



STAFF REPORT

SUBJECT: Route 154 Operational Improvements

MEETING DATE: March 16, 2006

AGENDA ITEM: 9

STAFF CONTACT: Fred Luna

RECOMMENDATION:

- A. Authorize the Chair to execute Amendment No. 3 to the agreement with RBF Consulting for the preparation of the project report & environmental document at a not-to-exceed cost of \$222,964 and extend the termination date of the agreement through December 31, 2008.
- B. Authorize the Chair to execute a new master agreement for final design services and design support during construction with RBF Consulting at a cost not-to-exceed \$1,084,919.

SUMMARY:

The project report (preliminary engineering) and environmental document for the second phase of the Measure D funded operational improvements project (Group II) on Route 154 is nearing completion. The project will make passing lane, intersection and turning lane improvements at six locations in the Santa Ynez Valley. A public meeting will be held late March in Solvang to allow the project team to take comments on the draft environmental document. Completion of this phase of project development has and will require additional work for the consultant hired by SBCAG. Staff is recommending that the Chair be authorized to sign a contract amendment for \$222,964. The next phase of project development, preparation of plans, specifications and estimates will commence this Summer. Staff is recommending that the Chair be authorized to sign a contract for this phase with the project consultant, RBF, for an amount not to exceed \$1,084,919.

DISCUSSION:

The first phase of Measure D funded operational and safety improvements on Route 154, "Group I improvements" were completed in 1997 during the peak of the Measure D Regional Program construction. These 12 improvements have improved safety and operations along Route 154, as can be shown in traffic analyses conducted prior to and after the improvements were constructed. When it was determined that there was sufficient Measure D funding for additional improvements, a second phase, "Group II", was initiated by SBCAG and Caltrans in 1999 with the development of a project study report. Caltrans completed this PSR in 2000. The

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scope of Group II improvements was subsequently refined to include two passing lanes, three turning lane improvements and a turnout shown in Figure 1.

RBF Consulting was hired by SBCAG to prepare a project report and environmental document for the Group II improvements. The original contract budget and scope of services has been amended twice to date to include additional work for topographic mapping and design surveys. Each of those amendments were executed after critical milestones in the development process were achieved.

RBF has prepared a draft Project Report and Initial Study/Mitigated Negative Declaration (environmental document). They are currently in the public comment period which will conclude in April 2006. A Notice of Intent has been issued that informs the public that the project that will not significantly effect the environment with the implementation of proposed mitigations and that the comment period is currently open. A public meeting is scheduled for late March. At the end of the public process a preferred alternative will be selected at each of the six locations and Caltrans will approve the final Project Report and environmental document. SBCAG and Caltrans have held two other public meetings on this project, the last being March 2005. The community is generally supportive of the safety benefit of each the improvements though they have previously expressed concerns regarding increased volumes and speeds on Route 154. SBCAG will continue to work with local community groups and interested parties to discuss the improvements as we move toward project approval and during the remaining phases of the project.

Project approval and environmental certification are anticipated in the fall of this year with some final design being done concurrently. Construction is scheduled to begin in late 2007.

Figure 1
Project Location Map



Amendment No. 3 to Existing Contract

Staff is recommending that Amendment No. 3 to the contract be authorized to complete the project report and environmental phase of the project. The cost of Amendment No. 3 is \$222,964. The amendment would provide additional funds to complete the preliminary engineering required for the project report, including investigating potential alternatives at Location E and refining the geometry and alternatives at the other improvement locations in the corridor. A complete description of these services and their cost is shown in Attachment A.

RBF is performing additional work during the environmental phase to meet changing conditions and direction in the project and to reduce environmental impacts and construction costs. The specific extra work tasks performed and their cost is shown in Attachment A. Much of the additional work, has added value to the overall process by providing information to the project team to make decisions about alternatives at several locations that will result in construction cost savings that far exceed the cost of the additional work being performed under the contract amendment.

For instance, at Location C, refinement of the geometric drawings has resulted in anticipated construction cost savings of around \$100,000 and at Location D the development of new alternatives has resulted in the elimination of the need for retaining walls and drainage extensions and a savings of \$400,000 in construction costs. Lastly, coordinating with Caltrans on a traffic analysis and collision history in the vicinity of Location E (intersection of Baseline/Edison and SR 154) resulted in findings that showed this intersection meets signal warrants for both collisions and traffic delay. This was new information to Caltrans, who had held that the above-average collision rate in this vicinity as documented in the PSR was attributable to lack of passing opportunities or unsafe passing maneuvers. As a result, Caltrans is working on a safety remediation project to address the collisions at this intersection and has undertaken a community dialogue to identify a solution that can be implemented quickly. Since Caltrans will be pursuing and funding safety improvements at this intersection as a separate project, it is likely the Group II project being funded through Measure D will no longer include improvements at Location E which results in an estimated savings of an additional \$1.4 million to the project in construction costs.

New Contract for Final Design and Design Support during Construction

Staff is also recommending that the Chair be authorized to execute a new contract with RBF Consulting covering the next two phases of work, including final design and engineering services during construction. The total value of this new contract being recommended for approval is \$ 1,084,919. The scope of services covered under this agreement is described in Attachment B.

It is anticipated that final design could begin as early as the summer of 2006 while the Project Report and Environmental Document are being finalized. This phase of the project will refine the preliminary engineering that was developed in the Project Report and result in the completion of Plans, Specifications & Estimates (PS&E) that will be used to advertise a construction contract. In addition to the PS&E, work will also include conducting design surveys, utility relocation, developing geotechnical and hydrology reports, addressing storm water concerns, obtaining necessary permits, and project management and coordination. Staff has worked with RBF Consulting to negotiate a contract cost for final design for the six locations in the Group II improvements. With the total construction cost of the project being an estimated \$5.5 million, the cost for final design is 18.7% of construction which is slightly above the average SBCAG has used on past projects. However, it should be noted that the percent design costs varies based on the size of the project (total construction cost) and difficulty of the terrain and elements being designed. As a frame of reference, a comparison of the Group I design costs versus the proposed Group II design costs is shown in Table 1 below.

Table 1 Comparison of Design Costs for Group I v. Group II				
Phase	Group I (Const. Cost \$8.57 M)		Group II (Const. Cost \$5.50 M)	
	Cost	%	Cost	%
	Design	\$1.699 M	19.8%	\$1.029
Design Support	\$0.071 M	0.04%	\$0.055	1.0%

Table 1 Comparison of Design Costs for Group I v. Group II				
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	Design	\$1.699 M	19.8%	\$1.029
Design Support	\$0.071 M	0.04%	\$0.055	1.0%

Recommendation

Staff is recommending that the board approve Amendment No. 3 to the contract with RBF Consulting. The amendment would provide additional budget to finalize the environmental document after the public comment period, prepare the final Project Report and assist Caltrans in certifying the environmental document. It would also extend the contract termination date to December 31, 2008. The total cost recommended for approval for Amendment No. 3 is \$222,964.

Staff is also recommending that the board authorize execution of a new agreement with RBF Consulting for future project development services, including final design and design support during construction (Phase III). The total cost recommended for approval for Phase II and Phase III is \$1,084,919.

Funds for the contract amendment and the approval of the final design contract were included in the approved FY 2005-06 Local Transportation Authority capital projects budget adopted by the SBCAG board. Approval of the recommendation would not require appropriation changes to the FY 05-06 budget.

COMMITTEE REVIEW: None

ATTACHMENTS:

1. Amendment No. 3 and Scope of Services
2. Master Agreement for Final Engineering

**ROUTE 154 OPERATIONAL IMPROVEMENTS
GROUP II**

**AGREEMENT FOR
ENVIRONMENTAL STUDIES and PRELIMINARY ENGINEERING**

**Amendment No. 3
March 16, 2006**

It is mutually agreed that the agreement the Route 154 Operational Improvements Group II project between Santa Barbara County Association of Governments (SBCAG) and the CONSULTANT (RBF Consulting Inc.) is amended as stated below.

- Amend Article 2.1 to read:
- The period of performance by CONSULTANT under this agreement shall commence on December 20, 2002 and shall continue until December 31, 2008 or until otherwise terminated, cancelled or extended.
- Amend Article 3.2 to read:

	Authorized Cost Agreement / Amendment	Available Contingency	Authorized Total
Original Agreement	\$225,792	\$40,000	\$265,792
Amendment No. 1	\$29,678	\$10,322	\$265,792
Amendment No. 1-1	-\$29,678	\$40,000	\$265,792
Amendment No. 2	\$86,360	\$40,000	\$352,152
Amendment No. 3	\$222,964	\$40,000	\$575,116
Totals	\$535,116		

- Add to Exhibit A, Scope of Work, the following:

PHASE I PRELIMINARY ENGINEERING (ADDITIONAL WORK REQUEST #3)

1.0 PROJECT MANAGEMENT, COORDINATION AND REVIEW

1.1 Project Management

Project management services associated with this additional work request will be provided as needed to support the overall goals of the project. This task includes

overall project management, liaison with agencies, PDT leadership, progress monitoring, resource scheduling and maintenance of project files.

Agency Liaison

A number of agencies, organizations and consultants are involved in this project. An important consideration is to ensure that the key players are coordinated with and kept informed regarding issues status and resolution and schedule progress. Consultant shall lead the PDT's effort and interface with agencies and other firms to facilitate project delivery.

Quality Control

Consultant shall supervise, coordinate, monitor and review design, including work of project subconsultants for conformance with County and Caltrans standards, policies and procedures.

Consultant shall prepare a log of submittals and monitor the progress for each submittal.

Progress Schedule

Consultant shall prepare a baseline progress schedule for performance of the scope of work. The schedule shall include at a minimum the activities necessary to complete the tasks and deliverables for the project and should include review times for submittals and lead times for permit issuance.

Deliverables:

- *Team Leadership and Quality Control*
- *Project Documentation as appropriate*
- *Resource Scheduling*
- *Subconsultant Management*
- *Update Schedule*

1.2 Project Meetings

Consultant has attended the following meetings in support of the Project goals and progress.

Meeting Summary		
Date	Attendees	Location/Purpose
1-9-03	Garrett	Caltrans, SLO/Kick-off
5-13-03	Garrett/Sean	SBCAG, SB/meeting w/Fred
6-5-03	Garrett/Sean	Caltrans, SLO/PDT
12-19-03	Garrett/Sean	SBCAG, SB/Meeting w/Fred
2-03-03	Garrett/Sean	Caltrans, SLO/PDT
7-16-04	Sean	Caltrans, SLO/PDT

Meeting Summary		
Date	Attendees	Location/Purpose
8-20-04	Sean	Project Site field meeting w/PDT members
10-15-04	Sean	SBCAG, SB/meeting w/USFS
10-10-04	Sean	Caltrans, SLO/CT project at Edison
11-05-04	Sean	Project Site field meeting w/PDT members & USFS
1-13-05	Garrett/Sean	Caltrans, SLO/PDT
2-10-05	Garrett/Sean	Solvang/Public meeting
3-21-05	Garrett/Sean	Caltrans, SLO/PDT
6-03-05	Sean	Conference Call
6-06-05	Sean	Caltrans, SLO/PDT
9-02-05	Sean	PDT Conference Call
9-16-05	Sean	PDT Conference Call
9-30-05	Sean	PDT Conference Call
10-07-05	Sean	PDT Conference Call
10-28-05	Sean	PDT Conference Call
Jan/Feb	Garrett/Sean	Public Meeting (Anticipated)

This task includes attendance at one (1) additional meeting in January 2006 in support of completing the Phase-I Scope of Work.

Deliverables:

- *Attend additional project meetings that were not included in the original Scope of Work.*

2.0 PRELIMINARY COORDINATION/DATA GATHERING

2.1 Existing Data Research and Investigation

Field Review

This task includes a reconnaissance of the existing conditions at Locations 3 and 7, as related to the as-built and existing aerial mapping. Discrepancies will be noted. Photographs from the field reconnaissance will be assembled into the project photo log. As-built mapping will be obtained/performed for Location 7.

Deliverables:

- *Field reconnaissance at Locations 3 and 7*
- *As-built and utility research at Location 7*

3.0 ENVIRONMENTAL DOCUMENT

Negative Historic Property Survey Report (NHPSR)

3.1.5

Consultant shall prepare a new negative Historic Property Survey at the new Location 7 and revised Location 3. This task includes revising the APE maps at each of these locations and one additional field reconnaissance.

Deliverables:

- *One new NHPSR for Location 7*
- *One updated NHPSR for Location 3 as revised*
- *Update APE mapping and one additional field reconnaissance*

3.1.6 Natural Environment Study (NES)

Consultant shall conduct a spring botanical survey and update the general wildlife surveys for Locations 1, 2, 5, and 6. Updating the California red-legged frog surveys at Locations 1, 2, 5 and 6 are not warranted at this time and are excluded from this task.

Consultant shall conduct a spring botanical survey, general wildlife surveys and protocol California red-legged frog surveys (two daytime and two nighttime) for the new portion of Locations 3. In addition, Consultant shall conduct a spring botanical survey, general wildlife surveys and protocol California red-legged frog surveys (two daytime and two nighttime) for the new portion of Location 7.

This task includes attendance at additional meetings (Padre only), re-mapping trees and other sensitive resources and additional field visits associated with the Project revisions. In addition, Consultant shall conduct a hazardous waste screening analysis, including a site reconnaissance and review of available information for Location 3. Consultant shall conduct a separate hazardous waste screening analysis including a site reconnaissance and review of available information at Location 7. Formal Initial Site Assessment and/or lead deposition testing is excluded from this task

Deliverables:

- *Spring botanical surveys for Locations 1, 2, 3, 5, 6, and 7*
- *Update general wildlife surveys for Locations 1, 2, 5, and 6*
- *Prepare general wildlife surveys for Locations 3 and 7*
- *Perform California red-legged frog surveys for Locations 3 and 7*
- *Additional Meeting attendance (Padre only)*
- *Re-mapping trees and sensitive resources*
- *Additional field visits*
- *ISA screening update for Location 3 and Location 7*

3.70 Storm Water Data Report

Consultant shall prepare one Storm Water Data Report (SWDR) in conformance with the new Caltrans policy dated September 2002 and the revised SWDR preparation guidelines dated May 2005. The SWDR will address receiving water bodies nearby the project sites, the pollutants of concern, and measures of avoiding or reducing potential storm water impacts. Said report and appropriate checklist will combine the five locations into one report. This task has been completed per the noted reference documents and coordination/collaboration with Caltrans.

Deliverables:

- *One Storm Water Data Report encompassing Locations 1, 2, 3, 5 and 6 will be compiled into one report.*

4.0 PROJECT REPORT

4.1 Geometric Plans

Consultant has prepared supplemental Geometric Plans to augment the geometric plans presented in the Project Study Report (PSR). Said supplemental geometric plans identify Highway Design Manual (HDM) design criteria for left and right turn pockets, lane transitions, intersection geometric analysis and other supporting designs. Several geometric configurations (alternatives) were evaluated for each location.

On February 3, 2004, the final geometric designs (Project Study Report Level) for Locations 1, 2, 3, 5, and 6 were completed and verbally accepted by the PDT. The environmental document will be prepared using these accepted geometric plans. It should be noted that the new alternatives studied during this process would be referred to in the Project Report. Some of these new alternatives will become the preferred alternatives for each location. This task includes geometric modifications at Locations 3, 5, 6 and the new Location 7. Said geometric modifications occurred after February 2004.

As noted in the original scope of work, Consultant would be using the Caltrans provided English topographic mapping to use as the base for preparing project related geometric designs. This English topographic mapping is the same topographic mapping that was used by Caltrans to prepare the Project Study Report. All designs completed up through September 2004 used the existing English topographic mapping. It should be noted that the dimensions and plotting of the designs were in metric units; however, the contours were in fact English. When Caltrans required that the Project Report be submitted using new metric topography (and thus new planimetrics) it became apparent that the original designs needed to be updated and adjusted to fit the new topography. Consultant adjusted the proposed designs to match with the new topographic metric mapping.

Location 1

Consultant has prepared preliminary geometric studies for this location in conformance with the original Scope of Work and the intended designs identified in the approved PSR. No additional alternatives were studied for this location and therefore, no additional work was performed.

Location 2

Consultant has prepared three preliminary geometric studies for this location that were not included in the approved PSR. One of the new alternatives has been selected as the preferred alternative. The PSR alternative did not meet current Highway Design Manual (HDM) criteria and therefore was discarded. The preferred alternative meets HDM criteria.

Location 3

Consultant has prepared seven preliminary geometric studies for this location that were not included in the approved PSR. One of the new alternatives has been selected as the preferred alternative. The two PSR alternatives did not meet current HDM criteria and therefore were discarded. The seven new alternatives did meet current HDM criteria. The preferred alternative meets HDM criteria.

The PDT considered several additional geometric configurations (enhancements) at Location 3 to accommodate Paradise Road to EB-154 left turning vehicles. Modification #1 accommodated a 154 median acceleration lane. Modification #2 accommodated an existing EB right shoulder turn-out area. After further study, the PDT determines that Modification #1 was the preferred alignment.

Location 5

Consultant has prepared two additional preliminary geometric studies for this location that were not included in the approved PSR. The first new alternative eliminated fill slopes into riparian areas (as the environmental studies recommended). The second new alternative shortened the passing lane, which eliminated the potential negative impacts on the environment. The alternative that shortened the passing lane required several further studies to prove that the passing lane was acceptable to Caltrans.

Location 6

Consultant has prepared one additional preliminary geometric study for this location. In addition, Caltrans required the existing intersection alignment be studied for compliance with HDM criteria. This additional study may include preparation of a Fact Sheet. Preparation of a fact sheet is excluded from this task.

Location 7A

Consultant has prepared three additional preliminary geometric studies for this location. At the conclusion of the geometric analysis, the PDT determined that the original goals for improvements were not attainable. Therefore, no additional geometric studies are required for this task. Approximately, 148 hours were

spent analyzing the various alternatives, including the time necessary to determine that the approved PSR alternative did not meet current HDM Standards.

Location 7B

The PDT decided to act upon an alternative to enhance an emergency project being designed by Caltrans. The emergency project was to install a traffic signal at SR-154 and Edison Street. Severe accidents have occurred at this location requiring Caltrans to design some intersection improvements as soon as possible.

Consultant supported Caltrans in the studies to enhance the proposed SR-154/Edison Street signal project. The enhancements included extending eastbound widening beyond the signal project to allow for additional passing opportunities. Two additional alternatives were studied at this location. After PDT consideration, it was determined that the Caltrans signal project needed to be installed first. Any further enhancements would need to be performed at a later date, if warranted.

Deliverables:

- *Geometric plans developed to PSR compliance level Location 2*
- *Geometric plans developed to PSR compliance level Location 3*
- *Geometric plans developed to PSR compliance level Location 5*
- *Geometric plans developed to PSR compliance level Location 6*
- *Geometric plans developed to PSR compliance level Location 7 (Old)*
- *Geometric plans developed to PSR compliance level Location 7 (New)*

4.2 Draft Project Report

Consultant prepared documentation supporting the Project Report (PR) in advance of the draft PR. Such documentation included traffic studies and analysis at each project intersection. As well, cost estimates for each of the various alternatives were prepared and updated several times through the course of the Draft PR preparation.

Consultant shall also prepare a Fact Sheet to document the existing skew angle at the intersection of SR-154 and SR-246. The existing angle is non-standard and Caltrans required this project to document the deviation. Consultant will prepare the Fact Sheet, cost estimates and geometric design to make the intersection standard.

Consultant shall also revise the Draft PR into a new format, separated by location. Per Caltrans comments on the draft submitted, each project location shall identify the existing conditions, existing problems, what needs to be fixed and what improvements are proposed. This re-formatting of the document is considered extra work as this is different than previously agreed upon.

Deliverables:

- *Turn pocket traffic analysis*
- *Analyzing traffic accident data at new Location 7*
- *Prepare cost estimates for each new project alternative*
- *Fact Sheet for skew angle at SR-154/SR-246*

TASK A Expenses

A.2 Computer Expenses

Consultant shall provide additional computer services related to the additional engineering services provided within Task 4. Said computer services expenses are 75% of the hours within Task 4, times \$10.00 per hour.

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IN WITNESS WHEREOF, the parties hereto have executed this amendment to the agreement for Environmental Studies and Preliminary Engineering on the day and year below written, but effective as of the day and year first set forth above.

RBF Consulting Inc.

By: _____
Name: Garrett Gritz
Title: Vice President
Date: _____

SBCAG

By: _____
Name: Joe Centeno
Title: Chair, SBCAG
Date: _____

Attest:

By: _____
Name: Jim Kemp
Title: Executive Director
Date: _____

Approved as to Form and Procedure:

Stephen Shane Stark
County Counsel

By: _____
Deputy County Counsel,
Counsel for SBCAG



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MASTER AGREEMENT
FOR SERVICES FOR
STATE ROUTE 154 OPERATIONAL IMPROVEMENTS PROJECT

between

Santa Barbara County Association of Governments

and

RBF Consulting

March 16, 2006

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MASTER AGREEMENT
FOR SERVICES FOR
STATE ROUTE 154 OPERATIONAL IMPROVEMENTS PROJECT

This agreement is entered into as of _____, 2006 by the firm **RBF Consulting Inc.**, a California corporation, whose corporate address is 500 Ygnacio Valley Road, Suite 270, Walnut Creek, California 94596 and the Santa Barbara County Association of Governments (hereinafter called SBCAG) whose address is 260 North San Antonio Road, Suite B, Santa Barbara, California 93110.

Whereas, in November 1989 the voters of Santa Barbara County approved Measure D, a half-cent sales tax increase for a period of twenty years, to fund transportation projects;

Whereas, Measure D included a list of regional projects to be completed of which one was to "construct safety improvements and passing lanes" on State Route 154 between Santa Barbara and Los Olivos;

Whereas, SBCAG completed an initial phase of safety and operational improvements on State Route 154 in 1997 and has since assessed that residual funding from the Measure D expenditure plan allocation would be available for a second phase of improvements;

Whereas, SBCAG in conjunction with California Department of Transportation (CALTRANS) identified, through a Project Study Report completed in 2000, seven additional safety and operational improvements that could be implemented on State Route 154;

Whereas, SBCAG through the retention of consulting services has studied six of the locations identified in the 2000 Project Study Report and identified these improvements as the Route 154 Group II Operational Improvements project (PROJECT);

Whereas, SBCAG and CALTRANS have entered into a cooperative agreement for the environmental, preliminary engineering and final design phases of the PROJECT;

Whereas, a Draft Project Report and Initial Study/Mitigated Negative Declaration has been completed for the PROJECT;

Whereas, SBCAG, as implementing agency for PROJECT will retain consultant services for final design and design support during construction;

Whereas, SBCAG conducted a qualifications-based selection process and selected **RBF Consulting** (hereinafter referred to as CONSULTANT) to perform technical services (SERVICES) for PROJECT;

Whereas, word "SERVICES," as used herein, includes without limitation, the performance, fulfillment and discharge of all obligations, duties, tasks, services and warranties imposed upon or assumed by CONSULTANT hereunder; and the SERVICES performed hereunder

shall be done to the satisfaction of SBCAG, with their satisfaction being based on prevailing engineering standards.

Whereas, CONSULTANT represents that it is qualified and prepared to provide certain professional and technical services in accordance with the professional engineering 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 herein and CONSULTANT desires to do so for the compensation and in accordance with the terms and conditions set forth herein and shall be performed to the satisfaction of SBCAG.

Whereas, CONSULTANT agrees to perform the SERVICES, which are herein described to include without limitation, the performance, fulfillment and discharge by CONSULTANT of all obligations, duties, tasks, services and warranties imposed upon or assumed by CONSULTANT.

NOW, THEREFORE, the parties do mutually agree as follows:

To enter into a Master Agreement fully comprised of the terms and conditions herein described and exhibits.

To execute task orders comprised of the description of SERVICES to be performed for each individual task order language and the task order exhibits that shall include a schedule for performance of the work and deliverables, a budget for compensation, a rate schedule, and a resource assignment plan.

Article 1 Description of Services - General

CONSULTANT shall perform SERVICES as set forth and as defined according to individual task orders. CONSULTANT shall commence performance of said SERVICES upon receipt of a fully executed task order signed by the Executive Director of SBCAG. Each fully executed task order shall act as an amendment to the Master Agreement and shall hereinafter be referred to as AGREEMENT.

Article 2 Performance Schedule and Force Majeure

- 2.1 The period of performance by CONSULTANT under this AGREEMENT shall commence on March 16, 2006 and shall continue in effect until December 31, 2009 or until otherwise terminated, canceled, or extended.
- 2.2 CONSULTANT shall not be considered in default in the performance of its duties and obligations with respect to schedule performance to the extent that the performance of any obligation is prevented or delayed by Force Majeure. In any event, CONSULTANT shall use its best efforts to minimize any schedule extension or additional cost to SBCAG resulting from such delay. Force Majeure includes, but is not limited to, acts of God or of the public enemy, acts or failures to act of other agencies, in either their sovereign or contractual capacity, voter initiatives, legal actions, changes in law, fires, floods, labor disputes, freight embargoes, unusually severe weather and

interference caused by, or failure to act of, SBCAG, SBCAG'S consultant's (other than CONSULTANT), or other third parties. In every case, the failure to perform must be beyond the control and without the fault or negligence of CONSULTANT.

Article 3 Agreement Compensation and Cost Principles

- 3.1 CONSULTANT shall be compensated for full and complete performance of the SERVICES, in compliance with all the terms and conditions of this AGREEMENT, and payment by CONSULTANT of all obligations incurred in, or application to, CONSULTANT'S performance of the SERVICES, and for which CONSULTANT shall furnish all personnel, facilities, equipment, materials, supplies, and services (except as may be explicitly set forth in this AGREEMENT as furnished by SBCAG). The total AGREEMENT compensation shall not exceed \$1,084,919. The scope of SERVICES shall be defined through the execution of task orders under this agreement, with a budget assigned to each respective task order. The compensation to CONSULTANT for each individual task order shall not exceed the maximum compensation defined in Article 3 of the Master Agreement.
- 3.2 The Cost principles set forth in Part 31 of the Federal Acquisition Regulation (FAR) as constituted on the effective date of this agreement shall be utilized to determine allowability of costs under this agreement and may be modified from time to time by amendment of the AGREEMENT.
 - 3.2.1 The CONSULTANT agrees to comply with Federal procedures in accordance with 49 CFR, Part 19, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
 - 3.2.2 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government are subject to repayment by CONSULTANT to SBCAG.
 - 3.2.3 Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this Article 3.2.
 - 3.2.4 Allowable Costs and Documentation: For billings on a time and materials basis, all costs charged to AGREEMENT by CONSULTANT shall be supported by properly executed payrolls, time records, invoices, and vouchers, evidencing in proper detail the nature and propriety of the charges. CONSULTANT shall also comply with Title 49, Code of Federal Regulations, Part 18, in the procurement of services, supplies or equipment.
- 3.3 From time to time the SERVICES may be changed by additions and/or deletions in accordance with Article 12, *Changes*, and in such event, the compensation limit shall be adjusted accordingly.

- 3.4 Any services provided by the CONSULTANT not specifically covered under SERVICES approved for AGREEMENT shall not be compensated without prior written authorization from SBCAG. It shall be CONSULTANT'S responsibility to recognize and notify SBCAG when services not covered by the SERVICES have been requested or are required. All changes and/or modifications to the SERVICES shall be made in accordance with Article 12, *Changes*.

Article 4 Availability of Funds

This AGREEMENT is awarded contingent on availability of funds. The obligation of SBCAG is conditioned upon the availability of funds, which are authorized and available for the payment for such an obligation. If funds are not authorized and available for the continuance of the Services performed by CONSULTANT, the Services directly or indirectly involved may be suspended or terminated by SBCAG at the end of the period for which funds are available. When SBCAG becomes aware that any portion of the services, which will or may be affected by a shortage of funds, it will immediately so notify CONSULTANT. Nothing herein shall relieve SBCAG from its obligation to compensate CONSULTANT for Services performed pursuant to this AGREEMENT prior to such notification and for any reasonable project related costs incurred in suspending work. No penalty shall accrue to SBCAG in the event this provision is exercised.

Article 5 Taxes, Duties, Fees

Except to the extent expressly provided otherwise elsewhere in this agreement, CONSULTANT shall pay when due, and the compensations set forth in Article 3, *Agreement Compensation and Cost Principles*, 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 Invoicing and Payments

- 6.1 Except to the extent expressly stated otherwise elsewhere in this AGREEMENT, the compensation of CONSULTANT as provided herein shall be payable in monthly payments, thirty (30) calendar days after receipt by SBCAG of an invoice prepared in accordance with instructions below.
- 6.2 CONSULTANT shall prepare all invoices in a form satisfactory to and approved by SBCAG and it shall be accompanied by documentation supporting each element of measurement and/or cost. Any invoice submitted which fails to comply with the terms of this AGREEMENT, 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.

- 6.3 CONSULTANT shall submit separate monthly progress invoices to SBCAG for payments for Services completed by CONSULTANT during each progress billing period. The cutoff date for CONSULTANT'S progress invoice shall fall within seven days of the last calendar day of the month. *Progress invoices shall be for labor costs, plus overhead (not to exceed 172%) and earned fee (not to exceed 10%) plus subconsultant and expense costs.* Payment shall not be construed to be an acceptance of Services.
- 6.4 SBCAG shall not be obligated to make final payment to CONSULTANT until CONSULTANT has delivered to SBCAG a statement and release satisfactory to SBCAG that CONSULTANT has fully performed the Services pursuant to this AGREEMENT, and that all claims of CONSULTANT and its subconsultants for the Services will be satisfied upon the making of such final payment. If CONSULTANT has made a claim for additional compensation, which has not then been resolved under the dispute procedure set forth in Article 20, *Claims*, SBCAG shall make such final payment even though such dispute has not been resolved. Upon resolution of such dispute, any additional amount due CONSULTANT shall be paid by SBCAG.
- 6.5 CONSULTANT shall forfeit all costs incurred if CONSULTANT fails to submit an invoice within one hundred twenty (120) calendar days after the cutoff date.

Article 7 Documentation and Right of Audit

CONSULTANT shall keep and maintain all books, papers, records, accounting records including but not limited to all direct and indirect costs allocated to the Services, files, accounts, reports, cost proposals with backup data, and all other material relating to the Services, and shall make all such materials available at any reasonable time during the term of Services on the Project and for three (3) years from the date of final payment to CONSULTANT, for auditing, inspection, and copying by SBCAG or its designee, upon request. CONSULTANT shall insert in each of its subcontracts the above requirement.

Article 8 Responsibility of Engineer

The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the CONSULTANT under this AGREEMENT. The CONSULTANT shall, without additional compensation, correct or revise any errors or omissions in its designs, drawings, specifications, and other services that are discussed following final submittal of the deliverables.

Article 9 Reporting Requirements/Deliverables

CONSULTANT shall submit all reports and deliverables in accordance with SERVICES assigned for each task order.

Article 10 Permits and Licenses

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

Article 11 Technical Direction

- 11.1 Performance of the SERVICES under this AGREEMENT shall be subject to the technical direction of the SBCAG Executive Director or his designee. The Executive Director shall advise CONSULTANT in writing the name of his designee. The term "Technical Direction" is defined to include, without limitation:
 - 11.1.1 Directions to the CONSULTANT, which redirect the AGREEMENT 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 AGREEMENT SERVICES.
 - 11.1.2 Provision of written information to the CONSULTANT, which assists in the interpretation of drawings, specifications or technical portions of the work description.
 - 11.1.3 Review and, where required by the AGREEMENT, approval of technical reports, drawings, specifications and technical information to be delivered by the CONSULTANT to SBCAG under the AGREEMENT.
- 11.2 Technical direction must be within the SERVICES stated in the AGREEMENT. The SBCAG Executive Director or his designee does not have the authority to, and may not, issue any technical direction which:
 - 11.2.1 Constitutes an assignment of additional work outside the SERVICES;
 - 11.2.2 Constitutes a change as defined in Article 12, *Changes*;
 - 11.2.3 In any manner causes an increase in the agreement's estimated cost, price or the time required for agreement performance;
 - 11.2.4 Changes any of the expressed terms, conditions or specifications of the agreement; or
 - 11.2.5 Interferes with the CONSULTANT'S right to perform the terms and conditions of the agreement.
- 11.3 All technical directions shall be issued in writing by the SBCAG Executive Director or his designee.
- 11.4 The CONSULTANT shall proceed promptly with the performance of technical directions duly issued by SBCAG in the manner prescribed by this article and within the authority provided in this clause. If, in the opinion of the CONSULTANT, any instruction or direction by SBCAG falls within one of the categories defined in 11.2.1 through 11.2.5 above, the CONSULTANT shall not proceed but shall notify SBCAG in writing within fifteen (15) working days

after receipt of any such instruction or direction and shall request the SBCAG Executive Director to modify the AGREEMENT accordingly. Upon receiving the notification from the CONSULTANT, the SBCAG Executive Director shall:

- 11.4.1 Advise the CONSULTANT in writing within thirty (30) days after receipt of the CONSULTANT'S letter that the technical direction is within the scope of Article 12, *Changes*, of the AGREEMENT;
 - 11.4.2 Advise the CONSULTANT within a reasonable time that SBCAG will issue a written change order.
- 11.5 A failure of the CONSULTANT and the SBCAG Executive Director to agree that the technical direction is within the scope of the agreement, or a failure to agree upon the AGREEMENT action to be taken with respect thereto shall be subject to the provisions of Article 29, *Disputes*.

Article 12 Changes

- 12.1 The SERVICES shall be subject to changes by additions, deletions, or revisions thereto by SBCAG. CONSULTANT will be advised of any such changes by written notification from SBCAG describing the change.
- 12.2 Promptly after such written notification of change is given to CONSULTANT by SBCAG, CONSULTANT and SBCAG will attempt to negotiate a mutually agreeable change in compensation or time of performance and amend the AGREEMENT accordingly. If CONSULTANT and SBCAG are unable to agree on the compensation change, the CONSULTANT may make a claim per Article 20, *Claims*. CONSULTANT shall have no obligation to perform the changes, and shall not be entitled to compensation for SERVICES performed on such changes, prior to the execution of the change order relating to the changes required by SBCAG.
- 12.3 CONSULTANT shall not suspend performance of this AGREEMENT during the negotiation of any change order, except as may be directed by SBCAG. CONSULTANT shall perform all changes in accordance with all the terms of this AGREEMENT.

Article 13 Federal and State Provisions

- 13.1 Small Business/Minority Business Enterprise

In connection with the performance of this AGREEMENT, and in compliance with 49 CFR, Part 23, the CONSULTANT will cooperate with SBCAG to insure the maximum utilization of small and minority business enterprises and shall insure these businesses have the maximum practicable opportunity to compete for subcontract work under this AGREEMENT.

- 13.2 Equal Employment Opportunity/Nondiscrimination

- 13.2.1 In connection with the execution of this AGREEMENT, the CONSULTANT shall not discriminate directly or indirectly against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. The CONSULTANT shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selections of training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment notice setting forth the provisions of the Equal Opportunity clause.
- 13.2.2 The CONSULTANT shall, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applications shall receive consideration for employment without regard to race, color, religion, sex, age, or national origin.
- 13.2.3 The CONSULTANT shall send to each labor union or representative of workers with which it has a collective bargaining contract or other contract or understanding, a notice advising the labor union or workers representative of the CONSULTANT'S commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 13.2.4 The CONSULTANT shall comply with all provisions of Executive Order No. 11246 as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60), and shall permit access to its books, records, and accounts by SBCAG and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 13.2.5 In the event of the CONSULTANT'S noncompliance with the Equal Opportunity clause of this AGREEMENT or any of the said rules, regulations, or orders, this AGREEMENT may be canceled, terminated, or suspended, in whole or in part, and the CONSULTANT may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
- 13.2.6 The CONSULTANT shall include the provisions of Articles 13.2.1 through 13.2.6 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60), so that such provisions will be binding upon each subcontract or vendor. The CONSULTANT shall take such action with respect to any subcontract or purchase order as SBCAG may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or

vendor as a result of such direction by SBCAG, the CONSULTANT may request SBCAG to enter into such litigation to protect the interests of SBCAG.

13.3 Affirmative Action for Handicapped Workers

The CONSULTANT will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The CONSULTANT agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Article 14 Conflict of Interest

- 14.1 The CONSULTANT agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this AGREEMENT. The CONSULTANT further agrees that in the performance of this AGREEMENT, no person having any such interest shall be employed.
- 14.2 No portion of the funds received by the CONSULTANT under this AGREEMENT shall be used for political activity or to further the election or defeat of any candidate for public office.

Article 15 Key Personnel

- 15.1 The personnel specified in Article 15.2 below are considered to be essential to the SERVICES being performed hereunder. Prior to reassigning or changing the responsibilities of the specified individuals to other projects, the CONSULTANT shall notify and obtain approval from SBCAG. CONSULTANT shall submit justifications (including proposed substitutions) in sufficient detail to permit evaluation of the proposed changes to project personnel.
- 15.2 Key Personnel and Title are:
- | | |
|---------------------------|---------------|
| Project Manager/Director: | Garrett Gritz |
| Project Engineer: | Sean Houck |

Article 16 Standard of Care

CONSULTANT represents to SBCAG that services supplied by CONSULTANT in performance of this AGREEMENT shall be supplied by personnel who are careful, skilled, experienced and competent in their respective trades or professions. CONSULTANT agrees that he is supplying professional services, findings, and/or recommendations that conform to the high and specialized professional and engineering principles which CONSULTANT'S selection was based upon and, for which CONSULTANT executes the performance of the SERVICES covered by with this AGREEMENT.

Article 17 Proprietary Rights/Confidentiality

- 17.1 If requested by SBCAG, CONSULTANT shall deliver to SBCAG the original of all deliverables described in SERVICES, which shall be come the property of SBCAG.
- 17.2 All materials, documents, data or information obtained from SBCAG data files or any SBCAG medium furnished to CONSULTANT in the performance of this AGREEMENT will at all times remain the property of the SBCAG. 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 SBCAG.
- 17.3 Except as reasonably necessary for the performance of the SERVICES, CONSULTANT and its employees and agents shall hold in confidence the materials and information referred to in this Article 17, *Proprietary Rights/Confidentiality*, which are produced by CONSULTANT for SBCAG in the performance and completion of CONSULTANT'S SERVICES under the AGREEMENT, until released in writing by SBCAG, 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 SBCAG'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 SBCAG.
- 17.5 All press releases relating to the Project or this AGREEMENT, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SBCAG unless otherwise agreed to by CONSULTANT and SBCAG.
- 17.6 CONSULTANT agrees that it, and its employees, agents, and subconsultants will hold confidential and not divulge to third parties without the prior written consent of SBCAG, any information obtained by CONSULTANT from or through SBCAG in connection with CONSULTANT'S performance of this AGREEMENT, unless (a) the information was known to CONSULTANT prior to obtaining same from SBCAG pursuant to a prior AGREEMENT; 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 subconsultants, or (c) the information

was obtained by CONSULTANT from a third party who did not receive the same, directly or indirectly, from SBCAG and who had, to CONSULTANT'S knowledge and belief, the right to disclose the same, or (d) disclosure as required by law.

Article 18 Terminations

18.1 Termination for Convenience

SBCAG shall have the right at any time, with or without cause, to terminate further performance of the 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 the SERVICES and shall preserve SERVICES in progress and completed SERVICES, pending SBCAG'S instruction, and shall turn over such SERVICES in accordance with SBCAG'S instructions.

18.1.1 CONSULTANT shall deliver to SBCAG, in accordance with SBCAG'S instructions, all SERVICES prepared by CONSULTANT or its subconsultants or furnished to CONSULTANT by SBCAG. Upon such delivery, CONSULTANT may then invoice SBCAG for payment in accordance with the terms hereof.

18.1.2 At the time of termination, CONSULTANT will be paid for SERVICES accomplished and delivered in accordance with the terms of this AGREEMENT. Final compensation to the CONSULTANT will include a prorata share of the fixed fee.

18.1.3 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 SERVICES in progress and SERVICES in accordance with SBCAG'S instructions plus the actual cost necessarily incurred in effecting the termination.

18.2 Termination for Cause

In the event CONSULTANT shall file a petition for 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 AGREEMENT and shall fail immediately to 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, SBCAG may, without prejudice to any other rights or remedies SBCAG may have, (a) hold in abeyance further payments to CONSULTANT; (b) stop any services of CONSULTANT or its subconsultants related to such failure until such failure is remedied; and/or (c) terminate this AGREEMENT by written notice to CONSULTANT specifying the date of termination. In the event of such termination by SBCAG, SBCAG may take possession of the services completed and finish the SERVICES by whatever method SBCAG

may deem expedient. A waiver by SBCAG 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 AGREEMENT.

- 18.2.1 In the event of termination CONSULTANT shall deliver to SBCAG all finished and unfinished SERVICES prepared by CONSULTANT or its subconsultants or furnished to CONSULTANT by SBCAG.
- 18.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to SBCAG, satisfactory in form and content to SBCAG and verified by SBCAG. In no event shall CONSULTANT be entitled to any prospective profits or any damages because of such termination.

Article 19 Stop Work Orders

Upon failure of CONSULTANT or its subconsultants to comply with any of the requirements of this agreement, SBCAG shall have the authority to stop any operations of CONSULTANT or its subconsultants affected by such failure until such failure is remedied or to terminate this agreement in accordance with Article 18, *Terminations*. No part of the time lost due to any such stop orders shall be made the subject of a claim for extension of time or for increased costs or damages by CONSULTANT.

Article 20 Claims

CONSULTANT shall give SBCAG written notice within fourteen (14) days after the happening of any event, which CONSULTANT believes, may give rise to a claim by CONSULTANT for an increase in the total compensation of this AGREEMENT or in the scheduled time for performance. Within thirty (30) days after the happening of such events, CONSULTANT shall supply SBCAG with a statement supporting CONSULTANT'S claim, which shall include CONSULTANT'S detailed estimate of the change in compensation and impact to time of performance. SBCAG shall not be liable for, and CONSULTANT hereby waives, any claim or potential claim of CONSULTANT of which CONSULTANT knew or should have known and which was not reported by CONSULTANT in accordance with the provisions of this Article 20. CONSULTANT agrees to continue performance of the SERVICES during the time any claim of CONSULTANT hereunder is pending. SBCAG shall make every effort to respond to claims in a timely manner. SBCAG shall not be bound to any adjustments in the compensation or time of performance for CONSULTANT'S claim unless expressly agreed to by SBCAG in writing and any such adjustments in the compensation so agreed to in writing shall be paid to CONSULTANT by SBCAG. No claim hereunder by CONSULTANT shall be allowed if asserted after final payments under this AGREEMENT.

Article 21 Insurance

In order to accomplish the indemnification herein provided for, but without limiting the indemnification, CONSULTANT and subconsultants shall secure and maintain throughout the term of the AGREEMENT the following types of insurance with limits as shown:

- 21.1 Professional Liability Insurance coverage in an amount of not less than \$1,000,000 combined single limit and in the aggregate.
- 21.2 Workers' Compensation Insurance or state-approved self-insurance program 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.
- 21.3 Comprehensive General Liability Insurance or Commercial General Liability Insurance, including coverage for Premises and Operations, Contractual Liability, Personal Injury 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 in the aggregate written on an occurrence form.
- 21.4 Comprehensive Automobile Liability Coverage, including 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.
- 21.5 Proof of Coverage. CONSULTANT and subconsultants shall furnish certificates of insurance to SBCAG evidencing the insurance coverage required above, prior to the commencement of performance of services hereunder. Such certificates shall include the Santa Barbara County Association of Governments as additional insured on Comprehensive General Liability Insurance or Commercial General Liability Insurance and auto insurance. The certificates shall provide that such insurance shall not be terminated without thirty (30) days written notice to SBCAG, and CONSULTANT and subconsultants shall maintain such insurance from the time CONSULTANT and subconsultants commence performance of services hereunder until the completion of such services.

Article 22 Indemnity

- 22.1 CONSULTANT agrees to indemnify and hold harmless, SBCAG, and their officers, employees (past and present), agents, and representatives, from and against:
 - 22.1.1 Any claim, cause of action, liability, loss, cost or expense arising from infringement or improper appropriation or use by SBCAG of trade secrets, proprietary information, know-how, copyright rights or inventions, arising out of the use of methods, processes, designs, information, or other items furnished or communicated to SBCAG by

CONSULTANT in connection with performance of the SERVICES;
and

22.1.2 Any claim, cause of action, liability, loss, cost or expense, on account of injury to or death of persons or damage to or loss of property arising out of the negligent or wrongful acts of CONSULTANT or its subconsultants, employees, or agents, in the performance of the SERVICES, and including any expenses for attorneys' fees incurred by SBCAG for legal action to enforce CONSULTANT'S indemnification obligations hereunder, but excepting where the injury or death of persons or damage or loss of property was caused by the negligence or willful misconduct of the party to be indemnified.

22.2 SBCAG shall hold harmless and indemnify the CONSULTANT and its officers and employees from and against losses, liability, damages, and costs arising out of the negligent acts, errors, or omissions of SBCAG or those for whom SBCAG is legally liable.

Article 23 Ownership of Drawings, Data and Copyrights

The copyright to all drawings, specifications, reports and other data developed by CONSULTANT in the performance of the SERVICES under this AGREEMENT shall become the property of SBCAG when prepared, whether delivered to SBCAG or not. SBCAG shall retain the copyright ownership for use on this project only, and shall not use toward any other project.

Article 24 Subcontracts

24.1 CONSULTANT shall not subcontract performance of all or any portion of the SERVICES under this AGREEMENT without first notifying SBCAG of the intended subcontracting and obtaining SBCAG'S approval in writing of the subcontracting and the subconsultant. The definition of subconsultant and the requirements for subconsultants hereunder shall include all lower-tier subcontracts.

24.2 CONSULTANT agrees that any and all subconsultants of CONSULTANT will comply with the terms of this AGREEMENT applicable to the portion of the SERVICES performed by them. If requested by SBCAG, CONSULTANT shall furnish SBCAG a copy of the proposed subcontract for SBCAG'S approval of the terms and conditions thereof and shall not execute such subcontract until SBCAG has approved such terms and conditions. SBCAG approval shall not be unreasonably withheld.

24.3 Approval by SBCAG of any services to be subcontracted and the subconsultant to perform said services will not relieve CONSULTANT of any responsibility or liability in regard to the acceptable and complete performance of said services.

Article 25 Inspection and Access

SBCAG shall at all times have access during normal business hours to CONSULTANT'S operations and SERVICES, 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 SBCAG shall not be deemed to be a waiver of any of their rights to require CONSULTANT to comply with the AGREEMENT or to subsequently reject unsatisfactory services or SERVICES.

Article 26 Independent Consultant

CONSULTANT is and shall be at all times an independent CONSULTANT. Accordingly, all SERVICES provided hereunder shall be done and performed by CONSULTANT under the sole supervision, direction and control of CONSULTANT. SBCAG 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 the SERVICES or as to the manner, means and methods by which the SERVICES is performed. All workers furnished by CONSULTANT pursuant to this AGREEMENT, and all representatives of CONSULTANT, shall be and remain the employees or agents of CONSULTANT or of CONSULTANT'S subconsultant(s) at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of SBCAG.

Article 27 Precedence

- 27.1 The AGREEMENT shall consist of the Master Agreement General Terms and Conditions herein described, including exhibits, the individual task order and exhibits to these task orders.
- 27.2 Specific language in the exhibits to the task order shall prevail where there is a conflict with the Master Agreement. The following order of precedence shall otherwise apply:
 - 27.2.1 Task Orders and Exhibits
 - 27.2.2 Master Agreement, its General Terms and Conditions, and Exhibits
 - 27.2.3 CONSULTANT'S Proposal
 - 27.2.4 SBCAG'S Request for Proposal
- 27.3 In the event of a conflict between the documents listed in Article 27, *Precedence*, or between any other documents, which are a party of the AGREEMENT, CONSULTANT shall notify SBCAG immediately and shall comply with SBCAG'S resolution of the conflict.

Article 28 Communications and Notices

- 28.1 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. 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 section. A change in address may be made by notifying the other party in accordance with this section.

CONSULTANT:

Name: Garrett Gritz, Vice-President
Address: 500 Ygnacio Valley Road
Suite 270
Walnut Creek, CA 94596-3847
Telephone: (925) 906-1460
Fax: (925) 906-1465

SBCAG:

Name: Jim Kemp, Executive Director, SBCAG
Address: 260 North San Antonio Road, Suite B
Santa Barbara, CA 93110
Telephone: (805) 961-8900
Fax: (805) 961-8901

Article 29 Disputes

- 29.1 In the event any dispute arises between the parties hereto under or in connection with this AGREEMENT (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 SBCAG Executive Director or his duly authorized representative 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 SBCAG. 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.
- 29.2 During resolution of the dispute both parties shall proceed with performance of this AGREEMENT with due diligence.

Article 30 Gratuities

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

Article 31 Review and Acceptance of Services

- 31.1 All SERVICES performed by CONSULTANT shall be subject to periodic review and approval by SBCAG at any and all places where such performance may be carried on. Failure of SBCAG to make such review, or to discover defective SERVICES, shall not prejudice the rights of SBCAG at the time of final acceptance. All SERVICES performed by CONSULTANT shall be subject to periodic and final review and acceptance by SBCAG upon completion of all the SERVICES.
- 31.2 When the SERVICES has been completed and delivered to SBCAG, CONSULTANT shall so advise SBCAG in writing. Within thirty (30) working days of receipt of such notice, SBCAG shall give CONSULTANT written notice of final acceptance of any SERVICES which has yet to be completed or which is unsatisfactory.
- 31.3 In the event SBCAG does not accept the SERVICES as submitted then upon its subsequent completion, CONSULTANT shall again so notify SBCAG, and within the above specified time period SBCAG shall give CONSULTANT written notice of final acceptance or notice that the specified unfinished SERVICES has not yet been completed or is still not satisfactory. In the latter instance, the foregoing procedures with respect to such specified unfinished SERVICES will be repeated. Final acceptance shall not constitute a waiver or abandonment of any rights or remedies available to SBCAG under this AGREEMENT or by law.

Article 32 Safety

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

Article 33 Assignment

CONSULTANT shall not assign this AGREEMENT wholly or in part, voluntarily, by operation of law, or otherwise without first obtaining the written consent of SBCAG. Subject to the foregoing, the provisions of this AGREEMENT shall extend to the benefit of and be binding upon the successors and assignees of the parties hereto.

Article 34 Amendments

This AGREEMENT may only be changed by an amendment duly executed by CONSULTANT and SBCAG, except that changes to the AGREEMENT to implement administrative changes such as approved changes in key personnel, may be made by administrative amendment signed by CONSULTANT and SBCAG'S Executive Director or other duly authorized representative.

Article 35 Governing Law

This AGREEMENT shall be subject to the law and jurisdiction of the State of California.

Article 36 Suspension of Services

- 36.1 SBCAG may at any time, and from time to time, by written Notice ("Suspension of Services Order") to CONSULTANT, suspend further performance of the SERVICES by CONSULTANT. Said Suspension of Services Order shall specify the date of suspension and the estimated duration of the suspension. Upon receiving any such Suspension of Services Order, CONSULTANT shall promptly suspend further performance of the SERVICES to the extent specified, and during the period of such suspension shall properly care for and protect all SERVICES in progress. Such suspensions shall not exceed more than sixty (60) consecutive calendar days each, nor aggregate more than ninety (90) calendar days; and, if they do, CONSULTANT may, if it so elects by notifying SBCAG in writing, consider that this AGREEMENT has been terminated for convenience of SBCAG. If the AGREEMENT has not been so terminated by CONSULTANT, then SBCAG may at any time withdraw the Suspension of the Services Order as to all or part of the SERVICES that have been suspended by a written notice to CONSULTANT specifying the effective date and scope of withdrawal, and CONSULTANT shall resume diligent performance of the SERVICES for which the suspension is withdrawn on the specified effective date of withdrawal.
- 36.2 If CONSULTANT believes that any such suspension or withdrawal of suspension justifies modification of the AGREEMENT compensation, CONSULTANT may request additional compensation and CONSULTANT and SBCAG will attempt to negotiate a mutually acceptable change in compensation and amend the AGREEMENT accordingly. If CONSULTANT and SBCAG are unable to agree on a change in compensation, CONSULTANT may request additional compensation, as specified in Article 20, *Claims*, herein. In no event shall CONSULTANT be entitled to any prospective profits or any damages because of such suspension.

Article 37 Contingent Fee

The CONSULTANT warrants, by execution of this AGREEMENT, that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an AGREEMENT or understanding for a commission, 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, SBCAG has the right to annul this AGREEMENT without liability, pay only for the value of the SERVICES actually performed, or in its discretion, to deduct from the total compensation, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

Article 38 Entire Document

- 38.1 This AGREEMENT and its Exhibits and attachments constitute the sole and only AGREEMENT governing the SERVICES and supersedes any prior understandings, written or oral, between the parties respecting the within subject matter. All previous proposals, offers, and other communications, written or oral, relative to this AGREEMENT, are superseded except to the extent that they have been incorporated into this AGREEMENT.
- 38.2 No agent, employee or representative of SBCAG has any authority to bind SBCAG to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this AGREEMENT, and CONSULTANT hereby stipulates that it has not relied, and will not relay, on same.

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

RBF Consulting Inc.

By: _____
Name: Garrett Gritz
Title: Vice President
Date: _____

SBCAG

By: _____
Name: Joe Centeno
Title: Chair, SBCAG
Date: _____

Attest:

By: _____
Name: Jim Kemp
Title: Executive Director
Date: _____

Approved as to Form and Procedure:

Stephen Shane Stark
County Counsel

By: _____
Deputy County Counsel,
Counsel for SBCAG