

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	June 11, 2008
TO:	Riverside County Transportation Commission
FROM:	Michael Blomquist, Toll Project Manager
THROUGH:	Anne Mayer, Executive Director
SUBJECT:	Agreement with San Bernardino Associated Governments for Alternative Project Financing Work in San Bernardino County

STAFF RECOMMENDATION:

This item is for the Commission to:

- 1) Approve Agreement No. 08-31-113-00 between the Commission and the San Bernardino Associated Governments (SANBAG) to further inter-county cooperation related to alternative project financing and to utilize existing Commission contracts to expedite initial feasibility work in San Bernardino County;
- 2) Authorize the Chair, pursuant to legal counsel review, to execute the agreement on behalf of the Commission;
- 3) Approve the following amendments to agreements for on-call strategic partnership advisory services by incorporating the terms of the agreement between the Commission and the SANBAG:
 - a) Agreement No. 06-66-026-05, Amendment No. 4 to Agreement No. 06-66-026 with KPMG Corporate Finance LLC
 - b) Agreement No. 06-66-027-17, Amendment No. 6 to Agreement No. 06-66-027 with PB Consult Inc.
 - c) Agreement No. 06-66-028-07, Amendment No. 5 to Agreement No. 06-66-028 with Nossaman, Guthner, Knox & Elliott, LLP; and
- 4) Authorize the Chair, pursuant to legal counsel review, to execute the amendments to the agreements on behalf of the Commission.

BACKGROUND INFORMATION:

In February 2006, the Commission approved the hiring of experts, knowledgeable in the area of transportation economics, federal transportation funding tools, tolling and corporate equity investment evaluation. This initial step resulted in significant work in several areas including public/private partnerships, toll feasibility studies, alternative funding evaluation, toll authority applications for the State Route 91 and Interstate 15 corridors, and serves as the foundation for a toll program in Riverside County.

At the request of the SANBAG staff, Commission staff and its toll program consultants met to discuss the work performed to date in Riverside County including diagnostic reports, staff education efforts, public vs. private ownership evaluation, funding alternatives, project delivery models, lessons learned, current toll program and legislative efforts, and future work needed to further develop a toll program in Riverside County. SANBAG staff desires to explore similar areas for San Bernardino County to help bridge the funding gap perceived to exist in the development of its upcoming multi-year delivery plan effort. Further, SANBAG staff expressed a strong interest in utilizing the Commission's existing contracts to begin this work in an expedient manner and to leverage the existing work already performed for Riverside County.

Staff recommends approving Cooperative Agreement No. 08-31-113-00 between the Commission and SANBAG, which defines consultant contract administration, task management, and payment responsibilities and acknowledges the cooperative efforts desirable to make successful the efforts by both counties. Staff further recommends approval of Agreement No. 06-66-026-05, 06-66-027-17, and 06-66-028-07, amendments to agreements for strategic partnership advisory services, by incorporating the terms of the cooperative agreement between the Commission and SANBAG. Execution of the cooperative agreement and contract amendments has no direct fiscal impact to the Commission and involves only nominal staff time to implement the proposed cooperative agreement and contract amendments.

Financial Information					
In Fiscal Year Budget:	Yes	Year:	FY 2008/09	Amount:	< \$5,000
Source of Funds:	Measure A			Budget Adjustment:	No
GLA No.:	262 31 6XXXX Staff salaries + benefits				
Fiscal Procedures Approved:	<i>Shervia Trevino</i>			Date:	05/22/2008

Attachments:

- 1) Cooperative Agreement No. 08-31-113-00 between RCTC and SANBAG
- 2) Agreement No. 06-66-026-05, Amendment No. 4 to Agreement No. 06-66-026 with KPMG Corporate Finance LLC
- 3) Agreement No. 06-66-027-17, Amendment No. 6 to Agreement No. 06-66-027 with PB Consult Inc.
- 4) Agreement No. 06-66-028-07, Amendment No. 5 to Agreement No. 06-66-028 with Nossaman, Guthner, Knox & Elliott, LLP

COOPERATIVE AGREEMENT

BETWEEN

**THE RIVERSIDE COUNTY TRANSPORTATION COMMISSION
and
THE SAN BERNARDINO ASSOCIATED GOVERNMENTS
for
JOINT USE OF CONSULTANT SERVICES**

THIS COOPERATIVE AGREEMENT ("Agreement") is made and entered into this ____ day of _____ 2008 by and between the Riverside County Transportation Commission ("RCTC") and the San Bernardino Associated Governments ("SANBAG"). RCTC and SANBAG are sometimes referred to herein individually as "Party", and collectively as the "Parties".

RECITALS

WHEREAS, RCTC has entered into consultant agreements with PB Consult, Inc., KPMG Corporate Finance LLC, and Nossaman Guthner, Knox & Elliot LLP (the "Consultants") to provide strategic partnership advisor services to RCTC, as necessary, on a task order basis (the "Consultant Agreements"); and

WHEREAS, SANBAG wishes to obtain certain services from the Consultants, on a task order basis, through the Consultant Agreements; and

WHEREAS, RCTC has agreed to make the services of the Consultants available to SANBAG under the Consultant Agreements; and

WHEREAS, RCTC and SANBAG have determined that such cooperation is in the Parties' best interests; and

WHEREAS, the Parties desire, pursuant to this Agreement, to set forth their respective obligations related to the issuance of task orders for services by SANBAG and payment by SANBAG for any Consultant services requested pursuant to this Agreement; and

NOW THEREFORE, for good and valuable consideration the receipt of which is hereby acknowledged, it is mutually understood and agreed by RCTC and SANBAG as follows:

1. Consultant Agreements.

1.1 RCTC has entered into and shall maintain, during the term of this Agreement, the Consultant Agreements.

1.2 RCTC agrees, pursuant to the terms of this Agreement, to make the services of the Consultants available to SANBAG under the Consultant Agreements and at the rates specified therein.

1.3 The Consultant Agreements include standard indemnification and insurance provisions, which provisions shall be revised to require the Consultants to indemnify SANBAG against third party claims related to any negligence or willful misconduct of the Consultants as relates to any services provided on behalf of SANBAG under the Consultant Agreements.

1.4 SANBAG has reviewed the terms of each of the Consultant Agreements and hereby agrees to be bound by all terms and obligations applicable to RCTC thereunder.

1.5 RCTC makes no representations regarding any of the Consultants' services. RCTC shall have no responsibility or liability to SANBAG for the timeliness or quality of any services or work performed by any of the Consultants. SANBAG's sole remedy regarding any Consultant services shall be as set forth in the applicable Consultant Agreement, which SANBAG shall be entitled to assert as a third party beneficiary thereunder.

1.6 All services completed under a SANBAG Task Order are for the sole benefit of SANBAG. The Commission shall not be entitled to receive any portion of the work completed by Consultant thereunder, and shall not be liable for any payments incurred under a SANBAG Task Order. All such payments shall be the sole obligation of SANBAG.

2. SANBAG Task Orders.

2.1 Services shall be requested by SANBAG pursuant to written task orders, signed by an authorized representative of SANBAG, to be submitted directly to the Consultants ("SANBAG Task Order"). SANBAG shall provide a courtesy copy of all SANBAG Task Orders to RCTC.

2.2 The services completed by any of the Consultants under a SANBAG Task Order is for the sole benefit of SANBAG. RCTC shall not be entitled to receive any portion of such work, and shall not be liable for any payments therefor.

2.3 The maximum compensation to be provided by SANBAG under a SANBAG Task Order shall be clearly set forth in the relevant SANBAG Task Order.

2.4 The Consultants shall submit monthly invoice statements directly to SANBAG, with a courtesy copy to be provided to RCTC, during the performance of any SANBAG Task Orders. The Consultant invoices shall indicate the services completed by the applicable Consultant on behalf of SANBAG.

2.5 SANBAG shall pay, on a timely basis and in accordance with the terms of the Consultant Agreements, all costs and expenses related to all SANBAG Task Orders. Such payments shall be made directly to the applicable Consultant. SANBAG shall provide to RCTC a courtesy copy of all payment stubs or checks made to the Consultants.

2.6 Resolution of any disputes regarding Consultant costs or charges shall be the sole responsibility of SANBAG and the relevant Consultant.

2.7 SANBAG shall only be responsible for services provided pursuant to a SANBAG Task Order and shall not be responsible for other services provided to RCTC under the Consultant Agreements.

3. Term and Termination.

3.1 This Agreement shall commence on the date first specified above and shall remain in effect for two (2) years unless earlier terminated pursuant to the terms contained in this Agreement.

3.2 This Agreement may be terminated by either Party by giving thirty (30) days written notice to the other Party.

3.3 Upon termination of this Agreement SANBAG shall notify each of the Consultants to cease performance of any outstanding Services. SANBAG shall pay all outstanding sums incurred by any of the Consultants pursuant to a SANBAG Task Order prior to the date upon which such notice was provided by SANBAG.

4. Party Representatives.

4.1 RCTC hereby designates _____, or his or her designee as the RCTC Representative under this Agreement. The RCTC Representative shall have the authority to act on behalf of RCTC for all purposes under this Agreement. All courtesy copies of documents required hereunder shall be delivered to the attention of the RCTC Representative.

4.2 SANBAG hereby designates _____, or his or her designee as the SANBAG Representative under this Agreement. The SANBAG Representative shall have the authority to act on behalf of SANBAG for all purposes under this Agreement including, but not limited to, the authority to execute SANBAG Task Orders.

5. Indemnification. SANBAG agrees to indemnify, defend and hold harmless RCTC, its officers, agents, consultants, and employees from any and all claims, demands, costs or liability (including attorneys' fees and reasonable expenses for litigation or settlement) arising from or related to the following: (i) SANBAG's failure to pay, in a timely manner, all sums due to the Consultants pursuant to the terms of this Agreement and the Consultant Agreements; (ii) failure of SANBAG to comply with all terms and conditions of the Consultant Agreements applicable to RCTC thereunder; (iii) any negligent acts, errors or omissions or willful misconduct of SANBAG, or any of its officers, agents, consultants, and employees in the performance of this Agreement. The provisions of this Section 5 shall survive any expiration or termination of this Agreement.

6. Inspection of Records. RCTC shall have the right, after providing SANBAG with reasonable notice, and during the regular business hours of SANBAG, to examine, audit and inspect all accounting books and records directly related to this Agreement. SANBAG shall maintain such books and records for a period of three (3) years from the date of final payment of any Consultant invoices.

7. Miscellaneous.

7.1 Third Party Beneficiaries. The Consultants shall be third party beneficiaries of this Agreement, and shall have the right to bring suit or take any other legal action to enforce the provisions of this Agreement.

7.2 Governing Law. This Agreement shall be governed by and construed with the laws of the State of California. Venue shall be in County of Riverside.

7.3 Attorneys' Fees. If a party commences an action against any other party arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

7.4 Headings. Article and section headings, paragraph captions or marginal headings contained in this Agreement are for convenience only and shall have no effect in the construction or interpretation of any provision herein.

7.5 Notification. All notices hereunder, copies of documentation and communications regarding interpretation of the terms of the Agreement or changes thereto shall be provided by the mailing thereof, postage prepaid and addressed as follows:

**Riverside County
Transportation Commission**
4080 Lemon Street, 3rd Floor
Riverside, California 92501
ATTN: _____

**San Bernardino Associated
Governments**

ATTN: _____

Any notices so given shall be considered served on the other Party three (3) days after deposit in the U.S. mail and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred regardless of the method of service.

7.6 Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes any previous agreements or understandings. This Agreement may only be modified pursuant to a written amendment hereto.

7.7 Validity of Agreement. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

[Signatures on following page]

**SIGNATURE PAGE
TO
COOPERATIVE AGREEMENT**

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

**SAN BERNARDINO ASSOCIATED
GOVERNMENTS**

By: _____

By: _____

Its: _____

Its: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____

By: _____

Best, Best & Krieger LLP
Counsel to the Riverside County
Transportation Commission

**AMENDMENT NO. 4
TO
AGREEMENT FOR STRATEGIC PARTNERSHIP
ADVISOR SERVICES**

1. PARTIES AND DATE

This Amendment No. 4 to the Agreement for Strategic Partnership Advisor Services is made and entered into this _____ day of _____, 2008 by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("Commission") and KPMG CORPORATE FINANCE LLC ("Consultant").

2. RECITALS

- 2.1 The Commission and the Consultant have entered into an agreement dated February 8, 2006 for the purpose of providing Strategic Partnership Advisory Services (the "Master Agreement").
- 2.2 The Commission and the Consultant have entered into an Amendment No. 1 to the Master Agreement, dated November 14, 2006 for the purpose of extending the term of the Master Agreement.
- 2.3 The Commission and the Consultant have entered into Amendment No. 2 to the Master Agreement dated February 14, 2007 for the purpose of providing additional compensation for the ongoing provision of Strategic Partnership Advisor Services.
- 2.4 The Commission and the Consultant have entered into Amendment No. 3 to the Master Agreement dated _____ for the purpose of extending the term of the Master Agreement through February 9, 2012.
- 2.5 The parties now desire to amend the Master Agreement, pursuant to this Amendment No. 4, in order to allow the San Bernardino Associated Governments ("SANBAG") to request Consultant's services pursuant to written task orders to be executed by an authorized representative of SANBAG ("SANBAG Task Order").

- 2.6 SANBAG and the Commission have entered into that certain Cooperative Agreement between the Riverside County Transportation Commission and the San Bernardino Associated Governments for Joint Use of Consultant Services dated as of ____ (“Cooperative Agreement”). The Cooperative Agreement establishes SANBAG’s obligations as to payment for Services requested pursuant to SANBAG Task Orders.

3. TERMS

- 3.1 SANBAG may request Consultant services pursuant to a SANBAG Task Order signed by an authorized representative of SANBAG.
- 3.2 The SANBAG Task Order shall specify the services to be provided by Consultant and the maximum compensation therefor. Unless otherwise agreed upon in writing by SANBAG and the Consultant, services shall be performed under SANBAG Task Orders at the rates set forth in the Master Agreement, as amended.
- 3.3 SANBAG Task Orders shall be signed by an authorized representative of the Consultant, evidencing the Consultant’s agreement with the terms contained therein, and returned to SANBAG.
- 3.4 The services set forth in an approved SANBAG Task Order shall be completed by the Consultant in a timely manner in accordance with any schedules attached thereto, and subject to the terms and conditions of the Master Agreement.
- 3.5 Consultant shall, pursuant to Section 3.18.3 of the Master Agreement, keep and maintain confidential all ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data, as defined in the Master Agreement, either created by or provided to Consultant by SANBAG in connection with any SANBAG Task Order. Such information shall not be shared with nor provided to the Commission.
- 3.6 Section 3.21 of the Master Agreement titled “Indemnification” shall be revised to include SANBAG and its directors, officials, officers, employees, consultants, agents and volunteers as indemnified parties under the provisions of Section 3.21 as applies to any services provided by Consultant pursuant to a SANBAG Task Order.

The limitation on Consultant's liability set forth in Section 3.21.2 of the Master Agreement shall apply separately to any SANBAG Task Orders.

- 3.7 Pursuant to Section 3.12.3 of the Master Agreement titled "Insurance Endorsements", Consultant shall add SANBAG and its directors, officials, officers, employees and agents as additional insureds under the insurance policies specified in the Master Agreement, and shall provide SANBAG with original insurance endorsement forms as required in Section 3.1.23, and containing all provisions set forth in said section. Consultant shall not commence work on any SANBAG Task Order prior to complying with this Section 3.7.
- 3.8 Consultant shall invoice SANBAG directly for any services performed pursuant to a SANBAG Task Order. A courtesy copy of all invoices shall be provided to the Commission.
- 3.9 All services completed under a SANBAG Task Order are for the sole benefit of SANBAG. The Commission shall not be entitled to receive any portion of the work completed by Consultant thereunder, and shall not be liable for any payments incurred under a SANBAG Task Order. All such payments shall be the sole obligation of SANBAG.
- 3.10 The parties agree that Consultant's sole remedy in the case of SANBAG's failure to pay any amounts due to Consultant under a SANBAG Task Order shall be to commence litigation, or to take any other legal action available, against SANBAG.
- 3.11 Consultant hereby represents that Consultant has reviewed and approved the terms of the Cooperative Agreement, and agrees that the Cooperative Agreement satisfactorily protects Consultant's interests.
- 3.12 Notwithstanding anything to the contrary in the Master Agreement, as applies to services requested by SANBAG pursuant to a SANBAG Task Order, SANBAG shall be a third party beneficiary under the Master Agreement.
- 3.13 The recitals set forth above are true and correct and are incorporated into this Amendment as though fully set forth herein.
- 3.14 Except as amended by this Amendment, all provisions of the Master Agreement, as amended by Amendments No. 1 through No. 3, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the parties under this Amendment.

[Signatures on following page]

SIGNATURE PAGE
TO
AMENDMENT NO. 4
TO AGREEMENT FOR STRATEGIC PARTNERSHIP
ADVISOR SERVICES

IN WITNESS WHEREOF, the parties hereto have executed the Agreement on the date first herein above written.

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

**KPMG CORPORATE FINANCE
LLC**

By: _____
Anne Mayer, Executive Director

Signature

Name

Title

APPROVED AS TO FORM:

By: _____
Best, Best & Krieger LLP
General Counsel

**AMENDMENT NO. 6 TO
AGREEMENT FOR STRATEGIC PARTNERSHIP ADVISOR SERVICES
WITH PB CONSULT INC.**

1. PARTIES AND DATE

This Amendment No. 6 to the Agreement for strategic partnership advisor services is made and entered into as of this _____ day of _____, 2008, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("Commission") and PB CONSULT INC. ("Consultant").

2. RECITALS

- 2.1 The Commission and the Consultant have entered into an agreement dated March 24, 2006 for the purpose of providing strategic partnership advisor services (the "Master Agreement").
- 2.2 The Commission and the Consultant have entered into Amendment No. 1 through Amendment No. 3 to the Master Agreement, dated July 11, 2006, November 8, 2006 and March 22, 2007, respectively, for the purpose of providing additional compensation for ongoing strategic partnership advisor services.
- 2.3 The Commission and the Consultant have entered into an Amendment No. 4 to the Master Agreement, dated July 1, 2007, for the purpose of changing the billing rates utilized by Consultant.
- 2.4 The Commission and the Consultant have entered into an Amendment No. 5 to the Master Agreement, dated _____, in order to extend the term and to provide additional compensation for the continued provision of strategic partnership advisor services.
- 2.5 The parties now desire to amend the Master Agreement, pursuant to this Amendment No. 6, in order to allow the San Bernardino Associated Governments ("SANBAG") to request Consultant's services pursuant to written task orders to be executed by an authorized representative of SANBAG ("SANBAG Task Order").

- 2.6 SANBAG and the Commission have entered into that certain Cooperative Agreement between the Riverside County Transportation Commission and the San Bernardino Associated Governments for Joint Use of Consultant Services dated as of _____ (“Cooperative Agreement”). The Cooperative Agreement establishes SANBAG’s obligations as to payment for Services requested pursuant to SANBAG Task Orders.

3. TERMS

- 3.1 SANBAG may request Consultant services pursuant to a SANBAG Task Order signed by an authorized representative of SANBAG.
- 3.2 The SANBAG Task Order shall specify the services to be provided by Consultant and the maximum compensation therefor. Unless otherwise agreed upon in writing by SANBAG and the Consultant, services shall be performed under SANBAG Task Orders at the rates set forth in the Master Agreement, as amended.
- 3.3 SANBAG Task Orders shall be signed by an authorized representative of the Consultant, evidencing the Consultant’s agreement with the terms contained therein, and returned to SANBAG.
- 3.4 The services set forth in an approved SANBAG Task Order shall be completed by the Consultant in a timely manner in accordance with any schedules attached thereto, and subject to the terms and conditions of the Master Agreement.
- 3.5 Consultant shall, pursuant to Section 3.18.3 of the Master Agreement, keep and maintain confidential all ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data, as defined in the Master Agreement, either created by or provided to Consultant by SANBAG in connection with any SANBAG Task Order. Such information shall not be shared with nor provided to the Commission.
- 3.6 Section 3.21 of the Master Agreement titled “Indemnification” shall be revised to include SANBAG and its directors, officials, officers, employees, consultants, agents and volunteers as indemnified parties

under the provisions of Section 3.21 as applies to any services provided by Consultant pursuant to a SANBAG Task Order.

- 3.7 Pursuant to Section 3.12.4 of the Master Agreement titled "Insurance Endorsements", Consultant shall add SANBAG and its directors, officials, officers, employees and agents as additional insureds under the insurance policies specified in the Master Agreement, and shall provide SANBAG with original insurance endorsement forms as required in Section 3.12.4, and containing all provisions set forth in said section. Consultant shall not commence work on any SANBAG Task Order prior to complying with this Section 3.7.
- 3.8 Consultant shall invoice SANBAG directly for any services performed pursuant to a SANBAG Task Order. A courtesy copy of all invoices shall be provided to the Commission.
- 3.9 All services completed under a SANBAG Task Order are for the sole benefit of SANBAG. The Commission shall not be entitled to receive any portion of the work completed by Consultant thereunder, and shall not be liable for any payments incurred under a SANBAG Task Order. All such payments shall be the sole obligation of SANBAG.
- 3.10 The parties agree that Consultant's sole remedy in the case of SANBAG's failure to pay any amounts due to Consultant under a SANBAG Task Order shall be to commence litigation, or to take any other legal action available, against SANBAG.
- 3.11 Consultant hereby represents that Consultant has reviewed and approved the terms of the Cooperative Agreement, and agrees that the Cooperative Agreement satisfactorily protects Consultant's interests.
- 3.12 Notwithstanding anything to the contrary in the Master Agreement, as applies to services requested by SANBAG pursuant to a SANBAG Task Order, SANBAG shall be a third party beneficiary under the Master Agreement.
- 3.13 The recitals set forth above are true and correct and are incorporated into this Amendment as though fully set forth herein.
- 3.14 Except as amended by this Amendment, all provisions of the Master Agreement, as amended by Amendments No. 1 through No. 5, including without limitation the indemnity and insurance provisions, shall remain in

full force and effect and shall govern the actions of the parties under this Amendment.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE TO
AMENDMENT NO. 6 TO
AGREEMENT FOR STRATEGIC PARTNERSHIP ADVISORY SERVICES**

IN WITNESS WHEREOF, the parties hereto have executed the Agreement on the date first herein above written.

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

PB Consult Inc.

By: _____
Jeff Stone, Chair

Signature

Wayne McDaniel _____
Name

Vice President _____
Title

APPROVED AS TO FORM:

By: _____
Best, Best & Krieger LLP
General Counsel

**AMENDMENT NO. 5 TO
AGREEMENT FOR STRATEGIC PARTNERSHIP
ADVISOR SERVICES**

1. PARTIES AND DATE

This Amendment No. 5 to the Agreement for Strategic Partnership Advisor Services is made and entered into as of this _____ day of _____, 2008, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("Commission") and NOSSAMAN, GUTHNER, KNOX & ELLIOTT LLP ("Consultant").

2. RECITALS

- 2.1 The Commission and the Consultant have entered into an agreement dated April 10, 2006 for the purpose of providing Strategic Partnership Advisor Services (the "Master Agreement").
- 2.2 The Commission and the Consultant have entered into Amendment No. 1 to the Master Agreement, dated July 27, 2006, for the purpose of increasing the not to exceed amount of the Master Agreement.
- 2.3 The Commission and the Consultant have entered into Amendment No. 2 to the Master Agreement, dated October 26, 2006, for the purpose of reducing the not to exceed amount of the Master Agreement.
- 2.4 The Commission and the Consultant have entered into Amendment No. 3 to the Master Agreement, dated April 9, 2007, for the purpose of increasing the not to exceed amount of the Master Agreement, inclusive of Amendments No. 1 and No. 2, to Three Hundred Twenty Five Thousand Dollars (\$325,000.00).
- 2.5 The Commission and the Consultant have entered into Amendment No. 4 to the Master Agreement, dated _____, for the purpose of incorporating additional Services into the Scope of Services of the Master Agreement, modifying the Consultant's hourly billing rates, extending the

term, and increasing the total not to exceed compensation amount set forth in the Master Agreement.

- 2.6 The parties now desire to amend the Master Agreement, pursuant to this Amendment No. 5, in order to allow the San Bernardino Associated Governments ("SANBAG") to request Consultant's services pursuant to written task orders to be executed by an authorized representative of SANBAG ("SANBAG Task Order").
- 2.7 SANBAG and the Commission have entered into that certain Cooperative Agreement between the Riverside County Transportation Commission and the San Bernardino Associated Governments for Joint Use of Consultant Services dated as of ____ ("Cooperative Agreement"). The Cooperative Agreement establishes SANBAG's obligations as to payment for Services requested pursuant to SANBAG Task Orders.

3. TERMS

- 3.1 SANBAG may request Consultant services pursuant to a SANBAG T Task Order signed by an authorized representative of SANBAG.
- 3.2 The SANBAG Task Order shall specify the services to be provided by Consultant and the maximum compensation therefor. Unless otherwise agreed upon in writing by SANBAG and the Consultant, services shall be performed under SANBAG Task Orders at the rates set forth in the Master Agreement, as amended.
- 3.3 SANBAG Task Orders shall be signed by an authorized representative of the Consultant, evidencing the Consultant's agreement with the terms contained therein, and returned to SANBAG.
- 3.4 The services set forth in an approved SANBAG Task Order shall be completed by the Consultant in a timely manner in accordance with any schedules attached thereto, and subject to the terms and conditions of the Master Agreement.
- 3.5 Consultant shall, pursuant to Section 3.18.3 of the Master Agreement, keep and maintain confidential all ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data, as defined in the Master Agreement, either created by or provided to

Consultant by SANBAG in connection with any SANBAG Task Order. Such information shall not be shared with nor provided to the Commission.

- 3.6 Section 3.21 of the Master Agreement titled "Indemnification" shall be revised to include SANBAG and its directors, officials, officers, employees, consultants, agents and volunteers as indemnified parties under the provisions of Section 3.21 as applies to any services provided by Consultant pursuant to a SANBAG Task Order.
- 3.7 Pursuant to Section 3.12.4 of the Master Agreement titled "Insurance Endorsements", Consultant shall add SANBAG and its directors, officials, officers, employees and agents as additional insureds under the insurance policies specified in the Master Agreement, and shall provide SANBAG with original insurance endorsement forms as required in Section 3.1.24, and containing all provisions set forth in said section. Consultant shall not commence work on any SANBAG Task Order prior to complying with this Section 3.7.
- 3.8 Consultant shall invoice SANBAG directly for any services performed pursuant to a SANBAG Task Order. A courtesy copy of all invoices shall be provided to the Commission.
- 3.9 All services completed under a SANBAG Task Order are for the sole benefit of SANBAG. The Commission shall not be entitled to receive any portion of the work completed by Consultant thereunder, and shall not be liable for any payments incurred under a SANBAG Task Order. All such payments shall be the sole obligation of SANBAG.
- 3.10 The parties agree that Consultant's sole remedy in the case of SANBAG's failure to pay any amounts due to Consultant under a SANBAG Task Order shall be to commence litigation, or to take any other legal action available, against SANBAG.
- 3.11 Consultant hereby represents that Consultant has reviewed and approved the terms of the Cooperative Agreement, and agrees that the Cooperative Agreement satisfactorily protects Consultant's interests.
- 3.12 Notwithstanding anything to the contrary in the Master Agreement, as applies to services requested by SANBAG pursuant to a SANBAG Task Order, SANBAG shall be a third party beneficiary under the Master Agreement.

3.13 The recitals set forth above are true and correct and are incorporated into this Amendment as though fully set forth herein.

3.14 Except as amended by this Amendment, all provisions of the Master Agreement, as amended by Amendments No. 1 through No. 4, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the parties under this Amendment.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement on the date first herein above written.

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

**NOSSAMAN, GUTHNER, KNOX
& ELLIOTT LLP**

By: _____
Jeff Stone, Chair

Signature

Name

Title

APPROVED AS TO FORM:

By: _____
Best, Best & Krieger LLP
General Counsel