

MINUTES OF THE
MARICOPA ASSOCIATION OF GOVERNMENTS
MAG JOINT REGIONAL COUNCIL EXECUTIVE COMMITTEE AND
THE BUILDING LEASE WORKING GROUP

February 19, 2008
MAG Offices, Cholla Room
302 N. 1st Avenue, Phoenix, Arizona

MEMBERS ATTENDING

Mayor James M. Cavanaugh, Goodyear, Chair	Mayor Keno Hawker, Mesa
# Mayor Mary Manross, Scottsdale, Vice Chair	# Mayor Thomas L. Schoaf, Litchfield Park
Vice Mayor Peggy Neely, Phoenix, Treasurer	* Mayor Marie Lopez Rogers, Avondale
Mayor Steven M. Berman, Gilbert	
* Frank Fairbanks, Phoenix	David Boggs, RPTA
Mike Ladino and John McCormick for Rick Simonetta, Valley Metro Rail	

* Not present

Participated by video or telephone conference call

1. Call to Order

The joint Executive Committee and Building Lease Working Group meeting was called to order by Chair James M. Cavanaugh and Building Lease Working Group Chair Keno Hawker at 11:05 a.m. Chair Cavanaugh stated that public comment cards were available for those members of the public who wish to comment. He noted that transit tickets were available from Valley Metro for those using transit to come to the meeting. Parking validation was available from MAG staff for those who parked in the parking garage.

2. Call to the Audience

Chair Cavanaugh noted that, according to the MAG public comment process, members of the audience who wish to speak are requested to fill out the public comment cards and stated that there is a three-minute time limit. Public comment is provided at the beginning of the meeting for items that are not on the agenda that are within the jurisdiction of MAG, or non-action agenda items that are on the agenda for discussion or information only. He noted that no public comment cards had been received.

3. Regional Office Center Update

Chair Cavanaugh noted that there was one item to be heard by the Executive Committee and Building Lease Working Group. Chair Cavanaugh introduced MAG Executive Director Dennis Smith and Alana Chávez, Management Analyst and Regional Office Center Project Manager.

Mr. Smith stated that Ms. Chávez would provide a brief overview of the status of the building project. He noted that there are some legal issues that need to be addressed and that MAG general counsel and Mr. Scott Holcomb, also with Mariscal, Weeks, McIntyre and Friedlander, will provide an update on the status of progress on legal documents pertaining to the project.

Ms. Chávez thanked Mr. Smith and noted that she would provide an update on activity related to the Regional Office Center (ROC) project since December 2007. She stated that in December the MAG Executive Committee and Regional Council approved a number of items including the following: 1) Signed Letter of Intent with the Landowner to purchase property; 2) Memorandum of Cooperation (MOC) between MAG, Regional Public Transportation Authority (RPTA) and Valley Metro Rail (METRO); 3) Final Terms for Development Agreement with the City of Phoenix; 4) Design-Build Team Rankings and 5) Resolution of Indemnification with the Ryan Companies for \$525,000. Ms. Chávez noted that with respect to the MOC agreement, all three agencies at that time committed up to \$330,000 each to cover the costs associated with the procurement of the project, which includes dates from June 2007 through December 2007. She acknowledged that the amount also included payment associated with the Ryan indemnification for \$525,000 and also included the land option payments to Mr. David Kaye for the 1st Ave/McKinley site through August 2008 or close of escrow. Ms. Chávez said that the Ryan indemnification was paid in early January and that the documents acquired were the schematic Ryan/RNL documents. She stated that these documents were provided shortly thereafter to the McCarthy/DMJM team who have, at their own cost, analyzed the documents and reexamined at the project. Ms. Chávez informed the committee that McCarthy provided to MAG staff a level of confidence to build the project within the parameters of the Guaranteed Maximum Price (GMP) and that the team believed the building could be built for the GMP with possible modifications to address changes in the economic conditions in the construction market. Ms. Chávez stated that she would like to update the committee on the land acquisition, financing, legal and design-build processes.

First, Ms. Chávez noted that with respect to the land acquisition, option payments to Mr. Kaye to keep the land off the market began with payments in December 2007. These monthly payments were included in the \$330,000 shared costs agreed to by the three agencies in the MOC in December. Ms. Chávez stated that three monthly payments of \$38,307 each had been made for December, January and February and that these payments would continue to be made on the first of each month until close of escrow in August. Second, she updated the committee on the financing process. Ms. Chávez stated that MAG had worked with bond counsel and the Community Finance Corporation, located in Tucson, to form the LLC entity which will represent the three agencies in project transactions. She added that MAG staff has also worked with the underwriter to develop the credit report that the underwriter is planning to present to the credit agencies so the agencies can receive a rating indicator for the financing. Ms. Chávez asked Becky Kimbrough, Fiscal Services Manager, if she had any information to add.

Ms. Kimbrough added that the credit report had been reviewed by all three agencies but the underwriter was waiting for a couple of updates. She stated that the underwriter would like

to get out to the market as soon as possible with the credit report so that the agencies can get the rating indicator back which will affect funding.

Ms. Chávez stated she would like to continue with the design-build activity and then proceed to the legal documents. She said that MAG has met with the McCarthy/DMJM team and they have reviewed Ryan/RNL schematic documents acquired from the indemnification. The McCarthy/DMJM team presented a level of confidence to build the ROC within the parameters of the GMP as established for the project. Ms. Chávez noted that MAG has made initial contact with the City of Phoenix Development Services Department for a fact finding meeting to address site issues, including alley abandonment, utility relocations and re-platting.

With respect to the legal documents, Ms. Chávez stated that there are a number of documents that MAG staff has been working closely on with the attorneys. She listed the following legal documents, including: 1) Purchase and Sale Agreement with Mr. Kaye; 2) the Amended and Restated Memorandum of Cooperation, which is for action referenced in item #5 on the Executive Committee agenda; 3) Form of Lease; 4) Master Development Agreement with the City of Phoenix, which MAG staff is working on with the City of Phoenix Downtown Development Office and anticipating a draft later this month or in early March; and 5) the Preconstruction Services Agreement, which is referenced in item #5 on the Executive Committee agenda for possible action. Scott Holcomb from Mariscal Weeks will be drafting this agreement. Ms. Chávez noted that members were provided a memo in their packet that summarizes the major deal points for the preconstruction services agreement. She offered to answer any questions that the committee had or address them to general counsel. Ms. Chávez noted that the possible minor modifications to the project mentioned previously for McCarthy to deliver the project within the parameters of the GMP referenced taking out one level of underground parking in the garage and possibly the media center. The team still believed with the loss of one underground level of parking that the parking ratio for the building users could still be met under the requirements for the city. Everything else in building is proposed to remain intact.

Vice Mayor Neely said that she thought that, in the agreement, part of the parking structure would be shared with the housing portion on the adjacent development. She asked how that might be affected if the project lost a whole floor of parking.

Monique de los Rios-Urban, Program Manager, clarified that the project team has not officially started the building redesign process and that they are studying and analyzing the Schematic Design documents acquired from Ryan Companies. She noted that in those documents there were originally five levels of parking, including four above ground and one level underground. Ms. de los Rios-Urban stated that the team is currently revisiting the entire meeting schedule and assessing the design of all levels as they were originally programmed. An optimum number of parking spaces per level in the garage is being considered to achieve the highest efficiency of space. She said that the team is also considering the city's Transit Oriented Development (TOD) standards and Urban Form standards and that within those parameters the team will be looking at how they can make all levels of parking function at maximum capacity without impacting the program. Ms. de

los Rios-Urban reported that the forty spaces proposed to be dedicated for the residential component are still there and will remain in the program regardless of the final design solution proposed by the team.

Ms. Chávez asked Ms. Fredda Bisman, MAG General counsel, to review where the attorneys are with the legal agreements pertaining to the project.

Ms. Bisman introduced Mr. Scott Holcomb, partner with Mariscal, Weeks, McIntyre and Friedlander, who practices in the area of construction law. She noted that he would provide an update on the preconstruction services and design-build agreement. First, Ms. Bisman provided an update on the Purchase and Sale Agreement. She said that Mr. Kaye had been out of town and therefore there had been a bit of delay in negotiations. Ms. Bisman stated that they had received an email from Mr. Kaye's retained attorney listing several issues. She informed the committee that, as the attorneys have reviewed the issues, she felt that they are all things that can be worked out. She provided a brief overview of the issues, which included some technical issues relating to the alley abandonment and re-plat of the property. Ms. Bisman noted that because of complexities and specific aspects pertaining to this transaction, MAG will need to go to the City of Phoenix and ask the city to step outside of its normal processes. Ms. Bisman explained that in typical Phoenix abandonments, the abandonment is conditionally approved subject to conditions and that the conditions are then fulfilled such as in this case, moving the utilities out of the alley. The abandonment is approved by council and then becomes final. She noted that in this project, because the abandoned property is part of the collateral for the bonds, MAG needs the abandonment to be final prior to the time when MAG's team is physically able to move the utilities. Ms. Bisman felt that this was possible and that the attorneys will have discussions with the City Attorney's office and suggest that the abandonment be approved subject to subsequent conditions. She stated that these were technical issues and were right to be raised, however she felt confident that with a willing partner, MAG can work them out with Phoenix. A second issue with the Purchase and Sale Agreement with Mr. Kaye is on the ten percent holdback, which was intended to be an incentive for Mr. Kaye to develop the adjacent parcel. Ms. Bisman acknowledged that the ten percent holdback was not part of the Letter of Intent and that this was discussed in negotiations thereafter. Ms. Bisman informed the committee that there is now a disagreement as to what that ten percent referred. She noted that it was MAG's attorney's understanding that it was ten percent of the entire purchase price. Mr. Kaye thought that the ten percent referred to something less than that. Ms. Chávez had spoken with him about this and Ms. Bisman said that further discussions were needed on this point. Thirdly, Mr. Kaye objected to MAG having approval over what he builds on the excepted parcel. Ms. Bisman stated that MAG would probably let that go because the neighborhood and City will be the entities who will have approval of what goes on that parcel, and this is probably more relevant. She commented that other matters are more technical and have to do with the drafting of the contract language which is very standard, and that MAG's attorneys will insist that they remain there. Ms. Bisman noted that she does not see these issues as hindrances to the transaction. Ms. Bisman added that they were anxious to get the agreement finalized and are pushing ahead so they can resolve issues and get Mr. Kaye's signature on the purchase agreement. She asked the committee if there were any questions that she could answer. There were none.

Ms. Bisman continued on to the Memorandum of Cooperation (MOC), which was approved by each of the agencies in December, and is now an amended and restated. The revised MOC is on its way through the process to be approved by the partner agencies. She stated that the primary impetus of the amended version was to change each entity's proportionate costs from \$330,000 to \$550,000 to accommodate the additional preconstruction phase costs. She noted that while the attorneys reviewed the document, they made some other minor amendments that provide further clarifications to the transaction. Ms. Bisman stated that, for example, there now included a provision that allows each governing body, if it wished to do so, to designate its Executive Director or Chief Executive Officer to approve certain aspects of the agreements. She noted that there are a number of agreements that have to be approved and that it is up to each entity whether they want to designate approval or not. Another example provided by Ms. Bisman included inserting explicit language noting that each of the attorneys is reviewing the legal documents for each of its agencies and not relying on the other attorneys. She clarified that MAG is taking the lead for the drafting of the documents and the negotiations, but that at certain points, the documents do go to the attorneys for review. Ms. Bisman considered other revisions to be fairly minor and stated that she believed the committee had received copies of the amended and restated MOC, which included the highlighted changes. She asked if the committee wanted her to go over any of the changes in detail.

Chair Cavanaugh asked if anyone had any comments or questions. There were none.

Chair Cavanaugh asked if someone could summarize what the \$330,000 covered, noting the legal, bond counsel, construction management consultant, Ryan indemnification and other expenses, and now there is the \$220,000 request for preconstruction. He asked what the preconstruction amount included and whether it included any of what was covered in the original \$330,000.

Ms. Bisman stated that MAG staff could provide the detail to that answer.

Ms. Chávez replied that the reason for the increase is because, at the time of the original \$330,000 request, MAG staff did not know what the preconstruction phase amount was going to be when MAG got the design-build team on board. She clarified that the \$220,000 is each agency's share of the \$500,000 preconstruction services contract with the McCarthy/DMJM team as well as other fees as estimated by MAG, which are ongoing legal, bond counsel and construction manager consultant costs estimated through June.

Mr. Smith clarified that what the committee previously approved in the \$330,000 did not include McCarthy getting us to the GMP. The original amount covered acquiring the schematic documents from Ryan and some of the out of pocket expenses to date through December 2007. He noted that the \$220,000 will get McCarthy/DMJM taking the schematic design acquired and working with the agencies to develop a GMP for the project and covering legal and other fees that will be expensed between now and then. Mr. Smith emphasized that the \$220,000 additional funds will get the agencies to the GMP, and the team will better understand if the building can move forward. He noted that MAG has had meetings with the McCarthy/DMJM team, and that they have looked at the Ryan schematic

documents and acknowledged how great and detailed the documents were, but that in looking at the design, and considering the cost escalation in the market from a year ago, McCarthy/DMJM believe that, to get into the acceptable price range, possible efficiencies might be necessary, including removal one level of underground parking and possibly removal of the media center.

Ms. Chávez added that normal preconstruction agreements are typically more expensive than the \$500,000 that has been negotiated with McCarthy/DMJM, because of the design work included in those contracts. She noted, however, that because of the indemnification with Ryan, which included the full acquisition and usage of the schematic design documents, MAG has been able to leverage use of that work and therefore is able to negotiate with the new design-build team a \$500,000 contract for the scope of work associated with the preconstruction services agreement.

Chair Hawker asked to take the sequence forward a couple steps, and asked what MAG could do if McCarthy returned with a proposal that removed too many desired features from the building and failed to fulfill the needs of the three organizations, but stays at the GMP. He noted that MAG had to go through a Title 34 procurement process and McCarthy was ranked first out of the top three. Chair Hawker asked how does MAG ensure that it can go through that list if McCarthy comes in with a building that isn't what we want, but is within the GMP. Is it possible to go to the next team and not violate the Title 34, so the agency does not expend more money? He stated that he would not want to spend another million dollars to see if the sub bidders can deliver the building we want without sacrificing crucial elements for the construction price that was allocated. He asked if MAG was considering this in the context of drafting the preconstruction services agreement.

Mr. Smith asked Ms. Bisman or Mr. Holcomb to provide insight into that process. He clarified that what Chair Hawker was asking was under what circumstances could the agencies say no to McCarthy and proceed to the second or third teams if the design was not what we wanted, but it stayed within the GMP for the project.

Mr. Holcomb noted that MAG could only do so after the time the McCarthy/DMJM team provided the GMP, but for whatever reason the team can meet the GMP, the agencies do not accept the design that McCarthy/DMJM presents.

Chair Hawker asked whether eliminating a level of underground parking in the parking structure would be significant enough change to make the design unacceptable.

Mr. Holcomb replied that would be for the Executive Committee to decide when the McCarthy/DMJM team returned with their full proposal. Mr. Holcomb acknowledged that there are benefits to the design-build process, but he confirmed that one of the disadvantages of doing the design-build is that you do not know what exactly you are getting until you get to GMP stage. He stated that it is not like you are going out to bid with a full set of documents and have everything already documented. This process states that MAG wants a building that meets certain parameters that requests a design and a contractor to return with a GMP. Part of the charge that McCarthy and their design team has is to come back and

make that building meet the committee's design parameters which have already been identified in the schematic design and that it be built for a certain price.

Chair Hawker stated that Ryan did that exercise, and that McCarthy, as the number one ranked team from the re-procurement, could potentially be changing the building significantly. If the committee decides it does not like the design the McCarthy/DMJM team provides, how does MAG say it is not interested in that but we want the design work. Chair Hawker explained that he did not want to redesign the building three different times and that MAG is already spending \$500,000 to redesign it once to get a GMP. He asked if MAG would have to spend \$500,000 two more times.

Mr. Holcomb stated that preferably no, but if MAG rejected the design provided, the team would have to come back with a design that is acceptable.

Chair Hawker asked if that was because that is the nature of the Title 34 process.

Mr. Holcomb said no, it is because it is the nature of the design-build and because MAG has schematic documents and not a set of construction drawings that can be handed to a contractor and built. He stated that what MAG has is a building that has to meet certain design parameters, that the design-build team has to go out and design to them, and give a GMP. Mr. Holcomb advised that the advantages, and there are many, that you have a one stop shop in that you only go to the design-build team contractor and neither entity can point at the other because they are together as the design-builder and they are charged to deliver what the client wants. He explained that the first hurdle is developing the design to a level that is sufficient so that the contractor can deliver to the client at a hard price, and that is the point that MAG is trying to get to. He said that there is no good mechanism that he is aware of that allows that when you get to that point and do not accept the design but accept the price, and that MAG may have to back out if it wants to move forward with the project.

Vice Mayor Neely commented that she thought all were pretty happy that MAG could secure the drawings from Ryan and be able to move forward, and all were fairly happy with the direction they were going. She noted that she would think that would send a fairly loud message to the new team of McCarthy/DMJM that those were things MAG wanted to see within the design. She said she would have great concerns if at every level MAG would have to pay \$500,000 to come up with a GMP and the design is not what we are looking for. She noted that she had concerns if that type of expenditure had to be made to attain the right design for the GMP that has been established.

Chair Cavanaugh echoed the same concern and asked whether it was \$550,000 multiplied by three as the current sunk cost. He asked for clarification before MAG agreed to a design as to whether the sunk cost would be \$550,000 per agency.

Ms. Chávez clarified that for the preconstruction services contract, each agency was being asked to put in an additional \$220,000, which would total each agency's shared of out of pocket costs to \$550,000 each in the MOC. She added that should the project move forward, those costs would be recouped through the project's bond financing.

Chair Cavanaugh stated that if MAG did not agree to go with the design presented, then the agency will have spent more money on a design it did not like.

Ms. Chávez assured the committee that staff has worked with Mr. Holcomb and the McCarthy/DMJM team to include a clause pertaining to the ownership of documents in the preconstruction services agreement to ensure that MAG would have ownership of those documents, and that language was provided in the memo summarizing terms of the preconstruction agreement.

Chair Cavanaugh asked if that was the \$330,000 figure.

Ms. Chávez said that the \$330,000 covered the acquisition of the Ryan/RNL schematic document set and that the \$220,000 would allow MAG to enter into the 90-day preconstruction services period with McCarthy/DMJM, and that in that contract, staff is asking for an ownership of documents clause. She added that, if for any reason the team did not get MAG to something it did not want, MAG would retain ownership of any work that had been done.

Mayor Berman expressed that he believed it was clear that MAG could buy a lot of buildings in the Phoenix area for \$90 million and that the reason this committee decided to build its own building is because there were specific design elements that were desired for a unique building with unique uses. He noted that he would have a problem with the team if the price was higher and design elements were eliminated. He said that he would like to see the building built with the media center as originally envisioned and if it could not be done within the GMP, that he would be in support of discussing the project with the second and third teams whether it could be done.

Mr. Smith introduced Mr. Dennis Tucker, Executive Vice President of Operations, from McCarthy Building Companies. Mr. Smith reported that McCarthy had, at its own expense, analyzed the Ryan schematic documents and provided staff with a level of comfort before MAG spent more money on the preconstruction phase. He asked Mr. Tucker to provide the committee insight into McCarthy's analysis process and some of the challenges that need to be addressed to meet the GMP, including changes in the market since MAG priced the building with Ryan.

Mr. Tucker thanked Mr. Smith and the committee. He said that some of the things he would mention as McCarthy approached the Ryan schematic documents is that they had not had the opportunity to see them as part of the Title 34 proposal process. Overall, he felt that Ryan had done a very good job and provided a good set of documents that were fairly detailed for a schematic set. He asked the committee to remember that more than a year had passed since Ryan's pricing and that had to be accounted for as McCarthy analyzed the project. He noted that McCarthy saw a good building that could be built and was looking at the opportunity to overcome cost hurdles that did not exist at the time Ryan proposed on the job. McCarthy has identified several options that could be pursued. Mr. Tucker emphasized that they intend to deliver the product MAG wants and that McCarthy works for the client. He stated that if the building as designed is what is desired, it will be the building

that McCarthy/DMJM will work to provide. He stated that McCarthy's motivation is to deliver the product that MAG wants at the GMP that the client has established.

Mr. Holcomb added that part of the process, particularly in design-build, includes working through the contract and going through value engineering process, in which the client works with the design-build team identifying priorities and potential cost savings. He noted that this is part of the ongoing design involvement process.

Mr. Tucker stated that, as he listened to the concerns of the committee, he wanted to emphasize that McCarthy will be taking direction from the client and will bring its own ideas, but that those ideas need buy in and only then would they be pursued. He assured the committee that there would not be any wholesale redesigning of the project. He acknowledged that this was a design-build preconstruction services agreement so part of the process would need to involve the new designer buying into the existing design, due to the fact that there exist obvious liabilities and commitments on their part with their involvement in the project.

Chair Hawker asked if McCarthy proceeds with the design company and MAG does not get the building it wants, is there a way to work with the second and third bidders in case McCarthy has to say to the designer that they are out, but then have to start over and keep the design drawings as part of the agreement. He asked how much it would cost to go to another bidder.

Mr. Holcomb said that the most effective way to address that issue would be to liken the design-build contract to a marriage and that the client has a concept and wants to move forward, but for some reason at the time when delivering the GMP, it doesn't work, there would then be a disassociation of the team and they would pick up what is possible and move forward. He noted that the process that happened with Ryan was a little different, but that the goal is to make sure that the agreement works so people have a good understanding of what is expected at the end of that process. He stated that as MAG's general counsel, it is his job to protect MAG if things do not work, and that MAG have the best protection possible for regrouping and taking the project in a new direction. He admitted that it is more difficult once you get to the GMP. He stated that it is difficult to go back and redo the work because of the design-build process but it is difficult to avoid because of the nature of the design-build process.

Chair Hawker stated that he felt held hostage. If McCarthy/DMJM come in at the GMP but not with the design that MAG wants, MAG would have to spend more money and is out of luck and will have to go to next bidder and be out another \$500,000 to go back and reconstitute another partnership and go through the whole process again, which in the end, could end up back with Ryan who MAG had to begin with. He wondered if there was any way to merge the process so it is more smooth and we can get the best product without having to spend money each time to try and get it.

Ms. Chávez asked Ms. de los Rios-Urban to address concerns regarding any possible design changes.

Ms. de los Rios-Urban stated that a number of minor building design modifications were already included as proposed next steps in the Ryan Companies' design process. Substantial changes had been proposed earlier in the value engineering process with Ryan, which had not been accepted.

Chair Hawker stated that the possibility of eliminating a level of parking and media center is not really what we wanted.

Ms. de los Rios-Urban noted that one of the things MAG staff is recognizing now with the new design-build team is that the project is in a fortunate position, that allows for design revisions and can look at the building as a whole and in its parts to see how it can function better. She explained that in the process of putting parts back together again, whether it is the exact same design or not, MAG has the opportunity to make enhancements. Ms. de los Rios-Urban said that the other benefit of our current position on the project is that, if a level of parking needs to be eliminated, a number of parking spaces can be brought back into the project utilizing enhanced efficiencies, thus maintaining exterior integrity of the building. She stated that if one of the team's considerations is the potential elimination of the underground level of parking, the massing and exterior components will be aesthetically and functionally the same, reflecting the schematic drawings that MAG currently has.

Chair Hawker said he was fine with that if eliminating the parking saves money, but he thinks that the budget is still at \$80 million. He noted that if there were functional design changes that substantially reduced the cost of the building to MAG then he would be more happy about it. He said that he thinks MAG is back to addressing the escalation factor and that we have to fit the building's design to that constraint.

Mr. Smith agreed that he would like to see costs reduced as well and that by taking a level off the garage underground and with the media center not completely going away - the recording studio would go in a different place in the building and there would not be need for the 20 foot ceiling - the best way to reduce the costs is to rethink the building noting the leftover Arizona Municipal Water Users Association (AMWUA) space. Mr. Smith noted that if there was any way MAG could live on a floor and a half or the RPTA and VMR could take one half of floor less and as a result take a floor off the building, that this is how the cost could be brought down. He informed the committee that MAG had its first meeting of sharing of services last week with the two agencies to discuss how the organizations could work better together and how the tenants could reduce the amount of space but still get the job done while reducing costs.

Vice Mayor Neely asked what savings would be accomplished by eliminating one level of parking underground and eliminating the media center. She asked what is the escalation of cost that has occurred in the last year and a third that makes that difficult to accomplish.

Ms. Chávez replied that the estimated savings of eliminating one underground parking level was \$3.3 million and the media center was approximately \$999,000 or \$1 million in savings totaling about \$4 million in savings.

Mr. Smith noted that not all of the savings would be accounted for were associated with the

media center since the recording studio would be retained and relocated somewhere else in the building.

Vice Mayor Neely stated that was about 5 percent of a \$90 million building. She acknowledged that doing an underground garage is expensive and asked how MAG can save money by not going underground. She noted that she had some concerns about the neighborhood because MAG has made commitments to the neighborhood. As she begins to see staff proposing that MAG use a floor and a half instead of two, she questions whether MAG is beginning to make the building useful for as long as we would like it to be. She questioned whether in the long run we would be going to make the commitment MAG needs to meet our needs. Vice Mayor Neely stated that MAG does not need to be put in the position where it ends up needing to go out and ask if there is someone we can lease for more space. She stated that she was a little concerned and understood that MAG has not entered into the contract yet, but that there has been a lack of information from general counsel or MAG relating to going through the process, anticipating that when MAG had paid the \$525,000 to Ryan, that we could utilize that information and we were not going to have to reduplicate the design efforts. She noted that she understood that it might not be a very viable option for McCarthy, but she thought that was a lot of what was being expected. She acknowledged that the building did not have to look the same on the outside, but that the committee had heard over and over that the utilization of the media center was hugely important, and to say that it just would not be in there was a big concern for her.

Chair Cavanaugh asked if any of the other partners or those on phone had questions.

Mr. Smith noted that regarding the media center, when staff met with McCarthy, the media center was on the bubble. He noted that staff was trying to fully disclose that the underground level of the garage has been discussed extensively and the media center could be on the bubble. Other portions of the building would not be reduced to get that price. When the team met with McCarthy, we had our choice between taking a level of the garage off, and felt we could live with it with everything else remaining, which might be a good trade off.

Ms. Chávez confirmed that the conference center and meeting rooms are still part of the building's program in addition to the office space which is the bulk of the building.

Mr. Smith added that the rooftop terrace also remains.

Mr. Tucker stated that McCarthy was performing an analysis of the parking, and looking at the opportunity to delete one level of the underground parking and that the needs of building will be met as far as parking is concerned. He noted that Ms. de los Rios-Urban is making sure that the look of the building is not changing for the neighbors and that is a major charge that is being made clear to the design-build team.

Mayor Berman said that he certainly appreciated staff coming back with a way to save \$4 million but did that mean that MAG was going to reduce the overall cost of the building from \$90 million to \$86 million or was MAG going to spend that \$4 million on something else.

Mr. Smith said that the actual cost of the building is closer to the \$77 million range after subtracting the land. He stated that staff had provided for a contingency for the agencies on this was backed out from the total cost and the remaining amount to build the building is \$73.8 million. In working with 3D/I, the consultant advised that MAG hold back a certain amount for changes that are unforeseen, and that is the number staff and the design-build team is working with for construction of the building and the garage.

Mayor Berman said that he perhaps did not understand the answer. Was MAG taking \$4 million off or will that be absorbed in other pricing increases in the building.

Mr. Smith stated that by reducing the scope of the building, staff is trying to get the building within the amount of money MAG has and that there would not be any saving of money by reducing the underground level in the parking garage or by doing any changes to media center. He said that he would like to reduce costs but that this exercise does not do that, it just gets MAG within the parameters of the funding for the building.

Mayor Berman concluded that MAG was not going to be able to do what it thought, and staff is changing the building to get to the budget level which was stipulated. He said that if MAG was going to be spending this type of money, which is an awful lot of money, MAG should make sure it gives us the long term use envisioned. He said that the one thing that makes buildings obsolete is not enough parking, and he hopes that we have parking spaces that are large enough. Mayor Berman stated that if the project was going to proceed he wants to do it right, as opposed to still paying a lot of money on a building that does not last as long as we think, and does not grow with us and do what we want long term.

Mr. Smith informed the committee that staff could proceed with the original concept and see how close we can get and stay within the acceptable GMP. Some of the variables Dennis Tucker addressed included changes in the inflation rate, which our regional economist did not completely agree with, which were reflected in McCarthy's numbers. Mr. Smith asked Mr. Tucker to clarify the discrepancy.

Mr. Tucker noted that the numbers McCarthy provided were not augmented numbers and that their level of confidence estimate performed on the Ryan documents is based on the anticipated construction schedule they are currently looking at. He stated that it is important to get a feel of how things have changed from fifteen months ago when Ryan would have priced the same project. He noted that in a discussion with MAG's economist everyone thought there was a difference in the market from 15 months ago, and that the baseline for which there was no disagreement was the 4 and 4.5 percent range. The economist felt commodities and materials alone were a hurdle that the project has to overcome 15 months later. McCarthy's own studies and other local studies for the Phoenix marketplace would indicate to him that the difference in the market from 15 months ago was more like seven percent. Mr. Tucker noted that there is a definite range there that is real and which this project has to deal with.

Mr. Holcomb observed that the concerns individuals were discussing are many that have to be dealt with when going through the design process and that there are different ways to deal

with that during development of the contracts. For example, there is the use of the contingencies and having owner's contingencies that can be outlined specifically for upgrades or changes in the project or provide direction to the contractor to provide for alternatives to identify what are going to be the most costly items, and provide the GMP with identified alternatives to see how much you can get for the money that is being invested. Mr. Holcomb said that the MAG representatives and design-build team will be communicating the most important criteria in working together, and MAG will get a value engineering process all at once instead of it being done separately by the designer and then the contractor.

Mr. Tucker informed the committee that the budget McCarthy is working toward includes a \$2 million owner contingency that the Ryan budget did not have or previously accommodated.

Mr. Smith stated that this contingency amount was included at the direction of 3D/I to provide some protection for possible changes during the project.

Mr. Tucker noted that McCarthy was accounting for the 4 to 7 percent range in market conditions plus a \$2 million contingency which is in range within 3 percent and are hurdles that will be worked on.

Chair Cavanaugh stated that staff is asking for 90 days to look at alternatives to come to an agreement with the design-build team. He noted that the question of how to deal with the potential problem of not liking the design had not been answered yet or how to move on to the next team without incurring additional cost. Chair Cavanaugh said it was disappointing but that he believed they were asked to make a motion on this item.

Mr. Smith noted that the action item would be later on the Executive Committee agenda and that this was just the update.

Chair Cavanaugh asked if there were any more comments from the Building Lease Working Group.

Mr. David Boggs, Executive Director, RPTA, asked if it was at the end of the 90 days or June when we would have the GMP - whether that was correct including the options so they could know exactly what they would be looking at.

Mr. Smith answered yes.

Mr. Mike Ladino, General Counsel, Valley Metro Rail, asked Chair Cavanaugh if he could be heard. Mr. Ladino stated that on behalf of METRO, he wanted to bring another matter to the committee's attention on behalf of METRO's member cities made up of Phoenix, Glendale, Chandler, Mesa, Tempe, Peoria and Scottsdale, and that the cities have an additional concern relating to the current 10-year lease. Mr. Ladino communicated that when the ROC is built, METRO will have to relocate and it is unclear to the member cities what exactly the cash impact might be at that time and that the METRO member cities are somewhat concerned that they might be left holding office space for which either they can

not sublet or for which they will take some loss on a sublease. Mr. Ladino said that he thinks that member cities may come back at some time to the partners and ask for some help to cover the downside - if there is a downside, and that he is only bringing up the issue, not as a new issue, but only as an issue because members might want to raise it. Mr. Ladino asked Mr. John McCormick, Financing Director, Valley Metro Rail, if he stated that correctly.

Mr. McCormick stated that the current building lease for METRO runs through 2015 and that by the time METRO moves in to the ROC, they will have six years of current lease commitment. He stated that the lease has a very favorable base rate which is currently \$19 per square foot and escalates to \$22.50 at the end. Mr. McCormick said that Coldwell Banker did a lease analysis of the downtown market and that METRO was assured that their base rate was sufficiently low that they would be able to sublet basically at cost neutral to the agency. He noted that in light of the changes to the local economy, METRO needed to revisit those assumptions and look hard at the commercial space in downtown Phoenix and that they want to make sure they would come out cost neutral before staff would recommend to their member cities that they sign off on the final finance package.

Vice Mayor Neely asked whether in the intergovernmental agreement that METRO signed if there was anything in the agreement that stated METRO was asking the partners for that, and she questioned why they were presenting this now.

Mr. Ladino answered that no - that the provision was not included in the MOC and that this has recently surfaced through discussions with member cities, and he wanted to inform the committee of the concern.

Vice Mayor Neely said she understood that and is a representative of one of the major member cities and expressed disappointment that this information is being communicated at the last minute. She questioned whether this was potentially another way to throw a diversion into the project. She acknowledged that there were some issues that were raised today that have to be addressed but that this issue would have been better addressed at the time when the MOC was being negotiated. Vice Mayor Neely said that to come in now and make this an issue - and as far as someone making comments as to what are values of leases - that is not the committee's responsibility - it would be METRO's because no one at the table can say what the market is going to be like at the time that the building is finished.

Mayor Berman agreed with Vice Mayor Neely and stated that Gilbert was not a member of METRO, but he wanted to know what happens if MAG or the other partners say they are not going to accommodate METRO's shortfall. He asked that if you sign the lease and it's your lease, will METRO drop out of the deal?

Mr. Ladino stated no and that the member cities would simply pay the loss.

Chair Cavanaugh stated he was not sure if he understood that.

Vice Mayor Neely clarified that METRO would pay the loss.

Mr. Ladino clarified that if there was a loss and the loss would not be reimbursed by funds

from MAG and the RPTA, the member cities would pay out of the general revenues.

Chair Cavanaugh confirmed that they would proceed with the agreement.

Mr. Ladino stated that was correct.

Chair Hawker asked if METRO would share the profits if they leased the space for more.

Mr. Ladino acknowledged Mayor Hawker's point and that they were simply communicating a concern from their member cities.

Mr. Smith said that he did appreciate hearing about this now before the agencies signed up for any more money. He noted that when the agency shared costs in the earlier MOC, there were probably \$150,000 worth of costs that MAG did not include. He noted that METRO has said for many months they have a great lease deal, and they have to decide whether they want to stay in their current building, and MAG needs to know that before any more money is spent. Mr. Smith proposed that perhaps the RPTA and MAG can start looking at their own options and possibly look at another project. He stated that he felt bad about the money that had been spent in legal fees alone, and that if the partnership in the project is not going to happen, now would be a good time to know.

Mayor Berman stated that Mr. Ladino said it would not be a deal breaker for them and that they just wanted to propose to see if they could be compensated.

Mr. Smith noted that MAG could also ask to be compensated for the \$150,000 of additional costs that were not accounted for in the original MOC.

Mr. Ladino stated that the member cities just wanted to be heard on the matter.

Chair Cavanaugh confirmed to Mr. Ladino that METRO fully intended to proceed with the agreement.

Mr. Ladino stated absolutely.

Vice Mayor Neely asked if that could be put into the record.

Chair Cavanaugh asked for a motion to adjourn the meeting.

Vice Mayor Neely moved to adjourn the joint Executive Committee and Building Lease Working Group meeting. Mayor Hawker seconded the motion. Motion passed unanimously.

Meeting adjourned at 12:00 p.m.

MINUTES OF THE
MARICOPA ASSOCIATION OF GOVERNMENTS
MAG REGIONAL COUNCIL EXECUTIVE COMMITTEE

February 19, 2008
MAG Offices, Cholla Room
302 N. 1st Avenue, Phoenix, Arizona

MEMBERS ATTENDING

Mayor James M. Cavanaugh, Goodyear, Chair	Mayor Keno Hawker, Mesa
# Mayor Mary Manross, Scottsdale, Vice Chair	# Mayor Thomas L. Schoaf, Litchfield Park
Vice Mayor Peggy Neely, Phoenix, Treasurer	* Mayor Marie Lopez Rogers, Avondale
Mayor Steven M. Berman, Gilbert	

* Not present

Participated by video or telephone conference call

1. Call to Order

The joint Executive Committee and Building Lease Working Group meeting was called to order by Chair James M. Cavanaugh and Building Lease Working Group Chair Keno Hawker at 11:05 a.m. Chair Cavanaugh stated that public comment cards were available for those members of the public who wish to comment. He noted that transit tickets were available from Valley Metro for those using transit to come to the meeting. Parking validation was available from MAG staff for those who parked in the parking garage.

2. Call to the Audience

Chair Cavanaugh noted that, according to the MAG public comment process, members of the audience who wish to speak are requested to fill out the public comment cards and stated that there is a three-minute time limit. Public comment is provided at the beginning of the meeting for items that are not on the agenda that are within the jurisdiction of MAG, or non-action agenda items that are on the agenda for discussion or information only. He noted that no public comment cards had been received.

3. Consent Agenda

Chair Cavanaugh noted that prior to action on the consent agenda, members of the audience are provided an opportunity to comment on consent items that are being presented for action. Following the comment period, Committee members may request that an item be removed from the consent agenda. There were no public comment cards received.

Vice Mayor Neely moved to approve items on the consent agenda. Mayor Hawker seconded the motion.

3A. Approval of the January 14, 2008 Executive Committee Meeting Minutes

The Regional Council Executive Committee, by consent, approved the January 14, 2008

Executive Committee meeting minutes.

3B. Consultant Selection for the Statewide Transportation Survey

The Regional Council Executive Committee, by consent, approved recommending that MAG negotiate with WestGroup Research to conduct the Statewide Transportation Survey for an amount not to exceed \$55,000. If negotiations with WestGroup Research are not successful, the panel recommends that MAG negotiate with its second choice, Behavior Research Center, to conduct the survey. On December 19, 2007, the MAG Regional Council approved conducting a public opinion survey to measure voter attitudes and preferences in addressing regional and statewide transportation mobility needs, and that the FY 2008 MAG Unified Planning Work Program and Annual Budget be amended to include \$55,000 for the survey. On January 13, 2008, MAG issued a Request for Proposals to develop and conduct an independent, scientifically valid voter opinion survey. In response, six proposals were received. A multi-agency review team met on February 5, 2008, and recommended to MAG the selection of WestGroup Research to conduct the survey. In addition, the team recommended that if negotiations with WestGroup are not successful, that MAG be directed to negotiate with its second choice, Behavior Research Center. On February 13, 2008, the MAG Management Committee recommended approval of this item.

6. Development of the FY 2009 MAG Unified Planning Work Program and Annual Budget

This agenda item was taken out of order.

Chair Cavanaugh noted that items number 4 and 5 pertaining to an Executive Session and the Regional Office Center would be discussed after items 6 and 7. Chair Cavanaugh invited Ms. Rebecca Kimbrough, Fiscal Services Manager, to present on item 6.

Ms. Kimbrough thanked Chair Cavanaugh and noted that she would be distributing a new project narrative to reflect the addition of a new project and other administrative modifications.

Mr. Smith recommended just reviewing the changes.

Ms. Kimbrough informed the committee that staff has added a project for \$100,000 in the Information Services division titled activity based socioeconomic modeling sub-models. She offered to read the new narrative if the committee had any questions or she could ask MAG staff to review it.

Mr. Smith noted that some other technical addition included adding on call consultants and other fairly minor changes.

Chair Cavanaugh stated that this item was for information and discussion.

Mr. Smith communicated that staff would be working on these projects up to May and until MAG finalizes its budget. He informed the committee that this was their first opportunity to review these projects and if the committee had any questions, MAG staff members could

contact them and that the committee will have other opportunities to look at these projects as well.

Ms. Kimbrough stated that as far as the budget is concerned staff will be having their conference video budget meeting at 9 a.m and that in that meeting she would be reviewing the list of projects with members of the public and anyone else who might want to attend. She stated that the invitation was sent out at the beginning of the month. Ms. Kimbrough also wanted to add that the proposed dues and assessments in committee members' packets proposes that MAG will not increase the overall total amount and that the amount for each city would change based on reallocation of population but otherwise it is remaining the same. She offered to answer any questions from the committee.

7. Resolution to Request the EPA to Provide Sufficient Time for Existing Measures to Take Effect in the Implementation of a More Stringent Eight-Hour Ozone Standard

Chair Cavanaugh stated that it was fine to proceed to the next item. He introduced Ms. Lindy Bauer, Environmental Director, to present her item.

Ms. Bauer stated that the committee had before them a resolution to request the Environmental Protection Agency (EPA) to provide sufficient time after they set a new eight hour ozone standard to look at all the measures done here in Arizona by local and state governments and the aggressive measures done by federal government while considering the phasing in of their requirements to implement the standard. Ms. Bauer continued that the EPA, as reported previously by MAG staff in air quality updates over last year, has proposed to tighten up the eight hour ozone standard and make it more stringent. She noted that under the Clean Air Act, the EPA is required to do this every so often. The last time the ozone standard was tightened was in 1997. Ms. Bauer informed the committee that the EPA has a committee of experts, including doctors and scientists who take a look at setting the standard to protect public health. She stated that MAG usually does not take a position on what the standard should be, however, recently MAG has been approached by some businesses in Arizona who are quite concerned and have some opposition to the adoption of the tightened standards given the condition of the current economy. Ms. Bauer conveyed that the resolution is middle ground and communicates to the EPA that they take a look at all the stringent measures that have been implemented by the local and state governments and that the EPA has done and provide sufficient time regardless of what standard is set when they start to phase it in Maricopa County.

Chair Cavanaugh asked Ms. Bauer if she was asking the committee to adopt a resolution or was that the request.

Ms. Bauer clarified that this would be to recommend adoption of the resolution to the Regional Council.

Chair Cavanaugh asked Ms. Bauer if she could give the committee specificity in any of the numbers to be changed, specifically numbers associated with the timing of the requirement.

Ms. Bauer stated that she did not have any specific timing because MAG does not know

what the standard will be. She said that MAG did do some research to see what the monitor values were from the last ozone season. One proposal from the EPA is to set the standard at 0.075. Ms. Bauer informed the committee that there are approximately twenty-five monitors for ozone in the region and that about eleven of those monitors are at .075 and below. She stated that as a result, MAG knows that these Arizona measures - state and local - and even the federal measures will be providing more benefit as time goes on. Ms. Bauer therefore noted that MAG is asking the EPA that whatever standard they set to protect the public health, to please take a look at the measures here and that the EPA has adopted when determining at what point the nonattainment areas will be designated and how long they will have to come into compliance. Ms. Bauer also stated that in 1997, when the EPA set the current standard, the state and Maricopa County thought that this area would never meet that standard and she was pleased to report to the committee that the area now has had three consecutive three year periods where it has had no violations of the eight-hour ozone standard.

Chair Cavanaugh noted that the resolution is general and not specific.

Ms. Bauer confirmed that the resolution is general and is asking the EPA, from a policy standpoint to take a look at providing sufficient time for the measures the region already has to work.

Chair Cavanaugh thanked Ms. Bauer for her presentation.

Mayor Hawker stated that the date Ms. Bauer provided of 1997 seemed as if MAG used that as a tracking mechanism or as an example to know the timing the agency is looking for. He noted that he understood the concept but did not have a good sense of the time frame and that if that were used in the resolution that it might be more useful.

Ms. Bauer stated that MAG would like to be more specific in the request but that it can not be at this time because the EPA has proposed two different standards and is even considering keeping the same one.

Mayor Hawker said that MAG knows the rate of compliance and has some type of information or slope from the monitors so would we not be able to extrapolate and figure out where it crosses out at the new standard so MAG can figure out how much time the region would need.

Ms. Bauer informed the committee that the downward trend in the monitoring data is not a perfect straight line down. The EPA tried to do an analysis with maps, which were previously provided to the Regional Council in October with their proposal, which showed that if the EPA went down to .07 parts per million the region would not be attaining the standard.

Chair Cavanaugh asked for a motion to recommend adoption of a resolution to request the Environmental Protection Agency to provide sufficient time for existing measures to take effect in the implementation of a more stringent eight-hour ozone standard.

Vice Mayor Neely moved approval. Mayor Berman seconded the motion. Motion passed unanimously.

4. Regional Office Center Negotiations

Chair Cavanaugh asked for a motion to go into Executive Session for item 4.

Mayor Berman moved approval. Vice Mayor Neely seconded the motion. Motion passed unanimously.

5. Request for Preconstruction Phase Funding and Authorization to Enter into Preconstruction Services Contract with McCarthy Building Companies

Chair Cavanaugh reconvened the Executive Committee at 12:50 p.m.

Ms. Chávez reviewed the requested actions pertaining to item 5, which included recommending 1) Approval of the Amended and Restated Memorandum of Cooperation (MOC) increasing the maximum of shared equal costs among the agencies from \$330,000 to \$550,000 each, including clarification of certain other provisions, and 2) Authorizing the MAG Executive Director to enter into a preconstruction services contract with McCarthy Building Companies not to exceed \$500,000.

Chair Cavanaugh asked if there were any comments.

Mayor Schoaf stated that his comments were the same and that he believed that it is the wrong action for MAG at this point in time and that he would vote no on this item.

Chair Cavanaugh asked if there could be a motion incorporating both actions. The committee agreed to vote separately on the actions.

Mayor Hawker moved approval of the amended and restated MOC increasing the maximum shared equal costs among the agencies from \$330,000 to \$550,000 each, including clarification of certain other provisions.

Vice Mayor Neely stated that she thought the committee was going to add language that the amended and restated MOC would be recommended for approval subject to no further changes.

Mayor Hawker revised his motion to incorporate Vice Mayor Neely's amendment. Vice Mayor Neely seconded the motion. The motion passed 5-1, with Mayor Schoaf voting no.

Chair Cavanaugh asked for a motion on recommending authorizing the MAG Executive Director to enter into a preconstruction services contract with McCarthy Building Companies not to exceed \$500,000.

Vice Mayor Neely moved approval of the motion. Mayor Hawker seconded the motion. The motion passed 4-2, with Mayor Berman and Mayor Schoaf voting no.

Mr. Smith clarified that the \$500,000 would be the total contact and that MAG's portion would be \$220,000. He asked Ms. Chávez if that was correct.

Ms. Chávez clarified that actually it would be MAG's portion of the \$500,000 which is \$167,000.

Ms. Bisman clarified that the prior motion to recommend authorization for the MAG Executive Director to enter into a preconstruction services contract with McCarthy Building Companies not to exceed \$500,000 was subject to the other agencies' board approvals.

Chair Cavanaugh asked for a repeat of the motion.

Ms. Bisman stated that the motion would be to recommend authorization for the MAG Executive Director to enter into a preconstruction services contract with McCarthy Building Companies not to exceed \$500,000 contingent upon approval of the amended and restated MOC by the other agencies.

Vice Mayor Neely asked if that would include the Regional Council.

Mr. Smith confirmed that it would.

Chair Cavanaugh asked to vote on the item as revised and asked for a roll call vote. Vice Mayor Neely moved approval of the motion. Mayor Hawker seconded the motion. The motion passed 4-2, with Mayor Berman and Mayor Schoaf voting no.

8. Adjournment

There being no further business, the Executive Committee adjourned at 1:00 p.m.

Chair

Secretary