Standard Plans.

6. Caltrans Storm Water Pollution Prevention Plan (SWPPP) and Water Pollution Control Program (WPCP) Preparation Manual

7. Manual of Test (3 volumes)

8. Survey Manual

9. District 8 Standard Staking Procedures Manual

Work not covered by the manuals shall be performed in accordance with accepted professional standards.

Surveys performed by CONSULTANT shall conform to the requirements of the Land Surveyor's Act. In accordance with the Land Surveyor's Act, "responsible charge" for the work shall reside with the Licensed Land Surveyor or a pre-January 1, 1982, Registered Professional Civil Engineer in the State of California.

Unless otherwise specified in the survey request, control surveys shall conform to second order (modified) accuracy standards as specified in the Caltrans "Survey Manual".

Additional standards for specific survey work may be included in the applicable request for survey. Such standards supplement the standards specified herein. If additional standards conflict with the standards specified herein, the "Survey Request's" standard shall govern.

The Resident Engineer and SANBAG will decide all questions which may arise as to the quality or acceptability of deliverables furnished and work performed for this contract. Any CONSULTANT employee who does not perform adequately will be replaced if directed by the SANBAG Construction Manager.

H. Availability and Work Hours

The typical workday includes all hours worked by SANBAG's construction contractor. The construction contractor's operations may be restricted to specific hours during the week, which will become the normal workday for CONSULTANT's personnel. On days when work is not performed by the construction contractor, such as rainy or unsuitable weather days, CONSULTANT services will not be provided unless authorized by the SANBAG Resident Engineer. When possible, the Resident Engineer will provide 8 hours advance notice if consultant services are not required.

Unless otherwise directed by SANBAG, the normal work week will consist of 40 hours. From time to time, overtime may be required. However, overtime will be worked only when directed in writing by SANBAG.

Once the notice to proceed has been issued, CONSULTANT will immediately begin all material testing. Once services begin, the CONSULTANT will proceed diligently until all required services have been satisfactorily completed.

Material testing will not be performed when conditions (such as weather, traffic, and other factors) prevent safe, efficient operations.

Most construction survey work will be required on an as needed basis as outlined in the "Survey Request".

Once the "Notice to Proceed" is issued, CONSULTANT will immediately begin all construction surveying. Once services begin, CONSULTANT will proceed diligently until all required services have been satisfactorily completed.

H. LIMITATIONS TO AUTHORITY

CONSULTANT does not have the authority to:

1. Authorize deviations from the contract documents.

2. Approve substitute materials or equipment; except as authorized in writing by SANBAG.

3. Conduct or participate in tests or third party inspections; except as authorized in writing by SANBAG.

4. Assume any of the responsibilities of the Contractors, Contractors' Superintendent, or subcontractors.

5. Exercise control over or be responsible for construction means, methods, techniques, sequences, procedures, or safety precautions.

6. Communicate directly with subcontractors or material suppliers without the prior consent of the Contractor.

7. Verbally authorize or approve change orders or extra work for the Project.

8. Offer or receive incentives, inducements, or other forms of enumeration to or from the Contractor to perform services or work outside the terms of any executed contracts for this Project.

I. THIRD PARTY RELATIONSHIPS

This Contract is intended to provide unique services for specific projects that are a portion of the Measure I Valley Major Projects Program within San Bernardino County. In the development of the Project, SANBAG has worked closely with various professional consultants, agencies, and others in the preparation of the construction documents and other Project related materials. SANBAG, however, is solely responsible for and will be the sole point of contact for all contractual matters related to this Project. CONSULTANT shall take direction **only** from SANBAG and shall regularly inform **only** SANBAG of Project progress, outstanding issues, and all Project related matters.

During the course of the Project, CONSULTANT may find occasion to meet with City or County representatives, the design engineer, Project consultants, or other third parties who have assisted with the Project. These entities may, from time to time, offer suggestions and/or recommendations regarding the Project or elements of the Project. While SANBAG enjoys a close relationship with and has considerable confidence in the capabilities of these other parties, CONSULTANT shall not act on any suggestions, solicited or unsolicited, without obtaining specific direction from SANBAG. All oral and written communication with outside agencies or consultants related to the project shall be directed only to SANBAG. Distribution of Project related communication and information shall be at the sole discretion of SANBAG representatives.

J. CONSTRUCTION SITE SAFETY

In addition to the requirements specified elsewhere in this contract, the following also will apply.

1. CONSULTANT will conform to the safety provisions of the Caltrans Construction Manual.

2. CONSULTANT's field personnel will wear white hard hats with proper suspension, orange vests with reflective tape, sleeved shirt, long pants, and leather boots with ankle support and rubber soled shoes at all times while working in the field.

3. CONSULTANT will provide appropriate safety training for all CONSULTANT's personnel, including work on and near highways.

4. All safety equipment will be provided by CONSULTANT.

5. CONSULTANT will provide appropriate safety training for all CONSULTANT personnel. Training should include information on safety when working on or near highways.

6. All safety equipment shall be provided by CONSULTANT.

K. BASIS FOR SURVEY AND MONUMENT STAKING

SANBAG will designate the existing horizontal and vertical control monuments that are the basis of CONSULTANT performed surveys. SANBAG will provide the California Coordinate System values and/or elevation values for these monuments. CONSULTANT shall adjust CONSULTANT performed surveys to be the designated control monuments and the values.

Monuments established by CONSULTANT shall be marked by CONSULTANT with Caltrans furnished disks, plugs, tags. In addition, CONSULTANT shall identify CONSULTANT established monuments by tagging or stamping the monuments with the license or registration number of CONSULTANT'S surveyor who is in "responsible charge" of the work.

L. PERSONNEL QUALIFICATIONS AND RESPONSIBILITIES

The quantity and qualifications of field personnel to be assigned will be determined by the scope of the Project and the degree of difficulty of required tasks to be performed. All personnel and personnel assignments shall be subject to approval by SANBAG. While some areas of responsibility may overlap, as a guideline, CONSULTANT personnel assigned to the project shall have the following minimum qualifications:

1. Project Manager

Minimum qualifications shall be as follows:

a. Six (6) years project management experience on similar highway and bridge construction projects.

b. Accessible to SANBAG at all times during normal working hours.

c. A thorough understanding of Caltrans construction practices and procedures.

The Project Manager will assume the following functional responsibilities:

a. Review, monitor, train, and provide general direction for CONSULTANT inspection personnel.

b. Assign personnel to projects on an as-needed basis.

c. Administer personal leave.

d. Prepare monthly reports for delivery to SANBAG.

2. Senior Resident Engineer

Minimum qualifications shall be as follows:

a. Eight (8) years resident engineer experience on similar highway construction projects.

b. Licensed Professional Civil Engineer in the State of California.

c. Ability to work independently, make effective decisions concerning construction work in progress, and solve field problems.

d. Accessible to SANBAG at all times including weekends and holidays.

e. Thorough understanding of Caltrans field methods, practices, and construction office procedures.

The Senior Resident Engineer will assume the following functional responsibilities:

a. Monitor and provide daily direction to CONSULTANT Resident Engineers and inspection personnel.

b. Assign field personnel to specific project tasks.

c. Monitor and track Contractor progress.

d. Prepare daily, weekly and monthly reports as required.

e. Coordinate efforts of the Construction Staking and Material Testing consultants under contract with SANBAG.

f. Coordinate utility relocations with appropriate agencies and the utility inspector.

g. Act as prime field contact between various project Contractors and SANBAG's Construction Manager.

3. Resident Engineer

Minimum qualifications shall be as follows:

a. Four (4) years resident engineer experience on similar highway construction projects.

b. Licensed Professional Civil Engineer in the State of California.

c. Ability to work independently, make effective decisions concerning construction work in progress, and solve field problems.

d. Accessible to SANBAG at all times including weekends and holidays.

e. Thorough understanding of Caltrans field methods, practices, and construction office procedures.

The Resident Engineer shall act under the direction of the Senior Resident Engineer and will assume the following functional responsibilities:

a. Monitor and provide daily direction to CONSULTANT inspection personnel.

b. Assign field personnel to specific project tasks.

c. Monitor and track Contractor progress.

d. Prepare daily, weekly and monthly reports as required.

e. Coordinate efforts of the Construction Staking and Material Testing consultants under contract with SANBAG.

f. Coordinate utility relocations with appropriate agencies and the Caltrans utility inspector.

g. Act as prime field contact between SANBAG's Segment Manager and the various project Contractors.

3. Lead Field Inspector

Minimum qualifications shall be as follows:

a. Six years (6) construction inspection experience in public works or similar highway projects ***or*** a four-year degree in the field of civil engineering, transportation and four years of similar construction experience.

b. Knowledge of Caltrans construction practices, physical characteristics and properties of highway construction materials, and approved methods and equipment used in making physical tests of construction materials.

c. Ability to work independently, make effective decisions concerning construction work in progress, and solve field problems.

d. Ability to direct the efforts of subordinate inspectors.

e. Understanding of Caltrans field and construction office procedures.

f. Ability to use an automatic level and transit for the purpose of verifying line and grade.

The Lead Field Inspector will assume the following functional responsibilities:

a. Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of highway construction.

b. Assist in the preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the Project.

c. Coordinate field testing of materials to monitor compliance with Project specifications and Caltrans Quality Assurance Program.

d. Maintain accurate and timely project records. Perform quantity calculations for progress pay estimates.

e. Perform analytical calculations such as basic earthwork, grading, profiles, and special staking procedures.

f. Provide input for the redesign of facilities to fit existing field conditions.

g. Monitor and track Contractor progress. Prepare daily, weekly, and monthly reports as required.

4. Field Inspector

Minimum qualifications shall be as follows:

a. Two years construction inspection experience in public works or similar highway projects ***or*** a four-year degree in the field of civil transportation engineering.

b. Knowledge of construction practices, physical characteristics and properties of highway construction materials, and approved methods and equipment used in making physical tests of construction materials.

c. Ability to work independently. Ability to make minor decisions concerning construction work in progress and to solve field and office problems.

d. Understanding of Caltrans construction methods and practices.

e. Ability to use an automatic level and transit for the purpose of verifying line and grade.

The Field Inspector will assume the following functional responsibilities:

a. Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of highway construction.

b. Assist in preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the Project.

c. Coordinate field testing of materials to monitor compliance with Project

specifications and Caltrans Quality Assurance Program.

d. Perform quantity calculations for progress pay estimates and maintain Project records.

e. Perform analytical calculations such as basic earthwork, grading, profiles, and special staking procedures.

f. Provide input for the redesign of facilities to fit existing field conditions.

g. Perform labor compliance interviews of the Contractors' personnel.

5. Structural Representative or Lead Structural Inspector

Minimum qualifications shall be as follows:

a. Six (6) years of bridge or structural construction inspection as related to Caltrans or major public works projects and a four-year degree in civil engineering.

b. Licensed Professional Civil Engineer in the State of California.

c. Knowledge of stress analysis, structural mechanics, and strength of materials.

d. Knowledge of Caltrans construction practices and the physical characteristics and properties of various highway bridge construction materials including concrete.

e. Experience in the following areas: foundations, pile driving, concrete prestressing, bridge deck construction, falsework, and shoring. Additional construction experience in the following areas is also needed: bridge retrofit, deep excavations, hard driving conditions, and deep foundations.

f. Ability to work independently. Ability to perform duties in the construction field office and effectively make decisions concerning construction work in progress and solving field problems.

g. Ability to direct the efforts of subordinate inspectors.

h. Ability to use an automatic level and transit for the purpose of verifying line and grade.

i. Thorough understanding of Caltrans field methods, practices, and construction office procedures.

The Structural Representative shall assume the following functional responsibilities:

a. Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of structural construction such as bridges, foundations, walls, falsework, shoring, and drainage structures.

b. Make grade, alignment, quantity, falsework, and shoring calculations.

c. Assist in the preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the Project.

d. Coordinate the sampling and testing of construction materials to monitor compliance with contract specifications.

e. Monitor and track Contractor progress. Prepare daily, weekly, and monthly reports as required.

f. Coordinate with Resident Engineer, as well as the Construction Staking and Material Testing consultants under contract with SANBAG.

g. Direct subordinate inspectors.

6. Structural Inspector

Minimum qualifications shall be as follows:

a. A minimum of two (2) years of bridge design or structural construction inspection as related to Caltrans or major public works projects ***or*** a four-year degree in civil or structural engineering.

b. Knowledge of stress analysis, structural mechanics, and strength of materials.

c. Knowledge of construction practices and the physical characteristics and properties of various highway bridge construction materials including concrete.

d. Experience in one or more of the following areas: pile driving, concrete prestressing, bridge deck construction, falsework, and shoring.

e. Ability to work independently and make minor decisions concerning construction work in progress and to solve field and office problems.

f. Ability to use an automatic level and transit for the purpose of verifying line and grade.

The Structural Inspector will assume the following functional responsibilities:

a. Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of structural construction such as bridges, foundation, walls, falsework, shoring, and drainage structures.

b. Make grade, alignment, quantity, falsework, and shoring calculations.

c. Assist in the preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the Project.

d. Sampling and testing of construction materials to monitor compliance with contract specifications and Caltrans Quality Assurance Program.

7. Office Engineer

Minimum Qualifications shall be as follows:

a. Two years (2) office engineering on similar Caltrans highway and/or bridge construction projects.

b. Knowledge of Caltrans Office of Highway Construction forms used to administer construction projects.

c. Knowledge of Caltrans system of document organization.

d. Knowledge of construction records and accounting procedures.

e. Knowledge of documentation, procedures, and reporting for federally funded projects.

f. Knowledge of laws and regulations governing the payment of prevailing wages.

The Office Engineer will assume the following functional responsibilities:

a. Process monthly progress pay estimates, monthly status reports, extra work reports, and weekly statements of working days.

b. Prepare and process contract change orders.

c. Monitor construction budget and schedule.

d. Prepare, maintain, and/or file project documents including labor and equipment records, correspondence, memoranda, meeting minutes, claims, personnel records, labor compliance reports, and daily, weekly, and monthly reports.

e. Perform routine calculations and checking of quantities.

f. Coordinate all office activities and functions with SANBAG representatives.

CONSULTANT's personnel will be capable of performing the types of material testing services described above in "Description of Required Services" with minimal instructions.

8. Materials Testing Project Manager

a. Four years project management experience on a similar highway/bridge construction project.
b. Licensed civil engineer in the State of California.
c. Ability to use typical computer programs including word processing and

spreadsheets.

d. Accessible to SANBAG at all times during normal working hours.

Under the direction of SANBAG, the project manager will assume the following functional responsibilities:

a. Review, monitor, train, and provide general direction for CONSULTANT's laboratory and field personnel.
b. Assign personnel to projects on an as-needed basis in coordination with SANBAG's Resident Engineer.
c. Administer personal leave, subject to approval of SANBAG's Resident Engineer.
d. Prepare monthly reports for delivery to the SANBAG project manager.
e. Provide direction, administration, and responsibility for Materials Certification per Caltrans Construction Manual, Section 8-01.

Material testing personnel will be certified by a California Registered Civil Engineer as being experienced and competent in the test procedures required for the work involved (and possess a current certificate of proficiency (Form MR-0111) in accordance with Quality Assurance Program Manual (Section 3-5). Independent certification of Caltrans test procedures may be performed at the discretion of the SANBAG Construction Manager.

9. Materials Technicians

CONSULTANT personnel provided under this contract will have a variety of skills and experience appropriate for the level of tasks to be assigned. Field personnel will have a minimum of two years experience in conducting material sampling and testing of the type required for the projects involved and will possess the following additional capabilities:

a. Have the ability to establish specific locations for appropriate tests when construction contract administration personnel are not available.

b. Be familiar with construction practices and be fully aware of construction activities at the project site.

c. Have knowledge of and comply with safety and health regulations and requirements applicable to the project.

Specific qualifications for technicians are as follows:

CONSTRUCTION TECHNICIAN I

Performs a variety of semi-skilled activities.

Examples of duties assigned to this classification are:

- Conducting quality control tests such as soil densities, sieve analysis tests, operation scales and inspecting spread operations.
- Sampling and transporting produced construction materials from point of application or production to testing laboratory.

Knowledge and Skills Required

- Knowledge of tools, equipment and vehicles utilized in highway construction.
- Knowledge of standard equipment and materials used for the sampling and testing of construction material.
- Knowledge of basic mathematics used in the computation of a variety of construction items.
- Knowledge of record keeping, preparing of documents and reports.

TECHNICIAN II

Performs a variety of skilled activities

Examples of duties assigned to this classification are:

- Inspecting minor construction items, sampling and inspection of steel reinforcement, sampling and inspection of concrete placing operation.
- Collect and analyze soil samples of construction materials to determine compaction and moisture content.
- Inspection and sampling of all phases of asphaltic concrete and PCC paving operation, including plant inspection.
- Confers with construction engineers and contractors regarding construction in progress and is conformance to specifications and construction plans.
- Answers questions and resolves problems.
- Inspects construction in progress to ensure conformance with specification, agreements, and established requirements.
- Keeps daily diary of work progress.
- Prepares reports on all field inspections and submits project quantities on a daily basis.
- Keeps accurate documentation for force accounts and possible claims.

Knowledge and Skill Required:

- All knowledge and skills required of lower classification.
- Knowledge of currently accepted methods, procedures and techniques used in highway construction inspection, survey, materials testing, and quality control equipment.
- Skill in interpersonal relations as applied to contact with contractors, representatives of other governmental jurisdictions, and other SANBAG/Caltrans staff.

TECHNICIAN III

Exercise considerable independent judgment within general Caltrans standards and guidelines.

Examples of duties assigned to this classification are:

- Inspect highway construction on an ongoing basis to assure compliance with contract and in accordance with State and local standards.

- Perform a variety of structural material tests and inspections.
- Reviews construction plans and verified that these are in accordance with designated specifications and other requirements.
- Participates in the preparation of completed work estimates, to calculate compensation due contractor.
- Examines and verifies numeric data and material specifications on project cost source documents, utilizing geometry and trigonometry calculations.
- Supervises all work activities involved in construction projects, laboratory, and quality control work.
- Recommends approval of proposed project changes.

Knowledge and Skills Required:

- All knowledge and skills required of lower classifications.
- Knowledge of the principles and practices of Civil Engineering as applied to the construction of state highways.
- Skill in analyzing and evaluating a wide variety of highly technical engineering data, including construction plans, field survey and quality control documents.
- Skill in interpreting and implementing Caltrans standards, policies, procedures and regulations.
- Skill in interpersonal relations, as applied to contacts with contractors, representatives of other governmental jurisdictions, and other SANBAG/Caltrans staff.

10. Construction Surveying Project Manager

Minimum qualifications for the position of Project Manager shall be as follows:

- Four (4) years project management experience on similar highway construction projects.
- Licensed Surveyor or pre-January 1, 1982, Registered Professional Engineer in the State of California.
- Accessible to the Resident Engineer and SANBAG at all times during normal working hours as specified in this Scope of Services.

Under the direction of the Resident Engineer and SANBAG the project manager will be responsible for:

- Review, monitor, train, and provide general direction for CONSULTANT survey personnel.
- Assign personnel to projects on an as-needed basis.
- Administer personal leave, subject to approval of the Resident Engineer.
- Prepare monthly reports for delivery to the SANBAG project manager.

11. Field Party Chiefs

- Minimum qualifications for the position of Party Chief shall meet at least one of the following licensing requirements:

1. A licensed Land Surveyor in the State of California.
2. A pre-January 1, 1982, Registered Professional Civil Engineer in the State of California
3. An experienced surveyor who serves as chief under the direction or supervision of a person who is a licensed Land Surveyor or pre-January 1, 1982, Registered Professional Civil Engineer in the State of California. The direction or supervision shall place the supervisor in "responsible charge" of the work. "Responsible Charge" is defined in Chapter 15 of the Business and Professions Code (the Land Surveyor's Act) and Title 16, Chapter 5, of the California Administrative Code (regulations adopted by the Board of Registration for Professional Engineers and Land Surveyors).

- Two (2) years survey experience on similar highway construction projects.
- Thorough knowledge of construction survey practices and the ability to read and interpret plans and specifications.
- Ability to make effective decisions concerning field problems and work in progress.
- Familiarity with typical coordinate geometry computer programs.
- Familiarity with safety requirements for surveying near traffic.

Under the direction of the Resident Engineer, the Party Chiefs will assume the following responsibilities:

- Perform construction staking services for highway construction.
- Administer day to day activities for the survey party.
- Perform analytical survey calculations for items such as grading, horizontal and vertical control, right of way, and minor in-field design.
- Maintain continuous communication with the Resident Engineer, field personnel, and construction administration staff.

12. Survey Crews

Minimum qualifications for survey crew members shall be as follows:

- One (1) year survey experience on similar highway construction projects.
- Fundamental knowledge of construction survey practices and the ability to read and interpret plans and specifications.
- Ability to assist Party Chiefs and office personnel in all required surveying work.
- One survey crew member must have the ability to assume temporary leadership of the survey party in the absence of the Party Chief.

Under the direction of the Resident Engineer and the Party Chief, the survey crew members will assume the following responsibilities:

- Perform basic calculations to support highway construction staking.
- Maintain continuous communication with Party Chiefs and office personnel.

Governments SANBAG Working Together

San Bernardino Associated Governments

1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715
Phone: (909) 884-8276 Fax: (909) 885-4407 Web: www.sanbag.ca.gov

TRANSPORTATION MEASURE I

■ San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 9

Date: July 13, 2006

Subject: Major Projects Contract Negotiation Guidelines policy

Recommendation:* Discuss and provide guidance on revision to Major Project Contract Negotiation Guidelines

Background: Over the past several years, design and construction professionals have experienced steady growth in their respective fields. Firms within the engineering and construction management related fields have reached a point where attracting and retaining engineering talent has become extremely difficult and in some cases is limiting their ability to expand. The high demand for engineering talent is a result of numerous factors but an active private development market and stable public funding supply (at least relative to 2002) have been the primary recent contributors. The increased demand has also led to an overall increase in the salaries of engineers of nearly all categories with which SANBAG contracts.

Given these increases, staff believes that a review and update of SANBAG's negotiating guidelines is warranted. SANBAG policy 34504, titled Major Projects Contracts Negotiation Guidelines, provides guidance for staff in negotiating overhead rates and direct salaries for consultant contracts. The policy was originally approved by the Board in 1995 and was updated in 2001. The 2001 update adjusted the maximum salary rate from $47 per hour to $60 per hour.

The policy was created to provide a ceiling to consultant overhead rates and salary levels for SANBAG contracts. Overhead rates were capped at 150 percent for large firms but varied up to 170 percent depending on whether a firm was small or maintained specialty equipment for their business. In reviewing past

*

Approved
Major Projects Committee

Date: July 13, 2006

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

staff reports, it appears that there was extensive discussion as to the exact levels of the overhead rates. When the policy was initiated SANBAG was embarking on a large number of consultant contracts and staff believed that limits on rates (both overhead and salary) would help reduce costs while still maintaining adequate competition for SANBAG contracts. On the salary side, there was also an attempt to limit executive level personnel from charging to contracts on an hourly level and instead let those costs be captured only by a firm's overhead costs. Exceptions might be made for high level personnel providing specific project level input in which cases the firm would be reimbursed for such costs, but generally those costs would not be reimbursable.

Staff feels that at least the salary portion of the policy should be revised to reflect the current salary market. The spirit of the salary cap was to prevent executive level members of firms from being reimbursed within our contracts as well as trying to reduce costs. With today's market, some project engineers and senior level engineers earn more than the salary cap. This creates a burden for consultants which could begin to affect competition and, regardless of competition, is outdated.

The hourly rate cap needs to be addressed and there are a variety of options. One alternative is to eliminate the salary cap entirely and instead not allow executive level personnel to be reimbursed for their time. This would simplify the salary issue since the intent is to prevent high level personnel from charging time for administrative functions. There are instances where executives provide project specific help and those could charges might be allowable. Another idea that was mentioned at a previous Majors meeting involved an annual salary cap increase based upon an economic index. One potential downside to indexing the cap is the potential lack of correlation between a particular index and the engineering industry. Still another option is to simply adjust the salary cap manually as deemed appropriate by the Board.

Staff is exploring options and will bring a recommendation to the Committee, but this report is to provide an update and elicit ideas and discussion.

Financial Impact: This action imposes no direct financial impact on the SANBAG budget. TN 81507000.

Reviewed By: This item will be reviewed by the Major Projects Committee on July13, 2006.

Responsible Staff: Darren Kettle, Director of Freeway Construction

Governments SANBAG Working Together

San Bernardino Associated Governments

1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715
Phone: (909) 884-8276 Fax: (909) 885-4407 Web: www.sanbag.ca.gov

TRANSPORTATION MEASURE I

■ San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 10

Date: July 13, 2006

Subject: Measure I 2010-2040 Major Freeway Project – Project Development Advancement

Recommendation:* Authorize staff to develop necessary legal/finance instruments to use current Measure I funds to "finance" project development activities for two Measure I 2010-2040 Major Freeway Projects, the Devore Interchange Project and the Interstate 10 High Occupancy Lane (HOV) project, to be repaid from Measure I 2010-2040 revenues.

Background: In November 2004, San Bernardino County voters overwhelmingly supported with an 80.02% vote the extension of Measure I, the County's ½ cent sales tax for transportation. While the new measure revenues will not start to flow until April 2010, there is now certainty that SANBAG, acting as the County Transportation Authority, will have a revenue stream to fund major transportation improvements over the next several decades.

In late 2005, the Board received the Interstate 15 Comprehensive Corridor Study. The Study was undertaken in order to address current and forecasted future travel needs along the I-15 corridor between the State Route 60 interchange and the Mojave River Crossing in Victorville. One of the areas of focus for the Study was the Interstate 15/Interstate 215 Devore Interchange which has become a notorious bottleneck creating substantial congestion on Interstate 15. In the Board's action receiving the Study, the Board emphasized the need to initiate project development activities for this project. SANBAG anticipates requesting that Caltrans agree that the appropriate project development document for this project is a Project Report/Project Study Report (PR/PSR) and an environmental document.

*

Approved
Major Projects Committee

Date: *July 13, 2006*

Moved: *Second:*

In Favor: *Opposed:* *Abstained:*

Witnessed: _____

MPC0607F-DMK.DOC

In early Fiscal Year 2006/07 Caltrans is expected to approve a Project Study Report (PSR) for the Interstate 10 HOV lane addition project and various operational improvements between the current terminus of the I-10 HOV lane at Haven Avenue in Ontario to Ford Street in the city of Redlands. The next phase in the project development process is the development of a Project Report and an environmental document. In the Board's action adopting the 2006/07 Budget, this Task was added to initiate project development activities for the I-10 HOV Lane Addition Project. While Caltrans has led the effort for the PSR, SANBAG will assume the next project development phases including the Project Report and environmental document.

The Board has given clear direction to staff of the need to explore funding/financing options that would allow these two projects to continue project development activities in advance of Measure I 2010-2040 revenues being available. It is anticipated that no more than $2 million per year over the next 3-4 years would be necessary to fund consultant services for the next phases of work for both the Devore Interchange Project and the I-10 HOV project. Upon completion of the project development activities for these projects, both projects would be ideal candidates for "design-build" procurement should state law change to allow for this procurement method.

RECOMMENDED OPTION

While staff has researched a variety of options for funding these activities, it has become apparent that the simplest and least costly option is to use current Measure I Major Projects fund balances to finance the project development work for the two projects. SANBAG's cashflow model indicates that adequate funds are available over the next several years to "loan" to projects included in Measure I 2010-2040. In 2010, when the new Measure I revenues are available, the new Measure would repay the Valley Major Projects Fund Balance to ensure adequate funding to complete the current Measure I ongoing construction program which will include completion of the I-215 widening through San Bernardino and the I-10 Westbound Lane addition through Yucaipa and Redlands.

There is an element of risk with this option as it is based on a cashflow model that assumes expenditures consistent with the current Engineer's Estimates for the remaining major freeway construction projects. If the industry experiences another significant spike in materials/construction costs, there is the potential that the $6-8 million used to the advance the project development activities might be needed to fund the current construction program. Staff is of the opinion that in the unlikely event that this scenario occurs, other short-term financing mechanisms could be used to ensure that there is no impact on SANBAG's ongoing construction program.

Staff researched several other options but due primarily to the extra cost component associated with both traditional and non-traditional financing

strategies, staff concluded that the "inter-Measure" loan concept was most advantageous. Other options considered included:

1. SANBAG was approached a year or so ago by one of the large national engineering firms with an unsolicited proposal to, using existing company capital, front the cost of project development activities for projects in the new measure. In 2010, when new Measure I revenues were available, the company would be repaid with interest. SANBAG explored this concept with 8-10 of other large and medium size engineering firms and all but one indicated an interest in such a concept. Interest costs were the primary reason for no proceeding with this option.
2. A second option considered but quickly dismissed was a more traditional financing mechanism known as "commercial paper." Commercial Paper typically is a financing tool when there is a need for a minimum of $75-100 million. Given the need for only $6-8 million over the next 3 or so years, commercial paper was not a viable option.
3. Staff also researched the potential of a simple loan concept with a local lender. While this approach certainly makes more sense than the commercial paper alternative given the need for "only" $2-3 million a year, again, interest adds an extra cost component making this option less desirable than the staff recommendation.

Financial Impact: The financial impact of the staff recommendation is minimal as adequate Measure Valley Major Projects fund balances appear to be available to fund the advancement of these project development activities. The only substantive impact identified is that of lost investment earnings from funds that otherwise would have remained in the Valley Major Projects fund balance.

Reviewed By: This item will be reviewed by the Major Projects Committee on July 13, 2006.

Responsible Staff: Darren Kettle, Director of Freeway Construction

This page left blank.

SANBAG Acronym List

AB	Assembly Bill
ACE	Alameda Corridor East
ACT	Association for Commuter Transportation
ADA	Americans with Disabilities Act
APTA	American Public Transportation Association
AQMP	Air Quality Management Plan
ATMIS	Advanced Transportation Management Information Systems
BAT	Barstow Area Transit
CAC	Call Answering Center
CALACT	California Association for Coordination Transportation
CALCOG	California Association of Councils of Governments
CALSAFE	California Committee for Service Authorities for Freeway Emergencies
CALTRANS	California Department of Transportation
CARB	California Air Resources Board
CEQA	California Environmental Quality Act
CHP	California Highway Patrol
CMAQ	Congestion Mitigation and Air Quality
CMP	Congestion Management Program
CNG	Compressed Natural Gas
COG	Council of Governments
CSAC	California State Association of Counties
CTA	California Transit Association
CTAA	Community Transportation Association of America
CTC	California Transportation Commission
CTC	County Transportation Commission
CTP	Comprehensive Transportation Plan
DMO	Data Management Office
DOT	Department of Transportation
E&H	Elderly and Handicapped
EIR	Environmental Impact Report
EIS	Environmental Impact Statement
EPA	United States Environmental Protection Agency
ETC	Employee Transportation Coordinator
FEIS	Final Environmental Impact Statement
FHWA	Federal Highway Administration
FSP	Freeway Service Patrol
FTA	Federal Transit Administration
FTIP	Federal Transportation Improvement Program
GFOA	Government Finance Officers Association
GIS	Geographic Information Systems
HOV	High-Occupancy Vehicle
ICMA	International City/County Management Association
ICTC	Interstate Clean Transportation Corridor
IEEP	Inland Empire Economic Partnership
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
IIP/ITIP	Interregional Transportation Improvement Program
ITS	Intelligent Transportation Systems
IVDA	Inland Valley Development Agency
JARC	Job Access Reverse Commute
LACMTA	Los Angeles County Metropolitan Transportation Authority
LNG	Liquefied Natural Gas
LTF	Local Transportation Funds
MAGLEV	Magnetic Levitation
MARTA	Mountain Area Regional Transportation Authority
MBTA	Morongo Basin Transit Authority
MDAB	Mojave Desert Air Basin
MDAQMD	Mojave Desert Air Quality Management District
MIS	Major Investment Study
MOU	Memorandum of Understanding

SANBAG Acronym List

MPO	Metropolitan Planning Organization
MSRC	Mobile Source Air Pollution Reduction Review Committee
MTP	Metropolitan Transportation Plan
NAT	Needles Area Transit
OA	Obligation Authority
OCTA	Orange County Transportation Authority
OWP	Overall Work Program
PA&ED	Project Approval and Environmental Document
PASTACC	Public and Specialized Transportation Advisory and Coordinating Council
PDT	Project Development Team
PPM	Planning, Programming and Monitoring Funds
PSR	Project Study Report
PTA	Public Transportation Account
PVEA	Petroleum Violation Escrow Account
RCTC	Riverside County Transportation Commission
RDA	Redevelopment Agency
RFP	Request for Proposal
RIP	Regional Improvement Program
ROD	Record of Decision
RTAC	Regional Transportation Agencies' Coalition
RTIP	Regional Transportation Improvement Program
RTP	Regional Transportation Plan
RTPA	Regional Transportation Planning Agencies
SB	Senate Bill
SAFE	Service Authority for Freeway Emergencies
SANBAG	San Bernardino Associated Governments
SCAB	South Coast Air Basin
SCAG	Southern California Association of Governments
SCAQMD	South Coast Air Quality Management District
SCRRA	Southern California Regional Rail Authority
SED	Socioeconomic Data
SHA	State Highway Account
SHOPP	State Highway Operations and Protection Program
SOV	Single-Occupant Vehicle
SRTP	Short Range Transit Plan
STAF	State Transit Assistance Funds
STIP	State Transportation Improvement Program
STP	Surface Transportation Program
TAC	Technical Advisory Committee
TCM	Transportation Control Measure
TCRP	Traffic Congestion Relief Program
TDA	Transportation Development Act
TEA	Transportation Enhancement Activities
TEA-21	Transportation Equity Act for the 21st Century
TIA	Traffic Impact Analysis
TMC	Transportation Management Center
TMEE	Traffic Management and Environmental Enhancement
TOC	Traffic Operations Center
TOPRS	Transit Operator Performance Reporting System
TSM	Transportation Systems Management
USFWS	United States Fish and Wildlife Service
UZAs	Urbanized Areas
VCTC	Ventura County Transportation Commission
VVTA	Victor Valley Transit Authority
WRCOG	Western Riverside Council of Governments

San Bernardino Associated Governments

Governments
SANBAG
Working Together

MISSION STATEMENT

To enhance the quality of life for all residents, San Bernardino Associated Governments (SANBAG) will:

- Improve cooperative regional planning

- Develop an accessible, efficient, multi-modal transportation system

- Strengthen economic development efforts

- Exert leadership in creative problem solving

To successfully accomplish this mission, SANBAG will foster enhanced relationships among all of its stakeholders while adding to the value of local governments.

Approved June 2, 1993
Reaffirmed March 6, 1996