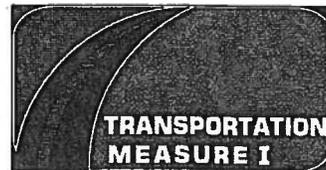




San Bernardino Associated Governments

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



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

AGENDA

Mountain/Desert Committee

April 20, 2012

9:00 a.m.

★LOCATION CHANGE: THIS MEETING ONLY★

**Victor Valley Transit Authority
17150 Smoketree Street
Hesperia, CA 92345**

Immediately following the adjournment of the Mountain/Desert Committee meeting, tours of the new Victor Valley Transit facility will be given to committee members prior to the dedication event which begins at 11:00AM

Mountain/Desert Committee Membership

Chair

*Jim Harris, Council Member
City of Twentynine Palms*

*Bill Jahn, Mayor
City of Big Bear Lake*

*George Huntington, Council Member
Town of Yucca Valley*

Vice Chair

*Julie McIntyre, Mayor Pro Tem
City of Barstow*

*Mike Leonard, Council Member
City of Hesperia*

*Brad Mitzelfelt
Board of Supervisors*

*Cari Thomas, Mayor
City of Adelanto*

*Ed Paget, Mayor
City of Needles*

*Neil Derry
Board of Supervisors*

*Rick Roelle, Council Member
Town of Apple Valley*

*Ryan McEachron, Mayor
City of Victorville*

*Janice Rutherford
Board of Supervisors*

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**

AGENDA

Mountain/Desert Committee

April 20, 2012

9:00 a.m.

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Valley Transit facility will be given to committee members
prior to the dedication event which begins at 11:00AM**

CALL TO ORDER:

(Meeting Chaired by: Jim Harris)

- I. Pledge of Allegiance
- II. Attendance:
- III. Announcements:
- IV. Agenda Notices/Modifications – Diane Greve -

- 1. **Possible Conflict of Interest Issues for the Mountain/Desert Committee Meeting of April 20, 2012.** Pg. 5

Note agenda item contractors, subcontractors and agents, which may require member abstentions due to conflict of interest and financial interests. Board Member abstentions shall be stated under this item for recordation on the appropriate item.

Notes/Actions

Consent Calendar

Consent Calendar items shall be adopted by a single vote unless removed by member request.

2. Attendance Register

Pg. 7

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.

Discussion Items

3. Interstate 15 (I-15)/Ranchero Road Interchange Project

Pg. 9

1. Approve Award of Contract C12218 with MNS Engineering Inc. for Construction Management services for the Interstate 15/Ranchero Road Interchange Project in an amount not-to-exceed \$7,000,000.

2. Approve a contingency amount for Contract No. C12218 of \$700,000 and authorize the Executive Director or designee to release contingency as necessary for the project. **Garry Cohoe**

4. Congestion Management Program Cost Allocation

Pg. 36

1. Approve the cost allocation schedule for the Congestion Management Program for 2010/2011 included in Attachment 1; and

2. Approve invoicing of Mountain/Desert subarea jurisdictions. **Duane Baker**

Public Comments

5. Additional Items from Committee Members -

6. Brief Comments by the General Public -

Additional Information

Acronym List

Pg. 43

ADJOURNMENT:

Complete packages of this agenda are available for public review at the SANBAG offices. Staff reports for items may be made available upon request. For additional information call (909) 884-8276.

Next Mountain Desert Committee Meeting – Friday, May 18, 2012

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!*

**SANBAG General Practices for Conducting Meetings
of
Board of Directors and Policy Committees**

Basic Agenda Item Discussion.

- The Chair announces the agenda item number and states the subject.
- The Chair calls upon the appropriate staff member or Board Member to report on the item.
- The Chair asks members of the Board/Committee if they have any questions or comments on the item. General discussion ensues.
- The Chair calls for public comment based on "Request to Speak" forms which may be submitted.
- Following public comment, the Chair announces that public comment is closed and asks if there is any further discussion by members of the Board/Committee.
- The Chair calls for a motion from members of the Board/Committee.
- Upon a motion, the Chair announces the name of the member who makes the motion. Motions require a second by a member of the Board/Committee. Upon a second, the Chair announces the name of the Member who made the second, and the vote is taken.

The Vote as specified in the SANBAG Bylaws.

- Each member of the Board of Directors shall have one vote. In the absence of the official representative, the alternate shall be entitled to vote. (Board of Directors only.)
- Voting may be either by voice or roll call vote. A roll call vote shall be conducted upon the demand of five official representatives present, or at the discretion of the presiding officer.

Amendment or Substitute Motion.

- Occasionally a Board Member offers a substitute motion before the vote on a previous motion. In instances where there is a motion and a second, the maker of the original motion is asked if he would like to amend his motion to include the substitution or withdraw the motion on the floor. If the maker of the original motion does not want to amend or withdraw, the substitute motion is not addressed until after a vote on the first motion.
- Occasionally, a motion dies for lack of a second.

Call for the Question.

- At times, a member of the Board/Committee may "Call for the Question."
- Upon a "Call for the Question," the Chair may order that the debate stop or may allow for limited further comment to provide clarity on the proceedings.
- Alternatively and at the Chair's discretion, the Chair may call for a vote of the Board/Committee to determine whether or not debate is stopped.
- The Chair re-states the motion before the Board/Committee and calls for the vote on the item.

The Chair.

- At all times, meetings are conducted in accordance with the Chair's direction.
- These general practices provide guidelines for orderly conduct.
- From time-to-time circumstances require deviation from general practice.
- Deviation from general practice is at the discretion of the Board/Committee Chair.

Courtesy and Decorum.

- These general practices provide for business of the Board/Committee to be conducted efficiently, fairly and with full participation.
- It is the responsibility of the Chair and Members to maintain common courtesy and decorum.

Adopted By SANBAG Board of Directors January 2008



- 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: April 20, 2012

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 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
3	C12218	MNS Engineers, Inc. <i>Greg Chelini</i>	Falcon Engineering Dynamic Engineering Services, Inc. Arcadis U.S., Inc. Mayer Surveying, Inc. Twining Lab CHJ Consultants BetKon, Inc.

*

Approved
 Mountain Desert Committee

Date: _____

Moved: _____ Second: _____

In Favor: _____ Opposed: _____ Abstained: _____

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	
-----	--	-----	---	-----	---	------	--	-----	--

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.

**AGENDA ITEM #2
MOUNTAIN/DESERT POLICY COMMITTEE ATTENDANCE RECORD – 2012**

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Cari Thomas + City of Adelanto	X	X	X									
Rick Roelle Town of Apple Valley		X										
Julie McIntyre City of Barstow	X	X										
Bill Jahn City of Big Bear Lake	X	X	X									
Mike Leonard City of Hesperia	X	X	X									
Ed Paget City of Needles	X	X	X									
Jim Harris City of Twentynine Palms	X	X	X									
Ryan McEachron City of Victorville	X	X	X									
George Huntington Town of Yucca Valley	X		X									
Brad Mitzelfelt County of San Bernardino		X										
Janice Rutherford County of San Bernardino		X										
Neil Derry County of San Bernardino	X	X	X									

*Non-voting City Representative attended
+ Measure I Committee representative

**The Mountain/Desert Committee did not meet
x* Alternate Attended

*** New SANBAG Board Member

X = Member attended meeting.
MDCatt12.doc

Empty box = Member did not attend meeting

Crossed out box = Not a Board Member at the time.

**AGENDA ITEM #2
MOUNTAIN/DESERT POLICY COMMITTEE ATTENDANCE RECORD - 2011**

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Cari Thomas ***+ City of Adelanto	**	X	X	X	X	X	X	X	X	X	X	X
Rick Roelle Town of Apple Valley	**	X	X	X*	X	X	X		X	X		X
Julie McIntyre City of Barstow	**	X	X	X	X		X	X	X	X	X	X
Bill Jahn City of Big Bear Lake	**	X	X	X	X	X	X	X	X	X		
Mike Leonard City of Hesperia	**	X	X	X	X	X				X*	X	X
Ed Paget *** City of Needles	**	X	X	X	X	X	X	X	X	X	X	X
Jim Harris City of Twentynine Palms	**	X	X	X	X	X	X	X	X	X	X	X
Ryan McEachron City of Victorville	**	X	X	X	X	X*	X	X	X	X	X	X
George Huntington *** Town of Yucca Valley	**	X	X	X	X	X	X	X	X	X	X	X
Brad Mitzelfelt County of San Bernardino	**		X	X	X	X		X	X	X	X	X
Janice Rutherford*** County of San Bernardino												
Neil Derry County of San Bernardino <i>(Self Suspension-5/3/2011)</i>	**	X	X	X	Self Suspension 5/3/11							

*Non-voting City Representative attended
+ Measure I Committee representative
**The Mountain/Desert Committee did not meet
x* Alternate Attended
*** New SANBAG Board Member

Empty box = Member did not attend meeting
X = Member attended meeting.
Crossed out box = Not a Board Member at the time.
MDCatt11.doc
Page 1 of 1



- 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: April 20, 2012

Subject: Interstate 15 (I-15)/Ranchero Road Interchange Project

- Recommendation:***
1. Approve Award of Contract No. C12218 with MNS Engineering Inc. for Construction Management services for the Interstate 15/Ranchero Road Interchange Project in an amount not-to-exceed \$7,000,000.
 2. Approve a contingency amount for Contract No. C12218 of \$700,000 and authorize the Executive Director or designee to release contingency as necessary for the project.

Background: **Recommendations 1 & 2 are for a new contract.** On March 7, 2012 SANBAG Board approved the release of Request for Proposals (RFP) C12218 for Construction Management, Materials Testing, and Construction Surveying and Public Outreach services associated with the construction of the Interstate 15/Ranchero Road Interchange Project. On March 28, 2012, staff received seven (7) proposals. The firms who submitted are, in alphabetical order, AECOM, Athalye, Berg and Associates, Danken, Harris and Associates, MNS Engineers, and NV5. Staff assembled a selection panel consisting of members from the City of Hesperia, Caltrans, and SANBAG staff. Following review of the 7, four (4) firms were shortlisted to participate in interviews: Berg and Associates, Harris and Associates, MNS Engineers, and NV5. Interviews were held on Wednesday, April 11, 2012.

*

Approved
Mountain Desert Committee

Date: _____

Moved: _____ *Second:* _____

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

Witnessed: _____

COG		CTC	X	CTA	X	SAFE		CMA	
-----	--	-----	---	-----	---	------	--	-----	--

Check all that apply.
 MDC1204a-bmf
 Attachment: C12218

All 4 firms were very qualified to manage this Interstate 15/Ranchero Road Interchange construction project. MNS's thorough knowledge of the project, proposed staffing for work on the project, including their choice of subconsultants, and their ability to commence immediately distinguished it from the other firms. By majority, the selection panel agreed that MNS was the most qualified and most available team to provide the services requested. Staff verified not only the references of the firm and the principal, but also called on and received positive references for the Resident Engineer and Structure Rep/Inspector. Therefore, staff recommends approval of Contract No. C12218 with MNS for Construction Management on the Interstate 15/Ranchero Road Interchange Project for a total not-to-exceed \$7,000,000, a contingency for Contract C12218 for a not-to-exceed \$700,000, and to authorize the Executive Director or designee to release contingency as necessary for the project.

- Financial Impact:*** This item is consistent with the 2011/2012 Fiscal Year budget. Task No. 0890
- Reviewed By:*** This item will be reviewed by the Mountain/Desert Committee on April 20, 2012. SANBAG Legal Counsel and Contracts Manager have reviewed and approved this item as to form.
- Responsible Staff:*** Garry Cohoe, Director of Project Delivery



CONTRACT SUMMARY SHEET

Contract No. C 12218 Amendment No. _____

By and Between

San Bernardino Associated Governments and MNS Engineers

Contract Description Construction Management contract for the I-15/Ranchero Road construction

Board of Director's Meeting Date: 5-2-2012

Overview of BOD Action:

Is this a Sole-Source procurement? Yes No

CONTRACT OVERVIEW

Original Contract Amount	\$	7,000,000	Original Contingency Amount	\$	700,000
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	
Current Amendment Amount	\$		Contingency Amendment	\$	
TOTAL CONTRACT VALUE	\$		TOTAL CONTINGENCY VALUE	\$	
TOTAL BUDGET AUTHORITY (contract value + contingency)					\$ 7,700,000

Contract Start Date <i>NTP Date</i>	Current Contract Expiration Date <i>05/02/2015</i>	Revised Contract Expiration Date
--	---	----------------------------------

Has the contract term been amended? No Yes - please explain.

FINANCIAL INFORMATION

Budget authority for this contract currently exists in Task No. 0890.

A Budget Amendment is required.

How are we funding current FY? – MSI – Victor Valley MLH

Federal Funds
 State Funds
 Local Funds
 TDA Funds
 Measure I Funds

Provide Brief Overview of the Overall Funding for the duration of the Contract:

City of Hesperia DIF and Measure I Major/Local Highway

Payable Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

Retention? If yes, indicate % _____.

Disadvantaged Business Enterprise (DBE) Goal _____ % Underutilized DBE (UDBE) Goal _____ %

[Signature] *4/13/12*

 Task Manager Signature Date

[Signature] *4.13.12*

 Project Manager Signature Date

[Signature] *4/13/12*

 Chief Financial Officer Signature Date

 Contracts Manager Signature Date

CONTRACT C12218

FOR

CONSTRUCTION MANAGEMENT, CONSTRUCTION SURVEYING, MATERIALS TESTING and PUBLIC OUTREACH SERVICES FOR INTERSTATE 15/RANCHERO ROAD INTERCHANGE IMPROVEMENT PROJECT

This Contract is effective on the Effective Date as defined herein, by and between the San Bernardino Associated Governments in its capacity as the San Bernardino Transportation Authority. (referred to hereafter as "AUTHORITY"), whose address is 1170 W. 3rd Street, 2nd Floor San Bernardino, California 92410-171; and the firm of MNS Engineers, Inc. (hereinafter referred to as "CONSULTANT") whose address is: 1655 East 6th Street, Suite A-4a, Corona, CA 92879.

The AUTHORITY and CONSULTANT are each a "Party" and collectively the "Parties" herein.

RECITALS:

WHEREAS, AUTHORITY requires certain Construction Management and Construction Support services as described in Attachment A of this Contract and;

WHEREAS, CONSULTANT has confirmed that they have the requisite personnel, and experience and is fully capable and qualified to perform the services identified herein; and

WHEREAS, CONSULTANT desires to perform all services identified herein and to do so for the compensation and in accordance with the terms and conditions set forth herein

NOW, THEREFORE, the Parties hereto agree as follows:

ARTICLE 1. DESCRIPTION OF SERVICES

CONSULTANT agrees to perform services set forth in Attachment "A", Scope of Services, (Services) which is incorporated herein by reference in accordance with professional engineering, land surveying and materials testing standards which are generally accepted in the State of California, in accordance with the terms and conditions expressed herein and in the sequence, time, and manner defined therein. The word "Services," as used herein, includes without limitation, the performance, fulfillment and discharge by CONSULTANT of all obligations, duties, tasks, and services imposed upon or assumed by CONSULTANT hereunder; and the Services performed hereunder shall be completed to the satisfaction of AUTHORITY, with their satisfaction being based on prevailing engineering standards.

ARTICLE 2. PERIOD OF PERFORMANCE

The Period of Performance by CONSULTANT under this Contract shall commence upon issuance of a written Notice To Proceed (NTP) issued by AUTHORITY and shall continue in effect through May 2, 2015 or until otherwise terminated, or unless extended as hereinafter provided by written amendment.

ARTICLE 3. PRICE

- 3.1 Total compensation to CONSULTANT for full and complete performance of Services, in compliance with all the terms and conditions of this Contract, payment by CONSULTANT of all obligations incurred in, or application to, CONSULTANT'S performance of Services, and for which CONSULTANT shall furnish all personnel, facilities, equipment, materials, supplies, and services (except as may be explicitly set forth in this Contract as furnished by AUTHORITY), shall not exceed the amounts set forth in 3.2 below.
- 3.2 The total Not-To-Exceed amount is **TBD, (\$ TBD)** for Construction Management, Construction Surveying, Materials Testing, and Public Outreach services to be provided under this Contract. Services are to be provided on a time and materials basis and are to be performed as set forth in Attachment "A", Scope of Services, and shall be reimbursed pursuant to the rates identified in Attachment B, "Billing Rate Schedule", which is attached herein and by this reference, incorporated in herein and made part of this Contract. The fully burdened hourly labor rates identified in Attachment B shall remain fixed for the term of this Contract and include CONSULTANT'S direct labor costs, indirect costs and profit. All expenses shall be reimbursed per the amount shown in Attachment B. The AUTHORITY will not reimburse for any expenses not shown in Attachment B.
- Escalation shall be a specific rate, as shown on the Employment Cost Index for the Bureau of Labor Statistics for the United State Department of Labor for Management, Professional, and related "White-collar Occupations", and noted in Attachment "B". The Employment Cost Index will be annually adjusted, apply to total benefits for the private industry economic sector, not be seasonally adjusted, but will include a 12-month percent change. Escalation shall commence as of one year after Effective Date, and shall be subject to change each (July 1) for the term of the Contract.
- 3.3 CONSULTANT'S overhead rates will be fixed, as agreed upon in Attachment "B" for the duration of this Contract and include all costs associated with the administration of this Contract. The fixed overhead rate will not be subject to adjustment. Any percentage increase over the direct labor rate in Attachment "B" is not permitted without prior authorization from AUTHORITY.
- 3.4 Salary increases for personnel subject to prevailing wage rates as described in the California Labor Code, all salary increased which are the direct result of changes in the prevailing wage rates are reimbursable.
- 3.5 The cost principles set forth in Part 31, Contract Cost Principles and Procedures, in Title 48, Federal Acquisition Regulations System of the Code of Federal Regulations (CFR) as constituted on the effective date of this Contract shall be utilized to determine allowableness of costs under this Contract and may be modified from time to time by amendment of the Contract.

- 3.5.1 CONSULTANT agrees to comply with Federal Department of Transportation procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- 3.5.2 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowed under 48 CFR, Part 31, Contract Cost Principles and Procedures, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments shall be repaid by CONSULTANT to AUTHORITY.
- 3.5.3 Any subcontract entered into as a result of this Contract shall contain all of the provisions of this Section.
- 3.6 Any services provided by the CONSULTANT not specifically covered by the Scope of Services (Attachment "A") shall not be compensated without prior written authorization from AUTHORITY. It shall be CONSULTANT's responsibility to recognize and notify AUTHORITY when services not covered by the Scope of Services have been requested or are required. All changes and/or modifications to the Scope of Services shall be made in accordance with the "Changes" provision.

ARTICLE 4. PAYMENT

- 4.1 The compensation of CONSULTANT as provided herein shall be payable in 4 week billing period payments, forty-five (45) calendar days after receipt by AUTHORITY of an invoice prepared in accordance with instructions below, except for the final invoice. The final invoice will be withheld until any and all closeout documents are finalized per the Caltrans Construction Manual and/or Local Assistance Procedure Manual. Payment shall not be construed to be an acceptance of Services.
- 4.2 CONSULTANT shall prepare all invoices in a form satisfactory to and approved by AUTHORITY and it shall be accompanied by documentation supporting each element of measurement and/or cost. Each invoice will be for a four-week billing period and will be marked with AUTHORITY'S Project name, contract number and task order number. Invoices shall be submitted within fifteen (15) calendar says for the period covered by the invoice. Invoices shall include request for payment for Services (including additional Services authorized by AUTHORITY) completed by CONSULTANT during each billing period. Any invoice submitted which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to CONSULTANT. Any costs incurred by CONSULTANT in connection with the resubmission of a proper invoice shall be at CONSULTANT'S sole expense.
- 4.3 CONSULTANT shall furnish evidence, satisfactory to AUTHORITY, that all labor and materials furnished and equipment used during all periods prior to the period covered by any invoice have been paid in full. AUTHORITY shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such evidence. Upon furnishing such evidence, satisfactory to AUTHORITY, AUTHORITY shall pay CONSULTANT the full amount of the invoice less disputed amounts.

- 4.4 Intentionally Left Blank.
- 4.5 CONSULTANT shall include a statement and release with each invoice, satisfactory to AUTHORITY, that CONSULTANT has fully performed the Services invoiced pursuant to this Contract for the period covered, that all information included with the invoice is true and correct and that all payments to and claims of CONSULTANT and its subcontractors for Services during the period will be satisfied upon the making of such payment. AUTHORITY shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such statement and release.
- 4.6 CONSULTANT shall forfeit the fixed fee portion of the progress payment for any billing period that CONSULTANT fails to submit an invoice within sixty (60) calendar days after the cutoff date for the billing period.
- 4.7 Appearance at Hearings – If and when required by AUTHORITY, CONSULTANT shall render assistance at hearings as may be necessary for the performance of the services.
- 4.8 CONSULTANT agrees to promptly pay each subcontractor for the satisfactory completion of all work performed under this Contract, no later than thirty (30) calendar days from the receipt of payment from AUTHORITY. AUTHORITY reserves the right to request documentation from CONSULTANT showing payment has been made to its subcontractors.
- 4.9 No payment will be made prior to approval of any work, nor any work performed prior to approval of this Contract by AUTHORITY's Board of Directors.
- 4.10 CONSULTANT agrees to pay each subcontractor for satisfactory work performed under this Contract, not later than ten (10) calendar days from the receipt of each payment CONSULTANT receives from AUTHORITY. CONSULTANT further agrees to return any retainage held to subcontractor within thirty (30) calendar days after the subcontractor's work is satisfactorily completed. AUTHORITY reserves the right to request appropriate documentation from CONSULTANT verifying that payment has been made to its subcontractors. Any delay or postponement from the above time frames must be approved in advance by AUTHORITY. This provision shall be included in all subcontract agreements.

ARTICLE 5. TAXES, DUTIES AND FEES

Except to the extent expressly provided otherwise elsewhere in this Contract, CONSULTANT shall pay when due, and the compensation set forth in "Article 3" shall be inclusive of all a) local, municipal, state, and federal sales and use taxes, b) excise taxes, c) taxes on personal property owned by CONSULTANT, and d) all other governmental fees and taxes or charges of whatever nature applicable to CONSULTANT to enable it to conduct business.

ARTICLE 6. AVAILABILITY OF FUNDS

The award and performance of this Contract is contingent on the availability of funds. If funds are not allocated and available to AUTHORITY for the continuance of Services performed by CONSULTANT, Services directly or indirectly involved may be suspended or terminated by AUTHORITY at the end of the period for which funds are available. When AUTHORITY becomes aware that any portion of Services, which will or may be affected by a shortage of funds, it will immediately so notify CONSULTANT. Nothing herein shall relieve AUTHORITY from its obligation to compensate CONSULTANT for Services performed pursuant to this Contract. No penalty shall accrue to AUTHORITY in the event this provision is exercised.

ARTICLE 7. PERMITS AND LICENSES

CONSULTANT shall (without additional compensation) keep current all governmental permits, certificates and licenses (including professional licenses) necessary for CONSULTANT to perform Services.

ARTICLE 8. DOCUMENTATION AND RIGHT OF AUDIT

- 8.1 CONSULTANT shall provide AUTHORITY, the U.S. Department of Transportation (DOT), the Comptroller General of the United States, or other authorized representatives or agents of AUTHORITY, access to CONSULTANT's records, which are directly related to this Contract for the purpose of inspection, auditing or copying. CONSULTANT shall maintain all records related to this Contract in accordance with generally accepted accounting principles and the Code of Federal Regulation, Title 48, Federal Acquisition Regulation System (FAR) Chapter 1, Part 31, in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a period of three (3) years from the date of final payment by AUTHORITY, except in the event of litigation or settlement of claims arising out of this Contract in which case CONSULTANT agrees to maintain records through the conclusion of all such litigation, appeals or claims related to this Contract. CONSULTANT further agrees to maintain separate records for costs of work performed by change amendment. CONSULTANT shall allow AUTHORITY or its representatives of agents to reproduce any materials as reasonably necessary. This Article applies to all subcontractors at any tier that is performing work under this Contract.
- 8.2 The cost proposal for this Contract is subject to audit. After any audit recommendations are received the cost proposal shall be adjusted by the CONSULTANT and approved by the Project Manager to conform to the audit recommendations. The CONSULTANT agrees that individual items of cost identified in the audit report may be incorporated into the Contract at AUTHORITY'S sole discretion. Refusal by CONSULTANT to incorporate the audit or post award recommendations will be considered a breach of the Contract terms and cause for termination of the Contract.

ARTICLE 9. RESPONSIBILITY OF CONSULTANT

- 9.1 CONSULTANT shall be responsible for the professional quality, technical accuracy, and

the assurance of compliance with Federal, State, and Local laws and regulations, and other services furnished by the CONSULTANT under terms of this Contract.

- 9.2 In addition to any other requirements of this Contract or duties and obligations imposed on CONSULTANT by law, the CONSULTANT shall, as an integral part of its services, employ quality control procedures that identify potential risks and uncertainties related to scope, schedule, cost, quality and safety of the Project and the services performed by CONSULTANT within the areas of CONSULTANT services and expertise. Risks that may be encountered include, but are not limited to, soil conditions, constructability, factors of safety, impact on adjacent properties, public safety, and environmental considerations. At any time during performance of the contracted Scope of Services, should the CONSULTANT observe, encounter, or identify any unusual circumstances or uncertainties which could pose potential risk and uncertainties, CONSULTANT shall immediately document such matters and notify AUTHORITY of said circumstances and related concerns. CONSULTANT shall also similarly notify AUTHORITY in regard to the possibility of any natural catastrophe, potential failure, or any situation that exceeds environmental, design, and/or construction assumptions and could precipitate a failure. Notifications under this paragraph shall be specific, clear and timely, and in a form which will enable AUTHORITY to understand and evaluate the magnitude and effect of the risk and uncertainties involved.
- 9.3 When a modification to a construction contract is required because of an error or deficiency in the design services provided under this Contract, the Project Manager, in conjunction with SANBAG's Legal Counsel shall consider the extent to which the CONSULTANT may be responsible to AUTHORITY for additional costs associated with the construction contract.
- 9.4 AUTHORITY's Project Manager shall advise CONSULTANT of their responsibility and collect the amount due, including but not limited to, withholding of payments, if the recoverable cost will exceed the administrative cost involved or is otherwise in the AUTHORITY's best interest. The Project Manager shall include in the Contract Audit File a written statement of the reasons for the decision or not recover the costs from CONSULTANT.

ARTICLE 10. REPORTING AND DELIVERABLES

All Reports and deliverables shall be submitted in accordance with Attachment "A", Scope of Services.

ARTICLE 11. TECHNICAL DIRECTION

- 11.1 Performance of Services under this Contract shall be subject to the technical direction of the AUTHORITY's Director of Project Delivery, or designee, as identified in Attachment "A", Scope of Services, attached to this Contract. The AUTHORITY's Director of Project Delivery will identify the designee, in writing to CONSULTANT, with the NTP and subsequently with any changes during the contract period. The term "Technical Direction" is defined to include, without limitation:

- 11.1.1 Directions to CONSULTANT, which redirect the contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Scope of Services.
 - 11.1.2 Provision of written information to CONSULTANT, which assists in the interpretation of drawings, reports, or technical portions of Service description.
 - 11.1.3 Review and, where required by the Contract, approval of technical reports, drawings, specifications and technical information to be delivered by the CONSULTANT to AUTHORITY or Caltrans under the Contract.
 - 11.1.4 Release retention as necessary for the Project.
- 11.2 Technical Direction must be within the Scope of Services under this Contract. The AUTHORITY's Director of Project Delivery or designee does not have the authority to, and may not, issue any Technical Direction which:
- 11.2.1 Constitutes an assignment of additional Services outside the Scope of Services;
 - 11.2.2 Constitutes a change as defined in the Contract clause entitled "Changes";
 - 11.2.3 In any manner causes an increase or decrease in the Contract's estimated cost or price or the time required for contract performance;
 - 11.2.4 Changes any of the expressed terms, conditions or specifications of the Contract;
 - 11.2.5 Interferes with the CONSULTANT's right to perform the terms and conditions of the Contract.
- Failure of the CONSULTANT and AUTHORITY to agree that the Technical Direction is within the scope of the Contract, or a failure to agree upon the Contract action to be taken with respect thereto shall be subject to the provisions of the Disputes Article herein.
- 11.3 All Technical Directions shall be issued in writing by the AUTHORITY's Director of Project Delivery or designee.
- 11.4 CONSULTANT shall proceed promptly with the performance of technical directions duly issued by the AUTHORITY, in the manner prescribed by this Article and within their authority under the provisions herein. If, in the opinion of CONSULTANT, any instruction or direction by the AUTHORITY falls within one of the categories defined in 11.2.1 through 11.2.5 above, CONSULTANT shall not proceed but shall notify the AUTHORITY in writing within five (5) working days after receipt of any such instruction or direction and shall request the Project Manager to modify the Contract accordingly. Upon receiving the notification from the CONSULTANT, AUTHORITY shall:

11.4.1 Advise CONSULTANT in writing within thirty (30) days after receipt of the CONSULTANT's letter that the technical direction is or is not within the scope of Article 12, Changes;

11.4.2 Advise the CONSULTANT within a reasonable time that AUTHORITY will or will not issue a written amendment.

ARTICLE 12. CHANGES

12.1 The Services shall be subject to changes by additions, deletions, or revisions made by AUTHORITY. CONSULTANT will be advised of any such changes by written notification from AUTHORITY describing the change.

12.2 Promptly after such written notification of change is given to CONSULTANT by AUTHORITY, CONSULTANT and AUTHORITY will attempt to negotiate a mutually agreeable change in compensation or time of performance and amend the Contract accordingly.

ARTICLE 13. EQUAL EMPLOYMENT OPPORTUNITY/DRUG FREE WORKPLACE

13.1 During the term of the Contract, CONSULTANT shall not willfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, gender, marital status, sexual orientation, age, political affiliation or disability. CONSULTANT agrees to comply with the provisions of Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment Practice Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

13.2 CONSULTANT agrees to comply with the Drug Free Workplace Act of 1990 per Government Code Section 8350 et. seq.

ARTICLE 14. CONFLICT OF INTEREST

CONSULTANT agrees that it presently has no interest, financial or otherwise and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. CONSULTANT further agrees that in the performance of this Contract no person having any such interest shall be employed. CONSULTANT is obligated to fully disclose to AUTHORITY, in writing, of any conflict of interest issues as soon as they are known to CONSULTANT and to comply with SANBAG's Policy 10102 regarding disclosure. CONSULTANT acknowledges that no member of or delegate to, the Congress of the United States shall have any interest, direct or indirect, in this Contract or the benefits thereof.

ARTICLE 15. KEY PERSONNEL

The personnel specified below are considered to be essential to Services being performed hereunder. Prior to diverting any of the specified individuals to other projects, or reallocation of tasks and hours of Services, which are the responsibility of key personnel to other personnel, the CONSULTANT shall notify AUTHORITY reasonably in advance and shall submit justifications (including proposed substitutions) in sufficient detail to permit evaluation of the import on the Project. Diversion or reallocation of key personnel shall be subject to written approval by AUTHORITY. AUTHORITY also reserves the right to approve proposed substitutions for key personnel. In the event that AUTHORITY and CONSULTANT cannot agree as to the substitute of key personnel, AUTHORITY shall be entitled to terminate this Contract. Key Personnel are:

Name	Function
Greg Chelini,	Project Manager
Lou Caballero	Resident Engineer
Jacob Tabari	Structures Representative/Inspector

ARTICLE 16. REPRESENTATIONS

Services supplied by CONSULTANT under this Contract shall be supplied by personnel who are careful, skilled, experienced and competent in their respective trades or professions. CONSULTANT agrees that they are supplying architectural and engineering services, findings, and/or recommendations in the performance of this Contract and agrees with AUTHORITY that the same shall conform to professional and engineering and environmental principles and standards, which are generally accepted in the State of California.

ARTICLE 17. PROPRIETARY RIGHTS/CONFIDENTIALITY

- 17.1 If, as part of this Contract, CONSULTANT is required to produce materials, documents data, or information ("Products"), then CONSULTANT, if requested by AUTHORITY, shall deliver to AUTHORITY the original of all such Products which shall become the property of AUTHORITY.
- 17.2 All materials, documents, data or information obtained from AUTHORITY's data files or any AUTHORITY medium furnished to CONSULTANT in the performance of this Contract will at all times remain the property of AUTHORITY. Such data or information may not be used or copied for direct or indirect use outside of this Project by CONSULTANT without the express written consent of AUTHORITY.
- 17.3 Except as reasonably necessary for the performance of Services, CONSULTANT and its employees and agents shall hold in confidence the materials and information referred to in this Article, which are produced by CONSULTANT for AUTHORITY in the performance and completion of CONSULTANT'S Services under the Contract, until

released in writing by AUTHORITY, except to the extent such materials and information become a part of public domain information through no fault of CONSULTANT, or its employees or agents.

- 17.4 CONSULTANT shall not use AUTHORITY'S name or photographs of the Project in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of AUTHORITY.
- 17.5 All press releases relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by AUTHORITY unless otherwise agreed to by CONSULTANT and AUTHORITY.
- 17.6 CONSULTANT agrees that it, and its employees, agents, and subcontractors will hold confidential and not divulge to third parties without the prior written consent of AUTHORITY, any information obtained by CONSULTANT from or through AUTHORITY in connection with CONSULTANT's performance of this Contract, unless (a) the information was known to CONSULTANT prior to obtaining same from AUTHORITY pursuant to a prior contract; or (b) the information was at the time of disclosure to CONSULTANT, or thereafter becomes part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONSULTANT or its employees, agents, or subcontractors, or (c) the information was obtained by CONSULTANT from a third party who did not receive the same, directly or indirectly, from AUTHORITY and who had, to CONSULTANT'S knowledge and belief, the right to disclose the same.

ARTICLE 18. CONSTRUCTION CLAIMS

- 18.1 If claims are filed by the AUTHORITY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from the CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with the AUTHORITY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- 18.2 CONSULTANT's personnel that the AUTHORITY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from the AUTHORITY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for the CONSULTANT's personnel services under this Contract.
- 18.3 Services of the CONSULTANT's personnel in connection with the AUTHORITY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this Contract in order to finally resolve the claims.
- 18.4 Any subcontract in excess of \$25,000 entered into as a result of this Contract, shall contain all of the provisions of this Article.

ARTICLE 19. TERMINATION

- 19.1 Termination for Convenience - AUTHORITY shall have the right at any time, with or without cause, to terminate further performance of Services by written notice to CONSULTANT specifying the date of termination. On the date of such termination stated in said notice, CONSULTANT shall discontinue performance of Services and shall preserve work in progress and completed work ("Work"), pending AUTHORITY'S instruction, and shall turn over such Work in accordance with AUTHORITY'S instructions.
- 19.1.1 CONSULTANT shall deliver to AUTHORITY, all deliverables prepared by CONSULTANT or its subcontracts or furnished to CONSULTANT by AUTHORITY. Upon such delivery, CONSULTANT may then invoice AUTHORITY for payment in accordance with the terms hereof.
- 19.1.2 If CONSULTANT has fully and completely performed all obligations under this Contract up to the date of termination, CONSULTANT shall be entitled to receive from AUTHORITY as complete and full settlement for such termination a pro rata share of the contract cost and a pro rata share of any fixed fee, for such Services satisfactorily executed to the date of termination.
- 19.1.3 CONSULTANT shall be entitled to receive the actual cost incurred by CONSULTANT to return CONSULTANT's field tools and equipment, if any, to it or its suppliers' premises, or to turn over Work in progress and Products in accordance with AUTHORITY'S instructions plus the actual cost necessarily incurred in effecting the termination.
- 19.2 Termination for Cause- In the event CONSULTANT shall file a petition in bankruptcy, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy shall be filed against CONSULTANT or a receiver shall be appointed on account of its solvency, or if CONSULTANT shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice thereof, AUTHORITY may, without prejudice to any other rights or remedies AUTHORITY may have, and in compliance with applicable Bankruptcy Laws, (a) hold in abeyance further payments to CONSULTANT; (b) stop any services of CONSULTANT or its subcontractors related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONSULTANT specifying the date of termination. In the event of such termination by AUTHORITY, AUTHORITY may take possession of the Products and finish Services by whatever method AUTHORITY may deem expedient. A waiver by AUTHORITY of one default of CONSULTANT shall not be considered to be a waiver of any subsequent default of CONSULTANT, nor be deemed to waive, amend, or modify any term of this Contract.
- 19.2.1 In the event of termination CONSULTANT shall deliver to AUTHORITY all finished and unfinished Products prepared by CONSULTANT or its subcontractors or furnished to CONSULTANT by AUTHORITY.

19.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to AUTHORITY, satisfactory in form and content to AUTHORITY and verified by AUTHORITY. In no event shall CONSULTANT be entitled to any prospective profits or any damages because of such termination.

ARTICLE 20. STOP WORK ORDER

Upon failure of CONSULTANT or its subcontractors to comply with any of the requirements of this Contract, AUTHORITY shall have the authority to stop any Services of CONSULTANT or its subcontractors affected by such failure until such failure is remedied or to terminate this Contract in accordance with Article 19, "Termination".

ARTICLE 21. CLAIMS

AUTHORITY shall not be bound to any adjustments in the Contract amount or schedule time for CONSULTANT's claim unless expressly agreed to by AUTHORITY in writing and any such adjustments in the Contract amount so agreed to in writing shall be paid to CONSULTANT by AUTHORITY. No claim hereunder by CONSULTANT shall be allowed if asserted after final payments under this Contract.

ARTICLE 22. INSURANCE

Without anyway affecting the indemnity provision identified in this Contract, Consultant shall, at the Consultant's sole expense, and prior to the commencement of any work, procure and maintain in full force, insurance through the entire term of this Contract. The policies shall be written by a California admitted carrier with a Best rating of A-VII or better, and shall be written with at least the following limits of liability:

- 22.1 Professional Liability - Shall be provided in an amount not less than \$1,000,000, per claim and \$2,000,000 in the aggregate. CONSULTANT shall secure and maintain this insurance or "tail" coverage provided throughout the term of this Contract and for a minimum of three (3) years after Contract completion.
- 22.2 Workers' Compensation - Worker's Compensation insurance shall be provided in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employers Liability with \$250,000 limits, covering all persons providing services on behalf of CONSULTANT and all risks to such persons under this Contract.
- 22.3 Commercial General Liability - To include coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Products/Completed Operations Liability, Broad-Form Property Damage and Independent Contractors' Liability, in an amount of not less than \$1,000,000 per occurrence, combined single limit, and \$2,000,000 in the aggregate written on an occurrence form. For products and completed operations a \$2,000,000 aggregate shall be provided.

- 22.4 Automobile Liability - To include owned, non-owned and hired automobiles, in an amount of not less than \$1,000,000 per occurrence, combined single limit, and in the aggregate written on an occurrence form.
- 22.5 Proof of Coverage- CONSULTANT shall immediately furnish certificates of insurance to AUTHORITY evidencing the insurance coverage required above, prior to the commencement of performance of services hereunder, and such certificates shall include San Bernardino Associated Governments/San Bernardino County Transportation Authority as additional insured on Comprehensive General Liability Insurance or Commercial General Liability Insurance and auto insurance. Prior to commencing any work, CONSULTANT shall furnish AUTHORITY with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth in this Article. If the insurance company elects to cancel or non-renew coverage for any reason, CONSULTANT will provide AUTHORITY thirty (30) days' notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONSULTANT will provide AUTHORITY ten (10) days written notice. CONSULTANT shall maintain such insurance from the time CONSULTANT commences performance of services hereunder until the completion of Services. The certificate(s) of insurance are to include the Contract number and Project Manager' name on the face of the certificate(s).
- 22.6 Additional Insured- All policies, except for Workers Compensation and Professional Liability policies, shall contain endorsements naming AUTHORITY and its officers, employees, agents, and volunteers as additional insureds with respect to liabilities arising out to the performance of Services hereunder. The additional insured endorsements shall not limit the scope of coverage for AUTHORITY to vicarious liability but shall allow coverage for AUTHORITY to the full extent provided by the policy.
- 22.7 Waiver of Subrogation Rights - CONSULTANT shall require the carriers of the above required coverages to waive all rights of subrogation against AUTHORITY, its officers, employees, agents, volunteers, contractors, and subcontractors. All general auto liability insurance coverage provided shall not prohibit CONSULTANT or CONSULTANTS employees or agents from waiving the right of subrogation prior to a loss or claim. CONSULTANT hereby waives all rights of subrogation against AUTHORITY.
- 22.8 All policies required herein are to be primary and non-contributory with any insurance carried or administered by AUTHORITY.
- 22.9 AUTHORITY'S contract with its general contractor for each Project is to require such contractor to obtain a Builder's Risk or Course of Construction Insurance, insuring on an "All-Risks" basis with a limit of not less than the full insurable replacement cost of the Project subject to deductible amounts as selected by AUTHORITY, and covering the Project and all materials and equipment to be incorporated therein, including property in transit or elsewhere and insuring the interests of AUTHORITY, CONSULTANT and its related entities, contractors and subcontractors of all tiers. The construction contract shall require that such insurance be primary, and shall include coverage for physical damage resulting from the Services and shall include an insurer's waiver of subrogation or right

of recourse in favor of each party insured hereunder. Furthermore, the construction contract shall require that such insurance shall remain in effect until the applicable Project is completed and accepted by the AUTHORITY.

ARTICLE 23. INDEMNITY

Except as provided below for those services falling within the scope of Civil Code section 2782.8, CONSULTANT agrees to indemnify, defend (with counsel reasonably approved by Authority) and hold harmless the AUTHORITY 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 acts, errors, or omissions of any person and for any costs or expenses incurred by the COMMISSION on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. CONSULTANT's indemnification obligation applies to AUTHORITY "active" as well as "passive" negligence but does not apply to the AUTHORITY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. To the extent CONSULTANT's services fall within the scope of Civil Code section 2782.8, the following indemnification is applicable. CONSULTANT shall defend and indemnify AUTHORITY for claims that arise out of, pertain to, or related to the negligence, recklessness, or willful misconduct of the design professional.

ARTICLE 24. ERRORS AND OMISSIONS

- 24.1 CONSULTANT shall be responsible for the professional quality, technical accuracy, and coordination of all services required under this Contract. CONSULTANT may be liable for AUTHORITY costs resulting from errors or deficiencies, fines, penalties, and damages in services furnished under this Contract.
- 24.2 When a modification to a construction contract is required because of an error or deficiency in the services provided under this Contract, the AUTHORITY (with the advice of technical personnel and legal counsel) shall consider the extent to which the CONSULTANT may be reasonably liable.
- 24.3 AUTHORITY shall enforce the liability and collect the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the AUTHORITY's interest. The AUTHORITY shall include in the Contract file a written statement of the reasons for the decision to recover or not recover the costs from the CONSULTANT.

ARTICLE 25. OWNERSHIP OF DOCUMENTS

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by CONSULTANT under this Contract shall become the property of AUTHORITY when prepared, whether delivered to AUTHORITY or not.

ARTICLE 26. SUBCONTRACTS

- 26.1 CONSULTANT shall not subcontract performance of all or any portion of Services under this Contract, excepting subcontractors listed in the CONSULTANT's proposal, without first notifying AUTHORITY of the intended subcontracting and obtaining AUTHORITY's approval in writing of the subcontracting and the subcontractor. The definition of subcontractor and the requirements for subcontractors hereunder shall include all lower-tier subcontracts.
- 26.2 CONSULTANT agrees that any and all subcontractors of CONSULTANT will comply with the terms of this Contract applicable to the portion of Services performed by them. If requested by AUTHORITY, CONSULTANT shall furnish AUTHORITY a copy of the proposed subcontract for AUTHORITY' approval of the terms and conditions thereof and shall not execute such subcontract until AUTHORITY has approved such terms and conditions. AUTHORITY approval shall not be unreasonably withheld.
- 26.3 Approval by AUTHORITY of any services to be subcontracted and the subcontractor to perform said Services will not relieve CONSULTANT of any responsibility or liability in regard to the acceptable and complete performance of said Services. Any substitution of subcontractors must be approved in writing by AUTHORITY.

ARTICLE 27. RECORD INSPECTION AND AUDITING

AUTHORITY, or any of its designees shall at all times have access during normal business hours to CONSULTANT's operation and products wherever they are in preparation or progress , and CONSULTANT shall provide sufficient, safe and proper facilities for such access and inspection thereof. Inspection or lack of inspection by AUTHORITY shall not be deemed to be a waiver of any of their rights to require CONSULTANT to comply with the Contract or to subsequently reject unsatisfactory services or products.

ARTICLE 28. INDEPENDENT CONTRACTOR

CONSULTANT is and shall be at all times an independent contractor. Accordingly, all Services provided by CONSULTANT shall be done and performed by CONSULTANT under the sole supervision, direction and control of CONSULTANT. AUTHORITY shall rely on CONSULTANT for results only, and shall have no right at any time to direct or supervise CONSULTANT or CONSULTANT's employees in the performance of Services or as to the manner, means and methods by which Services are performed. All workers furnished by CONSULTANT pursuant to this Contract, and all representatives of CONSULTANT, shall be and remain the employees or agents of CONSULTANT or of CONSULTANT's subcontractor(s) at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of AUTHORITY.

ARTICLE 29. ATTORNEY'S FEES

If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing Party, must bear its own costs and attorneys' fees. This Article shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under the Indemnity provision of this Contract.

ARTICLE 30. GOVERNING LAW AND VENUE

This Contract shall be subject to the law and jurisdiction of the State of California. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in whole or substantial part 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 Central District of San Bernardino County. Each Party hereby waives any law or rule of court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County District Civil Division.

ARTICLE 31. FEDERAL, STATE AND LOCAL LAWS

CONSULTANT warrants that in the performance of this Contract, it shall comply with all applicable Federal, State and local laws, ordinances, rules and regulations.

ARTICLE 32. PRECEDENCE

- 32.1 The Contract documents consist of these General Terms and Conditions and Attachment "A", Scope of Services, Attachment "B", Billing Rate Schedule, AUTHORITY's Request For Proposal and CONSULTANT's Proposal are incorporated herein by reference.
- 32.2 The following order of precedence shall apply: the provisions of this Contract, its General Terms and Conditions, and Attachments; AUTHORITY's Request For Proposal and CONSULTANT's Proposal.
- 32.3 In the event of an express conflict between the documents listed in this Article, or between any other documents, which are a part of the Contract, CONSULTANT shall notify AUTHORITY in writing within three (3) business days of its discovery of the conflict and shall comply with AUTHORITY's resolution of the conflict.

ARTICLE 33. COMMUNICATIONS AND NOTICES

Any and all notices permitted or required to be given hereunder shall be deemed duly given (a) upon actual delivery, if delivery is personally made; or (b) upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), fax or private courier including overnight delivery services. Each such notice shall be sent to the respective party at the address indicated below or to any other address as the respective parties may designate from time to time by a notice given in accordance with this Article. A change in address may be made by notifying the other party in writing.

To CONSULTANT	To AUTHORITY
MNS Engineers, Inc.	San Bernardino Associated Governments
1655 East 6 th Street, Suite A-4a	1170 W. 3rd St., 2nd
Corona, CA 92879	San Bernardino, CA 92410
Attn: Greg Chelini	Attn: Garry Cohoe – Director of Project Delivery
Phone: 805 896-9474	Phone: 909-884-8276

ARTICLE 34. DISPUTES

34.1 In the event any dispute arises between the Parties in connection with this Contract (including but not limited to disputes over payments, reimbursements, costs, expenses, services to be performed, Scope of Services and/or time of performance), the dispute shall be decided by the AUTHORITY within thirty (30) calendar days after notice thereof in writing which shall include a particular statement of the grounds of the dispute. If CONSULTANT does not agree with the decision, then CONSULTANT shall have thirty (30) calendar days after receipt of the decision in which to file a written appeal thereto with the Executive Director of AUTHORITY. If the Executive Director fails to resolve the dispute in a manner acceptable to CONSULTANT, then such appeal shall be decided by a court of competent jurisdiction.

34.2 During resolution of the dispute, CONSULTANT shall proceed with performance of this Contract with due diligence.

ARTICLE 35. GRATUITIES

CONSULTANT, its employees, agents, or representatives shall not offer or give to an officer, official, or employee of AUTHORITY, gifts, entertainment, payments, loans, or other gratuities to influence the award of a contract or obtain favorable treatment under a contract.

ARTICLE 36. REVIEW AND ACCEPTANCE

All Services performed by CONSULTANT shall be subject to periodic review and approval by the representatives of AUTHORITY at any and all places where such performance may be carried on. Failure of AUTHORITY to make such review, or to discover defective work, shall not prejudice the rights of AUTHORITY at the time of final acceptance. All Services performed by CONSULTANT shall be subject to periodic and final review and acceptance by AUTHORITY upon completion of all Services

ARTICLE 37. CONFIDENTIALITY

Any AUTHORITY materials to which the CONSULTANT or its subcontractor or agents have access to or materials prepared by CONSULTANT during the term of this Contract shall be held in confidence by CONSULTANT, who shall exercise reasonable precautions to prevent the disclosure of confidential information to anyone except as authorized by the AUTHORITY. CONSULTANT shall not release any reports, information of promotional material or allow for the use of any photos related to this Contract for any purpose without prior written approval of AUTHORITY.

ARTICLE 38. EVALUATION OF CONSULTANT

CONSULTANT's performance will be evaluated by AUTHORITY at the completion of certain milestones as identified in Attachment "A" to this Contract. A copy of the evaluation will be given to CONSULTANT for their information. The evaluation information shall be retained as part of the Contract record.

ARTICLE 39. SAFETY

CONSULTANT shall comply strictly with all local, municipal, state, and federal safety and health laws, orders and regulations applicable to CONSULTANT's operations in the performance of Services hereunder.

ARTICLE 40. ASSIGNMENT

CONSULTANT shall not assign this Contract in whole or in part, voluntarily, by operation of law, or otherwise without first obtaining the written consent of AUTHORITY. AUTHORITY's exercise of consent shall be within its sole discretion. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the parties hereto.

ARTICLE 41. AMMENDMENTS

This Contract may only be changed by a written amendment duly executed by CONSULTANT and AUTHORITY except, that changes to the Contract to implement administrative changes such as approved changes in key personnel as provided in Article 15, above, may be made by administrative amendment signed by CONSULTANT and AUTHORITY's Project Manager or other duly authorized representative.

ARTICLE 42. PREVAILING WAGES

Labor Laws. By its execution of this Contract, CONSULTANT certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Scope of Work is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, CONSULTANT agrees to fully comply with such Prevailing Wage Laws. CONSULTANT shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Scope of Work available to interested parties upon request, and shall post copies at the CONSULTANT's principal place of business and at the project site. CONSULTANT will also adhere to any other applicable requirements, including but not limited to, those regarding the employment of apprentices, travel and subsistence pay, retention and inspection of payroll records, workers compensation and forfeiture of penalties prescribed in the Labor Code for violations. CONSULTANT shall defend, indemnify and hold the AUTHORITY, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with Prevailing Wage Laws.

ARTICLE 43. CONTINGENT FEE

CONSULTANT warrants, by execution of this Contract, that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a Authority, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the CONSULTANT for the purpose of securing business. For breach or violation of this warranty, AUTHORITY has the right to annul this Contract without liability, pay only for the value of Services actually performed, or in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such Authority, percentage, brokerage, or contingent fee.

ARTICLE 44. INCORPORATION OF FEDERAL TERMS

All contractual provisions required by the U.S. Department of Transportation (DOT), including the Federal Highway Administration (FHWA) whether or not expressly set forth in this Contract, are hereby incorporated by this reference. CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any requests, which would cause the AUTHORITY to be in violation of FHWA terms and conditions.

ARTICLE 45. FEDERAL CHANGES

CONSULTANT shall at all times comply with all applicable US DOT regulations, policies and procedures and directives, including without limitation those directly or by this reference in the agreement between the AUTHORITY and the USDOT, as they may be amended from time to time during the term of this Contract. CONSULTANT's failure to comply shall be considered a material breach of this Contract.

ARTICLE 46. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

AUTHORITY and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent of the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the AUTHORITY, CONSULTANT, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from the underlying Contract. CONSULTANT further agrees to include this Article in all subcontracts.

ARTICLE 47. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

47.1 CONSULTANT acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 41 U.S.C. §3801 et. seq. and US DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Accordingly, by signing this Contract, CONSULTANT certifies and affirms the truthfulness and accuracy of any statement it has made, it makes, or causes to be made, pertaining to the underlying agreement of the US DOT assisted project for which this Contract' work is being performed. CONSULTANT further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement,

submission, or certification, the Federal Government reserves the right to impose penalties of the Program Fraud Civil Remedies Act of 1986 on the CONSULTANT to the extent the Federal Government deems appropriate.

- 47.2 CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an agreement connected with a project that is financed in whole or part with Federal assistance awarded by the US DOT under the authority of 49 U.S.C. §5307 et seq., the US Government reserves the right to impose penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307 (n) (1) et seq. on the CONSULTANT, to the extent the Federal Government deems appropriate. CONSULTANT agrees to include this Article in all of its subcontracts.

ARTICLE 48. DEBARMENT AND SUSPENSION CERTIFICATION

- 48.1 CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to AUTHORITY.
- 48.2 Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

ARTICLE 49. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

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

ARTICLE 50. PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING

CONSULTANT certifies to the best of their knowledge and belief that: No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or

federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such subcontracts.

ARTICLE 51. UNDERUTILIZED DISADVANTAGE BUSINESS ENTERPRISES

- 51.1 The AUTHORITY, as a recipient of federal financial assistance, is required to implement a Disadvantaged Business Program in accordance with federal regulation 49 CFR Part 26 issued by the U.S. Department of Transportation (DOT). The AUTHORITY has set a contract specific goal of 2.3 % for this project. CONSULTANT shall furnish all documentation satisfactory to AUTHORITY that the work committed to UDBE's was actually performed by UDBE's. Requests for progress payments shall include a summary of payments actually made to UDBE's during the invoice period (Form 315), which includes a total of all payments made to all subcontractors under this Contract. UDBE participation shall be credited toward the overall UDBE goal only when payments are actually made to the UDBE firms. CONSULTANT shall submit on the 15th of every month to AUTHORITY' Contract Compliance Officer, Form 315. Upon completion of the Contract, CONSULTANT shall submit "Final Report-Utilization of Disadvantaged Business Enterprises-First Tier Subcontractors", Form 17-F and submit with the final invoice.
- 51.2 As there is a UDBE goal on this Contract, the Bidder, in order to be considered responsible and responsive, must meet the contract specific UDBE goal identified in 32.1 or make Good Faith Efforts to meet the goal established for the Contract. If the goal is not met, the Bidder must document adequate Good Faith Efforts. Only UDBE firms certified through the CUCP will be counted towards the contract goal; however, all DBE participation shall be collected and reported. Please refer to Attachments A and A-1 to this Contract for further information and instructions.
- 51.3 CONSULTANT shall carry out all applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by CONSULTANT to carry out these requirements is material breach of this Contract, which may result in the termination of this Contract or such other remedy, as AUTHORITY may deem appropriate.

ARTICLE 52. NONSEGREGATED FACILITIES

- 52.1 CONSULTANT, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their

services at any location, under its control, where segregated facilities are maintained. CONSULTANT agrees that a breach of this certification is a violation of the EEO provisions of this Contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

- 52.2 As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time-clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, rec subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

ARTICLE 53. RECYCLED PRODUCTS

CONSULTANT shall comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act as amended, (42 USC 6962), including but not limited to the 40 CFR part 247 and Executive Order 12873, as applicable. CONSULTANT agrees to include this Article in all of its subcontracts.

ARTICLE 54. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

- 54.1 CONSULTANT agrees that any facility that is or will be utilized in the performance of this Contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
- 54.2 CONSULTANT agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
- 54.3 CONSULTANT shall promptly notify AUTHORITY of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for this Contract is under consideration to be listed on the EPA List of Violating Facilities.
- 54.4 CONSULTANT agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

ARTICLE 55. COVENANT AGAINST CONTINGENT FEES

CONSULTANT shall warrants that he/she has not employed or retained any company or person other than a bona fide employee working for the consultant; to solicit or secure this Contract; and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, Authority, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from any award, or formation of this Contract. For breach or violation of this warranty, that AUTHORITY shall have the right to annul this Contract without liability, or at its discretion; to deduct from the Contract price or consideration, or otherwise recover the full amount of such fee, Authority, percentage, brokerage fee, gift or contingent fee.

ARTICLE 56. FORCE MAJEURE

CONSULTANT shall not be in default under this Contract in the event that the [services provided/work performed] by CONSULTANT are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, and natural disasters such as floods, earthquakes, landslides, and fires, severe weather or other catastrophic events which are beyond the reasonable control of CONSULTANT and which CONSULTANT could not reasonably be expected to have prevented or controlled. Other catastrophic events do not include the financial inability of the CONSULTANT to perform or failure of the CONSULTANT to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of CONSULTANT.

ARTICLE 57. ENTIRE DOCUMENT

- 57.1 This Contract and its attachments constitute the sole and only agreement governing Services and supersedes any prior understandings, written or oral, between the parties respecting the Project. All previous proposals, offers, and other communications, written or oral, relative to this Contract, are superseded except to the extent that they have been expressly incorporated into this Contract.
- 57.2 No agent, employee or representative of AUTHORITY has any authority to bind AUTHORITY to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Contract, and CONSULTANT hereby stipulates that it has not relied, and will not rely, on same.
- 57.3 As this Contract was jointly prepared by both Parties, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning, and not for or against either Party.

ARTICLE 58. EFFECTIVE DATE

The date that this Contract is executed by Authority shall be the Effective Date of the Contract.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the day and year below written, but effective as of the day and year first set forth above.

MNS ENGINEERS, INC:

By: _____
Greg Chelini
Vice President

Date: _____

SAN BERNARDINO ASSOCIATED GOVERNMENTS

By: _____
Larry McCallon
President, Board of Directors

Date: _____

APPROVED AS TO FORM:

By: _____
Penny Alexander-Kelley
AUTHORITY General Counsel

CONCURRENCE:

By: _____
Kathleen Murphy-Perez
Contracts Manager



- 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: April 20, 2012

Subject: Congestion Management Program Cost Allocation

- Recommendation:***
1. Approve the cost allocation schedule for the Congestion Management Program for 2010/2011 included in Attachment 1; and
 2. Approve invoicing of Mountain/Desert subarea jurisdictions.

Background: The Congestion Management Program (CMP) General Task No. 20311005 accumulates expenses related to the general activities and updates of the countywide CMP. The expenses are billed annually to the various jurisdictions on a per capita basis. CMP General Task Nos. 20311010 through 20311060 accumulates expenses related to CMP activities in specific geographic subareas. These expenses are billed annually by dividing the expenses equally among the jurisdictions within each associated subarea.

This formula for billing provides for the sharing of general and administrative expenses among all jurisdictions and the allocation of expenses related to specific subareas to be born equally among the affected jurisdictions of a subarea.

Expenses related to the Congestion Management Program for 2010/2011 have been compiled and allocated between the Valley and Mountain/Desert subareas. In 2010/2011, CMP expenses were charged to the following tasks:

*

Approved
Mountain/Desert Committee

Date: _____

Moved: _____ *Second:* _____

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

Witnessed: _____

COG		CTC		CTA		SAFE		CMA	X
-----	--	-----	--	-----	--	------	--	-----	---

Check all that apply.
 MDC1204a-dab

20311005 CMP General
20311050 CMP Victor Valley
20311060 CMP Valley

No expenses in 2010/2011 were charged to the following tasks:

20311010 CMP North Desert
20311020 CMP Colorado River
20311030 CMP Mountains
20311040 CMP Morongo Basin

The item includes three attachments. Attachment 1 provides an overview of the Congestion Management Plan and its role within San Bernardino County. Attachment 2 provides the 2010/2011 Cost Allocation Schedule of the costs to be reimbursed by the Mountain/Desert jurisdictions. Attachment 3 provides for comparison the 2009/2010 Cost Allocation Schedule approved by the Board of Directors on April 15, 2011.

Financial Impact: This item will result in a reimbursement to two funding sources, General Fund-Local/Other and MSI 1990-Valley Fund-Traffic Management Environmental Enhancement Fund (TMEE).

Reviewed By: This item will be reviewed by the Mountain/Desert Committee on April 20, 2012.

Responsible Staff: Duane A. Baker, Director Management Services

Attachment 1

CONGESTION MANAGEMENT PROGRAM

Assembly Bills 471, 1791, and 3093, first implemented in 1990 by Proposition 111, require adoption and biennial updating of Congestion Management Programs (CMPs) for each county with an urbanized area of more than 50,000 population. In San Bernardino County, San Bernardino Associated Governments (SANBAG) was designated the Congestion Management Agency by the local governments, and is charged with developing and monitoring compliance with the program. Implementation of the program, and local compliance, are required to gain access to transportation funding through the Regional Transportation Improvement Program. The State controller is required to withhold local gas tax subventions from local jurisdictions which are not in conformance with the adopted CMP.

The CMP for San Bernardino County was developed by SANBAG through technical and policy committees with representation from all local jurisdictions, Caltrans, and the private sector. It was adopted by the Congestion Management Agency Board of Directors on November 4, 1992, and was updated in November 1993 and every odd-numbered year thereafter.

WHAT IS THE INTENT OF THE CMP?

The CMP is intended to strengthen the nexus between transportation and land use decisions, with consideration for air quality. It has resulted in more consistent analysis and a better understanding of regional or multi-jurisdictional transportation consequences of local actions.

HOW DOES IT ACCOMPLISH THIS?

The CMP requires definition of the regional multimodal transportation system, maintenance of level of service standards on regional roads, and implementation of measures to maximize the efficiency of the existing system. It also provides mechanisms to objectively identify and prioritize improvements to the regional system, and is the vehicle through which various state and federal transportation funds are accessed. The statutory CMP requirements are described below.

REQUIRED CMP ELEMENTS

1. **Establishment of Level of Service (LOS) Standards, as calculated by a uniform LOS methodology, for the system of highways and principal arterial roadways within the county.** Once designated, no roadway can be removed from the system. All new highways and principal arterials must be added to the system. The LOS standard must be LOS E or better, except on links or intersections which currently operate at LOS F. Deficiency plans must be completed and adopted for facilities which fail to meet the standard. Deficiency plans are described below.
2. **Standards for public transit service including frequency and routing, and for coordination among separate transit operators.**

3. **A trip reduction and travel demand element** that promotes carpools, vanpools, transit, bicycles, park-n-ride, jobs/housing balance, flextime, and parking management.
4. **A program to analyze the impacts of local land use decisions on the regional transportation system**, including an estimate of the costs to mitigate the identified impacts. This has been implemented through preparation of Traffic Impact Analyses. However, following the passage of Measure I 2010-2040, this requirement will be met in urban parts of the County through locally implemented development mitigation programs that are consistent with the SANBAG Development Mitigation Nexus Study.
5. **A capital improvements program (CIP) to maintain or improve the traffic level of service and transit performance standards, and mitigate the regional transportation impacts of further development.** The capital improvements program must conform to transportation-related vehicle emissions air quality mitigation measures. The actions identified within deficiency plans, traffic impact analyses, or other transportation master plans to mitigate the impacts of development and growth will serve as bases for the CIP.

MODELING REQUIREMENTS

SANBAG, with cooperation from SCAG, the cities, and the County, is required to develop a uniform data base on traffic impacts for use in transportation computer models or compatible analytical tools. The CMA must approve the consistency of local modeling efforts that are used to determine the impacts of development on the circulation system. Local modeling is to be compatible with CMP models, which in turn are to be consistent with regional models. The data base used in the County is to be consistent with the data base used by SCAG. The CMP model(s) for San Bernardino County are more locally detailed versions of the SCAG Regional model, and are maintained at SCAG's Inland Office.

MONITORING

SANBAG must monitor implementation of all elements of the CMP, and is required to make an annual determination of conformance with the CMP for each city and the County. Conformance criteria include:

1. Consistency with LOS and performance standards. Exceptions are segments or intersections for which deficiency plans for implementation of needed improvements have been adopted.
2. Adoption and implementation of a program to analyze the impacts of land use decisions by each local jurisdiction, including documentation of the costs associated with impact mitigation. Within the Valley and Victor Valley areas, their requirement is met by local implementation of development mitigation programs consistent with the SANBAG Development Mitigation Nexus Study. In non-urban areas, it is met by preparation of TIA Reports on qualifying projects.

In addition, traffic levels of service on the CMP roads are to be determined annually. Within San Bernardino County, the owner/operator of each facility has been responsible for monitoring the performance of the facility.

CONFORMANCE

If the Congestion Management Agency determines, following a public hearing, that a jurisdiction has not conformed to the requirements of the CMP, it will notify that city or the County in writing of the specific areas of nonconformance. If the city or County has not reached conformance within 90 days, the SANBAG Board is required to make a finding of nonconformance and submit the finding to the State Controller. The Controller then withholds apportionment of funds otherwise apportioned to the jurisdiction under Section 2105 of the Streets and Highways Code. If, within the 12-month period following receipt of the notice of nonconformance, the Controller is notified by the CMA that the local jurisdiction is again in conformance, the withheld monies will be provided to that jurisdiction. If the local jurisdiction continues to be out of conformance beyond the 12-month period, the apportionments withheld from that jurisdiction are to be returned to the CMA to be expended for capital projects of regional significance. Apportionments returned to the CMA cannot be expended for administration or planning purposes.

Attachment 2

CONGESTION MANAGEMENT PROGRAM COSTS 2010/2011

COST ALLOCATION

JURISDICTION	TN 20311005	TN 20311010- 20311060	TOTAL
COLORADO RIVER SUBAREA			
Needles	\$135.31	0	135.31
San Bernardino County	\$78.13	0	\$78.13
MOUNTAINS SUBAREA			
Big Bear Lake	\$242.36	0	\$242.36
San Bernardino County	\$2,124.92	0	\$2,124.92
MORONGO BASIN SUBAREA			
Twentynine Palms	\$1,354.43	0	\$1,354.43
Yucca Valley	\$1,204.21	0	1,204.21
San Bernardino County	\$1,121.37	0	\$1,121.37
NORTH DESERT SUBAREA			
Barstow	\$1,515.18	0	\$1,515.18
San Bernardino County	\$1,515.34	0	\$1,515.34
VICTOR VALLEY SUBAREA			
Adelanto	\$3,498.95	0	\$3,498.95
Apple Valley	\$4,150.30	0	\$4,151.30
Hesperia	\$4,437.22	0	\$4,437.22
Victorville	\$4,770.08	0	\$4,770.08
San Bernardino County	\$3,226.72	0	\$3,226.72
TOTAL	\$29,374.52	0	\$29,374.52

Attachment 3

CONGESTION MANAGEMENT PROGRAM COSTS 2009/2010

COST ALLOCATION

JURISDICTION	TN 2030905	TN 20309010- 20309050	TOTAL
COLORADO RIVER SUBAREA			
Needles	\$90.71	\$44.60	\$135.31
San Bernardino County	\$37.16	\$44.60	\$81.76
MOUNTAINS SUBAREA			
Big Bear Lake	\$97.95	\$144.41	\$242.36
San Bernardino County	\$732.01	\$144.41	\$876.42
MORONGO BASIN SUBAREA			
Twentynine Palms	\$482.80	\$871.63	\$1,354.42
Yucca Valley	\$332.58	\$871.63	\$1,204.21
San Bernardino County	\$401.40	\$871.63	\$1,273.03
NORTH DESERT SUBAREA			
Barstow	\$379.15	\$1,136.03	\$1,515.18
San Bernardino County	\$559.43	\$1,136.03	\$1,695.46
VICTOR VALLEY SUBAREA			
Adelanto	\$442.60	\$3,056.35	\$3,498.95
Apple Valley	\$1,093.95	\$3,056.35	\$4,150.30
Hesperia	\$1,380.87	\$3,056.35	\$4,437.22
Victorville	\$1,713.73	\$3,056.35	\$4,770.08
San Bernardino County	\$1,083.46	\$3,056.35	\$4,139.81
TOTAL	\$8,827.80	\$20,546.71	\$29,374.51

This list provides information on acronyms commonly used by transportation planning professionals. This information is provided in an effort to assist SANBAG Board Members and partners as they participate in deliberations at SANBAG Board meetings. While a complete list of all acronyms which may arise at any given time is not possible, this list attempts to provide the most commonly-used terms. SANBAG staff makes every effort to minimize use of acronyms to ensure good communication and understanding of complex transportation processes.

AB	Assembly Bill
ACE	Alameda Corridor East
ACT	Association for Commuter Transportation
ADA	Americans with Disabilities Act
ADT	Average Daily Traffic
APTA	American Public Transportation Association
AQMP	Air Quality Management Plan
ARRA	American Recovery and Reinvestment Act
ATMIS	Advanced Transportation Management Information Systems
BAT	Barstow Area Transit
CALACT	California Association for Coordination Transportation
CALCOG	California Association of Councils of Governments
CALSAFE	California Committee for Service Authorities for Freeway Emergencies
CARB	California Air Resources Board
CEQA	California Environmental Quality Act
CMAQ	Congestion Mitigation and Air Quality
CMIA	Corridor Mobility Improvement Account
CMP	Congestion Management Program
CNG	Compressed Natural Gas
COG	Council of Governments
CPUC	California Public Utilities Commission
CSAC	California State Association of Counties
CTA	California Transit Association
CTC	California Transportation Commission
CTC	County Transportation Commission
CTP	Comprehensive Transportation Plan
DBE	Disadvantaged Business Enterprise
DEMO	Federal Demonstration Funds
DOT	Department of Transportation
EA	Environmental Assessment
E&D	Elderly and Disabled
E&H	Elderly and Handicapped
EIR	Environmental Impact Report (California)
EIS	Environmental Impact Statement (Federal)
EPA	Environmental Protection Agency
FHWA	Federal Highway Administration
FSP	Freeway Service Patrol
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
FTIP	Federal Transportation Improvement Program
GFOA	Government Finance Officers Association
GIS	Geographic Information Systems
HOV	High-Occupancy Vehicle
ICTC	Interstate Clean Transportation Corridor
IIEP	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

SANBAG Acronym List

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
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
MSRC	Mobile Source Air Pollution Reduction Review Committee
NAT	Needles Area Transit
NEPA	National Environmental Policy Act
OA	Obligation Authority
OCTA	Orange County Transportation Authority
PA&ED	Project Approval and Environmental Document
PASTACC	Public and Specialized Transportation Advisory and Coordinating Council
PDT	Project Development Team
PNRS	Projects of National and Regional Significance
PPM	Planning, Programming and Monitoring Funds
PSE	Plans, Specifications and Estimates
PSR	Project Study Report
PTA	Public Transportation Account
PTC	Positive Train Control
PTMISEA	Public Transportation Modernization, Improvement and Service Enhancement Account
RCTC	Riverside County Transportation Commission
RDA	Redevelopment Agency
RFP	Request for Proposal
RIP	Regional Improvement Program
RSTIS	Regionally Significant Transportation Investment Study
RTIP	Regional Transportation Improvement Program
RTP	Regional Transportation Plan
RTPA	Regional Transportation Planning Agencies
SB	Senate Bill
SAFE	Service Authority for Freeway Emergencies
SAFETEA-LU	Safe Accountable Flexible Efficient Transportation Equity Act – A Legacy for Users
SCAB	South Coast Air Basin
SCAG	Southern California Association of Governments
SCAQMD	South Coast Air Quality Management District
SCRRA	Southern California Regional Rail Authority
SHA	State Highway Account
SHOPP	State Highway Operations and Protection Program
SOV	Single-Occupant Vehicle
S RTP	Short Range Transit Plan
STAF	State Transit Assistance Funds
STIP	State Transportation Improvement Program
STP	Surface Transportation Program
TAC	Technical Advisory Committee
TCIF	Trade Corridor Improvement Fund
TCM	Transportation Control Measure
TCRP	Traffic Congestion Relief Program
TDA	Transportation Development Act
TEA	Transportation Enhancement Activities
TEA-21	Transportation Equity Act for the 21 st Century
TMC	Transportation Management Center
TMEE	Traffic Management and Environmental Enhancement
TSM	Transportation Systems Management
TSSDRA	Transit System Safety, Security and Disaster Response Account
USFWS	United States Fish and Wildlife Service
VCTC	Ventura County Transportation Commission
VVTA	Victor Valley Transit Authority
WRCOG	Western Riverside Council of Governments

San Bernardino Associated Governments



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.

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