



Transportation Agency

Santa Clara County Bus, Light Rail, Roads, Aviation

3331 North First Street
San Jose, CA 95134-1906

Approved

Accepted

Adopted

Denied

Presented

BY THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA
Phyllis A. Perez, Clerk of the Board

By R. Ramirez
Deputy Clerk
Date: OCT 18 1994

S.D. 1

TRANSMITTAL MEMORANDUM

Page 1 of 4

Prepared by: Bob Van Etten

Reviewed by: Bob Van Etten

Submitted by: Scotty Bruce

APPROVED: DIRECTOR

Date: October 13, 1994

TRANSIT DISTRICT BOARD:

Agenda Date _____ Item No. _____

COUNTY BOARD OF SUPERVISORS:

Agenda Date October 18, 1994 Item No. _____

TRANSPORTATION COMMISSION:

Agenda Date _____ Item No. _____

FROM: Scotty A. Bruce, Deputy Director
Highway Design and Roads Operations

SUBJECT: ADDENDUM TO COOPERATIVE AGREEMENT NO. 4-1532-C DATED
SEPTEMBER 28, 1993 BY AND BETWEEN THE SANTA CLARA COUNTY
TRAFFIC AUTHORITY, THE COUNTY OF SANTA CLARA, THE CITY OF
SAN JOSE, THE STATE OF CALIFORNIA DEPARTMENT OF
TRANSPORTATION, AND BROTHERS INTERNATIONAL CORPORATION
REGARDING ROUTE 85 AT ALMADEN EXPRESSWAY

RECOMMENDED ACTION:

It is recommended that the Board of Supervisors approve the attached Addendum between the Brothers and the County and authorize the chairperson to execute the Addendum.

FISCAL IMPLICATIONS:

The Addendum provides that the Brothers pay for the annual maintenance cost for Almaden Plaza Way and Traffic Signal #2. Therefore, there will be no costs to the County.

CONTRACT HISTORY:

See BACKGROUND.

ORIGINAL

OCT 18 1994

APPROVED copy sent to Randy Sabado/T-A Property Division via T/A Administration 10/27/94-kmk

DATE: October 13, 1994

TRANSIT DISTRICT BOARD AGENDA DATE:

COUNTY BOARD OF SUPERVISORS AGENDA DATE: October 18, 1994

TRANSPORTATION COMMISSION AGENDA DATE:

SUBJECT: ADDENDUM TO COOPERATIVE AGREEMENT NO. 4-1532-C DATED SEPTEMBER 28, 1993 BY AND BETWEEN THE SANTA CLARA COUNTY TRAFFIC AUTHORITY, THE COUNTY OF SANTA CLARA, THE CITY OF SAN JOSE, THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION, AND BROTHERS INTERNATIONAL CORPORATION REGARDING ROUTE 85 AT ALMADEN EXPRESSWAY

REASONS FOR RECOMMENDATION:

The County has agreed to enter into an agreement to accept control and maintenance over Almaden Plaza Way and Traffic Signal #2 in accordance with the Cooperative Agreement No. 4-1532-C (see attachment).

BACKGROUND:

The County Traffic Authority, the City of San Jose, the State of California, the Brothers International Corporation and the County of Santa Clara entered into Cooperative Agreement No. 4-1532-C. In accordance with the Cooperative Agreement (Sec 2.2 and 4.5), the County and Brothers agreed to enter into an agreement for the maintenance and funding of Almaden Plaza Way and Traffic Signal #2. The Brothers developed a draft maintenance agreement which has been reviewed and modified by County staff.

The Addendum provides for payment to the County by the Brothers for all maintenance costs for Almaden Plaza Way and Traffic Signal #2. In addition, the Addendum includes a clause that any subsequent owner is responsible for the maintenance costs. Also, there is a requirement that at the time of dedication of Almaden Plaza Way to the County, the dedication document is to include a clause that limits the Almaden Shopping Center's access to only the westerly end of Almaden Plaza Way. This is consistent with Section 2.4 of the Cooperative Agreement.

CONSEQUENCES OF NEGATIVE ACTION:

Without the executed Addendum there would be no funding source for the maintenance of Almaden Plaza Way and Traffic Signal #2. The Transportation Agency would recommend that the dedication and relinquishment of Almaden Plaza Way not be accepted.

STEPS FOLLOWING APPROVAL:

After the Chairperson has signed the three original Addenda, one original Addendum should be sent to the Brothers and one original Addendum should be sent to the Transportation Agency, Property Division at the following addresses:

DATE: October 13, 1994

TRANSIT DISTRICT BOARD AGENDA DATE:

COUNTY BOARD OF SUPERVISORS AGENDA DATE: October 18, 1994

TRANSPORTATION COMMISSION AGENDA DATE:

SUBJECT: ADDENDUM TO COOPERATIVE AGREEMENT NO. 4-1532-C DATED SEPTEMBER 28, 1993 BY AND BETWEEN THE SANTA CLARA COUNTY TRAFFIC AUTHORITY, THE COUNTY OF SANTA CLARA, THE CITY OF SAN JOSE, THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION, AND BROTHERS INTERNATIONAL CORPORATION REGARDING ROUTE 85 AT ALMADEN EXPRESSWAY

Brothers International Corporation
120 Montgomery Street, Suite 1400
San Francisco, CA 94104
Attention: Mr. C. K. Kwan

Randy Sabado, Manager
Property Division
Transportation Agency
3331 N. First Street
San Jose, CA 95134-1906

The original Addendum sent to Transportation Agency, Property Division should include a request that the Addendum be recorded.

Copies of the Addendum should be sent to the following:

Ms. Erin Hmelar, General Manager
Almaden Plaza Shopping Center
49 Almaden Plaza
5353 Almaden Expressway
San Jose, CA 95118

Mr. Gary L. Conner, Esq.
18 Tice Valley Lane
Walnut Creek, CA 94595

Mr. Scotty A. Bruce
Deputy Director
Highway Design and Roads Operations
1505 Schallenberger Road
San Jose, CA 95131

DATE: October 13, 1994

TRANSIT DISTRICT BOARD AGENDA DATE:

COUNTY BOARD OF SUPERVISORS AGENDA DATE: October 18, 1994

TRANSPORTATION COMMISSION AGENDA DATE:

SUBJECT: ADDENDUM TO COOPERATIVE AGREEMENT NO. 4-1532-C DATED SEPTEMBER 28, 1993 BY AND BETWEEN THE SANTA CLARA COUNTY TRAFFIC AUTHORITY, THE COUNTY OF SANTA CLARA, THE CITY OF SAN JOSE, THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION, AND BROTHERS INTERNATIONAL CORPORATION REGARDING ROUTE 85 AT ALMADEN EXPRESSWAY

SAB:RVE:dh

Attachments: 1. Three Original Addenda
2. Cooperative Agreement No. 4-1532-C

cc: Ms. Erin Hmelar, General Manager, Almaden Plaza Shopping Center
Harrison Taylor, Deputy County Counsel
Randy Sabado, Manager Property Division
LM, SAB, RBP, AVJ, JME, DW, RVE



Transportation Agency

Santa Clara County Bus, Light Rail, Roads, Aviation

3331 North First Street
San Jose, CA 95134-1906

BOARD
CO OF SUPERVISORS
CO OF SANTA CLARA

M E M O R A N D U M

94 DEC 15 AM 1:21

DATE: DECEMBER 13, 1994
TO: KAY, CLERK OF THE BOARD
FROM: JLV JUANITA VILLEMAIRE, TA PROPERTY
SUBJECT: ALMADEN PLAZA WAY, COOPERATIVE AGREEMENT
BROTHERS INTERNATIONAL, 1000-281

Pending

I have enclosed an original recorded addendum to cooperative agreement 4-1532-C for your file. This agreement was signed by the Board of Supervisors on October 18, 1994, agenda item no. 13. Please forward this agreement to Jeanne Stringfellow in the library.

If you have any questions, please call me at 321-5777.

JLV:jb

Enclosure

jlv1867

12726218
FILED FOR RECORD
AT REQUEST OF

When recorded, return to:

County of Santa Clara
Transportation Agency
Property Division
3331 N. First Street, Bldg. B
San Jose, CA 95134

Attn.: Juanita Villamaire

94 NOV 18 PM 3:38
OFFICIAL RECORDS
SANTA CLARA COUNTY
BRENDA DAVIS
RECORDER

NO FEE

Project; Almaden Plaza Way

File No.: 1000-281

To be recorded without fee
as per Gov. Code 6103.

ADDENDUM TO COOPERATIVE AGREEMENT NO. 4-1532-C

DATED SEPTEMBER 28, 1993 BY AND BETWEEN

THE SANTA CLARA COUNTY TRAFFIC AUTHORITY, THE COUNTY OF SANTA
CLARA, THE CITY OF SAN JOSE, THE STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION, AND BROTHERS INTERNATIONAL
CORPORATION REGARDING ROUTE 85 AT ALMADEN EXPRESSWAY

WHEREAS, on September 28, 1993, the Santa Clara County
Traffic Authority, referred to as "Authority," the County of
Santa Clara, referred to as "County," the City of San Jose,
referred to as "City," the State of California Department of
Transportation, referred to as "State," and Brothers
International Corporation, referred to as "Brothers," entered
into Cooperative Agreement No. 4-1532-C, referred to as
"Agreement," regarding State Route 85 at the Almadén Expressway;
and

WHEREAS, pursuant to the Agreement, the AR-3 offramp was
redesigned and Almaden Plaza Way was constructed so that the AR-3
offramp at State Route 85 intersects with Almaden Plaza Way at #2
Traffic Signal; and

WHEREAS, Almaden Plaza Way is partly owned by State and
partly owned by Brothers, and #2 Traffic Signal is owned by
State; and

WHEREAS, under the terms of the Agreement, ownership of
Almaden Plaza Way shall be transferred to County, and the
maintenance obligations for #2 Traffic Signal shall be in
accordance with sections 2.2 and 4.5 of the Agreement; and

WHEREAS, under the terms of the Agreement, after the
aforementioned transfer has occurred, Brothers will pay for the
maintenance of Almaden Plaza Way and #2 Traffic Signal; and

WHEREAS, in anticipation of the aforementioned transfer,
Brothers and County wish to provide for an economical and uniform
program to service, maintain and repair Almaden Plaza Way and #2
Traffic Signal,

NOW, THEREFORE, in consideration of the terms, covenants and

ORIGINAL

conditions hereinafter set forth, County and Brothers agree as follows:

1. SCOPE OF ADDENDUM

In accordance with section 2.2 of the Agreement, County shall assume the maintenance obligations for Almaden Plaza Way and #2 Traffic Signal, including the service, maintenance, repair and, if necessary, the replacement of Almaden Plaza Way and #2 Traffic Signal. For purposes of this addendum, #2 Traffic Signal shall include signal standards, heads, pedestrian signals, lamps, luminaires, electroliers, foundations, pullboxes, conduits, conductors, and other appurtenant facilities. County shall also service, maintain and repair all electrical circuits which may exist within these facilities. For purposes of this addendum, Almaden Plaza Way includes that portion of the roadway west of the Almaden Expressway and immediately north and adjacent to Brothers' shopping center, and all curbs, gutters, sidewalks, fencing and other improvements which are on that portion of the roadway transferred to County through dedication by Brothers and through relinquishment by State.

2. ADDENDUM BINDING ON SUCCESSORS-IN-INTEREST

Brothers' obligations under this addendum shall be covenants running with the land encompassing their shopping center, which land is more particularly described in Exhibit "A" attached hereto and incorporated by reference. Brothers' obligations shall be binding upon Brothers and their successors-in-interest in the land which is described in the exhibit, excepting that portion of the land which is subsequently dedicated to County.

3. ACCESS

The instrument or document used by Brothers to transfer its ownership interest in Almaden Plaza Way to County shall contain a release and relinquishment to County of all abutters rights of access in and to Almaden Plaza Way from and to Brothers' shopping center, except over and across the westerly boundary of Almaden Plaza Way.

4. BILLING FOR SERVICE

Within sixty (60) days after every January 1st and July 1st, County shall bill Brothers for the actual costs incurred in the service, maintenance and repair services performed during the preceding six (6) months, which bill shall be calculated by use of the hourly rate of pay for the employees performing the service, maintenance and repair, the hourly benefit rate for these employees and the direct costs of the material and equipment used in the service, maintenance and repair. Such bills shall be specific with respect to time and materials expended. Upon request of Brothers, the data and information supporting County's bills shall be made available for review.

Brothers shall pay all bills within thirty (30) days of receipt.

5. UTILITY SERVICES

Notwithstanding any of the other provisions in this agreement, it is understood that Brothers shall be responsible for the cost of the utility services provided for #2 Traffic Signal and the adjacent street lights. County shall bill Brothers for these utility services in accordance with the provisions of paragraph 5, above.

6. INDEMNIFICATION

(a) Brothers shall not be responsible for any damage or liability occurring by reason of County's negligent or wrongful act or omission under this addendum. It is understood and agreed that, pursuant to Government Code section 895.4, County shall fully indemnify, defend, and hold Brothers harmless from any liability imposed or injury (as defined by Government Code section 810.8) occurring by reason of County's negligent or wrongful act or omission under this addendum.

(b) County shall not be responsible for any damage or liability occurring by reason of Brothers' negligent or wrongful act or omission under this addendum. It is understood and agreed that, pursuant to Government Code section 895.4, Brothers shall fully indemnify, defend and hold County harmless from any liability imposed for injury (as defined by Government Code section 810.8) occurring by reason of Brothers' negligent or wrongful act or omission under this addendum.

7. ENTIRE AGREEMENT

This addendum is made as a consequence of the obligations of County and Brothers as detailed in the Agreement. Any inconsistency or ambiguity between the terms of this addendum and the terms of the Agreement shall be resolved in favor of the Agreement, which shall be controlling for all purposes.

IN WITNESS WHEREOF, the parties have executed this addendum as follows:

County OCT 18 1994
Date: _____

[Signature]
Chairperson, Board of Supervisors
County of Santa Clara

ATTEST: Phyllis A. Perez, Clerk
Board of Supervisors

[Signature]

APPROVED AS TO FORM AND LEGALITY:

[Signature] 10-4-94
Harrison D. Taylor
Deputy County Counsel

Brothers

Date: 4 Oct 1994

[Signature]
C.K. Kwan, President
Brothers International
Corporation

APPROVED AS TO FORM AND
LEGALITY:

[Signature]
Gary L. Conner, Esq.
Brothers International
Corporation

LEGAL DESCRIPTION

REAL PROPERTY in the County of Santa Clara, State of California, described as follows:

Parcel One

A Fee Estate as to all that certain real property situated in the City of San Jose, County of Santa Clara, State of California, described as follows:

Beginning at the intersection of the Northwestern line of that certain 56.69 acre parcel of land described in the Deed from E.W. Knapp, et ux, to J.K. Greewalt dated January 14, 1914 and recorded in Volume 410 of Deeds, at page 532, Santa Clara County Records; with the general Easterly line of that certain parcel of land designated as Parcel "B" on that certain Record of Survey entitled Right of Way Acquisition on Russo Drive, Blair Drive to Cherryview Lane recorded in Book 455 of Maps, at page 51, Santa Clara County Records; said general Easterly line being also the general Easterly line of Russo Drive as shown on said Record of Survey, thence leaving said point of beginning along said Northwestern line of the 56.69 acre parcel North 72° 32' 23" East 1654.19 feet to the Northwestern corner of that certain 0.216 acre parcel of land shown on that certain Record of Survey of the Almaden Expressway recorded in Book 307 of Maps, at page 38, Santa Clara County Records; thence leaving said Northwestern line of the 56.69 acre parcel along the general Westerly line of said 0.216 acre parcel along the following courses and distances: South 1° 11' 47" East 74.98 feet; South 4° 37' 49" East 150.00 feet; along a tangent curve to the right with a radius of 40.00 feet through a central angle of 88° 31' 44" for an arc length of 61.80 feet; South 2° 58' 32" East 71.10 feet; from a tangent bearing of North 83° 53' 55" East along a curve to the right with a radius of 40.00 feet through a central angle of 91° 28' 16" for an arc length of 63.86 feet; and South 4° 37' 49" East 129.68 feet to a point on the Southerly line of that certain 12.04 acre parcel of land described in the deed from Helen Armstrong to the Emporium Capwell Company, recorded May 3, 1965 in Book 6942 of Official Records, at page 247, Santa Clara County Records; thence leaving said general Westerly line of the 0.216 acre parcel along said Southerly line of the 12.04 acre parcel South 72° 32' 23" West 947.15 feet to the Southwesterly corner thereof; said corner being also the most Northerly corner of that certain 12.287 acre parcel of land described firstly in the deed from the Oseana Corporation et al to City Title Insurance Company recorded October 18, 1963 in Book 6236 of Official Records, at page 482, Santa Clara County Records; thence along the Easterly line of said 12.287 acre parcel South 4° 38' 28" East 945.44 feet to the most Northerly corner of that certain parcel of land conveyed to the City of San Jose by deed recorded May 27, 1968 in Book 8136 of Official Records, at page 608, Santa Clara County Records; thence leaving said Easterly line of the 12.287 acre parcel along the Northwestern line of said parcel conveyed to the City of San Jose South 67° 22' 20" West 236.70 feet; thence along a tangent curve to the right with a radius 20.00 feet, through a central angle of 94° 30' 40" for an arc length of 32.99 feet to a point on the general Easterly boundary line of Tract No. 3602, a map of which was filed for record in the Book 178 of Maps, at page 14, Santa Clara County Records; said point lying also on the Northeasterly line of Russo Drive, as shown on said map; thence along the general Easterly line of said Tract 3602 and along the general Easterly line that certain parcel of land designated as Parcel 4 in that certain Third Amended Order of Final Condemnation recorded in Book K581 of Official Records, at page 1916 Santa Clara County Records along the following courses and distances: North 18° 07' 00" West 168.60 feet; North 71° 53' 00" East 110.00 feet and North 18° 07' 00" West 764.70 feet to the most Northerly corner of said Parcel 4; thence along the general Northwestern line of said Parcel 4 South 72° 32' 23" West 92.91 feet and along a tangent curve to the right

(LEGAL DESCRIPTION CONTINUED NEXT PAGE)

Exhibit A

LEGAL DESCRIPTION: (Continued)

Parcel One Continued

with a radius of 25.00 feet through a central angle of $86^{\circ} 49' 20''$ for an arc length of 37.88 feet to the intersection thereof with the hereinabove described general Easterly line of Parcel "B"; thence leaving said general Northwesternly line of Parcel 4 along said general Easterly line of Parcel "B" along the following courses and distances: from a tangent bearing of North $20^{\circ} 38' 17''$ West along a curve to the left with a radius of 626.00 feet through a central angle of $21^{\circ} 01' 28''$ for an arc length of 229.71 feet to a point of reverse curvature; from a tangent bearing of North $41^{\circ} 39' 45''$ West along a curve to the right with a radius of 574.00 feet through a central angle of $23^{\circ} 53' 41''$ for an arc length of 239.38 feet and North $17^{\circ} 46' 04''$ West 3.17 feet to the point of beginning.

Excepting therefrom that certain parcel condemned by the State of California acting by and through the Department of Transportation by that certain Final Order of Condemnation dated December 30, 1992, recorded December 30, 1992 in Book M569, page 1495, Official Records, being more particularly described as follows:

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, and being a portion of that certain parcel of land excepted and reserved from Parcel 1 in the grant deed from Almaden Plaza Associates, a California Limited Partnership, to Pacific Capital Application, Inc., a California corporation, recorded June 29, 1988 in Book K587 of Official Records at page 130, Santa Clara County Records described as follows:

Beginning at the intersection of the Northwesternly line of that certain 56.69 acre parcel of land described in the Deed from E. W. Knapp, et ux, to J.K. Greenwalt dated January 14, 1914 and recorded in Volume 410 of Deeds, at page 532, Santa Clara County Records with the general Easterly line of that certain parcel of land designated as Parcel "B" on that certain Record of Survey entitled "Right of Way Acquisition on Russo Drive, Blair Drive to Cherryview Lane" filed in Book 455 of Maps at page 51, Santa Clara County Records; thence from said point of beginning along said Northwesternly line of said 56.69 acre parcel N $72^{\circ} 52' 31''$ E 1654.07 feet to the Northwesternly corner of that certain 0.216 acre parcel of land shown on that certain Record of Survey on the Almaden Expressway filed for record in Book 307 of Maps at page 38, Santa Clara County Records; thence along the general Westerly line of said 0.216 acre parcel the following courses: S $00^{\circ} 51' 47''$ E 74.98 feet; S $4^{\circ} 17' 49''$ E 149.99 feet; along a tangent curve to the right with a radius of 40.00 feet, through a central angle $88^{\circ} 31' 44''$ for an arc length of 61.80 feet; thence S $2^{\circ} 38' 32''$ E 71.10 feet, from a tangent bearing of N $84^{\circ} 13' 55''$ E along a curve to the right with a radius of 40.00 feet, through a central angle of $69^{\circ} 02' 01''$ for an arc length of 48.19 feet; thence leaving said general Westerly line the following courses: S $84^{\circ} 13' 55''$ W 155.42 feet; N $74^{\circ} 48' 40''$ W 238.93 feet; along a tangent curve to the left with a radius of 785.00 feet, through a central angle of $32^{\circ} 53' 12''$ for an arc length of 450.58 feet; S $72^{\circ} 18' 08''$ W 530.00 feet and S $68^{\circ} 26' 17''$ W 247.83 feet to a point in said general Easterly line; thence along said general Easterly line, from a tangent bearing of N $26^{\circ} 36' 02''$ W, along a curve to the right with a radius of 573.97 feet, through a central angle of $9^{\circ} 09' 44''$ for an arc length of 91.78 feet and N $17^{\circ} 26' 18''$ W 3.21 feet to the point of beginning.

(LEGAL DESCRIPTION CONTINUED NEXT PAGE)

LEGAL DESCRIPTION: (Continued)

Parcel Two

A fee estate as to all that certain real property situated in the City of San Jose, County of Santa Clara, State of California, described as follows:

Being a portion of Parcel 48161-1 as described in the Final Order of Condemnation recorded December 30, 1992 in Book M569 of Official Records at page 1495 Santa Clara County Records described as follows:

Beginning at the Easterly terminus of the course described as "S72° 18' 08" W 530.00 feet" in said Parcel 48161-1; thence from said Point of Beginning, along the Southerly line of said parcel 48161-1 S72° 18' 08" W. 83.09 feet; thence leaving said Southerly line N 71° 10' 17" E 397.18 feet; thence along a tangent curve to the right with a radius of 125.00 feet, through a central angle of 75° 05' 54" for an arc length of 163.84 feet; thence S 56° 16' 11" W 13.34 feet; thence S4° 17' 49" E 28.37 feet; thence S 14° 10' 17" W 5.23 feet to said Southerly line of Parcel 48161-1; thence along said Southerly line from a tangent bearing of N 75° 49' 43" W along a curve to the left with a radius of 785.00 feet, through a central angle of 31° 52' 09" for an arc length of 436.64 feet to the Point of Beginning.

Parcel Three

A Subleasehold Estate as to all that certain real property situated in the City of San Jose, County of Santa Clara, State of California, (excepting therefrom all buildings, structures and improvements now or hereafter situated thereon, which are and shall remain real property), described as follows:

Beginning at the Northwestern corner of that certain parcel of land conveyed to the City of San Jose, by Deed recorded May 27, 1968 in Book 8136 of Official Records at page 606, Santa Clara County Records, said corner lying also in the Easterly line of that certain 12.287 acre parcel of land described firstly in the Deed from the Oseana Corporation, et al, to City Title Insurance Company, recorded October 18, 1963 in Book 6236 of Official Records at page 482, Santa Clara County Records; thence leaving said point of beginning along said Easterly line North 4° 38' 28" West 945.44 feet to the Southwesterly corner of that certain 12.04 acre parcel of land described in the Deed from Helen Armstrong to Emporium Capwell Company, recorded May 3, 1965 in Book 6942 of Official Records at page 247, Santa Clara County Records; thence along the Southerly line of said 12.04 acre parcel North 72° 32' 23" East 951.26 feet to the Northwestern corner of that certain parcel of land conveyed to the County of Santa Clara by Quitclaim Deed recorded October 17, 1973 in Book 0613 of Official Records, at page 504, Santa Clara County Records; thence leaving said Southerly line of the 12.04 acre parcel along the Westerly line of said parcel conveyed to the County of Santa Clara South 4° 37' 49" East 171.23 feet and South 7° 40' 58" East 150.21 feet to the most Southerly corner thereof; said corner lying on the Westerly line of Parcel C as said Parcel C is shown on that certain record of survey for Almaden Expressway, recorded June 12, 1964 in Book 180 of Maps, at page 15, Santa Clara County Records; thence along the Westerly line of said Parcel C and along the Westerly line of Parcel E and D as shown on that certain record of survey map filed for record in Book 180 of Maps, at page 19, Santa Clara County Records; the following courses and distances: South 4° 37' 49" East 72.13 feet, South 4° 06' 42" East 387.40 feet, South 2° 24' 30" West 88.19 feet, and South 4° 06' 42" East 67.48 feet to the most Northerly corner of Parcel D shown on that certain record of survey map filed for record in Book 368 of Maps at page 21, Santa Clara County Records; thence leaving said Westerly line of Parcel D of said record of survey recorded in Book 180

(LEGAL DESCRIPTION CONTINUED NEXT PAGE)

LEGAL DESCRIPTION: (Continued)

Parcel Three Continued

of Maps at page 19, along the general Northerly line of said Parcel D of said record of survey recorded in Book 368 of Maps at page 21, along the following courses and distances: from a tangent bearing of South 4° 06' 42" East along a curve to the right with a radius of 66.43 feet through a central angle of 89° 31' 53" for an arc length of 103.80 feet; South 85° 25' 11" West 177.29 feet; South 83° 42' 16" West 105.05 feet; along a tangent curve to the left with a radius of 1087.00 feet through a central angle of 14° 16' 04" for an arc length of 270.68 feet and South 6° 17' 45" East 12.39 feet to a point on the general Northerly line of the hereinabove described parcel of land conveyed to the City of San Jose by Deed recorded in Book 8136 of Official Records at page 606; thence leaving said general Northerly line of Parcel D along said general Northerly line of said parcel conveyed to the City of San Jose from a tangent bearing of South 69° 16' 26" West along a curve to the left with a radius of 1075.00 feet through a central angle of 1° 54' 06" for an arc length of 35.68 feet and South 67° 22' 20" West 285.01 feet to the point of beginning.

As created by the following instruments (collectively, the "Ground Sublease")

Sublease Agreement made December 19, 1974 by and between Carter Hawley Hale Stores, Inc., a California corporation as Landlord and Chrysler Realty Corporation, a Delaware corporation as Tenant, a Memorandum of which was recorded December 27, 1974 in Book B224, page 61 of Official Records, which was granted by Chrysler Realty Corporation, a corporation organized under the laws of the State of Delaware to Almaden Plaza Associates, a California Limited Partnership in the certain Deed dated October 14, 1977, recorded October 18, 1977 in Book D217, page 427 of Official Records, and which was assigned by Chrysler Realty Corporation, a Delaware corporation to Almaden Plaza Associates, a California Limited Partnership, in that certain Assignment and Assumption Agreement dated October 14, 1977 recorded October 18, 1977 in Book D217, page 440 of Official Records, and amended by that certain Supplemental Memorandum of Sublease dated June 28, 1988 made by and between Carter Hawley Hale Stores, Inc., a Delaware corporation as sublessor and Almaden Plaza Associates, a California Limited Partnership as sublessee, recorded June 29, 1988 in Book K587, page 110 of Official Records and assigned by Almaden Plaza Associates, a California Limited Partnership to Brothers International Corporation, a California corporation in that certain Assignment and Assumption of Lessees Interest in Sublease recorded June 29, 1988 in Book K587, page 140 of Official Records and further assigned by Assignment and Assumption of Lessees Interest in Sublease recorded June 29, 1988 in Book K587, page 166 of Official Records, and as amended by First Amendment to Sublease Agreement dated August 16, 1988 recorded September 2, 1988 in Book K668, page 833 of Official Records.

Parcel Four

A fee estate as to all that certain real property situated in the City of San Jose, County of Santa Clara, State of California, described as follows:

All buildings, structures and improvements now or hereafter situated on the land described in Parcel Three herein,, subject to the reversionary rights of Lessor and Lessors successors and assigns, as set forth in the Ground Lease as created by the following instruments:

(LEGAL DESCRIPTION CONTINUED NEXT PAGE)

Almaden Plaza Shopping Center
#49 Almaden Plaza
5353 Almaden Expressway
San Jose, CA 95118

LEGAL DESCRIPTION: (Continued)**Parcel Four Continued**

Agreement and Lease made April 27, 1965 by and between Mitchell M. Perusina and Anna E. Perusina, his wife, and Raymond Mitchell Perusina and Helen Catherine Perusina, his wife, as Lessor, and The Emporium Capwell Company, a California corporation, as Lessee, a Memorandum of which was recorded May 4, 1965 in Book 6944, page 88, Official Records; as amended December 15, 1974 by a First Amendment to Agreement and Lease recorded December 27, 1974 in Book B224, page 48 of Official Records, and which was assigned by Carter Hawley Hale Stores, Inc., a California corporation (successor by merger to Broadway-Hale Stores, Inc., which was successor by merger to The Emporium Capwell Company, a California corporation) to Carter Hawley Hale Stores, Inc., a Delaware corporation in that certain Assignment of Lease dated July 26, 1984, recorded September 4, 1984 in Book I850, page 14, Official Records; as amended by Second Amendment to Agreement and Lease recorded September 2, 1988 in Book K668, page 816, Official Records, and as amended by Supplemental Memorandum of Lease recorded September 2, 1988 in Book K668, page 826, Official Records, (collectively, the "Ground Lease") and subject to the reversionary rights of Sublessor and Sublessors successors and assigns, as set forth in the Ground Sublease referenced in Parcel Three herein.

Parcel Five

A fee estate as to all that certain real property situated in the City of San Jose, County of Santa Clara, State of California, described as follows:

All those lands condemned to the City of San Jose described as Parcels 1, 2, 3 and 4 of Exhibit "A" in that certain Third Amended Final Order of Condemnation, a certified copy of which recorded June 24, 1988 in Book K581, page 1916, Official Records, excepting any portion which lies outside the distinctive dark boundary line of that certain undated Tentative Parcel Map entitled "Lands of Brothers International Corporation/Perusina" prepared by Mark Thomas & Co. Inc., Job No. 93073.

APN: 569-02-045,046,047,048,054,055,056(ptn.), 569-03-014,015,019(ptn.),020,021,023
ARB: 569-2-24.01, 569-3-14,15, 569-46-1,2,3,4,5,6,7,01,8

DOCUMENT DISTRIBUTION

10-18-96

13

Meeting Date

Item Number

- ☐ Budget & Anlys
- ☐ Co Counsel
- ☐ Co Executive
- ☐ Emp Svc Ag
- ☐ Env Res Ag
- ☐ Finance Ag
- ☐ Gen Svc Ag
- ☐ Hosp & Clinics
- ☒ Rds & Airports
- ☐ Soc Svc Ag
- ☐ _____
- ☐ _____

- ☐ Contractor
- ☐ Muni Code
- ☐ Newspaper:

- ☐ _____
- ☐ _____
- ☐ _____

- ☐ Pony
- ☐ Mail
- ☐ Fax
- ☐ Pick-Up

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Processed By

Date

10-17-96

Dec 12 9 26 AM '96
SANTA CLARA COUNTY
TRANSPORTATION AGENCY
PLC

COOPERATIVE AGREEMENT NO. 4-1532-C
REGARDING ROUTE 85 AT ALMADEN EXPRESSWAY

This COOPERATIVE AGREEMENT ("Agreement") is entered into effective the thirtieth day of June, 1993, by and between the SANTA CLARA COUNTY TRAFFIC AUTHORITY, a public entity of the State of California ("Authority"), the COUNTY OF SANTA CLARA, a county of the State of California ("County"), CITY OF SAN JOSE, a municipal corporation, ("City"), the STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION ("State"), and BROTHERS INTERNATIONAL CORPORATION, a California corporation ("Brothers").

RECITALS

A. City and State have entered into that certain Freeway Agreement dated January 23, 1990 pursuant to which the State will construct the new State Route 85 ("Route 85") from Sanchez Drive to Sandy Lane.

B. A portion of the planned construction of Route 85 includes the construction of a new interchange at the intersection of Route 85 and Almaden Expressway (the "Almaden Interchange"). As planned, the Almaden Interchange south of Route 85 consists of one (1) on-ramp to Route 85 east from northbound Almaden Expressway (the "AR-2 On-ramp"), one (1) off-ramp from Route 85 east to Almaden Expressway (the "AR-3 Off-ramp"), and one (1) on-ramp to Route 85 east from Almaden Expressway south.

1. Pursuant to Santa Clara County Measure "A", all funds for right-of-way acquisition by State for the Almaden Interchange were paid by Authority.

C. Brothers owns the regional shopping center located on the southwest corner of the Almaden Interchange, and such shopping center is more commonly known as Almaden Plaza Shopping Center ("Almaden Plaza").

D. As planned, the design of the Almaden Interchange eliminates Emporium Way, a private street which connected the Almaden Plaza on its northerly boundary to Almaden Expressway, and a median opening on Almaden Expressway at its intersection with Emporium Way, and consequently there would be no direct access from the northerly boundary of the shopping center to Route 85 or to the northbound and southbound lanes of Almaden Expressway.

E. Brothers asserts that the present design of the Almaden Interchange as described in paragraph D above would be detrimental to Brothers, Authority, County and City because the reduction in ingress and egress to and from Almaden Plaza would reduce the number of shoppers who desire to shop at Almaden Plaza, which would result in less sales being generated at Almaden Plaza and, therefore, less sales tax revenue being paid to the Authority, City and County.

F. The State, County and Authority dispute Brothers' contentions noted above and note that Brothers' predecessor in interest consented to the design described in paragraph D above, and waived damages, if any, on account of said design. However, in order to address Brothers' concerns, the parties hereto agree to consider and review a redesign of the Almaden Interchange so as to provide the following elements: (1) a left turn from Almaden Expressway north into Almaden Plaza generally at the street known as "Emporium Way" that previously existed which will be redesigned and known as "Almaden Plaza Way"; (2) a right turn from Almaden Expressway south into Almaden Plaza Way; (3) egress from Almaden Plaza at Almaden Plaza Way to turn right onto Almaden Expressway south, left onto Almaden Expressway north or across Almaden Expressway to the AR-2 on-ramp; and (4) direct access from the AR-3 Off-ramp into Almaden Plaza Way (collectively, the "Requested Elements").

1. The requested redesign and construction noted in paragraph F above shall not result in any property right or compensable right of access in Brothers, its successors or assigns in and to Almaden Plaza Way or any of the other elements of the Almaden Interchange as redesigned.

2. Except as otherwise expressly set forth herein, State shall have the sole and exclusive right and authority at any time to address traffic safety and convenience or maintenance issues affecting its freeway and ramps that may arise at anytime in the future including the right to restore the Almaden Interchange to the original plan described in paragraphs B and D above without payment of any compensation of any type or kind to any of the parties, their successors or assigns except solely for the then fair market value of any land needed for such reconstruction which is sold to Brothers pursuant to paragraph 5.3 hereinbelow but without payment for improvements made thereon or for any claim of severance damages.

3. The parties agree that State may make emergency changes without consultation with the other parties. However, the State shall make no permanent modifications or elimination of the Requested Elements without consultation with the other parties regarding alternative solutions to any State suggested

modifications or elimination. The parties further agree that any such future determination by State after such consultation to exercise its right and authority under paragraph F2 above shall be final and binding on all parties, their successors or assigns.

4. Any conveyance referred to herein made to enable the redesign and construction of the Requested Elements shall include appropriate language incorporating the provisions of paragraphs F1, F2 and F3 above.

G. Brothers has agreed to engage, at its sole cost, the transportation consulting firms of Barton-Aschman and Parsons-De Leuw (collectively, "Brothers' Engineers") to redesign the Almaden Interchange to incorporate into such design the Requested Elements.

H. In order to facilitate the construction of Almaden Interchange as redesigned by Brothers' Engineers, Brothers agrees to pay the following costs associated with such construction: (1) the cost differential between the cost to construct Almaden Interchange as originally designed and the cost to construct Almaden Interchange as redesigned; (2) any delay impact cost charged to Authority in connection with the redesign and construction of the Requested Elements; and (3) a reasonable and actual charge for administration of Phase I and Phase III (as hereinafter defined) by State and Authority, but only to the extent such administration exceeds the work State and Authority would have performed absent the redesign of Almaden Expressway "Authority's Incremental Cost").

I. The original schedule for the construction of Almaden Interchange provided that the AR-3 Off-ramp and the AR-2 On-ramp would be constructed by October 5, 1992, and that the AR-2 On-ramp would be open for traffic onto Route 85 east by October 5, 1992.

J. Currently, the AR-2 On-ramp has been redesigned, constructed and is open; to accommodate Brothers' concerns, the contract for the AR-3 Off-ramp has been cancelled and it will instead be constructed by contract change order either upon State approval of Brothers' proposed redesign or the expiration of State's temporary encroachment permit no. 0492-6MC2045, as amended by rider 0492-6MC2045, whichever first occurs. AR-3 is now rescheduled to open in the Spring of 1994. In order to maintain the State construction schedule, and subject to appropriate redesign approval by State, County and Authority, the parties hereto have proceeded with the redesign and construction of the Almaden Interchange in three phases as hereinafter set forth.

1. Phase I included the redesign and construction of the AR-2 On-ramp and the redesign, construction and installation of the signal at the intersection ("#1 Traffic Signal"). Phase I has been constructed as a change order to the current contract between Raisch Grade Way and the State (the "Current State Contract") and opened to traffic as anticipated on or before October 23, 1992.

2. Phase II included the construction of Almaden Plaza Way as a temporary street under State temporary encroachment permit no. 0492-6MC2045 (which street shall be constructed to pre-established State and County standards upon approval of the Requested Elements), the removal of the current concrete barrier on the westernmost southbound lane of Almaden Expressway, and the redesign and construction of the left-turn lane from Almaden Expressway north into Almaden Plaza at Almaden Plaza Way.

3. Phase III shall include the redesign and, upon approval by the State, construction of the AR-3 Off-ramp and the construction and installation of the traffic signal at the intersection of the AR-3 Off-ramp and Almaden Plaza Way the (#2 Traffic Signal). The AR-3 off-ramp shall be equipped with queue detectors that will serve to reduce the ramp traffic at the signalized intersection and not allow traffic to back up on the AR-3 off-ramp so as to potentially affect main line freeway traffic. It is the intent of the parties hereto that the Phase III work shall be performed as a change order to the contract for the Route 85/Almaden to Bascom State construction contract.

K. Should the State approve all the Requested Elements following submittal of plans and supporting data from Brothers, and upon completion of the construction of the improvements including the Requested Elements, and upon payment by Brothers to Authority of a sum equal to the price per square foot paid to Almaden Equities and its member partners pursuant to Santa Clara County Action No. 717446 by State (with Authority funds as stated in paragraph B1 above) for each square foot of any portion of the real property that becomes a part of Almaden Plaza Way that is owned by the State and that was not in the State's original design of AR-3 as a diamond ramp together with any other property so acquired by the State that is contiguous to Almaden Plaza and becomes excess property because of the redesign ("Excess Property"), and subject to California Transportation Commission approval, the State shall relinquish Almaden Plaza Way to the County. State shall transfer to Brothers the excess property upon receipt of payment therefor as provided in paragraph 4.6 herein. Brothers shall also dedicate to County any portion of land owned by it which is incorporated in Almaden Plaza Way.

1. Relinquishment, transfer and dedication as provided herein shall not result in any property right in Brothers, its successors and assigns in and to Almaden Plaza Way or any of the other elements of the Almaden Interchange as redesigned nor impair any of the rights and authority reserved to State in paragraphs F1, F2 and F3.

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

1. Covenants of Authority.

1.1 Upon appropriate State approval of the incorporation of the Requested Elements in the redesign of the Almaden Interchange, the Authority hereby agrees to advance the funding for construction of those improvements (including the Requested Elements) that comprise Phase III pursuant to contract change orders to the ongoing Caltrans Construction Contracts.

1.2 The Authority hereby agrees to provide, or arrange to have provided, construction administration for Phase III.

1.3 From time to time, but not more often than once every month, the Authority shall deliver to Brothers a statement of Authority's Incremental Cost incurred as of the date of such statement, together with copies of invoices and other evidence as Brothers shall reasonably require of the charges shown on such statement; and Brothers shall pay within thirty (30) days of confirmation of such amount the amount shown on such statement.

1.4 The Authority hereby agrees to submit to the City, County and Brothers each month a construction progress report that describes the work performed and completed during the reporting period, states the cumulative percentage complete to date, and reports on change orders issued (current and accumulative), progress payments made (current and accumulative), and significant events affecting the progress of the work, such as bad weather or work stoppages.

1.5 The Authority hereby agrees, upon approval and completion of the improvements that comprise Phase III, and the resolution of all claims filed by the construction contractor, to provide to Brothers a detailed statement of the total actual cost of the construction of Phase I and Phase III, respectively. Upon submission and confirmation of the total actual cost of the construction of Phase I and Phase III, respectively, Brothers shall pay to Authority any amount outstanding or Authority shall refund to Brothers any amount overpaid by Brothers, as the case may be.

2. Covenants of County.

2.1 Upon appropriate review and approval the County hereby agrees to the incorporation of the Requested Elements into the redesign of the Almaden Interchange.

2.2 The County hereby agrees to accept the dedication and relinquishment of Almaden Plaza Way once Almaden Plaza Way has been constructed to County and State standards, and to maintain the #2 Traffic Signal; provided that Brothers agrees to fund the annual maintenance costs for #2 Traffic Signal and Almaden Plaza Way.

County agrees that the completion of construction of Almaden Plaza Way as accepted by the State's Resident Engineer fully meets State's responsibility to place Almaden Plaza Way in a state of good repair and County shall accept relinquishment of and all rights, title and interest therein, without any additional cost to State.

County will accept control and maintenance over Almaden Plaza Way on receipt of written notice to County from State that the work thereon has been completed, except for any portion which is adopted by State as a part of the freeway proper. County will accept title to the portions of such roads lying outside the freeway limits, upon relinquishment by State.

County agrees to waive the ninety (90) days' notice of "Intention to Relinquish" requirement contained in Section 73 of the Streets and Highways Code.

County will study any back-up of traffic waiting to make a right turn from southbound Almaden Expressway onto the proposed Almaden Plaza Way which could impede access to the southbound freeway on-ramp. County shall make appropriate adjustments to the timing of the traffic signals in order to reduce the back-up of traffic at this location.

2.3 If State approves redesign of the Almaden Interchange as requested, County agrees to execute such Freeway Agreement as is necessary to authorize changes in the Almaden Interchange needed to incorporate the Requested Elements.

2.4 The execution of the Freeway Agreement, and the acceptance of dedication and relinquishment as provided above shall not result in any property right in Brothers, its successors and assigns in and to Almaden Plaza Way or any of the elements of the Almaden Interchange as redesigned nor impair any of the rights and authority reserved to State in paragraphs F2 and F3 above.

3. Covenants of City.

3.1 If State approves the redesign of the Almaden Interchange as requested, City hereby agrees to execute a supersession of that certain Freeway Agreement dated January 23, 1990 as is necessary to authorize changes in the Almaden Interchange needed to incorporate the Requested Elements, without cost or condition to State, City, County or Authority.

4. Covenants of Brothers.

4.1 Brothers hereby agrees to cause Brothers' Engineers to prepare, at Brothers' own cost, preliminary plans, and supporting data showing the redesign of Almaden Interchange incorporating into such redesign the Requested Elements, and once such preliminary plans are approved, to cause Brothers' Engineers to then prepare construction documents therefor.

4.2 Pursuant to the terms of Section 1.3 above, Brothers hereby agrees to pay the Authority's Incremental Cost.

4.3 Brothers shall construct, at its own cost, the improvements that comprise Phase II; and agrees that Almaden Plaza Way and the #2 Traffic Signal shall be constructed to standards satisfactory to County and State.

4.4 Brothers shall remove the improvements that comprise Phase II and restore the property to its original condition, all at Brothers' sole cost, as provided in State's temporary encroachment permit no. 0492-6MC2045, as amended by rider 0492-6MC2045, unless State approves Brothers redesign of Phase III.

4.5 Brothers hereby agrees to be responsible and pay for the annual maintenance cost of Almaden Plaza Way and the #2 Traffic Signal pursuant to the terms of a separate agreement to be entered into between the County and Brothers.

4.6 Brothers agrees to pay for and accept all that property described in paragraph 5.3 hereinbelow. Brothers agrees to place payment in full for such property into an escrow account with First American Guarantee Company (or such other escrow as Authority may designate) no later than 30 days after State has approved the incorporation of the Requested Elements in the redesign of the Almaden Interchange, as set forth in Section 1.1 above, which account shall bear interest to the benefit of Authority. Authority and Brothers shall execute joint escrow instructions directing the escrow agent to distribute the deposited funds plus interest to Authority when the escrow agent is able to deliver fee simple absolute title by grant deed to

Brothers subject to only such exceptions to title as are reasonably acceptable to Brothers.

4.7 Concurrently with the execution of this Agreement by Brothers, Brothers shall deliver to Authority as security for the faithful performance of all of its obligations under this Agreement an unconditional and irrevocable letter of credit ("Letter of Credit") in the amount of \$380,000, for the benefit of Authority, and issued by the San Francisco office of Banque Nationale de Paris. All costs incurred in obtaining the Letter of Credit shall be borne by Brothers. Authority shall be entitled to draw upon the full amount of the Letter of Credit if Brothers shall fail to pay when due any amount owed or perform any duties owed to Authority pursuant to the terms of this Agreement. Brothers shall maintain the Letter of Credit in effect in accordance with the terms of this Section until thirty (30) days after Brothers has satisfied its monetary obligations to Authority pursuant to Section 1.3 above. If the stated term of the Letter of Credit would expire prior to such time as Brothers is no longer required to maintain the Letter of Credit in effect hereunder, Brothers shall renew the Letter of Credit for a period of not less than six (6) months or shall deliver to Authority a new Letter of Credit in accordance with the terms hereon.

4.8 Following final approval of the incorporation of the Requested Elements and Almaden Plaza Way, Brothers does hereby agree to dedicate to County such real property as County reasonably requires in order to accommodate the Requested Elements and Almaden Plaza Way. In addition, Brothers shall provide for the construction of sidewalks from Almaden Plaza Way to Blossom Hill Road along the westerly side of the Almaden Expressway (including curb and gutter realignment), construction of a bus "duckout," construction of appropriate barriers to prevent vehicular egress to Almaden Expressway at the existing driveway entrance/exit between proposed Almaden Plaza Way and Blossom Hill Road, and construction of such other improvements as may be reasonably requested by County. Brothers shall submit construction plans and specifications to County for pre-approval and shall make a good faith effort to perform said construction concurrently with the construction of the AR-3 off-ramp.

4.9 Brothers acknowledges and agrees to the provisions of paragraphs F1-4, K1 and 2.4 above.

5. Covenants of State.

5.1 The State shall review and comment on design plans showing the Almaden Interchange submitted by Brothers.

5.2 Should State approve the design plans including Requested Elements following review and comment as provided above, and subject to appropriate California Transportation Commission approval, and upon completion of the construction and payment by Brothers to Authority an amount equal to the sum referred to in Recital K above, State shall relinquish Almaden Plaza Way to County.

5.3 Upon review, comment, approval and construction as noted in 5.1 and 5.2 above, and subject to appropriate California Transportation Commission approval, and upon payment by Brothers to Authority an amount equal to the sum referred to in Recital K above, State shall transfer the excess property to Brothers. The excess property is generally depicted in attached Exhibit A and is marked "possible new excess." In any transfer to Brothers, State shall not be obligated to pay any escrow charges, title insurance fees, documentary transfer taxes or recording fees. State will not be obligated to improve the condition of title beyond that which existed at the time of State's acquisition.

6. Mutual Covenants.

6.1 Any party to this Agreement, or any officer or employee of such party shall not be responsible for any damage or liability occurring by reason of anything done or permitted by any other party to this Agreement under or in connection with any work, authority or jurisdiction delegated to such other party under this Agreement. Each party to this Agreement shall fully indemnify and hold each other party to this Agreement harmless from any liability imposed for injury, as defined by Government Code Section 810.8, occurring by reason of anything done or permitted by such indemnifying party under this Agreement or in connection with any work, authority or jurisdiction delegated to such indemnifying party under this Agreement.

7. Miscellaneous.

7.1 Notices. All notices, consents, demands and other communications from one party to the other that are given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been fully given when deposited in the United States mail, certified or registered, postage prepaid, and addressed as follows:

Authority: The Santa Clara County Traffic Authority
1754 Technology Drive, Suite 224
San Jose, California 95110
Attention: Mr. Joel Maniaci

County: Santa Clara County Transportation Agency
3331 North First Street
San Jose, California 95134
Attention: Mr. Lou Montini

City: Department of Public Works
Transportation Division
City of San Jose
151 West Mission Street
San Jose, California 95110
Attention: Rajeev Batra

State: California Department of Transportation
1754 Technology Drive, Suite 200
San Jose, California 95110
Attention: Mr. Gerald E. Ducey

Brothers: Brothers International Corporation
120 Montgomery Street, Suite 1400
San Francisco, California 94104
Attention: Mr. C. K. Kwan

With a copy to: Ms. Erin Hmelar
General Manager
Almaden Plaza Shopping Center
49 Almaden Plaza
5353 Almaden Expressway
San Jose, California 95118

With a copy to: Gary L. Conner, Esq.
18 Tice Valley Lane
Walnut Creek, California 94595

or to such other place as the parties hereto may from time to time designate in a notice to the other parties.

7.2 Complete Agreement. There are no oral agreements between Brothers International and the public entity parties hereto affecting this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements, and understandings between Brothers International and the public entity parties hereto, including the terms of that certain letter dated June 10, 1992 from Brothers to Authority, but excluding the Stipulation for Judgment in Condemnation and temporary encroachment permit between State and

Brothers.

7.3 Time of Essence. Time is of the essence in all matters covered by the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

SANTA CLARA COUNTY
TRAFFIC AUTHORITY

By:

James T. Beall, Jr.
JAMES T. BEALL, JR.
Chairperson

APPROVED AS TO FORM
AND LEGALITY:

Kevin D. Allmand
KEVIN D. ALLMAND
Deputy County Counsel

Attest:

Phyllis A. Perf
Clerk of the Board of
Supervisors and Acting
Secretary, Traffic Authority

COUNTY OF SANTA CLARA

By:

Ron Gonzales
RON GONZALES
Chairperson, Board
Supervisors

SEP 28 19

APPROVED AS TO FORM
AND LEGALITY:

Harrison D. Taylor
HARRISON D. TAYLOR
Deputy County Counsel

Attest:

Phyllis A. Perf
PHYLLIS A. PERF
Clerk of the Board of
Supervisors

BROTHERS INTERNATIONAL CORPORATION
a California corporation

By: 

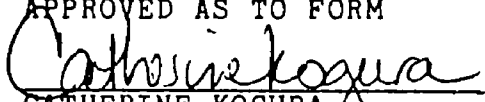
C. K. Kwan

Its President

CITY OF SAN JOSE

By: 

APPROVED AS TO FORM



CATHERINE KOGURA
Deputy City Attorney

STATE OF CALIFORNIA
Department of Transportation
JAMES W. VAN LOBEN SELS
Director of Transportation

By: 

Deputy District Director

APPROVED AS TO FORM AND PROCEDURE


ATTORNEY
Department of Transportation

CERTIFIED AS TO FUNDS AND PROCEDURE


District Accounting Administrator

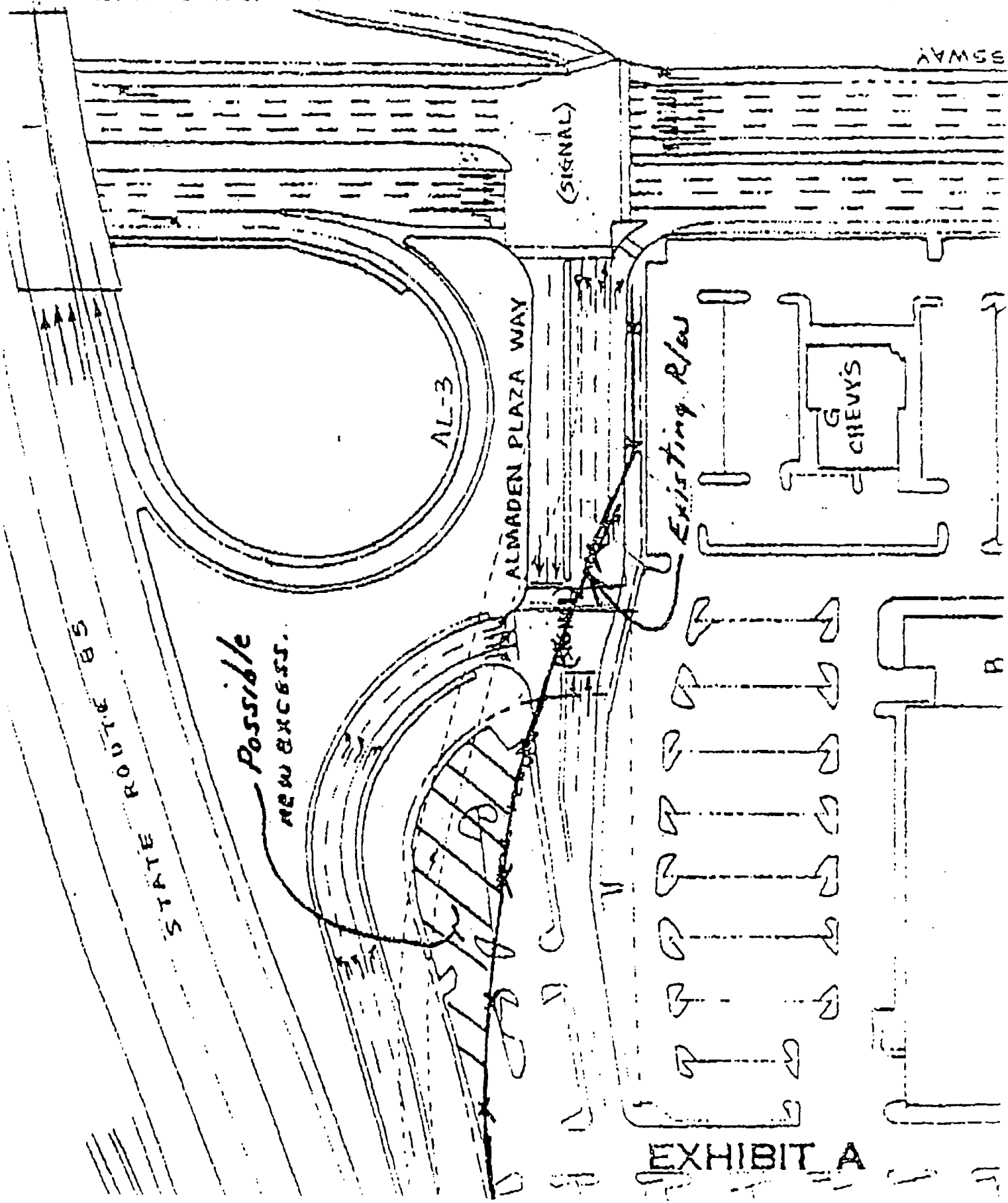


EXHIBIT A



Transportation Agency

Santa Clara County Bus, Light Rail, Roads, Aviation

3331 North First Street
San Jose, CA 95134-1906

clerk
THIS RELATES TO:
AGENDA ITEM No. 13
MEETING OF 10-18-94

October 13, 1994

To: Board of Supervisors, Each Member
From: *LH by RBP* Lou Montini, Acting Director
Subject: Modification of Board of Supervisors'
Transmittal dated September 30, 1994

Please replace the transmittal dated September 30, 1994 with the attached transmittal dated October 13, 1994. Note the attachments are not being changed.

The reason for the replacement is that recommendation #2 in the September 30, 1994 transmittal has been removed on the advice of County Counsel since a bond requirement is not in the original Cooperative Agreement No. 4-1532-C.

LM:RVE:rtj

cc: George Newell, County Executive
Harrison Taylor, Deputy County Counsel
Clerk of the Board



Transportation Agency

Santa Clara County Bus, Light Rail, Roads, Aviation

3331 North First Street
San Jose, CA 95134-1906

TRANSMITTAL MEMORANDUM

Page 1 of 4

Prepared by: *Bob Van Etten*

Reviewed by: *Bob Van Etten*

Submitted by: Scotty Bruce

APPROVED: DIRECTOR *Sm*

S.D. 1

Date: September 30, 1994

TRANSIT DISTRICT BOARD:

Agenda Date _____ Item No. _____

COUNTY BOARD OF SUPERVISORS:

Agenda Date October 18, 1994 Item No. _____

TRANSPORTATION COMMISSION:

Agenda Date _____ Item No. _____

FROM: *RA (for)* Scotty A. Bruce, Deputy Director
Highway Design and Roads Operations

SUBJECT: ADDENDUM TO COOPERATIVE AGREEMENT NO. 4-1532-C DATED SEPTEMBER 28, 1993 BY AND BETWEEN THE SANTA CLARA COUNTY TRAFFIC AUTHORITY, THE COUNTY OF SANTA CLARA, THE CITY OF SAN JOSE, THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION, AND BROTHERS INTERNATIONAL CORPORATION REGARDING ROUTE 85 AT ALMADEN EXPRESSWAY

RECOMMENDED ACTION:

1. It is recommended that the Board of Supervisors approve the attached Addendum between the Brothers and the County and authorize the chairperson to execute the Addendum.
2. It is recommended that the Brothers be required, within 30 days of the approval of this recommendation, to meet the following:
 - a) Submit to the Transportation Agency a bond for the faithful performance of all its obligations along Almaden Expressway set forth in Section 4.8 of the Cooperative Agreement. The value of the bond is to be based upon the Brothers Engineer's Estimate that is approved by the Transportation Agency.
 - b) Enter into an agreement that specifies the purpose of the bond.

ORIGINAL

OCT 1 8 1994

DATE: September 30, 1994

TRANSIT DISTRICT BOARD AGENDA DATE:

COUNTY BOARD OF SUPERVISORS AGENDA DATE: October 18, 1994

TRANSPORTATION COMMISSION AGENDA DATE:

SUBJECT: ADDENDUM TO COOPERATIVE AGREEMENT NO. 4-1532-C DATED SEPTEMBER 28, 1993 BY AND BETWEEN THE SANTA CLARA COUNTY TRAFFIC AUTHORITY, THE COUNTY OF SANTA CLARA, THE CITY OF SAN JOSE, THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION, AND BROTHERS INTERNATIONAL CORPORATION REGARDING ROUTE 85 AT ALMADEN EXPRESSWAY

FISCAL IMPLICATIONS:

The Addendum provides that the Brothers pay for the annual maintenance cost for Almaden Plaza Way and Traffic Signal #2. Therefore, there will be no costs to the County.

CONTRACT HISTORY:

See BACKGROUND.

REASONS FOR RECOMMENDATION:

1. The County has agreed to enter into an agreement to accept control and maintenance over Almaden Plaza Way and Traffic Signal #2 in accordance with the Cooperative Agreement No. 4-1532-C (see attachment).
2. The Cooperative Agreement was approved by the Board of Supervisors on September 28, 1993 and set forth that the improvements of Almaden Expressway should be completed concurrently with the construction of the AR-3 off-ramp (see Section 4.8). A year later, the Almaden Expressway improvements have not been completed. A bond would allow the project to be completed if the Brothers were unable to complete the Almaden Expressway improvements and is consistent with the County's land development process for private development.

BACKGROUND:

The County Traffic Authority, the City of San Jose, the State of California, the Brothers International Corporation and the County of Santa Clara entered into Cooperative Agreement No. 4-1532-C. In accordance with the Cooperative Agreement (Sec 2.2 and 4.5), the County and Brothers agreed to enter into an agreement for the maintenance and funding of Almaden Plaza Way and Traffic Signal #2. The Brothers developed a draft maintenance agreement which has been reviewed and modified by County staff.

DATE: September 30, 1994

TRANSIT DISTRICT BOARD AGENDA DATE:

COUNTY BOARD OF SUPERVISORS AGENDA DATE: October 18, 1994

TRANSPORTATION COMMISSION AGENDA DATE:

SUBJECT: ADDENDUM TO COOPERATIVE AGREEMENT NO. 4-1532-C DATED SEPTEMBER 28, 1993 BY AND BETWEEN THE SANTA CLARA COUNTY TRAFFIC AUTHORITY, THE COUNTY OF SANTA CLARA, THE CITY OF SAN JOSE, THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION, AND BROTHERS INTERNATIONAL CORPORATION REGARDING ROUTE 85 AT ALMADEN EXPRESSWAY

The Addendum provides for payment to the County by the Brothers for all maintenance costs for Almaden Plaza Way and Traffic Signal #2. In addition, the Addendum includes a clause that any subsequent owner is responsible for the maintenance costs. Also, there is a requirement that at the time of dedication of Almaden Plaza Way to the County, the dedication document is to include a clause that limits the Almaden Shopping Center's access to only the westerly end of Almaden Plaza Way. This is consistent with Section 2.4 of the Cooperative Agreement.

CONSEQUENCES OF NEGATIVE ACTION:

1. Without the executed Addendum there would be no funding source for the maintenance of Almaden Plaza Way and Traffic Signal #2. The Transportation Agency would recommend that the dedication and relinquishment of Almaden Plaza Way not be accepted.
2. Without a bond and an agreement, the County has no cost effective method to insure that the improvements to Almaden Expressway are completed.

STEPS FOLLOWING APPROVAL:

After the Chairperson has signed the three original Addenda, one original Addendum should be sent to the Brothers and one original Addendum should be sent to the Transportation Agency, Property Division at the following addresses:

Brothers International Corporation
120 Montgomery Street, Suite 1400
San Francisco, CA 94104
Attention: Mr. C. K. Kwan

Randy Sabado, Manager
Property Division
Transportation Agency
3331 N. First Street
San Jose, CA 95134-1906

DATE: September 30, 1994

TRANSIT DISTRICT BOARD AGENDA DATE:

COUNTY BOARD OF SUPERVISORS AGENDA DATE: October 18, 1994

TRANSPORTATION COMMISSION AGENDA DATE:

SUBJECT: ADDENDUM TO COOPERATIVE AGREEMENT NO. 4-1532-C THE SANTA CLARA COUNTY TRAFFIC AUTHORITY, THE COUNTY OF SANTA CLARA, THE CITY OF SAN JOSE, THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION, AND BROTHERS INTERNATIONAL CORPORATION REGARDING ROUTE 85 AT ALMADEN EXPRESSWAY

The original Addendum sent to Transportation Agency, Property Division should include a request that the Addendum be recorded.

Copies of the Addendum should be sent to the following:

Ms. Erin Hmelar, General Manager
Almaden Plaza Shopping Center
49 Almaden Plaza
5353 Almaden Expressway
San Jose, CA 95118

Mr. Gary L. Conner, Esq.
18 Tice Valley Lane
Walnut Creek, CA 94595

Mr. Scotty A. Bruce
Deputy Director
Highway Design and Roads Operations
1505 Schallenberger Road
San Jose, CA 95131

SAB:RVE:dh

Attachments: 1. Three Original Addenda
2. Cooperative Agreement No. 4-1532-C

cc: Ms. Erin Hmelar, General Manager, Almaden Plaza Shopping Center
Harrison Taylor, Deputy County Counsel
Randy Sabado, Manager Property Division
LM, SAB, RBP, AVJ, JME, DW, RVE