



30164
AGREEMENT

BETWEEN

**DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION**

AND

the CITY OF LONG BEACH, Long Beach Airport (LGB), Long Beach, California

RELATING TO

LGB North & South Baggage Area Improvements

Negotiated by the TSA pursuant to
49 U.S.C. §106(1)(6), Homeland Security Act of 2002, and Pub.L.107-296, §102

HSTS04-06-A-CTO300

ACCOUNTING AND APPROPRIATION DATA
See Article VI – Funding and Limitations

ARTICLE I – PARTIES AND AUTHORITIES

This Other Transaction Agreement (hereinafter “Agreement” or “OTA”) is entered into between the United States of America as represented by the Transportation Security Administration (TSA) and the City of Long Beach, as represented by its Airport Bureau (the “Airport”) relating to improvements to be made in the North and South Baggage areas at Long Beach Airport. This OTA is authorized by and in furtherance of the Aviation and Transportation Security Act (ATSA) Public Law 107-71, November 19, 2001, and 49 U.S.C. §106(l)(6), Homeland Security Act of 2002, and Pub. L. 107-296, §102(b)(2). The TSA and Airport agree to cooperate in good faith and to perform their respective obligations using their best efforts in executing the purpose of this Agreement.

ARTICLE II - PURPOSE AND SCOPE

The purpose of this Agreement is to establish the respective cost-sharing obligations and other responsibilities of the TSA and the Airport regarding the repairs and improvements to be made to the North and South Baggage make up areas at Long Beach Airport. The work to be performed (the “Project”) is as follows:

1. Install new portable 3 to 5 inch high deck on concrete floors under existing canopy structure to keep personnel dry from any rain and run-off water. Flooring to be constructed of recycled plastic boards and built in sectional pallets so it can be removed and made portable. The raised and portable flooring must be secured and leveled sufficiently to minimize any shifting, tripping or physical strain when walking or standing.
2. Provide and install new roller conveyors to the existing belt conveyors at various locations along the conveyor belt as depicted in Attachment # 1.
3. Provide and install additional electrical outlets, electrical boxes, and electrical conduit, electrical circuits, and electrical panels to support equipment placement.
4. Perform all modifications, relocations, and new installation of electrical outlets, circuits and light fixtures as deemed necessary for the operations of ETDs, fans, lights and minor ancillary equipment as indicated in the power requirements contained in Attachment # 2.
5. Provide and install rollup, clear plastic curtains that overlap and cover the entire perimeter of each canopy-covered area to keep rain off the baggage make up area as necessary (South baggage canopy edge shown in Attachment # 1).
6. Removal and proper disposal of all unused material replaced or demolished material and debris from each work location.

ARTICLE III - AIRPORT RESPONSIBILITIES

1. The Airport shall own and have title to all personal property, improvements to real property, or other assets which are acquired under this Agreement. It will be the responsibility of the

Airport, acting through such agents as it may use, to operate, maintain, and if it becomes necessary, to replace, such property to support the efficient passenger and baggage screening operations in a safe environment.

2. Except for the responsibilities of the TSA as outlined below, the Project will be managed by the Airport, who will oversee the work. The Airport will procure the services of a design consultant, construction manager, and contractor or contractors to undertake the Project.

3. The Airport will use its best efforts to have the Project completed within the budget and schedule contained herein. The Airport and the TSA agree to cooperate to ensure that the Project is completed in an expedient, efficient, and cost effective manner. The Airport will obtain all permits and approvals necessary to complete the Project.

ARTICLE IV – EFFECTIVE DATE AND TERM

The effective date of this Agreement is the date on which it is signed by both the Airport and the TSA. Airport shall begin Project work within sixty (60) days after the effective date of this Agreement. . The period of performance for the Project is established as six (6) months in order to allow the Airport time to submit a final invoice and close out the Project. In the event the Project completion date is delayed to a force majeure as provided in Article XVIII, the termination date of this Agreement will be extended by the number of days that the Project completion date is so delayed.

ARTICLE V – ACCEPTANCE AND TESTING

TSA will deem the Project complete upon completing an on-site inspection that confirms the Project improvements fulfill the requirements to keep personnel in the baggage makeup area dry from any rain and run-off water. Prior to release of payment, the TSA will review the Airport improvements to determine whether the Airport has conformed to the TSA requirements.

ARTICLE VI – FUNDING AND LIMITATIONS

The TSA shall pay all allowable, allocable, and reasonable costs up to the not-to-exceed ceiling amount of \$160,000.00. Determination of allowable and allocable costs will be made by the TSA in accordance with the cost principles in the FAA pricing handbook <http://fast.faa.gov/pricing/>. TSA will reimburse the Airport on an actual expense basis supported by one or more invoices submitted by the Airport in accordance with Article VII of this Agreement. 100% of all allowable, allocable, and reasonable costs of work performed on the Project shall be paid by the TSA up to the not-to-exceed ceiling price of \$160,000.00. The parties agree that all costs in excess of that amount as well as any costs that do not comply with the FAA Cost Principles, shall be borne solely by the Airport unless otherwise agreed by the TSA in a modification in accordance with Article XIV.

Under no circumstances is the TSA liable for (1) interest charges (2) any profit to the Airport or (3) costs incurred by the Airport or its subcontractors or its agents to perform work not in compliance with the TSA approved design. The TSA Contracting Officer has the right to

demand the return of payments made to the Airport, if the TSA Contracting Officer determines that the labor rates used to calculate invoices hereunder exceed the actual costs incurred and expenses by the Airport, or if the work substantially deviates from the TSA approved plan.

The total cost to TSA of this Agreement shall not exceed \$160,000.00 without a separate modification to this Agreement issued by the Contracting Officer pursuant to Article XIV. Funds in the amount of \$160,000.00 are hereby obligated and made available for payment for the performance of this Agreement. Expenses incurred in executing the work identified herein are chargeable to:

PR: 21-06-206CTO300

Appropriation Code:

5 AV067A000D 2006 SWE020 GE0104 2500 3F00 CTO000 2B11LGB0000000000 252R

Amount: \$160,000.00

In the event of termination or expiration of this Agreement, any TSA funds that have not been spent or obligated for allowable expenses prior to the date of termination and are not reasonably necessary to cover termination expenses will be de-obligated from this Agreement and/or returned to TSA, as appropriate.

The TSA's liability to make payments to the Airport is limited to the funds obligated and available for payment hereunder, including written modifications to this Agreement.

ARTICLE VII – PAYMENT

The TSA will use its best efforts to make payment to the Airport within 45 days of receipt of each properly prepared invoice for reimbursement of incurred costs (it being acknowledged that multiple invoices may be submitted during the progress of the Project work). The reimbursement process consists of two steps:

- A. Step 1- "Summary" Invoice Submittal to the US Coast Guard Finance Center for Payment, and
- B. Step 2 - Invoice Submittal and backup documentation to TSA for Approval for Payment

A. Step 1 – "Summary" Invoice Submittal to the US Coast Guard Finance Center for Payment:

The United States Coast Guard Center performs the payment function of invoices on behalf of the TSA. For purposes of submission to the Coast Guard Finance Center, Airport invoice formats are acceptable for the "Summary" Invoice.

The "Summary" Invoice should contain the following information:

- (1) Agreement Number HSTS04-06-A-CTO300
- (2) Invoice Number and Invoice Date
- (3) Airport Point of Contact with contact information
- (4) Tax Identification Number and DUNS Number
- (5) Dollar amount of reimbursement being requested from TSA

- (6) Electronic Funds Transfer Banking Information
- (7) Signature of Airport's authorized representative with certification language as to the portion of the Project covered by such invoice: *"This is to certify that all services set forth herein were performed during the period stated and that incurred costs billed were actually expended for the Project."*

The "Summary" Invoice may be submitted to the Coast Guard Financial Center at the following address:

United States Coast Guard Finance Center
TSA Commercial Invoices
P.O. Box 4111
Chesapeake, VA 23327-4111

B. Step 2 – Invoice Submittal to TSA for Payment Approval

The Contracting Officer and the Contracting Officer's Technical Representative are required to review and approve all invoices prior to payment. To aid in this review, the Airport shall provide a copy of the "Summary" Invoice along with all receipts and other supporting information to document the work performed in connection with the Project. Such documentation shall specify the vendor, services provided, and/or products delivered. This must include the appropriate identifications indicating that the obligations have been "Paid in Full". The Airport is encouraged to provide this information simultaneously with Step 1 in order to expedite the payment process. The invoice can be submitted by standard mail or by electronic transmission to the following address:

Connie Thornton, Contracting Officer
Transportation Security Administration
4275 Airport Road, Suite C
Rapid City, SD 57703
Phone: 605-393-8191
Email: Connie.Thornton@dhs.gov

Upon completion of the review of the supporting documentation for the "Summary" Invoice, the Contracting Officer Technical Representative and Contracting Officer will advise the Coast Guard Finance Center regarding payment of the "Summary" Invoice.

ARTICLE VIII – AUDITS

TSA shall have the right to examine or audit relevant Project financial records for a period of three years after expiration of the terms of this Agreement. The Airport shall maintain Project records pursuant to an established accounting system that complies with generally accepted accounting principles, for such period of time. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for three years after any resulting final termination settlement. Records relating to appeals under the "Contract Disputes" provision or to litigation or the settlement of contract disputes arising under or relating to this Agreement shall be made available until such appeals, litigation, or contract disputes are

finally resolved. As used in this provision, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

The Airport shall maintain or cause to be maintained all records and other evidence sufficient to reflect costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Agreement. The Contracting Officer, the Contracting Officer's Representative, or the authorized representatives of these officers shall have the right to examine and audit those records at any time, or from time to time. This right of examination shall include inspection at all reasonable times at the Airport's or its designee's offices directly responsible for managing the Project.

The Comptroller General of the United States, or an authorized representative, shall also have access to and the right to examine any directly pertinent records involving transactions related to this Agreement.

This article will not be construed to require the Airport or its contractors to create or maintain any record that they do not maintain in the ordinary course of business pursuant to a provision of law, provided that those entities maintain records which conform to generally accepted accounting procedures.

ARTICLE IX – DELETED

ARTICLE X – POINTS OF CONTACT

It is the responsibilities of both parties to identify changes in the Points of Contact throughout the term of this Agreement.

A. TSA Contracting Officer (CO)

All correspondence pertaining to this Agreement will reference the TSA Agreement Number HSTS04-06-A-CTO300 and be submitted to:

Connie Thornton, Contracting Officer
 Transportation Security Administration
 4275 Airport Road
 Rapid City, SD 57703
 Phone: 605-393-8191
 Fax: 605-393-1199
 Email: Connie.Thornton@dhs.gov

B. TSA Contracting Officer Representative (COR)

The technical administration of this Agreement shall be accomplished by the Contracting Officer Representative (COR) on behalf of the TSA.

James Farrell
Transportation Security Administration
CTO Safety Hazard Mitigation Branch, TSA-16
701 South 12th Street
Arlington, VA 22202
Phone: 571-227-1351
Email: James.Farrell@dhs.gov

The COR is responsible for the technical administration of this Agreement and the technical liaison with the Airport. The COR is not authorized to change the scope of work, to make any commitment or otherwise obligate the TSA, or authorize any changes that affect the liability of the TSA. The Airport promises to inform the Contracting Officer in the event that the COR takes any action which the Airport interprets as a change in scope or liability to either party.

C. Airport Points of Contact are:

The Airport Point of Contact regarding all correspondence is:

Phillip Balmeo
Public Works Department
333 W. Ocean Boulevard, 9th Floor
Long Beach, CA 90802
Phone: (562) 570-7454
Fax: (562) 570-6012
E-Mail: phillip_balmeo@longbeach.gov

The Airport Point of Contact regarding invoices is:

Christine Edwards
Airport Bureau
4100 Donald Douglas Drive
Long Beach, CA 90808
Phone: (562) 570-2630
Fax: (562) 570-2601
Email: christine_edwards@longbeach.gov

ARTICLE XI – LIMITATIONS ON LIABILITY

- A. Each party expressly agrees without exception or reservation that it shall be solely and exclusively liable for the negligence of its own agents and or employees, in accordance with applicable law, and that neither party looks to the other to save or hold it harmless for the consequences of any negligence on the part of one of its own agents or employees.
- B. The Airport has the affirmative duty to notify the TSA CO and COR in the event that any TSA agent or employee takes any action which is interpreted by the Airport as a direction which increases the Airport's costs and that would cause the Airport to seek reimbursement from the TSA beyond TSA's liability as stated in Article II (Purpose And Scope), Article III

(Cost Sharing And Other Responsibilities), or Article VI (Funding and Limitations). Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of funding obligated under this Agreement at the time the dispute arises. If the Airport receives any communication which it interprets as direction to change the work addressed by this Agreement, or to incur costs not covered by funding obligated at that time, the Airport must not take any action as a result of that communication, and must contact the Contracting Officer immediately.

- C. In no event shall either party be liable to the other for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

ARTICLE XII – RESOLUTION OF DISAGREEMENTS

When possible, disputes will be resolved by informal discussion between the parties. If the parties are unable to resolve any disagreement through good faith negotiations, the issues raised during the performance of this Agreement will be addressed by the TSA Contracting Officer and the authorizing official for the Airport. Any unresolved issues will be referred to the cognizant officials of the parties to this Agreement.

If a dispute cannot be resolved through negotiations, the dispute shall be submitted to the Office of Dispute Resolution for Acquisition (“ODRA”) (see <http://www.faa.gov/agc/odra/default.htm>). ODRA acts on behalf of TSA, pursuant to a Memorandum of Agreement dated September 23, 2002, to manage TSA’s dispute resolution process and to recommend decisions on matters concerning contract disputes. Judicial review, where available, will be in accordance with 40 U.S.C. 46110 and shall apply only to final agency decisions.

ARTICLE XIII – EARLY TERMINATION

In addition to any other termination rights provided in this Agreement, either party may terminate this Agreement at any time prior to its expiration date with cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date) by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations that might require payment.

ARTICLE XIV – CHANGES AND/OR MODIFICATIONS

Changes and/or modifications to this Agreement shall be in writing and signed by the TSA Contracting Officer and the authorized representative of the Airport. The modification shall cite the TSA Agreement Number and shall state the exact nature of the modification. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this Agreement.

ARTICLE XV- TYPE OF AGREEMENT

This Agreement is an Other Transaction Agreement (OTA). It is not intended to be, nor shall it be construed as a creation of a partnership, corporation, or other business entity between the parties.

ARTICLE XVI – CONSTRUCTION OF THE AGREEMENT

This Agreement is authorized by 49 U.S.C. §106(l)(6), Homeland Security Act of 2002, and Pub. L. 107-296, §102(b)(2) in furtherance of the Aviation and Transportation Security Act (ATSA) Public Law 107-71, November 19, 2001. Nothing in this Agreement shall be construed as incorporating by reference or implication any provision of Federal acquisition law, policy, or regulation, except to the extent that the FAA Procurement Guidance, Section 3.3.2, Contract Cost Principles, establishes standards for determining allowability and allocability of costs.

Each party acknowledges that all parties hereto participated equally in the negotiation and drafting of this Agreement and any amendments thereto, and that, accordingly, this Agreement shall not be construed more stringently against one party than against the other. Moreover, each party acknowledges that there are no exceptions taken or reserved and that this Agreement represents the complete meeting of the minds of the parties notwithstanding any contemporaneous writing, correspondence, or conversation to the contrary.

ARTICLE XVII – PROTECTION OF INFORMATION

The parties agree that they shall take appropriate measures to protect proprietary, privileged, confidential, or otherwise Sensitive Security Information (SSI) that may come into their possession as a result of this Agreement.

A. RELEASE OF TECHNICAL DATA

No information, oral or written, concerning any technical aspects of this Agreement, shall be published or released to the public, without prior written approval of the TSA Contracting Officer.

B. RECORDS AND RELEASE OF INFORMATION

All Sensitive Security Information (SSI), as defined in 49 CFR Part 1520, shall be handled in accordance with TSA policies and regulations. All members assigned to work under this Agreement are subject to the provisions of 49 CFR Part 1520, Protection of Sensitive Security Information, because they act for, or carry out duties for, or on behalf of the TSA. SSI may not be disclosed except in accordance with the provisions of that rule or where TSA otherwise approves.

C. MEDIA

All media releases and other contact with or by media related to this Agreement and in accordance with the terms of this Agreement shall be referred to the Contracting Officer.

ARTICLE XVIII – FORCE MAJEURE

Neither party will be liable for any unforeseeable event not caused by the fault or negligence of such party, which causes such party to be unable to perform its obligations under this Agreement and which it has been unable to overcome by the exercise of due diligence, including but not limited, to flood, drought, earthquake, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil, disturbance or disobedience, strikes, labor disputes, or failure, threat, of failure, or sabotage, or any order or injunction made by a court or public agency. In the event of the occurrence of such a force majeure event, the party unable to perform shall promptly notify the other party. The party unable to perform shall further use its best reasonable effort to resume performance as quickly as possible and shall suspend performance only for such period of time as it is reasonably necessary as a result of the force majeure event. In the event that performance is suspended for more than (7) days, the party unable to perform shall provide written weekly progress reports to the other party, indicating, among other things, what efforts are being made to minimize suspension and to effectuate the resumption of performance, together with the date expected resumption of work under the Agreement.

If it appears that such unforeseen events will increase the cost of the work to such an extent that additional funding may be required, the Airport is required to notify the TSA Contracting Officer immediately, and advise the Contracting Officer of (a) the amount of additional funding that will be required and (b) any work which will not be completed if additional funding is not made available. The Contracting Officer will either provide additional funding to permit completion of the planned work, or reduce the scope of the work to fit the project into the obligated funding.

ARTICLE XIX - ORDER OF PRECEDENCE

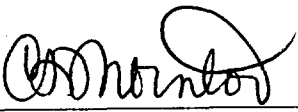
In the event of any inconsistency between the terms of the Agreement, the inconsistency shall be resolved by giving preference in the following order:

- (a) The Agreement,
- (b) The Attachments.

IN WITNESS WHEREOF, the Parties have entered into this Agreement by their duly authorized officers this 20th day of September, 2006.

WITNESS:

**DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION**

By: 
Name: Connie Thornton
Title: TSA Contracting Officer

CITY OF LONG BEACH

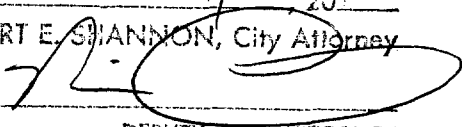
ASSISTANT


Name: Gerald R. Miller
Title: City Manager

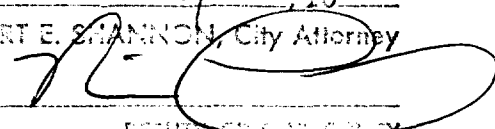
**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.**

Copy to:
Federal Security Director

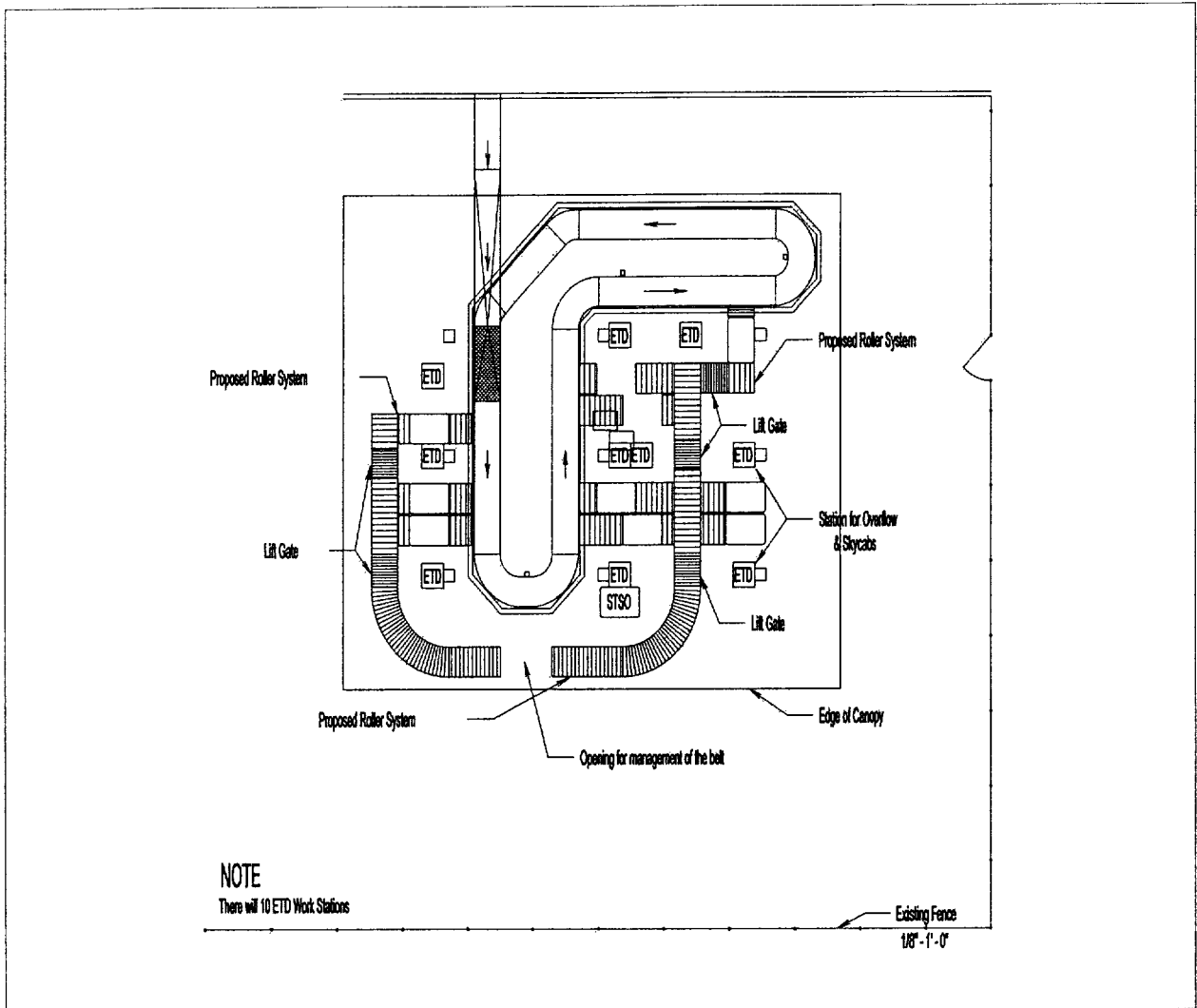
APPROVED AS TO FORM

9/20, 2006
ROBERT E. SHANNON, City Attorney
By 
DEPUTY CITY ATTORNEY

APPROVED AS TO FORM

9/20, 2006
ROBERT E. SHANNON, City Attorney
By 
DEPUTY CITY ATTORNEY

Attachment # 1



Attachment # 2**LGB Checked Baggage Power Requirements**

| Location | Item | # Items | Amps | Total Amps | Proposed # Circuits | Proposed # of Drops |
|-----------------|----------------------|----------------|-------------|-------------------|----------------------------|----------------------------|
| NCB | ETD's | 5 | 5 | 25 | 3 | 3 |
| | Auxiliary Lights | 8 | 1.25 | 10 | 2 | 4 |
| | 30" Pedestal Fans | 2 | 2.7 | 5.4 | 2 | 2 |

(Suggest combining auxiliary lights and fans on the same two 20 amp circuits)

| | | | | | | |
|------------|----------------------|----|------|------|---|---|
| SCB | ETD's | 10 | 5 | 50 | 5 | 9 |
| | Auxiliary Lights | 11 | 1.25 | 14 | 2 | 9 |
| | 30" Pedestal Fans | 6 | 2.7 | 16.2 | 2 | 6 |

(Suggest combining auxiliary lights and fans on the same two 20 amp circuits)