

AGENDA
General Policy Committee Meeting

June 8, 2022

9:00 AM

Location

San Bernardino County Transportation Authority
First Floor Lobby Board Room
1170 W. 3rd Street, San Bernardino, CA 92410

VIDEO CONFERENCING WILL BE AVAILABLE AT THE FOLLOWING LOCATION:

City Council Chambers
1111 Bailey Ave.
Needles, CA 92363

General Policy Committee Membership

Chair – Vice President

Mayor Pro Tem Art Bishop
Town of Apple Valley

President

Supervisor Curt Hagman
County of San Bernardino

Past President

Mayor Frank Navarro
City of Colton

East Valley Representatives

Mayor Larry McCallon
City of Highland

Mayor Darcy McNaboe
City of Grand Terrace

Supervisor Dawn Rowe
County of San Bernardino, *MVSS/MDC Chair*

Mt./Desert Representatives

Vice Mayor Edward Paget
City of Needles

Mayor Debra Jones
City of Victorville

Supervisor Paul Cook
County of San Bernardino

West Valley Representatives

Mayor Ray Marquez
City of Chino Hills, *TC Chair*

Mayor Acquanetta Warren
City of Fontana

Mayor Pro Tem Alan Wapner
City of Ontario

**San Bernardino County Transportation Authority
San Bernardino Council of Governments**

AGENDA

General Policy Committee Meeting

June 8, 2022

9:00 AM

Location

SBCTA

First Floor Lobby Board Room

1170 W. 3rd Street, San Bernardino, CA 92410

VIDEO CONFERENCING WILL BE AVAILABLE AT THE FOLLOWING LOCATION:

City Council Chambers

1111 Bailey Ave.

Needles, CA 92363

Items listed on the agenda are intended to give notice to members of the public of a general description of matters to be discussed or acted upon. The posting of the recommended actions does not indicate what action will be taken. The Board may take any action that it deems to be appropriate on the agenda item and is not limited in any way by the notice of the recommended action.

To obtain additional information on any items, please contact the staff person listed under each item. You are encouraged to obtain any clarifying information prior to the meeting to allow the Board to move expeditiously in its deliberations. Additional ***“Meeting Procedures”*** and agenda explanations are attached to the end of this agenda.

CALL TO ORDER

(Meeting Chaired by Art Bishop)

- i. Pledge of Allegiance
- ii. Attendance
- iii. Announcements
- iv. Agenda Notices/Modifications - Lupe Biggs

Possible Conflict of Interest Issues

Note agenda item contractors, subcontractors and agents which may require member abstentions due to conflict of interest and financial interests. Board Member abstentions shall be stated under this item for recordation on the appropriate item.

1. Information Relative to Possible Conflict of Interest

Note agenda items and contractors/subcontractors, which may require member abstentions due to possible conflicts of interest.

This item is prepared monthly for review by Board and Committee members.

CONSENT CALENDAR

Items listed on the Consent Calendar are expected to be routine and non-controversial. The Consent Calendar will be acted upon as a single motion. Items on the Consent Calendar may be removed for discussion by Board Members.

Consent - Administrative Matters

2. May 2022 Procurement Report

Pg. 12

Receive the May 2022 Procurement Report.

Presenter: Shaneka Morris

This item is not scheduled for review by any other policy committee or technical advisory committee.

DISCUSSION ITEMS

Discussion - Administrative Matters

3. Fiscal Year 2021/2022 Initiatives and Action Plan - Fourth Quarter Report

Pg. 21

Receive the Fiscal Year 2021/2022 Initiatives and Action Plan - Fourth Quarter Report.

Presenter: Raymond Wolfe

This item is not scheduled for any other policy committee or technical advisory committee.

4. Purchase and Sale Agreement No. 23-1002825 for Property Assessed Clean Energy Assessment Receivables with FNA California, LLC

Pg. 22

That the General Policy Committee recommend the Board, acting as the San Bernardino Associated Governments:

A. Approve Purchase and Sale Agreement No. 23-1002825 with FNA California, LLC, to grant their first right of refusal and to allow them to advance funds to cover the Property Assessed Clean Energy Assessment delinquencies for the 2015-2016 through 2021-2022 tax years, and authorize the Executive Director, or his designee, with the approval of General Counsel as to legal form, to finalize the terms of the agreement, including the final amount and the delinquent properties to be included, and to execute the final agreement.

B. Defer the judicial foreclosure proceedings for the delinquent properties.

Presenter: Hilda Flores

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel and Risk Manager have reviewed this item and the draft agreement.

5. Resolution No. 23-002 Authorizing Placement of Assessments on the Tax Roll and Agreement for Collection of Special Taxes Related to the Property Assessed Clean Energy Program

Pg. 52

That the General Policy Committee recommend the Board, acting as the San Bernardino Associated Governments (SBCOG):

A. Approve Resolution No. 23-002, authorizing the placement of assessments related to the Property Assessed Clean Energy Program on the tax roll for Fiscal Year 2022/2023.

Agenda Item 5 (cont.)

B. Approve Agreement No. 23-1002827 with the San Bernardino County Auditor-Controller/Treasurer/Tax Collector, authorizing the Collection of Special Taxes, Fees, and Assessments.

Presenter: Hilda Flores

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCOG General Counsel has reviewed this item, the draft resolution, and the draft agreement.

6. Award On-Call Labor Compliance Service Contracts

Pg. 59

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

A. Award Contract No. 22-1002768 to GCAP Services, Inc., for On-Call Labor Compliance Services for a three-year contract with two (2) one-year options for an amount described in Recommendation D.

B. Award Contract No. 22-1002769 to Cumming Management Group, Inc., for On-Call Labor Compliance Services for a three-year contract with two (2) one-year options for an amount described in Recommendation D.

C. Award Contract No. 23-1002832 to Gafcon, Inc., for On-Call Labor Compliance Services for a three-year contract with two (2) one-year options for an amount described in Recommendation D.

D. Approve a total cumulative not-to-exceed amount of \$500,000 for GCAP Services, Inc. (22-1002768), Cumming Management Group, Inc. (22-1002769), and Gafcon Inc., (23-1002832) over a three-year term, with two (2) one-year options to extend for an additional \$200,000 for a cumulative total not-to-exceed amount of \$700,000.

Presenter: Shaneka Morris

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel, Risk Manager and Procurement Manager have reviewed this item and the draft contracts.

Discussion - Air Quality/Traveler Services

7. Award Freeway Service Patrol Contracts - RFP No. 22-1002736 for Beats 9,14, and 31

Pg. 175

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

A. Award Contract No. 22-1002736 to Royal Coaches Auto Body & Towing for Freeway Service Patrol (FSP) Beat No. 9, from July 6, 2022, through December 31, 2027, for a not-to-exceed amount of \$3,102,514 for regular FSP services and for construction support for the Interstate 10 Corridor Contract 1 Project.

B. Approve a contract contingency for a not-to-exceed-amount of \$685,430 for Contract No. 22-1002736 for construction support and authorize the Executive Director or designee to release contingency as necessary.

C. Award Contract No. 22-1002738 to Royal Coaches Auto Body & Towing for FSP Beat No. 14, from July 6, 2022, through December 31, 2027, for a not-to-exceed amount of \$2,741,718.

Agenda Item 7 (cont.)

D. Approve a contract contingency for a not-to-exceed amount of \$685,430 for Contract No. 22-1002738 for construction support and authorize the Executive Director or designee to release contingency as necessary.

E. Award Contract No. 22-1002737 to Royal Coaches Auto Body & Towing for FSP Beat No. 31, from July 6, 2022, through December 31, 2027, for a not-to-exceed amount of \$2,741,718.

F. Approve a contract contingency for a not-to-exceed amount of \$685,430 for Contract No. 22-1002737 for construction support and authorize the Executive Director or designee to release contingency.

Presenter: Cheryl Wilson

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel, Procurement Manager and Risk Manager have reviewed this item and the draft contracts.

8. Update on the Commuter and Motorist Assistance Call Box Program

Pg. 335

Receive information on the status of the San Bernardino County Transportation Authority Call Box Program.

Presenter: Cheryl Wilson

This item is not scheduled for review by any other policy committee or technical advisory committee.

Discussion - Regional/Subregional Planning

9. Transportation Development Act Article 3 Allocation for Metrolink Station Accessibility Improvement Project - Phase II

Pg. 350

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

Allocate \$384,945 from the Transportation Development Act Article 3 Contingency Funds for Bicycle and Pedestrian Facilities to the Metrolink Station Accessibility Improvement Project - Phase II to fund anticipated cost increases.

Presenter: Ginger Koblasz

This item is not scheduled for review by any other policy committee or technical advisory committee.

10. Long Range Multimodal Transportation Plan California Department of Transportation Grant Award Pg. 352

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

Approve Resolution No. 23-001, authorizing the Executive Director, or his designee, to execute Contract No. 23-1002824 and any amendments, subject to approval as to form by General Counsel, a Restricted Grant Agreement between San Bernardino County Transportation Authority (SBCTA) and the California Department of Transportation for SBCTA to receive an amount not-to-exceed \$594,479 for the development of the San Bernardino County Long Range Multimodal Transportation Plan.

Presenter: Ginger Koblasz

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel has reviewed this item and the draft resolution.

Discussion - Transportation Programming and Fund Administration

11. Measure I 2022 Population Estimates

Pg. 379

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

Adopt the 2022 Population Estimates in Attachment B for use in the allocation of Measure I Local Street Projects Program and Transportation Development Act funds and in the apportionment of shares of certain State and Federal funds.

Presenter: Michele Fogerson

This item is not scheduled for review by any other policy committee or technical advisory committee.

Public Comment

Brief Comments from the General Public

Comments from Board Members

Brief Comments from Board Members

ADJOURNMENT

Additional Information

Attendance

Pg. 388

Acronym List

Pg. 389

Mission Statement

Pg. 391

The committee will go dark in July.

The next General Policy Committee meeting is scheduled for August 10, 2022.

Meeting Procedures and Rules of Conduct

Meeting Procedures - The Ralph M. Brown Act is the state law which guarantees the public's right to attend and participate in meetings of local legislative bodies. These rules have been adopted by the Board of Directors in accordance with the Brown Act, Government Code 54950 et seq., and shall apply at all meetings of the Board of Directors and Policy Committees.

Accessibility - The meeting facility is accessible to persons with disabilities. If assistive listening devices or other auxiliary aids or services are needed in order to participate in the public meeting, requests should be made through the Clerk of the Board at least three (3) business days prior to the Board meeting. The Clerk can be reached by phone at (909) 884-8276 or via email at clerkoftheboard@gosbcta.com and office is located at 1170 W. 3rd Street, 2nd Floor, San Bernardino, CA.

Agendas – All agendas are posted at www.gosbcta.com/board/meetings-agendas/ at least 72 hours in advance of the meeting. Staff reports related to agenda items may be reviewed online at that web address. Agendas are also posted at 1170 W. 3rd Street, 1st Floor, San Bernardino at least 72 hours in advance of the meeting.

Agenda Actions – Items listed on both the “Consent Calendar” and “Discussion” contain recommended actions. The Board of Directors will generally consider items in the order listed on the agenda. However, items may be considered in any order. New agenda items can be added and action taken by two-thirds vote of the Board of Directors or unanimous vote of members present as provided in the Ralph M. Brown Act Government Code Sec. 54954.2(b).

Closed Session Agenda Items – Consideration of closed session items excludes members of the public. These items include issues related to personnel, pending litigation, labor negotiations and real estate negotiations. Prior to each closed session, the Chair will announce the subject matter of the closed session. If action is taken in closed session, the Chair may report the action to the public at the conclusion of the closed session.

Public Testimony on an Item – Members of the public are afforded an opportunity to speak on any listed item. Individuals wishing to address the Board of Directors or Policy Committee Members should complete a “Request to Speak” form, provided at the rear of the meeting room, and present it to the Clerk prior to the Board's consideration of the item. A "Request to Speak" form must be completed for each item an individual wishes to speak on. When recognized by the Chair, speakers should be prepared to step forward and announce their name and address for the record. In the interest of facilitating the business of the Board, speakers are limited to three (3) minutes on each item. Additionally, a twelve (12) minute limitation is established for the total amount of time any one individual may address the Board at any one meeting. The Chair or a majority of the Board may establish a different time limit as appropriate, and parties to agenda items shall not be subject to the time limitations. Members of the public requesting information be distributed to the Board of Directors must provide 40 copies of such information in advance of the meeting, except for noticed public hearings. Information provided as public testimony is not read into the record by the Clerk.

The Consent Calendar is considered a single item, thus the three (3) minute rule applies. Consent Calendar items can be pulled at Board member request and will be brought up individually at the specified time in the agenda allowing further public comment on those items.

Agenda Times – The Board is concerned that discussion take place in a timely and efficient manner. Agendas may be prepared with estimated times for categorical areas and certain topics to be discussed. These times may vary according to the length of presentation and amount of resulting discussion on agenda items.

Public Comment – At the end of the agenda, an opportunity is also provided for members of the public to speak on any subject within the Board’s authority. Matters raised under “Public Comment” may not be acted upon at that meeting. “Public Testimony on any Item” still applies.

Disruptive or Prohibited Conduct – If any meeting of the Board is willfully disrupted by a person or by a group of persons so as to render the orderly conduct of the meeting impossible, the Chair may recess the meeting or order the person, group or groups of person willfully disrupting the meeting to leave the meeting or to be removed from the meeting. Disruptive or prohibited conduct includes without limitation addressing the Board without first being recognized, not addressing the subject before the Board, repetitiously addressing the same subject, failing to relinquish the podium when requested to do so, bringing into the meeting any type of object that could be used as a weapon, including without limitation sticks affixed to signs, or otherwise preventing the Board from conducting its meeting in an orderly manner. Your cooperation is appreciated!

General Practices for Conducting Meetings of Board of Directors and Policy Committees

Attendance.

- The Chair of the Board or a Policy Committee (Chair) has the option of taking attendance by Roll Call or Self-Introductions. If attendance is taken by Roll Call, the Clerk of the Board will call out by jurisdiction or supervisorial district. The Member or Alternate will respond by stating his/her name. If attendance is by Self-Introduction, the Member or Alternate will state his/her name and jurisdiction or supervisorial district.
- A Member/Alternate, who arrives after attendance is taken, shall announce his/her name prior to voting on any item.
- A Member/Alternate, who wishes to leave the meeting after attendance is taken but before remaining items are voted on, shall announce his/her name and that he/she is leaving the meeting.

Basic Agenda Item Discussion.

- The Chair announces the agenda item number and states the subject.
- The Chair calls upon the appropriate staff member or Board Member to report on the item.
- The Chair asks members of the Board/Committee if they have any questions or comments on the item. General discussion ensues.
- The Chair calls for public comment based on “Request to Speak” forms which may be submitted.
- Following public comment, the Chair announces that public comment is closed and asks if there is any further discussion by members of the Board/Committee.
- The Chair calls for a motion from members of the Board/Committee.
- Upon a motion, the Chair announces the name of the member who makes the motion. Motions require a second by a member of the Board/Committee. Upon a second, the Chair announces the name of the Member who made the second, and the vote is taken.
- The “aye” votes in favor of the motion shall be made collectively. Any Member who wishes to oppose or abstain from voting on the motion, shall individually and orally state the Member’s “nay” vote or abstention. Members present who do not individually and orally state their “nay” vote or abstention shall be deemed, and reported to the public, to have voted “aye” on the motion.

The Vote as specified in the SANBAG Bylaws.

- Each Member of the Board of Directors shall have one vote. In the absence of the official representative, the alternate shall be entitled to vote. (Board of Directors only.)
- Voting may be either by voice or roll call vote. A roll call vote shall be conducted upon the demand of five official representatives present, or at the discretion of the presiding officer.

Amendment or Substitute Motion.

- Occasionally a Board Member offers a substitute motion before the vote on a previous motion. In instances where there is a motion and a second, the maker of the original motion is asked if he or she would like to amend his or her motion to include the substitution or withdraw the motion on the floor. If the maker of the original motion does not want to amend or withdraw, the substitute motion is voted upon first, and if it fails, then the original motion is considered.
- Occasionally, a motion dies for lack of a second.

Call for the Question.

- At times, a Member of the Board/Committee may “Call for the Question.”
- Upon a “Call for the Question,” the Chair may order that the debate stop or may allow for limited further comment to provide clarity on the proceedings.
- Alternatively and at the Chair’s discretion, the Chair may call for a vote of the Board/Committee to determine whether or not debate is stopped.
- The Chair re-states the motion before the Board/Committee and calls for the vote on the item.

The Chair.

- At all times, meetings are conducted in accordance with the Chair’s direction.
- These general practices provide guidelines for orderly conduct.
- From time-to-time circumstances require deviation from general practice.
- Deviation from general practice is at the discretion of the Chair.

Courtesy and Decorum.

- These general practices provide for business of the Board/Committee to be conducted efficiently, fairly and with full participation.
- It is the responsibility of the Chair and Members to maintain common courtesy and decorum.

Adopted By SANBAG Board of Directors January 2008

Revised March 2014

Revised May 4, 2016

Minute Action

AGENDA ITEM: 1

Date: June 8, 2022

Subject:

Information Relative to Possible Conflict of Interest

Recommendation:

Note agenda items and contractors/subcontractors, which may require member abstentions due to possible conflicts of interest.

Background:

In accordance with California Government Code 84308, members of the Board may not participate in any action concerning a contract where they have received a campaign contribution of more than \$250 in the prior twelve months from an entity or individual, except for the initial award of a competitively bid public works contract. This agenda contains recommendations for action relative to the following contractors:

Item No.	Contract No.	Principals & Agents	Subcontractors
4	23-1002825	FNA California, LLC <i>Dale Kocher</i>	None
5	23-1002827	San Bernardino County Auditor- Controller/Treasurer/Tax Collector	None
6	22-1002768	GCAP Services, Inc. <i>Sylvia Linn</i>	None
	22-1002769	Cumming Management Group, Inc. <i>Anthony Sanchez</i>	None
	23-1002832	Gafcon, Inc. <i>Lizette Rodriguez</i>	None
7	22-1002736	Royal Coaches Auto Body and Towing <i>William Salazar, Owner</i>	None
	22-1002738		
	22-1002737		
10	23-1002824	California Department of Transportation	None

Financial Impact:

This item has no direct impact on the Budget.

Reviewed By:

This item is prepared monthly for review by Board and Committee members.

Responsible Staff:

Carrie Schindler, Deputy Executive Director

Approved
General Policy Committee
Date: June 8, 2022

Witnessed By:

Entity: San Bernardino Council of Governments, San Bernardino County Transportation Authority

Minute Action

AGENDA ITEM: 2

Date: June 8, 2022

Subject:

May 2022 Procurement Report

Recommendation:

Receive the May 2022 Procurement Report.

Background:

The Board of Directors adopted the Procurement and Special Risk Assessment Policy (Policy No. 11000) on January 3, 1997, and approved the last revision on October 6, 2021. The Board of Directors authorized the Executive Director, or his designee, to approve: a) contracts and Purchase Orders up to \$100,000; b) Contract Task Orders (CTO) up to \$500,000 and for CTOs originally \$500,000 or more, increasing the CTO amount up to \$250,000; c) amendments with a zero dollar value; d) amendments to exercise the option term if the option term was approved by the Board of Directors in the original contract; e) amendments that cumulatively do-not-exceed 50% of the original contract or Purchase Order value or \$100,000, whichever is less; f) amendments that do-not-exceed contingency amounts authorized by the Board of Directors; and g) release Request for Proposals (RFP), Request for Qualifications (RFQ), and Invitation for Bids (IFB) for proposed contracts from which funding has been approved in the Annual Budget, and are estimated not-to-exceed \$1,000,000.

The Board of Directors further authorized General Counsel to award and execute legal services contracts up to \$100,000 with outside counsel as needed, and authorized Department Directors to approve and execute Contingency Amendments that do-not-exceed contingency amounts authorized by the Board of Directors. Below is a summary of the actions taken:

- Two (2) contract amendments were executed for a total cost of \$54,916.
- Two (2) contract CTOs were executed for a total cost of \$974,423.57.
- Three (3) contingency releases were executed for a total cost of \$360,626.67.
- Eight (8) Purchase Orders were executed for a total cost of \$58,259.67.
- Four (4) Purchase Order Amendments were executed for a total cost of \$15,405.32.

A list of all Contracts and Purchase Orders that were executed by the Executive Director, Department Director and/or General Counsel during the month of May 2022 are presented herein as Attachment A, and all RFPs and IFBs are presented in Attachment B.

Financial Impact:

This item is consistent with the Fiscal Year 2022/2023 Budget. Presentation of the monthly procurement report demonstrates compliance with the Procurement and Special Risk Assessment Policy.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee.

Responsible Staff:

Shaneka Morris, Procurement Manager

Entity: San Bernardino Council of Governments, San Bernardino County Transportation Authority

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Approved
General Policy Committee
Date: June 8, 2022
Witnessed By:

Attachment A**May Contract Actions****New Contracts Executed:**

Contract No.	Description of Services	Vendor Name	Contract Amount
None			

Attachment A

May Amendment Actions

Contract Amendments Executed:

Contract No. & Amendment No.	Reason for Amendment (Include a Description of the Amendment)	Vendor Name	Contract History	Contract Amount
19-1002007 No. 1	To exercise the first one-year option extending the contract through May 11, 2023.	Bender Rosenthal, Inc.	Original	\$1,375,000.00
			Prior Amendments(CTOs)	\$0.00
			Current Amendment	\$0.00
			Total Contract Amount	\$1,375,000.00
20-1002323 No. 2	To increase the contract value to provide weekend construction freeway support services for the Victorville Oak Hills Road to Bear Valley Road project for Caltrans.	Carpe Carma, LLC DBA Pomona Valley Towing	Original	\$2,196,291.00
			Prior Amendments	\$0.00
			Current Amendment	\$54,916.00
			Total Contract Amount	\$2,251,207.00

Attachment: May 2022 Procurement Attachment A (8254 : May 2022 Procurement Report)

Attachment A

May Contract Task Order Actions

Contract Task Order (CTO) Executed:

Contract No. & CTO No.	Description of CTO	Vendor Name	Contract History	Contract Amount
22-1002708 CTO No. 1	Metrolink Station Accessibility Improvement Project – Phase II construction support services.	WSP USA	Original	\$5,000,000.00
			Prior Amendments	\$0.00
			Prior CTOs	\$0.00
			Current CTO	\$894,507.57
			Available Contract Amount	\$4,105,492.43
22-1002323 CTO No. 1	Provide weekend construction freeway support services for the Victorville Oak Hills Road to Bear Valley Road project for Caltrans.	Carpe Carma, LLC DBA Pomona Valley Towing	Original	\$2,196,291.00
			Prior Amendments	\$54,916.00
			Prior CTOs	\$0.00
			Current CTO	\$79,916.00
			Available Contract Amount	\$2,171,291.00

Attachment: May 2022 Procurement Attachment A (8254 : May 2022 Procurement Report)

Attachment A

May Contingency Released Actions

Contingency Released Executed:

Contract No. & Contingency No.	Reason for Contingency Amendment (Include a Description of the Contingency Amendment)	Vendor Name	Contract History	Contract Amount
21-1002452 Contingency 0B	Ontario Loop Project - Develop of an abbreviated Alternative Analysis to be included in the environmental document to meet FTA requirements.	HNTB Corporation	Original	\$26,940,428.00
			Prior Amendments	\$0.00
			Prior Contingencies	\$50,000.00
			Current Contingency	\$116,070.00
			Amended Contract Amount	\$27,106,498.00
18-1001869 Contingency 1B	I-10 Mount Vernon Avenue Interchange Project Design Services - 5 additional retaining walls structural design and geotechnical exploration/analysis.	Kimley-Horn and Associates, Inc	Original	\$3,486,045.00
			Prior Amendments	\$23,000.00
			Prior Contingencies	\$309,000.00
			Current Contingency	\$124,556.67
			Amended Contract Amount	\$3,942,601.67
16-1001440 Contingency 2C	Redlands Passenger Rail Program (RPRP) Construction Management Services - support needed to complete project close-out activities.	AECOM	Original	\$17,380,058.00
			Prior Amendments	\$1,200,000.00
			Prior Contingencies	\$1,738,006.00
			Current Contingency	\$120,000.00
			Amended Contract Amount	\$20,438,064.00

Attachment: May 2022 Procurement Attachment A (8254 : May 2022 Procurement Report)

Attachment A

May Purchase Order Actions

Purchase Orders Executed:

PO No.	PO Posting Date	Vendor Name	Description of Services	PO Dollar Amount
4002260	05/10/2022	Inland Action Inc	Annual Membership Dues	\$3,596.00
4002261	05/16/2022	G/M Business Interiors	Office Furniture - Stand up Desks	\$28,118.20
4002262	05/20/2022	Expert Plant Care, Inc	Plant Service Monthly Maintenance Fiscal Year 2021-22 through December 2023	\$5,530.00
4002263	05/20/2022	Ametron	Sole Source - SBCTA Board Room System Repair - Parts	\$1,170.47
4002264	05/20/2022	Nth Generation Computing. Inc	3 year VMware Production Support Services	\$2,304.00
4002265	05/23/2022	Nth Generation Computing. Inc	Host and SAN (Storage Area Network) Support Renewal	\$9,084.00
4002266	05/24/2022	Climate Resolve	Annual membership to the Inland Southern California Climate Collaborative	\$3,000.00
4002267	05/26/2022	Copperfasten Technologies, Limited	Email Spam Filtering and Encryption Software	\$5,457.00

Attachment: May 2022 Procurement Attachment A (8254 : May 2022 Procurement Report)

Attachment A

May Purchase Order Amendment Actions

Purchase Order Amendments Executed:

Purchase Order No. & Amendment No.	Description of Services and Reason for Amendment	Vendor Name	Purchase Order History	Purchase Order Amount
4002013 No. 3	Removal for 28 GPS units adjusted to correct amount and funding source.	Emergency Vehicle Specialities, Inc	Original	\$3,410.00
			Prior Amendments	\$2,704.00
			Current Amendment	-\$291.20
			Amended PO Amount	\$5,822.80
4002165 No. 1	Iron Mountain Record/Equipment Storage termination fees.	Iron Mountain Inc	Original	\$58,000.00
			Prior Amendments	\$0.00
			Current Amendment	\$15,000.00
			Amended PO Amount	\$73,000.00
4002222 No. 1	P6 License Series Additional License.	Oracle America, Inc	Original	\$1,477.47
			Prior Amendments	\$0.00
			Current Amendment	\$77.69
			Amended PO Amount	\$1,555.16
4002242 No. 2	Revised to add tax.	Cintas Corporation No. 2	Original	\$7,070.00
			Prior Amendments	\$0.00
			Current Amendment	\$618.83
			Amended PO Amount	\$7,688.83

Attachment: May 2022 Procurement Attachment A (8254 : May 2022 Procurement Report)

Attachment B**May RFP's, RFQ's and IFB's****Release of RFP's, RFQ's and IFB's**

Release Date	RFP/RFQ/IFB No.	Anticipated Dollar Amount	Anticipated Award Date	Description of Overall Program and Program Budget
None				

Attachment: May 2022 Procurement Attachment B (8254 : May 2022 Procurement Report)

Minute Action

AGENDA ITEM: 3

Date: June 8, 2022

Subject:

Fiscal Year 2021/2022 Initiatives and Action Plan - Fourth Quarter Report

Recommendation:

Receive the Fiscal Year 2021/2022 Initiatives and Action Plan - Fourth Quarter Report.

Background:

The San Bernardino County Transportation Authority's (SBCTA) Fiscal Year 2021/2022 Initiatives and Action Plan establish the Board of Directors' priorities for the year. The Executive Director uses this as a tool with the Executive Management Team to evaluate SBCTA's progress in achieving the Board's priorities.

Financial Impact:

This item is consistent with the Adopted Fiscal Year 2021/2022 Budget.

Reviewed By:

This item is not scheduled for any other policy committee or technical advisory committee.

Responsible Staff:

Raymond Wolfe, Executive Director

<p><i>Entity: San Bernardino County Transportation Authority</i></p>	<p>Approved General Policy Committee Date: June 8, 2022 Witnessed By:</p>
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Minute Action

AGENDA ITEM: 4

Date: June 8, 2022

Subject:

Purchase and Sale Agreement No. 23-1002825 for Property Assessed Clean Energy Assessment Receivables with FNA California, LLC

Recommendation:

That the General Policy Committee recommend the Board, acting as the San Bernardino Associated Governments:

A. Approve Purchase and Sale Agreement No. 23-1002825 with FNA California, LLC, to grant their first right of refusal and to allow them to advance funds to cover the Property Assessed Clean Energy Assessment delinquencies for the 2015-2016 through 2021-2022 tax years, and authorize the Executive Director, or his designee, with the approval of General Counsel as to legal form, to finalize the terms of the agreement, including the final amount and the delinquent properties to be included, and to execute the final agreement.

B. Defer the judicial foreclosure proceedings for the delinquent properties.

Background:

Under the Master Indentures that outline how San Bernardino Associated Governments (SANBAG) will issue bonds for the Property Assessed Clean Energy (PACE) Program, any property owner that is delinquent in their tax bill on October 1st of each year will be subject to SANBAG starting a judicial foreclosure process. The Master Indentures provide that SANBAG may elect to defer the judicial foreclosure proceedings if SANBAG has received or advanced funds to cover the delinquent amounts.

In May 2022, SANBAG's Special Tax Consultant, David Taussig & Associates (DTA), reported that there were 143 properties considered delinquent for the 2021-2022 tax year and 151 properties delinquent from the 2015-2016 through 2020-2021 tax years combined. DTA transmits delinquency notices to the delinquent property owners after the 1st and 2nd tax installments are not paid. The delinquencies by tax year are shown in the table below.

Tax Year	Amount of Tax Levy	Number of Properties	Amount Delinquent	Number of Delinquent Properties	Delinquency Rate by Value
14/15	\$7,856,008.93	3,160	\$0.00	0	0.00%
15/16	\$19,058,514.63	7,103	\$9,499.42	4	0.05%
16/17	\$29,734,139.75	10,557	\$25,253.57	10	0.08%
17/18	\$35,736,978.72	12,384	\$49,417.14	22	0.14%
18/19	\$31,123,600.04	10,731	\$91,675.93	35	0.29%
19/20	\$25,179,345.70	8,766	\$125,268.94	43	0.50%
20/21	\$19,906,970.38	7,062	\$90,900.60	37	0.46%
21/22	\$14,356,417.31	5,275	\$273,477.12	143	1.90%

In order for the Board of Directors to defer the judicial foreclosure process, the delinquent amounts must be advanced to the Trustee--either by SANBAG, or by a third party, such as FNA California, LLC, pursuant to an agreement with SANBAG allowing that third party to advance the funds and to be reimbursed for such advance when the delinquent assessments are brought current. Purchase and Sale Agreement No. 23-1002825 accomplishes this task.

Entity: San Bernardino Council of Governments

General Policy Committee Agenda Item

June 8, 2022

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This contract allows FNA California, LLC, to exercise its right of first refusal to purchase the PACE assessment delinquencies as of June 30, 2022, as outlined in Purchase and Sale Agreement No. 21-1002484 approved by SANBAG and dated October 27, 2020. FNA California, LLC, will pay a fee equal to 7.5% of the delinquent assessments, which is the same rate as in the agreement prior to the pandemic when it was reduced to 2.5%, at a cost of \$20,510.78 based on current delinquencies, to be used by SANBAG to cover our administrative costs as well as the additional costs incurred by our Special Tax Consultant. FNA California, LLC, is providing a similar service with the same fee for Western Riverside Council of Governments (WRCOG) for their local and statewide PACE programs.

Staff recommends that it is in the best interest of SANBAG and property owners to defer the judicial foreclosure process and to approve the agreement with FNA California, LLC, and allow them to advance the delinquent amounts. These actions will provide property owners more time to become current on their assessments and will allow SANBAG to meet the conditions of the Master Indentures for the bonds.

Financial Impact:

This item is consistent with the Proposed Fiscal Year 2022/2023 Budget.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel and Risk Manager have reviewed this item and the draft agreement.

Responsible Staff:

Hilda Flores, Chief Financial Officer

Approved
General Policy Committee
Date: June 8, 2022

Witnessed By:

General Contract Information

Contract No: 23-1002825 Amendment No.: _____

Contract Class: Receivable Department: Council of Governments

Customer ID: 03543 Customer Name: FNA California, LLC

Description: Fees related to purchase of PACE Program Delinquent Assessments

List Any Accounts Payable Related Contract Nos.: _____

Dollar Amount							
Original Contract		\$	20,510.78	Original Contingency		\$	-
Prior Amendments		\$	-	Prior Amendments		\$	-
Current Amendment		\$	-	Current Amendment		\$	-
Total/Revised Contract Value		\$	20,510.78	Total Contingency Value		\$	-
	Total Dollar Authority (Contract Value and Contingency)					\$	20,510.78

Contract Authorization

Board of Directors Date: 7/6/2022 Committee _____ Item # _____

Contract Management (Internal Purposes Only)

Local						Services					
Accounts Receivable											
Total Contract Funding:		\$		20,510.78		Funding Agreement No:		23-1002825			
Beginning POP Date:		8/15/2022		Ending POP Date:		6/30/2023		Final Billing Date:		6/30/2023	
Expiration Date:		6/30/2023									
Fund	Prog	Task	Sub-Task	Revenue	Total Contract Funding:	Fund	Prog	Task	Sub-Task	Revenue	Total Contract Funding:
GL: 2911	10	0111	0708	48007000	20,510.78	GL:					-
GL:					-	GL:					-
GL:					-	GL:					-
GL:					-	GL:					-
GL:					-	GL:					-

Hilda Flores

Project Manager (Print Name)

Hilda Flores

Task Manager (Print Name)

Additional Notes: Final terms and listing of delinquent properties will be finalized and approved by Executive Director

PURCHASE AND SALE AGREEMENT

Dated as of August 15, 2022

between

SAN BERNARDINO ASSOCIATED GOVERNMENTS,

as Seller

and

FNA CALIFORNIA, LLC,

as Purchaser

**Regarding
Assessment Installment Receivables
for the 2022-2023 Tax Year**

Attachment: 23-1002825 (8617 : Purchase and Sale Agreement for PACE Assessment Receivables)

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DRAFT

Attachment: 23-1002825 (8617 : Purchase and Sale Agreement for PACE Assessment Receivables)

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement"), dated as of August 15, 2022, between San Bernardino Associated Governments ("SANBAG"), a joint exercise of powers authority existing under the Joint Exercise of Powers Act, being Chapter 5 of Division 7, Title 1 of the Government Code of the State of California and a Joint Exercise of Powers Agreement originally made and entered into as of March 15, 1973, as further amended to date, and FNA California, LLC, an Illinois limited liability company ("Company").

BACKGROUND

SANBAG has levied assessments under Chapter 29 (as defined below) payable in installments under the 1915 Act (defined below) on properties participating in the SANBAG HERO Program (as defined below) which are collected on the secured property tax roll of the County (as defined below) in which the participating properties are located.

Certain installments of such assessments are delinquent (the "Assessment Installment Receivables") as of the Cut-off Date (as defined below).

SANBAG has determined that it is in the best interests of SANBAG at this time to sell to the Company the Assessment Installment Receivables it is entitled to receive arising from the collection of certain delinquent assessments for the tax years specified in this Agreement, upon the terms and conditions provided herein.

Now, THEREFORE, for and in consideration of the premises and the material covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

Attachment: 23-1002825 (8617 : Purchase and Sale Agreement for PACE Assessment Receivables)

Article I Definitions

Section 1.01 Definitions. Whenever used in this Agreement, the following words and phrases, unless the context otherwise requires, shall have the following meanings:

“1915 Act” means the Improvement Bond Act of 1915, Division 10 of Part I (commencing with Section 8500) of the California Streets and Highways Code.

“Agreement” means this Purchase and Sale Agreement, as originally executed or as it may from time to time be supplemented, modified or amended in accordance with the provisions hereof.

“Assessment” means each “Assessment” as defined in an Assessment Contract and levied pursuant to such Assessment Contract against a Property (as defined below) to which such Assessment Contract is subject.

“Assessment Administrative Fee” means, as to each Property, the assessment administrative fee due and payable pursuant to the applicable Assessment Contract that shall be collected on the property tax bill pertaining to such Property.

“Assessment Administrator” means David Taussig & Associates, and its successors, or any financial consultant or firm of such financial consultants judged by SANBAG to have experience in the administration for and on behalf of public agencies of assessments similar to the Assessments levied by such public agencies in the State of California.

“Assessment Contract” shall have the meaning given such term in the applicable Master Indenture.

“Assessment Installment” means, as to each Property, the portion of the principal amount of an Assessment, together with the interest on the Assessment, due and payable pursuant to an Assessment Contract that shall be collected on the property tax bill for a particular Tax Year pertaining to such Property.

“Assessment Installment Receivable” means, with respect to a Property for a particular Tax Year, the Assessment Installment and the related Assessment Administrative Fee on the secured tax roll of the County that:

- (i) was levied by SANBAG on one of the Properties listed on the Assessment Installment Receivables Schedule for such Tax Year in accordance with the Chapter 29, the 1915 Act and the applicable Assessment Contract and is payable to SANBAG if and when collected,
- (ii) was levied on account of the applicable Purchased Tax Year, was delinquent as of the Cut-off Date and was shown as such on the Delinquent Tax Roll maintained by the County for the applicable Purchased Tax Year,
- (iii) had not been received by SANBAG or the Trustee, on behalf of SANBAG, as of the Cut-off Date,

(iv) is due and owing to SANBAG in an amount equal to the amount of such Assessment Installment and Assessment Administrative Fee, penalties and accrued interest set forth on the Assessment Installment Receivables Schedule,

(v) includes, to the extent permitted by law and the terms of the applicable Master Indenture, all penalties and accrued interest thereon to the date of collection, and

(vi) has not become a Defective Assessment Installment Receivable.

“Assessment Installment Receivable Balance” means, with respect to an Assessment Installment Receivable as of a particular date, the sum of

(i) an amount equal to the delinquent Assessment Installments and Assessment Administrative Fees levied by or on behalf of SANBAG and payable to the SANBAG with respect to such Assessment Installment Receivable as shown on the Assessment Installment Receivables Schedule,

(ii) to the extent permitted by law and the applicable Master Indenture, the ten percent (10%) penalty payable on the Assessment Installment Receivable in accordance with Sections 2617 and 2618 of the California Revenue and Taxation Code, and

(iii) to the extent permitted by law and the applicable Master Indenture, interest accrued on the amount in clause (A) from the July 1 of the Tax Year following the Tax Year in which such Assessment Installment Receivable first became delinquent through the date of determination at the rate of one and half percent (1.5%) per month in accordance with Section 4103 of the California Revenue and Taxation Code.

“Assessment Installment Receivables Schedule” means the schedule attached as (or incorporated by reference in) EXHIBIT A hereto, as such schedule may be amended from time to time in accordance with Section 3.01(e) hereof, with respect to the Assessments levied on the Properties described on EXHIBIT A hereto.

“Assessment Installments Purchased” has the meaning set forth in Section 2.01(a) hereof.

“Assessment Lien” means any lien that attaches, by operation of Section 2187 of the California Revenue and Taxation Code, to the fee interest in real property.

“Bond Counsel” means Best Best & Krieger LLP or any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to public financing in the State.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banking institutions in New York or California are authorized or obligated by law or executive order to be closed.

“Chapter 29” means Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (commencing with Section 5898.12 et seq.)

"Closing Date" means August 15, 2022.

"Collections" means, with respect to an Assessment Installment Receivable, the amount collected by the County (whether as payments by the related Property Owner in a lump sum, payments by the related Property Owner pursuant to an installment payment plan, as proceeds of sale of the related tax-defaulted Property, or otherwise) on the Assessment Installment Receivable. Collections include but are not limited to the following:

- (i) the delinquent Assessment Installments payable for the Tax Year to which the Assessment Installment Receivable is related,
- (ii) the ten percent (10%) penalty payable thereon in accordance with Sections 2617 and 2618 of the California Revenue and Taxation Code,
- (iii) interest accruing at the rate of one and half percent (1.5%) per month in accordance with Section 4103 of the California Revenue and Taxation Code, and
- (iv) all Assessment Administrative Fees levied in connection therewith that are distributable to SANBAG, if any.

"Company" means FNA California, LLC, a limited liability company organized and existing under the laws of the state of Illinois or any successor thereto.

"County" means the County of San Bernardino, California.

"Cut-off Date" means August 10, 2022.

"Defective Assessment Installment Receivable" has the meaning set forth in Section 3.01(c) hereof.

"Defective Assessment Installment Receivable Purchase Amount" means, as to any Defective Assessment Installment Receivable, an amount equal to the Purchase Price and Premium of such Defective Assessment Installment Receivable set forth on the Assessment Installment Receivables Schedule reduced by the amount, if any, of Collections on such Defective Assessment Installment Receivable which have been applied to the recovery of such Purchase Price and Premium and paid to the Company as of the date of calculation.

"Delinquent Tax Roll" means the delinquent tax roll which is delivered by the Treasurer-Tax Collector of the County to the Auditor-Controller of the County pursuant to Section 2627 of the Revenue and Taxation Code of the State, or such other report, file or data of the Treasurer-Tax Collector or Auditor-Controller of the County as may be available from the County and mutually satisfactory to SANBAG and the Company.

"Master Indenture" means, as applicable, each of the master indentures listed on EXHIBIT B, incorporated herein by reference.

"Opinion of Counsel" means one or more written opinions of counsel, who may be an employee of or counsel to SANBAG, which counsel shall be acceptable to the recipient of such opinion or opinions.

“Person” any individual, corporation, partnership (general or limited), limited liability company, limited liability partnership, firm, joint venture, association, joint-stock company, trust, estate, unincorporated organization, governmental body or other entity.

“Premium” has the meaning set forth in Section 2.01(a) hereof.

“Property” means, with respect to an Assessment Installment Receivable, the real property that is encumbered by the Assessment Lien of such Assessment Installment Receivable.

“Property Owner” means, with respect to an Assessment Installment Receivable, the fee owner or owners of the related Property.

“Purchase Price” has the meaning set forth in Section 2.01(a) hereof.

“Purchased Tax Year” means, for a given Assessment Installment Receivable, the Tax Year ending on June 30 of the applicable calendar year, as set forth in EXHIBIT A hereto.

“Purchased Receivables” means the Assessment Installment Receivables listed on the Assessment Installment Receivables Schedule and purchased by the Company pursuant to this Agreement.

“Responsible Officer” means, with respect to SANBAG, the Executive Director, and the Deputy Executive Director, or any other official of SANBAG customarily performing functions similar to those performed by any of the above designated officials, and also with respect to a particular matter, any other official of SANBAG to whom such matter is referred because of such official’s knowledge of and familiarity with the particular subject.

“SANBAG” means San Bernardino Associated Governments, a joint exercise of powers authority organized and existing under the laws of the State, including any entity with which it may be consolidated or which otherwise succeeds to the interests of SANBAG.

“SANBAG HERO Program” means the SANBAG HERO Program established by SANBAG pursuant to Chapter 29 and the 1915 Act.

“State” means the State of California.

“Tax Year” means the 12-month period beginning on July 1 in any year and ending on the following June 30. Whenever in this Agreement reference is made to the Tax Year of a certain year, such reference is to the Tax Year ending June 30 of that year.

“Trustee” shall mean Deutsche Bank National Trust Company, a national banking association duly organized and existing under the laws of the United States of America, acting as trustee and not in its individual capacity, its successors and assigns, and any other corporation or association which may be at any time substituted in its place, as provided in the applicable Master Indenture.

Section 1.02 Other Definitional Provisions.

(a) All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein.

(b) As used in this Agreement and in any certificate or other document made or delivered pursuant hereto or thereto, accounting terms not defined in this Agreement or in any such certificate or other document, and accounting terms partly defined in this Agreement or in any such certificate or other document to the extent not defined, shall have the respective meanings given to them under generally accepted accounting principles. To the extent that the definitions of accounting terms in this Agreement or in any such certificate or other document are inconsistent with the meanings of such terms under generally accepted accounting principles, the definitions contained in this Agreement or in any such certificate or other document shall control.

(c) The words “hereof”, “herein”, “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; Article, Section, Schedule and Exhibit references contained in this Agreement are references to Articles, Sections, Schedules and Exhibits in or to this Agreement unless otherwise specified; and the term “including” shall mean “including without limitation.”

(d) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

(e) Any agreement, instrument or statute defined or referred to herein or in any instrument or certificate delivered in connection herewith means such agreement, instrument or statute as from time to time amended, modified or supplemented and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein; references to a Person are also to its permitted successors and assigns.

Section 1.03 Term of this Agreement.

This Agreement shall remain in full force and effect for the period during which any of the Assessment Installment Receivables purchased under this Agreement remains outstanding.

Article II

Purchase and Sale of Assessment Installment Receivables

Section 2.01 Purchase and Sale of Assessment Installment Receivables; Assignment of Rights.

(a) *Purchase and Sale.* In consideration of the Company’s promise to deliver on the Closing Date to or upon the order of SANBAG the sum of \$293,987.90 (the “Purchase Price”), which is equal to the principal amount of \$273,477.12 of the delinquent Assessment Installments included in Assessment Installment Receivables to be purchased (“Assessment Installments Purchased”), plus a premium equal to seven and a half_ percent (7.5%) of the Assessment Installments Purchased (the “Premium”) in the amount of \$20,510.78, SANBAG does hereby sell, transfer, assign, set over and otherwise convey to the Company, without recourse (but subject to the obligations herein), all right, title and interest of SANBAG on the Closing Date, free and clear of all liens, claims and interest, whether now owned or hereinafter acquired, in and to:

- (i) the Assessment Installment Receivables;
- (ii) all Collections in respect of the Assessment Installment Receivables since the Cut-off Date; and

(iii) the proceeds of any and all of the foregoing.

(b) *Collections.* The Company shall be entitled, from and after the Closing Date, to receive all Collections with respect to the Assessment Installment Receivables.

(c) *Payment and Application of Purchase Price.* On the Closing Date, the Company shall pay or cause to be paid the Purchase Price, together with the Premium thereon, in immediately available funds by federal funds wire to or upon the order of SANBAG. SANBAG covenants that (i) it shall treat the Purchase Price as Assessments or Assessment Administrative Fees, as applicable, for all purposes under the terms of the applicable Master Indenture or other document by which any bonds, notes or other evidences of indebtedness were issued and secured by the Assessments to which the Assessment Installment Receivables relate, and (ii) it shall apply the Purchase Price to the payment of the bonds secured by the Assessments to which the Assessment Installment Receivables relate, and to the other authorized purposes to which the Assessments or the Assessment Administrative Fees may be applied (including without limitation replenishment of reserve funds and payment of administrative expenses), to the same extent that the proceeds of the Assessments and Assessment Administrative Fees constituting the Assessment Installment Receivables would have been required to be applied had they been paid by the respective property owner before delinquency and received by SANBAG.

Section 2.02 Closing Conditions. The obligation of the Company to purchase the Assessment Installment Receivables and pay the Purchase Price, together with the Premium thereon, will be subject to the accuracy of the representations and warranties of SANBAG herein, to the accuracy of statements to be made by or on behalf of SANBAG, to the performance by SANBAG of its obligations hereunder and to the following additional conditions precedent:

(a) *Executed Agreement.* At the Closing Date, this Agreement must have been authorized, executed and delivered by the respective parties thereto, and this Agreement and all official actions of SANBAG relating thereto must be in full force and effect and not have been amended, modified or supplemented.

(b) *Closing Documents.* The Company must receive the following opinions and certificates (which may be consolidated into a single certificate for convenience), dated the Closing Date and acceptable to the Company:

(i) *Legal Opinion of Bond Counsel.* An approving opinion of Bond Counsel to the effect that the obligations of SANBAG under this Agreement are valid, binding and enforceable, and as to certain other matters, addressed to, and in form and substance satisfactory to, SANBAG and the Company.

(ii) *Certificate of SANBAG.* A certificate signed by an appropriate official of SANBAG to the effect that:

(A) SANBAG is duly organized and validly existing as a joint exercise of powers authority under the Joint Exercise of Powers Act, being Chapter 5 of Division 7, Title 1 of the Government Code of the State of California and a Joint Exercise of Powers Agreement originally made and entered into as of March 15, 1973, as further amended to date,

(B) the representatives of SANBAG who executed this Agreement have been duly authorized to do so on behalf of SANBAG,

(C) the representations, agreements and warranties of SANBAG herein are true and correct in all material respects as of the Closing Date,

(D) SANBAG has complied with all the terms of this Agreement which are required to be complied with by SANBAG prior to or concurrently with the Closing Date, and

(E) the execution and delivery of this Agreement have been approved by the governing board of SANBAG, which approval was duly and regularly adopted in accordance with all applicable legal requirements.

Section 2.03 Right to Terminate. If SANBAG is unable to satisfy the conditions set forth in Section 2.02(a) and (b) hereof, as reasonably determined by the Company, this Agreement may be canceled either in part or in its entirety by the Company at any time. Notice of such cancellation shall be given to SANBAG in writing, or by telephone call confirmed in writing. Upon receipt of a notice of cancellation pursuant to this Section 2.03, SANBAG shall remit the full Purchase Price, together with the Premium thereon, to and upon the order of the Company.

Section 2.04 Pledge. Although the parties hereto intend that the sale of the Assessment Installment Receivables by SANBAG to the Company be characterized as an absolute sale rather than a secured borrowing, if the sale of the Assessment Installment Receivables is deemed to be a secured borrowing, then in order to secure SANBAG's obligations to the Company hereunder, SANBAG takes the actions set forth below.

(a) SANBAG hereby pledges, assigns and grants a lien to the Company on the following (the "Collateral"):

- (i) the Assessment Installment Receivables;
- (ii) the Collections; and
- (iii) all proceeds of the foregoing.

(b) SANBAG represents and warrants to the Company that:

(i) this Agreement creates a valid and continuing lien on the Collateral in favor of the Company, which is prior to all other liens, and is enforceable as such as against creditors of and purchasers from SANBAG;

(ii) SANBAG owns and has good and marketable title to the Collateral free and clear of any lien, claim or encumbrance of any person subject to the provisions of the applicable Master Indenture;

(iii) other than the lien granted to the Company pursuant to this Agreement, SANBAG has not pledged, assigned, sold, granted a lien on, or otherwise conveyed any of the Collateral; and

- (iv) SANBAG is not aware of any judgment or tax lien filings against SANBAG.

These representations and warranties shall survive the Closing and may not be waived.

Section 2.05 Release of Collateral upon Repurchase of Assessment Installment Receivables. Any Assessment Installment Receivable that is repurchased by SANBAG in accordance with this Agreement shall be released from the Collateral when the required payment is made pursuant to Section 3.01(e) of this Agreement. Promptly upon such release, the Company shall amend the Assessment Installment Receivables Schedule to reflect the release of such Assessment Installment Receivable from the terms of this Agreement. Such Assessment Installment Receivable shall cease to be a part of the Collateral and be released from, and no longer be subject to, the pledge of this Agreement. The Company agrees to take or cause to be taken such actions and to execute, deliver and record such instruments and documents as may be set forth in a written request of SANBAG to release such Assessment Installment Receivable from the lien of this Agreement.

Article III The Assessment Installment Receivables

Section 3.01 Representations, Warranties and Covenants as to the Assessment Installment Receivables.

(a) *Representations and Warranties.* SANBAG hereby represents and warrants to the Company that to SANBAG's knowledge (1) as of the Closing Date for the Assessment Installment Receivables, the information set forth in the Assessment Installment Receivables Schedule will be correct in all material respects, and (2) as to each Assessment Installment Receivable transferred hereunder, as of the Closing Date:

(i) SANBAG was the sole owner of such Assessment Installment Receivable;

(ii) SANBAG has full right and authority to sell such Assessment Installment Receivable as provided in this Agreement;

(iii) SANBAG sold such Assessment Installment Receivable free and clear of any and all liens, pledges, charges, security interests or any other statutory impediments to transfer created by or imposed upon SANBAG encumbering such Assessment Installment Receivable (but subject to the right of redemption by the related Property Owner), except for liens that will be discharged by the application of the proceeds of the sale thereof;

(iv) the sale of such Assessment Installment Receivable by SANBAG did not contravene or conflict with any laws, rules or regulations applicable to SANBAG;

(v) the Assessment Installments and Assessment Administrative Fees of which the Assessment Installment Receivable constitutes a portion were validly levied by SANBAG and, to the best knowledge of SANBAG and its agents and representatives, also validly levied and collected by the County on the secured property tax roll on behalf of SANBAG, in accordance with all applicable provisions of the laws, rules and regulations of the State, the County and of the United States;

(vi) the amount of the Assessment Installment Receivable includes Assessment Installments and Assessment Administrative Fees on the secured tax roll which have been levied by SANBAG and by the County on the secured property tax roll on behalf of SANBAG during the applicable Purchased Tax Year which were delinquent as of the Cut-off Date;

(vii) the Assessment Installment Receivable was secured by a legal, valid, binding and enforceable lien on the related Property;

(viii) the lien of the Assessment Installment Receivable represented a valid, proper and enforceable lien on the related Property, the priority of which was subject only to other Assessment Liens on such Property and to certain other priorities prescribed by statute;

(ix) the amount of such Assessment Installment Receivable includes a ten percent (10%) penalty imposed pursuant to Revenue & Taxation Code Section 2617 and/or 2618 on the portion of such Assessment Installment Receivable consisting of the delinquent Assessment Installment(s) and the delinquent Assessment Administrative Fee(s);

(x) interest payable by the related Property Owner has accrued and will continue to accrue on the delinquent Assessment Installments and Assessment Administrative Fees of which the Assessment Installment Receivable constitutes a portion from July 1 of the Tax Year following the Tax Year in which such Assessment Installment Receivable first became delinquent to the date of payment of such Assessment Installments Receivable at the rate of one and a half percent (1.5%) per month (not compounded) as provided in California Revenue and Taxation Code Section 4103;

(xi) such Assessment Installment Receivable had not been discharged or disallowed (in whole or in part) in a bankruptcy proceeding;

(xii) such Assessment Installment Receivable had not been compromised, adjusted or modified (including by the granting of any discounts, allowances or credits, but not including installment payment plans in accordance with law);

(xiii) such Assessment Installment Receivable was not subject to a foreign government's diplomatic immunity from enforcement or treaty with the United States of America;

(xiv) there existed no fact, condition or circumstance that would prevent the County from being able to sell the related Property in a tax sale upon the expiration of a period of five years from July 1 of the Tax Year after the Tax Year in which the Assessment Installments became delinquent;

(xv) no right of rescission, setoff, counterclaim or defense had been asserted with respect to such Assessment Installment Receivable;

(xvi) SANBAG has not received notice that such Assessment Installment Receivable relates to a Property owned by a Property Owner that is subject to any bankruptcy proceeding commenced prior to the Closing Date;

(xvii) such Assessment Installment Receivable does not relate to a Property owned by a federal, state, or local governmental entity;

(xviii) SANBAG had not waived any penalties or interest with respect to such Assessment Installment Receivable;

(xix) each of the requirements included in the definition of "Assessment Installment Receivable" is satisfied with respect to such Assessment Installment Receivable; and

(xx) none of the exclusion criteria set forth in EXHIBIT C are applicable to such Assessment Installment Receivable unless, as of the Closing Date, any such criteria has been expressly waived in writing by the Company.

(b) Survival of Representations and Warranties; Liability of SANBAG.

(i) It is understood and agreed that the representations and warranties set forth in this Section 3.01, Section 2.04 Section 4.01 and Section 4.02 shall survive the consummation of the sale of the Assessment Installment Receivables on the Closing Date and shall inure to the benefit of the Company.

(ii) It is understood and agreed that the representations and warranties made by SANBAG in Section 3.01(a) hereof are made solely for the purpose of determining the existence of a Defective Assessment Installment Receivable, and in no case shall SANBAG or any of its officers or employees have any liability if it was subsequently discovered that such representations and warranties were in fact false at the time they were made, other than the obligation of SANBAG to repurchase Defective Assessment Installment Receivables as provided in this Agreement.

(c) *Defective Assessment Installment Receivables.* Upon discovery by SANBAG or the Company (based on information provided by the County, examination of the Delinquent Tax Roll, or otherwise) of a breach of any of the foregoing representations and warranties (without regard to any knowledge qualifier) that materially and adversely affects the value of any Assessment Installment Receivable (such Assessment Installment Receivable, a "Defective Assessment Installment Receivable"), the party making such discovery shall immediately notify SANBAG or the Company of such discovery and describe in reasonable detail the representations and warranties that were breached.

The Company may, at its option, require SANBAG to repurchase the Defective Assessment Installment Receivable. Under no circumstances will SANBAG have the right to require the resale of a Defective Assessment Installment Receivable to the Company. SANBAG shall have no right to substitute another Assessment Installment Receivable for a Defective Assessment Installment Receivable.

If the Company elects to require SANBAG to repurchase a Defective Assessment Installment Receivable, the Company shall give written notice to SANBAG. Such notice must (i) identify the Defective Assessment Installment Receivable, (ii) if the Assessment Installment Receivable Balance as of the Closing Date is determined to be less than the amount thereof shown on the Assessment Installment Receivables Schedule, state the amount of such deficiency

and (iii) be accompanied by documentation from the County which reasonably establishes the factual basis for the determination of the breach. SANBAG shall fully cooperate (at its own expense), or utilize all reasonable efforts to cause the County to cooperate, as reasonably requested by the Company in the investigation and reporting of the foregoing matters.

For purposes of clause (ii) of the preceding paragraph, if the adjustments to the Assessment Installment Receivable Balance result from adjustments to the Delinquent Tax Roll provided by the County, the Company will use its best reasonable efforts to obtain the reason(s) for the adjustments from the County, but if the Company is unable to obtain such reasons despite using its best reasonable efforts to do so, such inability shall not be grounds for rejection or disallowance of the adjustment.

(d) *Effect of Reduced Assessment Installment Receivable Amount.* If any Assessment Installment Receivable becomes a Defective Assessment Installment Receivable solely as a result of the determination that the Assessment Installment Receivable Balance as of the Closing Date (or applicable repurchase date) was less than the amount set forth on the Assessment Installment Receivables Schedule, then only the amount of the reduction of such Assessment Installment Receivable shall be deemed to be repurchased and such Assessment Installment Receivable, at its reduced Assessment Installment Receivable Balance, shall continue to be an Assessment Installment Receivable for all purposes of this Agreement.

(e) *Cure or Purchase of Defective Assessment Installment Receivables.* As to any Defective Assessment Installment Receivable, on or prior to the next date on which SANBAG receives the normal payments of Assessment Installments and Assessment Administrative Fees from the County following the day on which it is discovered that what was supposed to be an Assessment Installment Receivable is, in fact, a Defective Assessment Installment Receivable, SANBAG shall, at its option, either (A) cure or cause to be cured such breach or (B) pay to the Company, in immediately available funds, the Defective Assessment Installment Receivable Purchase Amount.

If any Assessment Installment Receivable is determined to be a Defective Assessment Installment Receivable prior to the Closing Date, the Defective Assessment Installment Receivable Purchase Amount shall be subtracted from the Purchase Price and Premium payable to SANBAG on the Closing Date.

The obligations of SANBAG under this Section 3.01(e) shall constitute the sole remedies available to the Company with respect to a Defective Assessment Installment Receivable and SANBAG shall not incur any other liability to the Company or any other Person because of any inaccuracy of any representation or warranty made under this Section 3.01 with respect to the Assessment Installment Receivables. Upon the repurchase of a Defective Assessment Installment Receivable by SANBAG, the Company shall cause the Assessment Installment Receivables Schedule to be amended to delete the Defective Assessment Installment Receivable, and SANBAG shall have no further liabilities or obligations with respect to such Defective Assessment Installment Receivable.

(f) *Company's Calculation of Defective Assessment Installment Receivables.* The Company shall cause the Company's calculations and/or recalculations of any adjustments made under this Section 3.01 (herein, "Adjustments") to be delivered to SANBAG. SANBAG shall have ten (10) Business Days after delivery thereof to review the Adjustments and submit to the Company any objections and deliver revised Adjustments to SANBAG. If SANBAG does not

respond to any such Adjustments (as they may be revised) within ten (10) Business Days after delivery, such Adjustments shall be deemed final and binding on SANBAG, and SANBAG shall remit any payment required by Section 3.01(e).

Section 3.02 Enforcement and Collection; Assignment of Rights.

(a) *Enforcement Rights of the Company.* Except as provided herein, the Company shall be entitled to assert all right, title, and interest of SANBAG in the enforcement and collection of the Purchased Receivables, including but not limited to SANBAG's lien priority, and SANBAG's right to receive the Collections on the Purchased Receivables. Notwithstanding the foregoing, the Company acknowledges that Streets & Highways Code Section 5898.28(b)(2) provides that (i) the Company is not authorized to initiate and prosecute a judicial foreclosure action upon the Properties securing the payment of the Purchased Receivables and (ii) prosecution of such a judicial foreclosure action remains the responsibility of SANBAG.

From and after the receipt by SANBAG of the Purchase Price on the Closing Date, SANBAG shall have no rights whatsoever in and to the Purchased Receivables, including but not limited to the right to receive any Collections in respect of the Purchased Receivables, except with respect to Defective Assessment Installment Receivables repurchased by SANBAG in accordance with Section 3.01 hereof.

SANBAG shall cooperate fully with the Company as may be reasonably required by the Company to exercise any enforcement rights granted to the Company under this Agreement. SANBAG shall take all actions as may be reasonably required by law, including but not limited to the initiation of judicial foreclosure proceedings upon the request of the Company upon the Properties securing the payment of the Purchased Receivables upon behalf of the Company as provided for herein, fully to preserve, maintain, defend, protect and confirm the interests of the Company in the Purchased Receivables and the Collections. Any such enforcement actions, including judicial foreclosure proceedings, required to be undertaken by SANBAG at the Company's request shall be at the sole expense of the Company. If the cost of any such enforcement action is recovered by SANBAG such funds shall first be used to reimburse SANBAG for any such costs that have not been paid by the Company and, upon reimbursement of SANBAG for all such costs, such remaining funds shall be used to reimburse the Company for such costs as have been paid by the Company.

The Company and SANBAG agree that the primary means of enforcement of the payment of a Purchased Receivable shall be a tax sale by the County in which the Property securing such Purchased Receivable is located pursuant to the applicable provisions of Part 6 of Division 1 of the California Revenue and Taxation Code (the "R&T Code"). The Company shall initially forebear from requesting SANBAG to initiate judicial foreclosure proceedings upon any Property securing the payment of a Purchased Receivable for a period of nine (9) years from the date of the original delinquency of the Purchased Receivable. If the County fails to attempt to sell such Property as required pursuant to R&T Code Section 3692 within nine (9) years from the date such Property can be sold at a tax sale, the Company may request that SANBAG initiate judicial foreclosure proceedings to secure the payment of the Purchased Receivable. Following receipt of such request from the Company, SANBAG may, at its sole discretion, (1) initiate such foreclosure proceedings or (2) repurchase such Purchased Receivable from the Company for an amount equal to the Purchase Price and Premium of such Purchased Receivables set forth in the Assessment Installment Receivables Schedule reduced by the amount, if any of Collections on

such Purchased Receivables which have been applied to the recovery of such Purchase Price and Premium and paid to the Company as of the date of calculation.

(b) *Change of Records; Further Actions and Assurances.* On or before the Closing Date, SANBAG shall mark its appropriate records so that, from and after the Closing Date, records of SANBAG shall indicate that such Purchased Receivables have been sold. SANBAG hereby agrees to (i) execute, deliver and cause to be approved and/or recorded all documents, and take all actions, as may be required to assign the Purchased Receivables and the Collections to the Company under this Agreement, and to notify the County of the assignments made under this Agreement, and (ii) execute, deliver and cause to be approved all amendments to any documents under which bonds or other debt secured by the Purchased Receivables were issued as may be required to assign the Purchased Receivables and the Collections to the Company under this Agreement, and to notify any applicable bond trustee, fiscal agent or payment agent of the assignments made under this Agreement.

(c) *Administration and Remittances of Collections.* SANBAG shall take all commercially reasonable best efforts as may be required to cause the Collections, when remitted by the County to SANBAG, to be remitted as soon as reasonably possible, and in any event not less frequently than once per calendar year, by or on behalf of SANBAG to the Company by federal funds wire transfer to the following account:

CIBC Bank USA
ABA 071006486
Acct Number: 2202292
Acct Name: Elm Limited LLC

If the Company becomes aware of Collections that have been remitted by the County to SANBAG and not paid to the Company, the Company may notify SANBAG in writing and SANBAG agrees to take all actions required to remit those Collections to the Company as soon as reasonably possible. If any Collections received by SANBAG from the County are not remitted to the Company within ten (10) business days of such notice, SANBAG agrees to pay to the Company upon demand interest on the amount of such unpaid Collections at the rate of ten percent (10%) per annum for each day such Collections remain unpaid after such date.

SANBAG shall cause all notices and reports relating to the Purchased Receivables to be provided to the Company as and when they are available from SANBAG, the Trustee or the Assessment Administrator. In addition, SANBAG shall provide, or cause the Assessment Administrator to provide monthly reporting to the Company on the status of Assessment Installment Receivables, cash reconciliations, and such other similar reports as the Company may reasonably request to enable the Company to account for the Assessment Installment Receivables. The costs of providing such notices and reports as described in this paragraph shall be borne by SANBAG.

(d) *Covenant Not to Waive Penalties.* SANBAG agrees not to waive all or any portion of delinquency penalties and redemption penalties as permitted by any provision of applicable law with respect to any delinquent Assessment Installments included within the Purchased Receivables.

Article IV SANBAG

Section 4.01 Representations of SANBAG. SANBAG makes the following representations on which the Company is deemed to have relied in acquiring the Assessment Installment Receivables. The representations speak as of the Closing Date, and shall survive the sale of the Assessment Installment Receivables to the Company and the pledge thereof to the Company pursuant to this Agreement.

(a) *Due Organization, Existence and Company.* SANBAG is a joint exercise of powers authority, duly organized and validly existing under the Joint Exercise of Powers Act, being Chapter 5 of Division 7, Title 1 of the Government Code of the State of California and a Joint Exercise of Powers Agreement originally made and entered into as of March 15, 1973, as further amended to date, has full legal right, power and authority under the Constitution and laws of the State to enter into this Agreement, to sell the Assessment Installment Receivables and the Collections to the Company, and to carry out and consummate all transactions contemplated hereby.

(b) *Due Execution.* By all necessary official action of the governing board of SANBAG, SANBAG has duly authorized and approved the execution and delivery of, and the performance by it of the obligations contained in this Agreement, and, as of the date hereof, such authorizations and approvals are in full force and effect and have not been amended, modified or rescinded.

(c) *Valid, Binding and Enforceable Obligations.* This Agreement constitutes the legal, valid and binding obligation of SANBAG, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or affecting creditors' rights, generally.

(d) *Consents and Approvals.* No consent or approval of any trustee or holder of any indebtedness of SANBAG or of the voters of SANBAG's member jurisdictions, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental agency, is necessary in connection with the execution and delivery of this Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

(e) *No Conflicts.* The authorization, execution and delivery of this Agreement and compliance with the provisions of this Agreement do not and will not conflict with or constitute a breach of or default under any applicable constitutional provision, law or administrative rule or regulation of the State or the United States, or any applicable judgment, decree, license, permit, trust agreement, loan agreement, bond, note, resolution, ordinance, agreement or other instrument to which SANBAG (or any of its officers in their respective capacities as such) are subject, or by which it or any of its properties are bound; nor will any such authorization, execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of its assets or properties or under the terms of any such law, regulation or instrument, except as may be provided by this Agreement.

(f) *No Litigation.* No action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, is pending with service of process accomplished or, to the knowledge of SANBAG, pending or threatened, that:

(i) in any way questions the legal existence of SANBAG or the titles of the officers of SANBAG to their respective offices that would have any material likelihood of affecting the obligations of SANBAG under this Agreement;

(ii) contests the validity or the power and authority of SANBAG to sell or pledge the Assessment Installment Receivables to Company;

(iii) affects, contests or seeks to prohibit, restrain or enjoin the execution and delivery of this Agreement, the sale or pledge of the Assessment Installment Receivables by SANBAG to Company, or the payment of Collections on the Assessment Installment Receivables to the Company;

(iv) in any way contests or affects the validity of this Agreement, the power or authority of SANBAG to enter into this Agreement and perform its obligations hereunder or the consummation of the transactions contemplated hereby; or

(v) may result in any material adverse change relating to SANBAG's ability to comply with its obligations under this Agreement or to the Assessment Installment Receivables.

Section 4.02 Additional Representations and Agreements. SANBAG makes the following additional representations and agreements as of the Closing Date, on which the Company is deemed to have relied in acquiring the Assessment Installment Receivables:

(a) SANBAG has transferred the Assessment Installment Receivables to the Company pursuant to this Agreement for the Purchase Price, together with the Premium thereon, specified in this Agreement in cash. The consideration paid to SANBAG represents the fair market value of the Assessment Installment Receivables. This consideration was agreed upon as the result of arm's length negotiations. SANBAG has determined that the transactions contemplated by this Agreement and the related documents provide the maximum available financial benefits to SANBAG consistent with other objectives and requirements of SANBAG.

(b) SANBAG properly treats the transfer of the Assessment Installment Receivables to the Company as a sale pursuant to generally accepted accounting principles.

(c) There are no other agreements between SANBAG and the Company relating to or affecting the Assessment Installment Receivables, other than this Agreement.

(d) SANBAG does not receive any payments with respect to the Assessment Installment Receivables, except pursuant to this Agreement.

(e) SANBAG will mark its appropriate records so that they indicate the Assessment Installment Receivables have been sold and that the Company is the owner of such Assessment Installment Receivables. Such records of SANBAG may be in the form of a computer tape, microfiche, or other electronic or computer media.

(f) Sales of assets to the Company by SANBAG, including but not limited to the Assessment Installment Receivables, at all times have constituted and will constitute absolute transfers and conveyances, for fair and reasonably equivalent consideration, of all of the seller's right, title and interest in, to and under those assets for all purposes.

(g) SANBAG at no time has taken or will take any action that is inconsistent with any of the foregoing assumptions and that has given or will give (i) any creditor or future creditor of the Company cause to believe mistakenly that any obligation incurred by SANBAG has been or will be not only the obligation of SANBAG, but also of the Company, or (ii) any creditor or future creditor of either SANBAG or the Company cause to believe mistakenly that SANBAG and the Company have not been or will not continue to remain separate and distinct entities.

Section 4.03 Representations of Company. Company makes the following representations as of the Closing Date on which the SANBAG is deemed to have relied in selling the Assessment Installment Receivables to Company.

(a) *Due Organization, Existence and Company.* Company is a limited liability company, duly organized and validly existing under the laws of the State of Illinois, has full legal right, power and authority under the Constitution and laws of the State to enter into this Agreement, to purchase the Assessment Installment Receivables and the Collections from SANBAG, and to carry out and consummate all transactions contemplated hereby.

(b) *Due Execution.* By all necessary official action of Company, Company has duly authorized and approved the execution and delivery of, and the performance by it of the obligations contained in this Agreement, and, as of the date hereof, such authorizations and approvals are in full force and effect and have not been amended, modified or rescinded.

(c) *Valid, Binding and Enforceable Obligations.* This Agreement constitutes the legal, valid and binding obligation of Company, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or affecting creditors' rights, generally.

(d) *No Conflicts.* The authorization, execution and delivery of this Agreement and compliance with the provisions of this Agreement do not and will not conflict with or constitute a breach of or default under any applicable constitutional provision, law or administrative rule or regulation of the State or the United States, or any applicable judgment, decree, license, permit, trust agreement, loan agreement, bond, note, resolution, ordinance, agreement or other instrument to which Company (or any of its officers in their respective capacities as such) are subject, or by which it or any of its properties are bound; nor will any such authorization, execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of its assets or properties or under the terms of any such law, regulation or instrument, except as may be provided by this Agreement.

(e) *Consents and Approvals.* No consent or approval of any trustee or holder of any indebtedness of Company and no consent, permission, authorization, order or license of, or filing or registration with, any governmental agency, is necessary in connection with the execution and delivery of this Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

(f) *No Litigation.* No action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, is pending with service of process accomplished or, to the knowledge of Company, pending or threatened, that:

(i) in any way questions the legal existence of Company or the titles of the officers of Company to their respective offices that would have any material likelihood of affecting the obligations of Company under this Agreement;

(ii) contests the validity or the power and authority of Company to purchase the Assessment Installment Receivables from SANBAG;

(iii) affects, contests or seeks to prohibit, restrain or enjoin the execution and delivery of this Agreement, the purchase of the Assessment Installment Receivables by Company from SANBAG, or the payment of Collections on the Assessment Installment Receivables to the Company;

(iv) in any way contests or affects the validity of this Agreement or the consummation of the transactions contemplated hereby; or

(v) may result in any material adverse change relating to Company's ability to comply with its obligations under this Agreement.

Article V Miscellaneous

Section 5.01 Amendment. This Agreement may be amended by an instrument in writing signed by SANBAG and the Company.

Section 5.02 Entire Agreement. This Agreement shall constitute the entire agreement between the parties hereto and is made solely for the benefit of the parties hereto. No other person shall acquire or have any right hereunder by virtue hereof, except as provided herein.

Section 5.03 Notices. All notices or communications to be given under this Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon actual receipt after deposit in the United States mail, postage prepaid, or (b) in the case of personal delivery to any person, upon actual receipt. The Company or SANBAG may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the Company:

FNA California, LLC
c/o First National Assets
120 N. LaSalle, Suite 1220
Chicago, IL 60602
Attn: General Counsel

If to SANBAG:

San Bernardino Associated Governments
1170 West 3rd Street, 2nd Floor
San Bernardino, California 92410
Attn: Hilda Flores, Chief Financial Officer

Section 5.04 No Assignment by SANBAG. Notwithstanding anything to the contrary contained herein, this Agreement may not be assigned by SANBAG.

Section 5.05 Limitations on Rights of Others. The provisions of this Agreement are solely for the benefit of SANBAG and the Company, and nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

Section 5.06 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 5.07 Separate Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 5.08 Headings. The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 5.09 Governing Law and Venue.

(a) This Agreement shall be construed in accordance with the laws of the State, without reference to its conflict of law provisions, and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws.

(b) To the extent permitted by law, the parties hereto agree that any and all claims asserted against the Company arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in Riverside, California or in the California State Courts located in San Bernardino, California.

(c) If SANBAG commences any action against the Company in a court located other than in Riverside or San Bernardino, California, upon request of the Company, SANBAG shall either consent to a transfer of the action to a court of competent jurisdiction located in Riverside (federal) or San Bernardino (State), California or, if the court where the action is initially brought will not or cannot transfer the action, SANBAG shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in Riverside (federal) or San Bernardino (State), California.

(d) To the extent permitted by law, the parties hereto agree that any and all claims asserted against SANBAG arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in Riverside County, California or in the California State Courts located in San Bernardino County, California.

(e) If the Company commences any action against SANBAG in a court located other than in Riverside (federal) or San Bernardino (State) County, California, upon request of SANBAG, the Company shall either consent to a transfer of the action to a court of competent jurisdiction located in Riverside (federal) or San Bernardino (State) County, California or, if the court where the action is initially brought will not or cannot transfer the action, the Company shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in Riverside (federal) or San Bernardino (State) County, California.

(f) With respect to any action between SANBAG and the Company in California State Court brought in accordance with the provisions of this Section, SANBAG and the Company each hereby expressly waives and relinquishes any rights either might otherwise have (i) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a California State Court outside the county in which it is pending.

(g) With respect to any action between SANBAG and the Company in Federal Court brought in accordance with the provisions of this Section, SANBAG and the Company each hereby expressly waives and relinquishes any right either might otherwise have to move to transfer the action to another United States Court.

Section 5.10 Nonpetition Covenants. Notwithstanding any prior termination of this Agreement, SANBAG shall not, prior to the date which is one (1) year and one (1) day after the termination of this Agreement with respect to the Company, acquiesce, petition or otherwise invoke or cause the Company to invoke the process of any court or government against Company for the purpose of commencing or sustaining a case against the Company under any Federal or state bankruptcy, insolvency or similar law or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of the Company or any substantial part of its property, or ordering the winding up or liquidation of the affairs of the Company.

Section 5.11 Successor Is Deemed Included In All References To Predecessor. Whenever in this Agreement either SANBAG or the Company is named or referred to, such reference shall be deemed to include the successors thereof, and all the covenants and agreements in this Agreement by or for the benefit of SANBAG and Company shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

Section 5.12 Waiver of Personal Liability. No member, officer, agent or employee of the Company or SANBAG shall be individually or personally liable for the payment of any amount due hereunder or be subject to any personal liability or accountability by reason of the transactions described herein; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by this Agreement.

Section 5.13 Exclusive Right of First Refusal. SANBAG hereby grants to the Company an exclusive right of first refusal to purchase, upon similar and mutually agreeable terms in this Agreement, *mutatis mutandis*, Assessment Installment Receivables that become delinquent with respect to the Tax Years ending on June 30, 2024, June 30, 2025 and June 30, 2026 as follows:

(a) With respect to Assessment Installment Receivables secured by Properties that also secure Assessment Installment Receivables that were previously purchased by the Company, such purchases shall be documented by the execution of an agreement in the form of this Agreement, *mutatis mutandis*, with the purchase price and premium calculated in the same manner as this Agreement; and

(b) With respect to all other Assessment Installment Receivables, such purchases shall be documented by the execution of an agreement in the form of this Agreement, *mutatis mutandis*, with the purchase price and premium calculated in the same manner as this Agreement, modified as the parties mutually agree.

[Next page is signature page]

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

SAN BERNARDINO ASSOCIATED
GOVERNMENTS

By

Name: Raymond W. Wolfe
Title: Executive Director

Approved as to Form

By:

Bond Counsel

FNA CALIFORNIA, LLC

By

Name: John Eisinger
Title: CEO

Attachment: 23-1002825 (8617 : Purchase and Sale Agreement for PACE Assessment Receivables)

EXHIBIT "B"
LIST OF MASTER INDENTURES

- (a) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of November 1, 2013, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (First Residential Property Tranche – Phase One);
- (b) Amended and Restated Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of September 3, 2014, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (First Residential Property Tranche – Phase One);
- (c) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of September 3, 2014, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Second Residential Property Tranche – Phase One);
- (d) Amended and Restated Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of March 4, 2015, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Second Residential Property Tranche – Phase One);
- (e) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of March 4, 2015 relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Third Residential Property Tranche – Phase One);
- (f) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of July 1, 2015, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Fourth Residential Property Tranche – Phase One);
- (g) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of October 1, 2015, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Fifth Residential Property Tranche – Phase One);
- (h) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of January 1, 2016, relating to the San Bernardino Associated Governments Limited Obligation Improvements

Attachment: 23-1002825 (8617 : Purchase and Sale Agreement for PACE Assessment Receivables)

Bonds (SANBAG HERO Program) (Sixth Residential Property Tranche – Phase One);

- (i) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of May 1, 2016 relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Seventh Residential Property Tranche – Phase One);
- (j) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of September 1, 2016, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Eighth Residential Property Tranche – Phase One);
- (k) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of January 1, 2017, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Ninth Residential Property Tranche – Phase One);
- (l) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of March 1, 2017, relating to the San Bernardino Associated Governments Limited Subordinate Obligation Improvement Bonds (SANBAG HERO Program) (First Residential Property Tranche – Phase One), as amended;
- (m) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of May 1, 2017, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Tenth Residential Property Tranche – Phase One);
- (n) Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of September 1, 2017, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Eleventh Residential Property Tranche – Phase One);
- (o) Amended and Restated Master Indenture by and between SANBAG and Deutsche Bank National Trust Company, as Trustee, dated as of November 1, 2017, relating to the San Bernardino Associated Governments Limited Obligation Improvement Bonds (SANBAG HERO Program) (Eleventh Residential Property Tranche – Phase One).

EXHIBIT "C"
EXCLUSION CRITERIA

1. On the Closing Date, an Assessment Installment Receivable that is not lawfully collectable or no longer constitutes a valid and existing lien on the subject Property.
2. On the Closing Date, an Assessment Installment Receivable where the subject Property (i) has been or is expected to be designated as a CERCLA or government designated environmental cleanup site or (ii) is subject to environmental contamination that could materially decrease the market value thereof.
3. On the Closing Date, a subject Property that is described as, owned by, or used for (a) vacant land, (b) a church or religious organization, (c) orphanages or other non-profit or charitable services, (d) sanitariums, convalescent and rest homes, (e) military properties, (f) forests parks or recreational areas, (g) public schools, (h) public colleges (i) public hospitals, (j) county properties, (k) state properties, (l) federal properties, (m) municipal properties, (n) utility properties (e.g., gas, electric, telephone, water, sewage, railroads, pipelines, canals, radio/tv/mobile communications towers), (o) subsurface rights, (p) right-of-way, streets, roads, irrigation channels and ditches, (q) rivers, lakes or other submerged lands, (r) sewage, disposal, solid waste disposal, borrow pits, drainage reservoirs, waste lands, marshes, sand dunes, or swamps or (s) heavy manufacturing or mineral processing.
4. At the time of origination, a subject Property, including improvements thereon, has an assessed value or market value of less than \$75,000.
5. On the Closing Date, an Assessment Installment Receivable where the original date of delinquency is greater than three hundred sixty-five (365) days prior to the Cut-off Date.
6. An Assessment Installment Receivable that was not originated by a SANBAG or any of its authorized program administrators.
7. On the Closing Date, an Assessment Installment Receivable that has been (a) challenged as to amount, enforceability or validity, (b) the subject of litigation, (c) subject to right of rescission, right of setoff or counterclaim, or (d) subjected to the assertion of defenses with respect to any of the foregoing.
8. At the time of origination, an Assessment Installment Receivable where (a) the loan to value ratio of the existing mortgage is greater than ninety percent (90%) or (b) the ratio of the aggregate amount of debt secured by any lien on the related Property to the market value of the Property is greater than ninety-five percent (95%).
9. On the Closing Date, an Assessment Installment Receivable that is subordinate to other valid claims on the subject Property or that otherwise does not have a first lien.

Minute Action

AGENDA ITEM: 5

Date: June 8, 2022

Subject:

Resolution No. 23-002 Authorizing Placement of Assessments on the Tax Roll and Agreement for Collection of Special Taxes Related to the Property Assessed Clean Energy Program

Recommendation:

That the General Policy Committee recommend the Board, acting as the San Bernardino Associated Governments (SBCOG):

- A. Approve Resolution No. 23-002, authorizing the placement of assessments related to the Property Assessed Clean Energy Program on the tax roll for Fiscal Year 2022/2023.
- B. Approve Agreement No. 23-1002827 with the San Bernardino County Auditor-Controller/Treasurer/Tax Collector, authorizing the Collection of Special Taxes, Fees, and Assessments.

Background:

On March 6, 2013, the Board of Directors held a public hearing and then adopted Resolution No. 13-044, creating the Home Energy Renovation Opportunity (HERO) Program, a Property Assessed Clean Energy (PACE) Program, that allows a jurisdiction and an interested property owner to enter into a contractual agreement to finance the installation of eligible renewable energy, energy efficiency, or water efficiency improvements that are permanently affixed to the property. San Bernardino Associated Governments (SBCOG) loans the property owner the funds for the improvements. The amount of the loan plus a fixed interest amount is repaid through an assessment on the property tax bill for the property. SBCOG obtains the funds to loan by selling bonds to private investors secured by the property tax assessments paid by the property owners.

The HERO Program, administered by SBCOG, ended on June 30, 2017. However, during the four (4) years of the program, more than 15,000 assessments were created and SBCOG has a continuing obligation to bond holders to see that those existing assessments are collected.

Resolution No. 23-002 requests the San Bernardino County Auditor-Controller/Treasurer/Tax Collector to enter the special assessments on the tax roll consistent with the obligations agreed to by the property owners that participated in the HERO Program and with SBCOG's obligations to the trustee and bondholders. The complete list of properties to be included on the tax roll is on file with the Clerk of the Board and available for review.

Additionally, the San Bernardino County Auditor-Controller/Treasurer/Tax Collector requests that each agency sign their Agreement for Collection of Special Taxes, Fees, and Assessments each year. This agreement is required by San Bernardino County (County) and covers the expectations and responsibilities of the agency requesting the collection of the assessment or special tax and the County in the collection of that assessment or special tax.

Entity: San Bernardino Council of Governments

General Policy Committee Agenda Item

June 8, 2022

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Financial Impact:

This item is consistent with the Proposed Fiscal Year 2022/2023 Budget.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCOG General Counsel has reviewed this item, the draft resolution, and the draft agreement.

Responsible Staff:

Hilda Flores, Chief Financial Officer

Approved
General Policy Committee
Date: June 8, 2022

Witnessed By:

RESOLUTION NO. 23-002

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN BERNARDINO ASSOCIATED GOVERNMENTS MAKING CERTAIN REPRESENTATIONS AND AUTHORIZING THE PLACEMENT OF ASSESSMENTS ON THE TAX ROLL IN SAN BERNARDINO COUNTY

WHEREAS, pursuant to Chapter 29 of Part 3 of Division 7 of the Streets and Highways Code of the State of California (“Chapter 29”), the Joint Exercise of Powers Agreement of the San Bernardino Associated Governments (“SANBAG”), originally made and entered into October 17, 1975, as further amended to date, and each separate Memorandum of Understanding by and between SANBAG and those parties to the Joint Exercise of Powers Agreement (each, a “Participating Party”) that have elected to participate in the implementation of a Property Assessed Clean Energy (“PACE”) Program to finance the installation of distributed generation renewable energy sources, energy or water efficiency improvements or electric vehicle charging infrastructure, SANBAG has undertaken proceedings to establish and has established such a PACE Program known as the “SANBAG HERO Program” (the “HERO Program”), to assist property owners within the jurisdictional boundaries of each Participating Party (the “Program Area”) with the costs of installing distributed generation renewable energy sources, energy or water efficient improvements or electric vehicle charging infrastructure (the “Authorized Improvements”) that are permanently fixed to their property; and

WHEREAS, SANBAG has by previous resolutions declared its intent to levy assessments for the purpose of financing Authorized Improvements under the provisions of Chapter 29; and

WHEREAS, assessment contracts have been entered into for properties located within the jurisdictional boundaries of San Bernardino County (the “County”); and

WHEREAS, the special assessments levied against the real property within the County are not levied with regard to property values but rather are fixed special assessments based upon the costs of the Authorized Improvements and the financing of such improvements; and

WHEREAS, SANBAG has determined and hereby certifies that the assessments are exempt from the provisions of Proposition 218, which was passed by the voters in November 1996; and

WHEREAS, SANBAG has further determined that the assessments are in compliance with all applicable laws; and

WHEREAS, SANBAG requests that the Auditor-Controller of the County enter those special assessments identified in Exhibit A on the tax roll for collection by the Auditor-Controller for the 2022-2023 Fiscal Year.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the San Bernardino Associated Governments as follows:

Section 1. The above recitals are true and correct.

Section 2. SANBAG orders the levy and collection of such special assessments identified on Exhibit A within the jurisdictional boundaries of each Participating Party within the County for the 2022-2023 Fiscal Year, and in each subsequent fiscal year in which the charges may validly be levied; that a copy of this resolution shall be delivered to the Auditor-Controller of the County for placement of such assessments on the 2022-2023 Tax Roll of the County, and in each subsequent fiscal year in which the charges may validly be levied.

Section 3. The special assessments are in compliance with all applicable laws and are exempt from the provisions of Proposition 218.

Section 4. In the event of delinquencies, SANBAG will pursue the removal of the delinquent special taxes from the delinquent secured tax roll in accordance with the provisions of the Master Indenture.

Section 5. The Chief Financial Officer, or any designee of the Chief Financial Officer (each, an “Authorized Representative”), is hereby authorized and directed to take any other actions in the judgment of the Chief Financial Officer or such Authorized Representative necessary to place the special assessments on the 2022-2023 Tax Roll of the County, including, but not limited to making additions, deletions and modifications to Exhibit A attached hereto.

Section 6. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED at a meeting of the Board of Directors of the San Bernardino Associated Governments held on July 6, 2022.

Curt Hagman, SBCTA Board President

ATTEST:

Marleana Roman, Clerk of the Board



AUDITOR-CONTROLLER/TREASURER/TAX COLLECTOR
 AGREEMENT FOR COLLECTION OF SPECIAL
 TAXES, FEES, AND ASSESSMENTS
 FISCAL YEAR 2022-23

THIS AGREEMENT is made and entered into this 6 day of July, 2022,
 by and between the COUNTY OF SAN BERNARDINO, hereinafter referred to as "County"
 and the San Bernardino Associated Governments, hereinafter referred to as "District".

WITNESSETH:

WHEREAS, Government Code Sections 29304 and 51800 authorize the County to recoup its collection costs when the County collects taxes, fees, or assessments for any city, school district, special district, zone or improvement district thereof; and

WHEREAS, the District and County have determined that it is in the public interest that the County, when requested by District, collect on the County tax rolls the special taxes, fees, and assessments for District.

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

1. County agrees, when requested by District as hereinafter provided to collect on the County tax rolls the special taxes, fees, and assessments of District, and of each zone or improvement District thereof.
2. When County is to collect District's special taxes, fees, and assessments, District agrees to notify in writing the Auditor-Controller (268 W. Hospitality Lane, 4TH floor, San Bernardino, CA 92415) of the County on or before the 10th day of August of each fiscal year of the Assessor's parcel numbers and the amount of each special tax, fee, or assessment to be so collected. Any such notice, in order to be effective, must be received by the Auditor-Controller by said date.
3. County may charge District an amount per parcel for each special tax, fee, or assessment that is to be collected on the County tax rolls by the County for the District, not to exceed County's actual cost of collection.
4. District warrants that the taxes, fees, or assessments imposed by District and collected pursuant to this Agreement comply with all requirements of state law, including but not limited to, Articles XIIIC and XIID of the California Constitution (Proposition 218).
5. District hereby releases and forever discharges County and its officers, agents, and employees from any and all claims, demands, liabilities, costs and expenses, damages, causes of action, and judgments, in any manner arising out of District's responsibility under

AGCY _____

this agreement, or other action taken by District in establishing a special tax, fee, or assessment and implementing collection of special taxes, fees or assessments as contemplated in this agreement.

6. The County Auditor-Controller has not determined the validity of the taxes or assessments to be collected pursuant to this contract, and the undersigned District hereby assumes any and all responsibility for making such a determination. The undersigned District agrees to indemnify, defend, and hold harmless the County and its authorized officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract or the imposition of the taxes or assessments collected pursuant to this contract, and for any costs or expenses incurred by the County on account of any claim therefore, except where such indemnification is prohibited by law. If any judgment is entered against County or any other indemnified party as a result of action taken to implement this Agreement, District agrees that County may offset the amount of any judgment paid by County or by any indemnified party from any monies collected by County on District's behalf, including property taxes, special taxes, fees, or assessments. County may, but is not required to, notify District of its intent to implement any offset authorized by this paragraph.

7. District agrees that its officers, agents and employees will cooperate with County by answering inquiries made to District by any person concerning District's special tax, fee, or assessment, and District agrees that its officers, agents, and employees will not refer such individuals making inquiries to County officers or employees for response.

8. District shall not assign or transfer this agreement or any interest herein and any such assignment or transfer or attempted assignment or transfer of this agreement or any interest herein by District shall be void and shall immediately and automatically terminate this agreement

9. This agreement shall be effective for the 2022-23 fiscal year.

10. Either party may terminate this agreement for any reason upon 30 days written notice to the other party. The County Auditor-Controller shall have the right to exercise County's right and authority under this contract including the right to terminate the contract.

11. County's waiver of breach of any one term, covenant, or other provision of this agreement, is not a waiver of breach of any other term, nor subsequent breach of the term or provision waived.

12. Each person signing this agreement represents and warrants that he or she has been fully authorized to do so.

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

District: San Bernardino Associated Governments

By: _____

Printed Name: _____

Title: Board President

Date: _____

ENSEN MASON CPA, CFA,
AUDITOR-CONTROLLER/TREASURER/TAX COLLECTOR
SAN BERNARDINO COUNTY

By Authorized Deputy: _____

Printed Name: Linda Santillano

Title: Chief Deputy, Property Tax

Date: _____

Minute Action

AGENDA ITEM: 6

Date: June 8, 2022

Subject:

Award On-Call Labor Compliance Service Contracts

Recommendation:

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

A. Award Contract No. 22-1002768 to GCAP Services, Inc., for On-Call Labor Compliance Services for a three-year contract with two (2) one-year options for an amount described in Recommendation D.

B. Award Contract No. 22-1002769 to Cumming Management Group, Inc., for On-Call Labor Compliance Services for a three-year contract with two (2) one-year options for an amount described in Recommendation D.

C. Award Contract No. 23-1002832 to Gafcon, Inc., for On-Call Labor Compliance Services for a three-year contract with two (2) one-year options for an amount described in Recommendation D.

D. Approve a total cumulative not-to-exceed amount of \$500,000 for GCAP Services, Inc. (22-1002768), Cumming Management Group, Inc. (22-1002769), and Gafcon Inc., (23-1002832) over a three-year term, with two (2) one-year options to extend for an additional \$200,000 for a cumulative total not-to-exceed amount of \$700,000.

Background:

The San Bernardino County Transportation Authority (SBCTA) receives Federal, State, and local funds to construct various SBCTA public works projects. As a condition of receiving this funding, SBCTA must follow Federal and State statutes and guidelines, which impose upon SBCTA a wide range of prevailing wage labor compliance responsibilities. The prevailing wage requirements are identified in the public works contracts issued by SBCTA and by Federal (if applicable) and State labor codes. A prime consultant and contractor and any tier subcontractor, by entering into or performing work under Public Works projects, agrees to comply with all Federal (if applicable) provisions and State labor codes applicable to public works projects.

SBCTA will utilize consultant services on an on-call basis to act as SBCTA's Labor Compliance Officer (LCO) and provide labor compliance oversight and technical support associated with various types (construction and pre-construction activities) of Public Works projects. The LCO will demonstrate detailed knowledge of the California Department of Transportation (Caltrans) and California Division of Labor Standards Enforcement (DSLE) Compliance Monitoring Unit (CMU), the United States Department of Labor Regulations and Guidelines, and Equal Employment Opportunity compliance monitoring, as well as knowledge of the Davis Bacon Act, the Copeland "Anti-Kickback" Act, and the Contract Work Hour and Safety Standards Act.

On March 31, 2022, the SBCTA Executive Director approved the release of a Request for Proposals (RFP) No. 22-1002768 for On-Call Labor Compliance. The RFP was released on April 5, 2022, via Planet Bids, with a Proposal Submission due date of April 27, 2022.

Entity: San Bernardino County Transportation Authority

General Policy Committee Agenda Item

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PlanetBids notified 36 vendors and 19 vendors downloaded the RFP. A pre-bid meeting was held on April 12, 2022, via Zoom, and was attended by seven (7) vendors. A total of six (6) questions were received by the date and time specified in the RFP, and the answers were provided on April 21 and 22, 2022. One addendum was issued on April 22, 2022, which deleted some language from the Program Approach/Work Plan in the RFP.

On April 27, 2022, the following five (5) vendors, submitted proposals by the date and time specified in the RFP:

- Cumming Management Group Inc.
- Gafcon, Inc.
- GCAP Services, Inc.
- PPM Group, Inc.
- TSG Enterprises, Inc.

After a responsiveness review was conducted by the Procurement Analyst and reviewed by the Director of Special Projects and Strategic Initiatives, one (1) vendor (PPM Group, Inc.) was found to be non-responsive.

On May 6, 2022, four (4) proposals and their respective references were sent to the Evaluation Committee, consisting of three (3) SBCTA members.

A short-list meeting was held on May 5, 2022, the Evaluation Committee short-listed firms and invited three (3) to interview on May 18, 2022. Considering that two (2) of three (3) firms were very close in scoring, the amount of work projected in the six-month look ahead, and the quick turn-around required for Labor Compliance services, the Evaluation Committee felt it to be in the best interest of SBCTA to award contracts to all three short-listed firms. As a result of the scoring, the Evaluation Committee recommends that three contracts to perform the scope of work, as outlined in the RFPs No. 22-1002768, be awarded to GCAP Services, Inc., Cumming Management Group, Inc., and Gafcon, Inc. The firms clearly demonstrated a thorough understanding of the scope of work and proposed an overall solid team.

Financial Impact:

This item is consistent with the Proposed Fiscal Year 2022/2023 Budget.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel, Risk Manager and Procurement Manager have reviewed this item and the draft contracts.

Responsible Staff:

Shaneka Morris, Procurement Manager

Approved
General Policy Committee
Date: June 8, 2022

Witnessed By:

General Contract Information

Contract No: 22-1002768 Amendment No.: _____Contract Class: Payable Department: Special ProjectsVendor No.: 02511 Vendor Name: GCAP Services, IncDescription: On-Call Labor Compliance

Dollar Amount

Original Contract	\$	166,666.00	Original Contingency	\$	-
Prior Amendments			Prior Amendments	\$	-
Prior Contingency Released	\$	-	Prior Contingency Released (-)	\$	-
Current Amendment			Current Amendment	\$	-
Total/Revised Contract Value	\$	166,666.00	Total Contingency Value	\$	-
Total Dollar Authority (Contract Value and Contingency)				\$	166,666.00

Contract Authorization

Board of Directors _____ Date: 7/6/2022 _____ Committee _____ Item # _____

Contract Management (Internal Purposes Only)

Other Contracts _____ Sole Source? No _____ No Budget Adjustment _____

Local _____ Professional Services (Non-A&E) _____ N/A _____

Accounts Payable

Estimated Start Date: 7/31/2022 Expiration Date: 7/31/2025 Revised Expiration Date: _____NHS: N/A QMP/QAP: N/A Prevailing Wage: N/A

						Total Contract Funding:		Total Contingency:	
						\$	166,666.00	\$	-
Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name		
GL								166,666.00	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-

Shaneka Morris

Bea Valdez

Project Manager (Print Name)

Task Manager (Print Name)

Additional Notes: multi funded depending on project - CTO

Attachment: 22-1002768 GCAP Services, Inc. CSS-print (8656 : On-Call Labor Compliance)

CONTRACT NO. 22-1002768**BY AND BETWEEN****SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY****AND****GCAP SERVICES, INC.****FOR****ON-CALL LABOR COMPLIANCE SERVICES**

This contract ("Contract") is made and entered into by and between the San Bernardino County Transportation Authority ("SBCTA"), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715, and GCAP Services, Inc., ("CONSULTANT"), whose address is 3525 Hyland Ave, Suite 140, Costa Mesa, CA 92626. SBCTA and CONSULTANT are each a "Party" and are collectively the "Parties".

RECITALS:

WHEREAS, SBCTA requires certain work services as described in Exhibit "A" of this Contract; and

WHEREAS, CONSULTANT has confirmed that CONSULTANT has the requisite professional qualifications, personnel and experience and is fully capable and qualified to perform the services identified herein; and

WHEREAS, CONSULTANT desires to perform all Work identified herein and to do so for the compensation and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1. SCOPE OF WORK

- 1.1 CONSULTANT agrees to perform the work and services set forth in Exhibit A "Scope of Work" ("Work"), in accordance with all applicable professional standards which are generally accepted in the State of California, in accordance with the terms and conditions expressed herein and in the sequence, time, and manner defined herein, but only upon SBCTA's issuance of and in accordance with the terms and instructions contained in one or more written Contract Task Orders ("CTO") executed by both parties. The word "Work" includes, without limitation, the performance, fulfillment and discharge by CONSULTANT of all obligations, duties, tasks, and services imposed upon or assumed by CONSULTANT hereunder; and the

Work performed hereunder shall be completed to the satisfaction of SBCTA, with SBCTA's satisfaction being based on prevailing applicable professional standards.

- 1.2 The Project Manager for this Contract is Shaneka M. Morris, or such other designee as shall be designated in written notice to CONSULTANT from time to time by SBCTA's Director of Special Projects and Strategic Initiatives or his or her designee. The Project Manager shall have authority to act on behalf of SBCTA in administering this Contract, including giving notices (including, without limitation, notices of default and/or termination), technical directions and approvals; issuing, executing and amending CTOs; and demanding performance and accepting work performed, but is not authorized to receive or issue payments or execute amendments to the Contract itself.

ARTICLE 2. CONTRACT TERM

The Contract term shall commence upon issuance of a written Notice To Proceed or Notice of Executed Contract (NTP) issued by SBCTA's Procurement Division, and shall continue in full force and effect through July 31, 2025, until otherwise terminated, or unless extended as hereinafter provided by written amendment, except that all indemnity and defense obligations hereunder shall survive termination of this Contract. CONSULTANT shall not be compensated for any Work performed or costs incurred prior to issuance of the NTP.

SBCTA at its sole discretion may extend the original term of the Contract for two (2) one (1) year option terms. The maximum term of this Contract, including the Option Term(s), if exercised, will not exceed July 31, 2027.

ARTICLE 3. COMPENSATION

- 3.1 Total compensation to CONSULTANT for full and complete performance of Services in compliance with all the terms and conditions of this Contract and any CTOs issued shall not exceed the amount set forth in 3.2 below.
- 3.2 The total Not-To-Exceed Amount for all CTOs issued to CONSULTANT is Five Hundred Thousand Dollars (\$500,000). All services shall be reimbursed pursuant to the hourly labor rates identified in Exhibit B "Price Proposal" and the executed CTO. The hourly labor rates identified in Exhibit B shall remain fixed for the term of this Contract and shall include CONSULTANT's direct labor costs, indirect costs, and profit. All expenses shall be reimbursed for the amount identified in Exhibit B. SBCTA will not reimburse for any expenses not shown in Exhibit B.
- 3.3 As need for Labor Compliance Services arises, SBCTA will issue a request for CTOs based on services and costs identified in 3.2, above. SBCTA does not guarantee any certain number of CTOs will be issued during the term of this Contract. Award of CTOs is at the sole discretion of SBCTA.
- 3.4 Intentionally Omitted.
- 3.5 The Cost Principles and Procedures set forth in 48 CFR, Ch. 1, subch. E, Part 31, as constituted on the effective date of this Contract shall be utilized to determine allowability of costs under this Contract and may be modified from time to time by written amendment of the Contract.

- 3.5.1 CONSULTANT agrees to comply with Federal Department of Transportation procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- 3.5.2 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Ch. 1, subch. E, Part 31, or 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, shall be repaid by CONSULTANT to SBCTA.
- 3.6 Any Work provided by CONSULTANT not specifically covered by the Scope of Work shall not be compensated without prior written authorization from SBCTA. It shall be CONSULTANT's responsibility to recognize and notify SBCTA in writing when services not covered by the Scope of Work have been requested or are required. All changes and/or modifications to the Scope of Work shall be made in accordance with the "CHANGES" Article in this Contract. Any additional services agreed to in accordance with this Contract shall become part of the Work.

ARTICLE 4. INVOICING

- 4.1 Payment to CONSULTANT as provided herein shall be payable in four (4) week billing period payments, forty-five (45) calendar days after receipt of an acceptable invoice by SBCTA of an invoice prepared in accordance with instructions below. Payment shall not be construed to be an acceptance of Work.
- 4.2 CONSULTANT shall prepare invoices in a form satisfactory to and approved by SBCTA, which shall be accompanied by documentation supporting each element of measurement and/or cost. Each invoice will be for a four-week billing period and will be marked with SBCTA'S contract number, description and task order number, if applicable. Invoices shall be submitted within thirty (30) calendar days for the period covered by the invoice except for the month of June, which will require the invoice to be submitted by July 10th. Invoices shall include request for payment for Work (including additional services authorized by SBCTA) completed by CONSULTANT during each billing period and shall include back-up information sufficient to establish the validity of the invoice. Any invoice submitted which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to CONSULTANT. Any costs incurred by CONSULTANT in connection with the resubmission of a proper invoice shall be at CONSULTANT's sole expense. The final invoice shall be marked "FINAL" and will be submitted within 60 calendar days after SBCTA has received and approved all Work and deliverables. Invoices should be e-mailed to SBCTA at the following address:

ap@gosbcta.com

For large files over 30 megabytes, invoices can be submitted using this link:

<https://sanbag-lfweb.sanbag.ca.gov/Forms/Invoice-submission>

- 4.3 CONSULTANT shall include a statement and release with each invoice, satisfactory to SBCTA, that CONSULTANT has fully performed the Work invoiced pursuant to the Contract for the period covered, that all information included with the invoice is true and correct, and that all payments to and claims of CONSULTANT and its subconsultants for Work during the period will be satisfied upon making of such payment. SBCTA shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such statement and release.

- 4.4 Intentionally Omitted
- 4.5 No payment will be made prior to approval of any Work, nor for any Work performed prior to the NTP or the issuance of an applicable CTO, nor for any Work under any amendment to the Contract until SBCTA's Awarding Authority takes action.
- 4.6 CONSULTANT agrees to promptly pay each subconsultant for the satisfactory completion of all Work performed under this Contract no later than ten (10) calendar days from the receipt of payment from SBCTA. CONSULTANT also agrees to return any retainage payments to each subconsultant within ten (10) calendar days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval by SBCTA. SBCTA reserves the right to request documentation from CONSULTANT showing payment has been made to its subconsultants. SBCTA also reserves the right, at its own sole discretion, to issue joint checks to CONSULTANT and any subconsultant(s), which shall constitute payment to CONSULTANT in compliance with the terms of this Contract. This clause applies to both DBE and non-DBE subconsultants.
- 4.7 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Ch. 1, subch. E, Part 31 are subject to repayment by CONSULTANT to SBCTA.

ARTICLE 5. TAXES, DUTIES AND FEES

Except to the extent expressly provided elsewhere in this Contract, CONSULTANT shall pay when due, and the compensation set forth herein, shall be inclusive of all: a) local, municipal, State, and federal sales and use taxes; b) excise taxes; c) taxes on personal property owned by CONSULTANT; and d) other governmental fees and taxes or charges of whatever nature applicable to CONSULTANT to enable it to conduct business.

ARTICLE 6. AVAILABILITY OF FUNDS

The award and performance of this Contract is contingent on the availability of funds. If funds are not appropriated and/or allocated and available to SBCTA for the continuance of Work performed by CONSULTANT, Work directly or indirectly involved may be suspended or terminated by SBCTA at the end of the period for which funds are available. When SBCTA becomes aware that any portion of Work will or may be affected by a shortage of funds, it will promptly notify CONSULTANT. Nothing herein shall relieve SBCTA from its obligation to compensate CONSULTANT for work already performed pursuant to this Contract. No penalty shall accrue to SBCTA in the event this provision is exercised.

ARTICLE 7. PERMITS AND LICENSES

CONSULTANT shall, without additional compensation, keep current all governmental permits, certificates and licenses (including professional licenses) and required registrations necessary for CONSULTANT to perform Work identified herein.

ARTICLE 8. DOCUMENTATION AND RIGHT TO AUDIT

- 8.1 CONSULTANT shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a

period of three (3) years from the date of final payment by SBCTA, or until the conclusion of all litigation, appeals or claims related to this Contract, whichever is longer. CONSULTANT shall provide SBCTA, the California State Auditor, or other authorized representatives of SBCTA access to Consultants' records which are directly related to this Contract for the purpose of inspection, auditing or copying during the entirety of the records maintenance period above. CONSULTANT further agrees to maintain separate records for costs of Work performed by amendment. CONSULTANT shall allow SBCTA and its representatives or agents to reproduce any materials as reasonably necessary.

- 8.2 The cost proposal and/or invoices for this Contract are subject to audit by SBCTA and/or any state or federal agency funding this Work at any time. After CONSULTANT receives any audit recommendations, the cost or price proposal shall be adjusted by CONSULTANT and approved by SBCTA's Project Manager to conform to the audit recommendations. CONSULTANT agrees that individual items of cost identified in the audit report may be incorporated into the Contract at SBCTA's sole discretion. Refusal by CONSULTANT to incorporate the audit or post award recommendations will be considered a breach of the Contract and cause for termination of the Contract. Any dispute concerning the audit findings of this Contract shall be reviewed by SBCTA's Chief Financial Officer. CONSULTANT may request a review by submitting the request in writing to SBCTA within thirty (30) calendar days after issuance of the audit report
- 8.3 Subcontracts in excess of \$25,000 shall contain this provision.

ARTICLE 9. RESPONSIBILITY OF CONSULTANT

- 9.1 CONSULTANT shall be responsible for the professional quality, technical accuracy, and assurance of compliance with all applicable federal, State and local laws and regulations and other Work furnished by CONSULTANT under the Contract. The Contract includes reference to the appropriate standards for Work performance stipulated in the Contract.
- 9.2 In addition to any other requirements of this Contract or duties and obligations imposed on CONSULTANT by law, CONSULTANT shall, as an integral part of its Work, employ quality control procedures that identify potential risks and uncertainties related to scope, schedule, cost, quality, and the Work performed by CONSULTANT within the areas of CONSULTANT's expertise. At any time during performance of the Scope of Work, should CONSULTANT observe, encounter, or identify any unusual circumstances or uncertainties which could pose potential risk to SBCTA, CONSULTANT shall immediately document such matters and notify SBCTA in writing. Notifications under this paragraph shall be specific, clear and timely, and in a form which will enable SBCTA to understand and evaluate the magnitude and effect of the risk and/or uncertainties involved.

ARTICLE 10. REPORTING AND DELIVERABLES

All reports and deliverables shall be submitted in accordance with Exhibit A "Scope of Work". At a minimum, CONSULTANT shall submit monthly progress reports with their monthly invoices. The report shall be sufficiently detailed for SBCTA to determine if CONSULTANT is performing to expectations and is on schedule; to provide communication of interim findings; and to sufficiently address any difficulties or problems encountered, so remedies can be developed.

ARTICLE 11. TECHNICAL DIRECTION

- 11.1 Performance of Work under this Contract shall be subject to the technical direction of SBCTA's Project Manager, identified in Section 1.2, upon issuance of the NTP and/or subsequently by written notice during the Contract. The term "Technical Direction" is defined to include, without limitation:
- 11.1.1 Directions to CONSULTANT which redirect the Contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the Scope of Work.
 - 11.1.2 Provision of written information to CONSULTANT which assists in the interpretation of reports or technical portions of the Scope of Work described herein.
 - 11.1.3 Review and, where required by the Contract, approval of technical reports and technical information to be delivered by CONSULTANT to SBCTA under the Contract.
 - 11.1.4 SBCTA's Project Manager may modify this Contract for certain administrative modifications without issuing a written amendment. Administrative modifications are limited to: substitutions of personnel identified in the Contract, including Key Personnel and subconsultants; modifications to classifications, hourly rates and names of personnel in Exhibit B; and modifications of the address of the CONSULTANT. All such modifications will be documented in writing between the Parties.
- 11.2 Technical Direction must be within the Scope of Work under this Contract. SBCTA's Project Manager does not have the authority to, and may not, issue any Technical Direction which:
- 11.2.1 Increases or decreases the Scope of Work;
 - 11.2.2 Directs CONSULTANT to perform Work outside the original intent of the Scope of Work;
 - 11.2.3 Constitutes a change as defined in the "CHANGES" Article of the Contract;
 - 11.2.4 In any manner causes an increase or decrease in the Contract price as identified in the "COMPENSATION" Article or the time required for Contract performance;
 - 11.2.5 Changes any of the expressed terms, conditions or specifications of the Contract, unless identified herein;
 - 11.2.6 Interferes with CONSULTANT's right to perform the terms and conditions of the Contract unless identified herein; or
 - 11.2.7 Approves any demand or claims for additional payment.
- 11.3 Failure of CONSULTANT and SBCTA's Project Manager to agree that the Technical Direction is within the scope of the Contract, or a failure to agree upon the Contract action to be taken with respect thereto, shall be subject to the provisions of the "DISPUTES" Article herein.
- 11.4 All Technical Direction shall be issued in writing by SBCTA's Project Manager.

11.5 CONSULTANT shall proceed promptly with the performance of Technical Direction issued by SBCTA's Project Manager, in the manner prescribed by this Article and within their authority under the provisions of this Article. If, in the opinion of CONSULTANT, any instruction or direction by SBCTA's Project Manager falls within one of the categories defined in sections 11.2.1 through 11.2.7 above, CONSULTANT shall not proceed but shall notify SBCTA in writing within five (5) working days after receipt of any such instruction or direction and shall request SBCTA to modify the Contract accordingly. Upon receiving the notification from CONSULTANT, SBCTA shall:

11.5.1 Advise CONSULTANT in writing within thirty (30) calendar days after receipt of CONSULTANT's letter that the Technical Direction is or is not within the scope of this Contract.

11.5.2. Advise CONSULTANT within a reasonable time whether SBCTA will or will not issue a written amendment.

ARTICLE 12. CHANGES

12.1 The Work shall be subject to changes by additions, deletions, or revisions made by SBCTA. CONSULTANT will be advised of any such changes by written notification from SBCTA describing the change. This notification will not be binding on SBCTA until SBCTA's Awarding Authority has approved an amendment to this Contract.

12.2 Promptly after such written notification of change is given to CONSULTANT by SBCTA, the Parties will attempt to negotiate a mutually agreeable adjustment to compensation or time of performance, and amend the Contract accordingly.

ARTICLE 13. EQUAL EMPLOYMENT OPPORTUNITY

13.1 During the term of this Contract, CONSULTANT shall not willfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, gender, sex, marital status, gender identity, gender expression, sexual orientation, age, or military or veteran status. CONSULTANT agrees to comply with the provisions of Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

13.2 The CONSULTANT and all subconsultants shall comply with all provisions of Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin. In addition, CONSULTANT and all subconsultants will ensure their services are consistent with and comply with obligations and procedures outlined in SBCTA's current Board-adopted Title VI Program, including the Public Participation Plan and the Language Assistance Plan.

ARTICLE 14. CONFLICT OF INTEREST

CONSULTANT agrees that it presently has no interest, financial or otherwise, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Work required under this Contract or be contrary to the interests of SBCTA as to the Program. CONSULTANT further agrees that in the performance of this Contract, no person having any such interest shall be employed. CONSULTANT is obligated to fully disclose to SBCTA, in writing, any conflict of interest issues as soon as they are known to CONSULTANT. CONSULTANT agrees that CONSULTANT and its staff shall comply with SBCTA's Conflict of Interest Policy, No. 10102.

ARTICLE 15. KEY PERSONNEL

The personnel specified below are considered to be essential to the Work being performed under this Contract. Prior to diverting any of the specified individuals to other projects, or reallocation of any tasks or hours of Work that are the responsibility of Key Personnel to other personnel, CONSULTANT shall notify SBCTA in writing in advance and shall submit justifications (including proposed substitutions, resumes and payroll information to support any changes to the labor rates) in sufficient detail to permit evaluation of the impact on the Project. Diversion or reallocation of Key Personnel shall not be made without prior written consent of SBCTA's Project Manager. CONSULTANT shall not substitute any Key Personnel without the prior written consent of SBCTA. In the event that the Parties cannot agree as to the substitution of Key Personnel, SBCTA may terminate this Contract. Key Personnel are:

Name	Job Classification/Function
Sylvia Linn	Labor Compliance Officer/Program Manager
Kim Morales	Senior Labor Compliance Analyst
Stephannie Gabaldon	Labor Compliance Analyst II
Ariana Fernandez	Labor Compliance Analyst II
Celeste Maldonado	Labor Compliance Analyst I

ARTICLE 16. REPRESENTATIONS

All Work supplied by CONSULTANT under this Contract shall be supplied by personnel who are qualified, careful, skilled, experienced and competent in their respective trades or professions. CONSULTANT agrees that they are supplying professional services, findings, and/or recommendations in the performance of this Contract and agrees with SBCTA that the same shall conform to professional standards that are generally accepted in the profession in the State of California.

ARTICLE 17. PROPRIETARY RIGHTS/CONFIDENTIALITY

- 17.1 If, as a part of this Contract, CONSULTANT is required to produce materials, documents data, or information ("Products"), then CONSULTANT, if requested by SBCTA, shall deliver to SBCTA the original of all such Products, which shall become the sole property of SBCTA.
- 17.2 All materials, documents, data or information obtained from SBCTA's data files or any SBCTA-owned medium furnished to CONSULTANT in the performance of this Contract will at all times remain the property of SBCTA. Such data or information may not be used or copied for direct or indirect use outside of this Project by CONSULTANT without the express written consent of SBCTA.

- 17.3 Except as reasonably necessary for the performance of the Work, CONSULTANT agrees that it, its employees, agents and subconsultants will hold in confidence and not divulge to third parties, without prior written consent of SBCTA, any information obtained by CONSULTANT from or through SBCTA unless (a) the information was known to CONSULTANT prior to obtaining same from SBCTA, or (b) the information was at the time of disclosure to CONSULTANT, or thereafter becomes, part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONSULTANT or its employees, agents, or subconsultants, or (c) the information was obtained by CONSULTANT from a third party who did not receive the same, directly or indirectly, from SBCTA and who had, to CONSULTANT's knowledge and belief, the right to disclose the same. Any materials and information referred to in this Article, which are produced by CONSULTANT shall remain confidential until released in writing by SBCTA, except to the extent such materials and information become subject to disclosure by SBCTA under the California Public Records Act, or other law, or otherwise become public information through no fault of CONSULTANT, or its employees or agents.
- 17.4 CONSULTANT shall not use SBCTA's name or photographs in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SBCTA.
- 17.5 All press releases, or press inquiries relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SBCTA unless otherwise agreed to in writing by both Parties.
- 17.6 CONSULTANT, its employees, agents and subconsultants shall be required to comply with SBCTA's Confidentiality Policy; anyone who may have access to Personally Identifiable Information ("PII") and/or Sensitive Security Information ("SSI") will be required to execute a Confidentiality Agreement.

ARTICLE 18. TERMINATION

- 18.1 Termination for Convenience - SBCTA shall have the right at any time, with or without cause, to terminate further performance of Work by giving thirty (30) calendar days written notice to CONSULTANT specifying the date of termination. On the date of such termination stated in said notice, CONSULTANT shall promptly discontinue performance of Work and shall preserve Work in progress and completed Work, pending SBCTA's instruction, and shall turn over such Work in accordance with SBCTA's instructions.
- 18.1.1 CONSULTANT shall deliver to SBCTA all deliverables prepared by CONSULTANT or its subconsultants or furnished to CONSULTANT by SBCTA. Upon such delivery, CONSULTANT may then invoice SBCTA for payment in accordance with the terms herein.
- 18.1.2 If CONSULTANT has fully and completely performed all obligations under this Contract up to the date of termination, CONSULTANT shall be entitled to receive from SBCTA as complete and full settlement for such termination a pro rata share of

the Contract cost based upon the percentage of all contracted Work satisfactorily executed to the date of termination.

18.1.3 CONSULTANT shall be entitled to receive the actual costs incurred by CONSULTANT to return CONSULTANT's tools and equipment, if any, to it or its suppliers' premises, or to turn over Work in progress in accordance with SBCTA's instructions plus the actual cost necessarily incurred in effecting the termination.

18.2 Termination for Cause - In the event CONSULTANT shall file a petition in bankruptcy court, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy court shall be filed against CONSULTANT, or a receiver shall be appointed on account of its insolvency, or if CONSULTANT shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice, SBCTA may, without prejudice to any other rights or remedies SBCTA may have, and in compliance with applicable Bankruptcy Laws: (a) hold in abeyance further payments to CONSULTANT; (b) stop any Work of CONSULTANT or its subconsultants related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONSULTANT specifying the date of termination. In the event of such termination by SBCTA, SBCTA may take possession of the deliverables and finished Work by whatever method SBCTA may deem expedient. A waiver by SBCTA of one default of CONSULTANT shall not be considered to be a waiver of any subsequent default of CONSULTANT, of the same or any other provision, nor be deemed to waive, amend, or modify any term of this Contract.

18.2.1 CONSULTANT shall deliver to SBCTA all finished and unfinished deliverables under this Contract prepared by CONSULTANT or its subconsultants or furnished to CONSULTANT by SBCTA within ten (10) working days of said notice.

18.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to SBCTA, satisfactory in form and content to SBCTA and verified by SBCTA. In no event shall CONSULTANT be entitled to any payment for prospective profits or any damages because of such termination.

ARTICLE 19. STOP WORK ORDER

Upon failure of CONSULTANT or its subconsultants to comply with any of the requirements of this Contract, SBCTA shall have the right to stop any or all Work affected by such failure until such failure is remedied or to terminate this Contract in accordance with Article 18 "Termination".

ARTICLE 20. CLAIMS

SBCTA shall not be bound to any adjustments in the Contract amount or schedule unless expressly agreed to by SBCTA in writing. SBCTA shall not be liable to CONSULTANT for any claim asserted by CONSULTANT after final payment has been made under this Contract.

ARTICLE 21. INSURANCE

21.1 Prior to commencing the Work, subject to the provisions of Article 21.2 “General Provisions”, and at all times during the performance of the Work and for such additional periods as required herein, CONSULTANT and all sub-consultants of every tier performing any Work under this contract shall, at CONSULTANT’s and sub-consultant's sole expense, procure and maintain broad form insurance coverage at least as broad as the following minimum requirements specified below:

21.1.1 Professional Liability. The policies must include the following:

- A limit of liability not less than \$3,000,000 per claim
- An annual aggregate limit of not less than \$5,000,000
- Coverage shall be appropriate for the CONSULTANT’s profession and provided services to include coverage for errors and omissions arising out of the CONSULTANT’s professional services, or services of any person employed by the CONSULTANT, or any person for whose acts, errors, mistakes or omissions the CONSULTANT may be legally liable.
- If Coverage is on a claims made basis:
 - Policy shall contain a retroactive date for coverage of prior acts, which date will be prior to the date the CONSULTANT begins to perform Work under this Contract.
 - CONSULTANT shall secure and maintain “tail” coverage for a minimum of Five (5) years after Contract completion.

21.1.2 Worker’s Compensation/Employer’s Liability. The policies must include the following:

- Coverage A. Statutory Benefits
- Coverage B. Employer’s Liability
- Bodily Injury by accident - \$1,000,000 per accident
- Bodily Injury by disease - \$1,000,000 policy limit/\$1,000,000 each employee

Such policies shall contain a waiver of subrogation in favor of the parties named as Indemnitees below. Such insurance shall be in strict accordance with the applicable workers’ compensation laws in effect during performance of the Work by CONSULTANT or any subconsultant of any tier. All subconsultants of any tier performing any portion of the Work for CONSULTANT shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with a waiver of subrogation in favor of CONSULTANT and all parties named as Indemnitees below. Where coverage is provided through the California State Compensation Insurance Fund, the requirement for a minimum A.M. Best rating does not apply.

21.1.3. Commercial General Liability. The policy must include the following:

- Consultant shall maintain commercial general liability (CGL) insurance (Insurance Services Office (ISO) Form CG 00 01), and if necessary excess/umbrella

commercial liability insurance, with a combined limit of liability of not less than **\$5,000,000 each occurrence.**

- The policy shall, at a minimum, include coverage for any and all of the following: bodily injury, property damage, personal injury, broad form contractual liability (including coverage to the maximum extent possible for the indemnifications in this Contract), premises-operations (including explosion, collapse and underground coverage), duty to defend in addition to (without reducing) the limits of the policy(ies), and products and completed operations.
 - \$2,000,000 per occurrence limit for property damage or bodily injury
 - \$2,000,000 per occurrence limit for personal injury and advertising injury
 - \$2,000,000 per occurrence limits for products/completed operations coverage (ISO Form 20 37 10 01) if SBCTA's Risk Manager determines it is in SBCTA's best interests to require such coverage,
- If a general aggregate applies, it shall apply separately to this project/location. The contract number and brief explanation of the project/work must be indicated under "Description of Operations/Locations" (ISO Form CG 25 03 or CG 25 04).
- Coverage is to be on an "occurrence" form. "Claims made" and "modified occurrence" forms are not acceptable.
- A copy of the declaration page or endorsement page listing all policy endorsements for the CGL policy must be included.

All subconsultants of any tier performing any portion of the Work for CONSULTANT shall also obtain and maintain the CGL insurance coverage with limits not less than:

- Each occurrence limit: \$2,000,000
- General aggregate limit: \$2,000,000
- Personal injury and advertising limit \$2,000,000
- Products-completed operations aggregate limit \$2,000,000

All subconsultants' and sub-subconsultants' deductibles or self-insured retentions must be acceptable to SBCTA's Risk Manager.

21.1.4 Umbrella/Excess CGL. The policy must include the following:

- If the CONSULTANT elects to include an umbrella or excess policy to cover any of the total limits required beyond the primary commercial general liability policy limits and/or the primary commercial automobile liability policy limits, then the policy must include the following:
 - The umbrella or excess policy shall follow form over the CONSULTANT's primary general liability coverage and shall provide a separate aggregate limit for products and completed operations coverage.
 - The umbrella or excess policy shall not contain any restrictions or exclusions beyond what is contained in the primary policy.
 - The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

- The umbrella or excess policy must also extend coverage over the automobile policy if it is to be used in combination with the primary automobile policy to meet the total insurance requirement limits.

There shall be no statement limiting the coverage provided to the parties listed as additionally insureds or as indemnitees below.

21.1.5 Commercial Auto. The policy must include the following:

- A total limit of liability of not less than **\$5,000,000** each accident. This total limits of liability may be met by combining the limits of the primary auto policy with an umbrella or excess policy in accordance with subparagraph 4 (Umbrella/Excess CGL) of Section A of this Article.
- Such insurance shall cover liability arising out of any vehicle, including owned, hired, leased, borrowed and non-owned vehicles assigned to or used in performance of the CONSULTANT services.
- Combined Bodily Injury and Property Damage Liability insurance. The commercial automobile liability insurance shall be written on the most recent edition of ISO Form CA 00 01 or equivalent acceptable to SBCTA.

21.1.6 Pollution Liability - Intentionally Omitted

21.1.7 Cyber (Technology) Liability Insurance -

- Policy form appropriate to the Consultant's profession and work hereunder, with limits not less than \$2,000,000 per occurrence.
- Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Consultant in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security.
- The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
- The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of SBCTA in the care, custody, or control of the CONSULTANT.
 - If not covered under the CONSULTANT's liability policy, such "property" coverage of SBCTA may be endorsed onto the CONSULTANT's Cyber Liability Policy as covered property as follows:
 - Cyber Liability coverage in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of SBCTA that will be in the care, custody, or control of CONSULTANT.

21.1.8 Railroad Protective Liability - Intentionally Omitted

21.2. General Provisions

- 21.2.1 Qualifications of Insurance Carriers. If policies are written by insurance carriers authorized and admitted to do business in the state of California, then the insurance carriers must have a current A.M. Best rating of A-VIII or better and if policies are written by insurance carriers that are non-admitted but authorized to conduct business in the state of California, then they must meet the current A.M. Best rating of A-X or better, unless otherwise approved in writing by SBCTA's Risk Manager.
- 21.2.2 Additional Insured Coverage. All policies, except those for Workers' Compensation and Professional Liability insurance, shall be endorsed by ISO Form CG 20 10 11 85, or if not available, then ISO Form CG 20 38, to name San Bernardino County Transportation Authority and its officers, directors, members, employees, and agents, as additional insureds ("Additional Insureds"). With respect to general liability arising out of or connected with work or operations performed by or on behalf of the CONSULTANT under this Contract, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for SBCTA to vicarious liability, but shall allow coverage for SBCTA to the full extent provided by the policy.
- 21.2.3 Proof of Coverage. Evidence of insurance in a form acceptable to SBCTA's Risk Manager, including declarations pages of each policy, certificates of insurance and the required additional insured endorsements, shall be provided to SBCTA's Procurement Analyst prior to issuance of the NTP or prior to commencing any Work, as SBCTA specifies. Certificate(s) of insurance, as evidence of the required insurance shall: be executed by a duly authorized representative of each insurer; show compliance with the insurance requirements set forth in this Article; set forth deductible amounts applicable to each policy; list all exclusions which are added by endorsement to each policy; and also include the Contract Number and the SBCTA Project Manager's name on the face of the certificate. If requested in writing by SBCTA, CONSULTANT shall submit complete copies of all required insurance policies within ten (10) business days of a written request by SBCTA.
- 21.2.4 Deductibles and Self-Insured Retention. Regardless of the allowance of exclusions or deductibles by SBCTA, CONSULTANT shall be responsible for any deductible or self-insured retention (SIR) amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Article. CONSULTANT will pay, and shall require its sub-CONSULTANT to pay, all deductibles, co-pay obligations, premiums and any other sums due under the insurance required in this Article. Any deductibles or self-insured retentions must be declared to and approved in writing by SBCTA's Risk Manager. Without SBCTA's Risk Manager's expressed written approval, no deductibles or SIR will be allowed. At the option of SBCTA, if the deductible or SIR is approved and it is greater than \$10,000 or one (1) percent of the amount of coverage required under this Contract, whichever is less, the CONSULTANT shall guarantee that either: (1) the insurer shall reduce or eliminate

such deductibles or self-insured retentions as respects to SBCTA, its directors, officials, officers, employees and agents; or, (2) the CONSULTANT shall procure a bond guaranteeing the amount of the deductible or self-insured retention. SBCTA shall have the right to review any and all financial records that SBCTA, in its sole discretion, deems necessary to approve any deductible or SIR. SBCTA will have the right, but not the obligation, to pay any deductible or SIR due under any insurance policy. If SBCTA pays any sums due under any insurance required above, SBCTA may withhold said sums from any amounts due to CONSULTANT. The Consultant's policies will neither obligate nor prohibit SBCTA or any other Additional Insured from paying any portion of any Consultant's deductible or SIR.

- 21.2.5 CONSULTANT's and Subconsultants' Insurance will be Primary. All policies required to be maintained by the CONSULTANT or any subconsultant, with the exception of Professional Liability and Worker's Compensation, shall be endorsed, with a form at least as broad as ISO Form CG 20 01 04 13, to be primary coverage, and any coverage carried by any of the Additional Insureds shall be excess and non-contributory. Further, none of CONSULTANT's or subconsultants', automobile, general liability or other liability policies (primary or excess) will contain any cross-liability exclusion barring coverage for claims by an additional insured against a named insured.
- 21.2.6 Waiver of Subrogation Rights. To the fullest extent permitted by law, CONSULTANT hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other consultant, subconsultant or sub-subconsultant performing work or rendering services on behalf of SBCTA, in connection with the subject matter of the WORK. To the fullest extent permitted by law, CONSULTANT shall require similar written express waivers and insurance clauses from each of its subconsultants of every tier. CONSULTANT shall require all of the policies and coverages required in this Article to waive all rights of subrogation against the Additional Insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided shall not prohibit CONSULTANT from waiving the right of subrogation prior to a loss or claim.
- 21.2.7 Cancellation. If any insurance company elects to cancel or non-renew coverage for any reason, CONSULTANT will provide SBCTA thirty (30) days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONSULTANT will provide SBCTA ten (10) days prior written notice. In any event, CONSULTANT will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance coverage required herein which CONSULTANT receives within one business day after CONSULTANT receives it by submitting it to SBCTA at insurance@gosbcta.com, to the attention of SBCTA's Procurement Analyst, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of this Contract.
- 21.2.8 Enforcement. SBCTA may take any steps as are necessary to assure CONSULTANT's compliance with its insurance obligations as identified within this Article. Failure to continuously maintain insurance coverage as provided herein is a material breach of contract. In the event the CONSULTANT fails to obtain or maintain any insurance

coverage required, SBCTA may, but is not required to, maintain this coverage and charge the expense to the CONSULTANT or withhold such expense from amounts owed CONSULTANT, or terminate this Contract. The insurance required or provided shall in no way limit or relieve CONSULTANT of its duties and responsibility under the Contract, including but not limited to obligation to indemnify, defend and hold harmless the Indemnitees named below. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve CONSULTANT of liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions as available to it under any other provision of the Contract or law. Nothing contained herein shall relieve CONSULTANT, or any subconsultant of any tier, of their obligations to exercise due care in the performance of their duties in connection with the Work and to complete the Work in strict compliance with the Contract.

- 21.2.9 No Waiver. Failure of SBCTA to enforce in a timely manner any of the provisions of this Article shall not act as a waiver to enforcement of any of these provisions at a later date.
- 21.2.10 Subconsultant Insurance. Insurance required of the CONSULTANT shall be also provided by subconsultants or by CONSULTANT on behalf of all subconsultants to cover their services performed under this Contract. CONSULTANT may reduce types and the amounts of insurance limits provided by subconsultant(s) to be proportionate to the amount of the subconsultant's contract and the level of liability exposure for the specific type of work performed by the subconsultant. CONSULTANT shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to subconsultant.
- 21.2.11 Higher limits. If CONSULTANT maintains higher limits than the minimums shown above, SBCTA shall be entitled to coverage for the higher limits maintained by CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SBCTA.
- 21.2.12 Special Risks or Circumstances. SBCTA reserves the right to modify any or all of the above insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

ARTICLE 22. INDEMNITY

22.1 To the extent, but only to the extent, that CONSULTANT's Work falls within the scope of Civil Code Section 2782.8, the following indemnification is applicable:

CONSULTANT shall indemnify and defend (with legal counsel reasonably approved by SBCTA) SBCTA and its authorized officers, employees, agents and volunteers (collectively "Indemnitees"), from any and all losses, damages, liability, actions, and/or costs for claims that arise out of, pertain to, or are related to the negligence, recklessness, or willful misconduct of the professional.

22.2 For all other Work, CONSULTANT agrees to indemnify, defend (with legal counsel reasonably approved by SBCTA) and hold harmless SBCTA and its authorized officers, employees, agents and volunteers ("Indemnitees"), from any and all claims, actions, losses, damages and/or liability (Claims) arising out of this Contract from any cause whatsoever, including acts, errors, or omissions of any person and for any costs or expenses incurred by SBCTA on account of any

claim, except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. CONSULTANT's indemnification obligation applies to SBCTA's "active" as well as "passive" negligence, but does not apply to SBCTA's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

ARTICLE 23. ERRORS AND OMISSIONS

CONSULTANT shall be responsible for the professional quality, technical accuracy, and coordination of all Work required under this Contract. CONSULTANT shall be liable for SBCTA's costs resulting from errors or deficiencies in Work furnished under this Contract, including, but not limited to, any fines, penalties, damages, and costs required because of an error or deficiency in the Work provided by CONSULTANT under this Contract.

ARTICLE 24. OWNERSHIP OF DOCUMENTS

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by CONSULTANT under this Contract shall become the sole property of SBCTA when prepared, whether delivered to SBCTA or not.

ARTICLE 25. SUBCONTRACTS

- 25.1 CONSULTANT shall not subcontract performance of all or any portion of Work under this Contract, except to those subconsultants listed in CONSULTANT's proposal, without first notifying SBCTA in writing of the intended subcontracting and obtaining SBCTA's written approval of the subcontracting and the subconsultant. The definition of subconsultant and the requirements for subconsultants hereunder shall include all subcontracts at any tier.
- 25.2 CONSULTANT agrees that any and all subconsultants of CONSULTANT performing Work under this Contract will comply with the terms and conditions of this Contract applicable to the portion of Work performed by them. CONSULTANT shall incorporate all applicable provisions of this Contract into their subcontracts regardless of the tier. If requested by SBCTA, CONSULTANT shall furnish SBCTA a copy of the proposed subcontract for SBCTA's approval of the terms and conditions thereof and shall not execute such subcontract until SBCTA has approved such terms and conditions. SBCTA's approval shall not be unreasonably withheld.
- 25.3 Approval by SBCTA of any Work to be subcontracted and the subconsultant to perform said Work will not relieve CONSULTANT of any responsibility or liability in regard to the acceptable and complete performance of said Work. Any substitution of subconsultants must be approved in writing by SBCTA. CONSULTANT shall have sole responsibility for managing all of their subconsultants, including resolution of any disputes between CONSULTANT and its subconsultants.

ARTICLE 26. RECORD INSPECTION AND AUDITING

SBCTA or any of its designees, representatives, or agents shall at all times have access during normal business hours to CONSULTANT's operations and products wherever they are in preparation or progress, and CONSULTANT shall provide sufficient, safe, and proper facilities for such access and inspection thereof. Inspection or lack of inspection by SBCTA shall not be deemed to be a waiver of

any of their rights to require CONSULTANT to comply with the Contract or to subsequently reject unsatisfactory Work or products.

ARTICLE 27. INDEPENDENT CONTRACTOR

CONSULTANT is and shall be at all times an independent contractor. Accordingly, all Work provided by CONSULTANT shall be done and performed by CONSULTANT under the sole supervision, direction and control of CONSULTANT. SBCTA shall rely on CONSULTANT for results only and shall have no right at any time to direct or supervise CONSULTANT or CONSULTANT's employees in the performance of Work or as to the manner, means and methods by which Work is performed. All personnel furnished by CONSULTANT pursuant to this Contract, and all representatives of CONSULTANT, shall be and remain the employees or agents of CONSULTANT or of CONSULTANT's subconsultant(s) at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of SBCTA.

ARTICLE 28. ATTORNEY'S FEES

If any legal action is instituted to enforce or declare any Party's rights under the Contract, each Party, including the prevailing Party, must bear its own costs and attorneys' fees. This Article shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a Party hereto and payable under the "Indemnity" provision of the Contract.

ARTICLE 29. GOVERNING LAW AND VENUE

This Contract shall be subject to the law and jurisdiction of the State of California. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any Party to this Contract will be the Superior Court of California, San Bernardino County. Each Party hereby waives any law or rule of court that would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County.

ARTICLE 30. FEDERAL, STATE AND LOCAL LAWS

CONSULTANT warrants that in the performance of this Contract it shall comply with all applicable federal, State and local laws, ordinances, rules and regulations.

ARTICLE 31. PRECEDENCE

- 31.1 The Contract consists of these Contract Articles, Exhibit A "Scope of Work", and Exhibit B "Price Proposal", SBCTA's Request for Proposal and CONSULTANT's proposal, all of which are incorporated into this Contract by this reference.
- 31.2 The following order of precedence shall apply: first, the Contract Articles; second, Exhibits A and B; third, SBCTA's Request for Proposal; and last, CONSULTANT's proposal. In the event of a conflict between the Contract Articles and the Scope of Work, the Contract Articles will prevail.

- 31.3 In the event of an express conflict between the documents listed in this Article, or between any other documents which are a part of the Contract, CONSULTANT shall notify SBCTA in writing within three (3) business days of its discovery of the conflict and shall comply with SBCTA's resolution of the conflict.

ARTICLE 32. COMMUNICATIONS AND NOTICES

Notices sent by mail shall be by United States Mail, postage paid, certified mail (return receipt requested). Any and all notices permitted or required to be given hereunder shall be deemed duly given and received: (a) upon actual delivery, if delivery is personally made or if made by fax or email during regular business hours; (b) the first business day following delivery by fax or email when not made during regular business hours; or (c) on the fourth business day after deposit of such notice into the United States Mail. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective Parties may designate from time to time by a notice given in accordance with this Article. CONSULTANT shall notify SBCTA of any contact information changes within ten (10) business days of the change.

To GCAP Services, Inc.	To SBCTA
3525 Hyland Ave, Suite 140	1170 W. 3rd Street, 2nd Floor
Costa Mesa, CA 92626	San Bernardino, CA 92410-1715
Attn: Sylvia Linn	Attn: Shaneka Morris
Email: slinn@gcapsservices.com	Email: Smorris@gosbcta.com
Phone: (714) 800-1795	Phone: (909) 884-8276
2 nd Contact: Ed Salcedo	Copy: Procurement Manager
Email: esalcedo@gcapsservices.com	Email: procurement@gosbcta.com

ARTICLE 33. DISPUTES

- 33.1 In the event any dispute, other than an audit, arises between the Parties in connection with this Contract (including but not limited to disputes over payments, reimbursements, costs, expenses, Work to be performed, Scope of Work and/or time of performance), the dispute shall be decided by SBCTA's Director of Special Projects and Strategic Initiatives within thirty (30) calendar days after notice thereof in writing, which notice shall include a particular statement of the grounds of the dispute. If CONSULTANT does not agree with the decision, then CONSULTANT shall have ten (10) calendar days after receipt of the decision in which to file a written appeal thereto with SBCTA's Executive Director. If the Executive Director fails to resolve the dispute in a manner acceptable to CONSULTANT, then such dispute may be reviewed by a court of competent jurisdiction.
- 33.2 During resolution of the dispute, CONSULTANT shall proceed with performance of this Contract with due diligence.

ARTICLE 34. GRATUITIES

CONSULTANT, its employees, agents, or representatives shall not offer or give to any officer, official, agent or employee of SBCTA, any gift, entertainment, payment, loan, or other gratuity.

ARTICLE 35. REVIEW AND ACCEPTANCE

All Work performed by CONSULTANT shall be subject to periodic review and approval by SBCTA at any and all places where such performance may be carried on. Failure of SBCTA to make such review or to discover defective work shall not prejudice the rights of SBCTA at the time of final acceptance. All Work performed by CONSULTANT shall be subject to periodic and final review and acceptance by SBCTA upon completion of all Work.

ARTICLE 36. CONFIDENTIALITY

Any SBCTA communications or materials to which CONSULTANT or its subconsultants or agents have access, or materials prepared by CONSULTANT under the terms of this Contract, shall be held in confidence by CONSULTANT, who shall exercise reasonable precautions to prevent the disclosure of confidential information to anyone except as expressly authorized by SBCTA. Any communications with or work product of SBCTA's legal counsel to which CONSULTANT or its subconsultants or agents have access in performing work under this Contract shall be subject to the attorney-client privilege and attorney work product doctrine and shall be confidential. CONSULTANT shall not release any reports, information or promotional material, or allow for the use of any photos related to this Contract, for any purpose without prior written approval of SBCTA. CONSULTANT agrees to inform itself and make its employees, agents, and subconsultants aware of the requirements of SBCTA's privacy and confidentiality policies and to abide by the same.

ARTICLE 37. EVALUATION OF CONSULTANT

CONSULTANT's performance may be evaluated by SBCTA periodically throughout the Contract performance period, such as at the completion of certain milestones as identified in Scope of Work and/or at the completion of the Contract. A copy of the evaluation will be given to CONSULTANT for their information. The evaluation information shall be retained as part of the Contract file and may be used to evaluate CONSULTANT if they submit a proposal on a future RFP issued by SBCTA.

ARTICLE 38. SAFETY

CONSULTANT shall strictly comply with OSHA regulations and local, municipal, state, and federal safety and health laws, orders and regulations applicable to CONSULTANT's operations in the performance of Work under this Contract. CONSULTANT shall comply with all safety instructions issued by SBCTA or its representatives.

ARTICLE 39. DRUG FREE WORKPLACE

CONSULTANT agrees to comply with the Drug Free Workplace Act of 1990 per Government Code section 8350 et seq.

ARTICLE 40. ASSIGNMENT

CONSULTANT shall not assign this Contract in whole or in part, voluntarily, by operation of law, or otherwise, without first obtaining the written consent of SBCTA. SBCTA's exercise of consent shall be within its sole discretion. Any purported assignment without SBCTA's prior written consent shall be void and of no effect, and shall constitute a material breach of this Contract. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the Parties.

ARTICLE 41. AMENDMENTS

The Contract may only be changed by a written amendment duly executed by the Parties. Work authorized under an amendment shall not commence until the amendment has been duly executed.

ARTICLE 42. PREVAILING WAGES

42.1 The State of California's General Prevailing Wage Rates are not applicable to this Contract.

ARTICLE 43. CONTINGENT FEE

CONSULTANT warrants by execution of this Contract that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, SBCTA has the right to terminate this Contract without liability, pay only for the value of the Work actually performed, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 44. FORCE MAJEURE

CONSULTANT shall not be in default under this Contract in the event that the Work performed by CONSULTANT is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, and natural disasters such as floods, earthquakes, landslides, and fires, or other catastrophic events which are beyond the reasonable control of CONSULTANT and which CONSULTANT could not reasonably be expected to have prevented or controlled. "Other catastrophic events" does not include the financial inability of CONSULTANT to perform or failure of CONSULTANT to obtain either any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of CONSULTANT.

ARTICLE 45. WARRANTY

CONSULTANT warrants that all Work performed shall be in accordance with the Contract and all applicable professional standards. In the event of a breach of this provision, CONSULTANT shall take the necessary actions to correct the breach at CONSULTANT's sole expense. If CONSULTANT does not take the necessary action to correct the breach, SBCTA, without waiving any other rights or remedies it may have, may take the necessary steps to correct the breach, and the CONSULTANT shall promptly reimburse SBCTA for all expenses and costs incurred.

ARTICLE 46. ENTIRE DOCUMENT

46.1 This Contract constitutes the sole and only agreement governing the Work and supersedes any prior understandings, written or oral, between the Parties respecting the services which are the subject of this Contract. All previous proposals, offers, and other communications, written or oral, relative to this Contract are superseded except to the extent that they have been expressly incorporated into this Contract.

- 46.2 No agent, official, employee or representative of SBCTA has any authority to bind SBCTA to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Contract, and CONSULTANT hereby stipulates that it has not relied, and will not rely, on same.
- 46.3 Both Parties have been represented or had the full opportunity to be represented by legal counsel of their own choosing in the negotiation and preparation of this Contract. Therefore, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning and not for or against either Party.

ARTICLE 47. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

CONSULTANT shall comply with all applicable provisions of the Americans with Disabilities Act in performing Work under this Contract.

ARTICLE 48. EFFECTIVE DATE

The date that this Contract is executed by SBCTA shall be the Effective Date of the Contract.

-----SIGNATURES ARE ON THE FOLLOWING PAGE-----

IN WITNESS WHEREOF, the Parties hereto have executed this Contract below.

**GCAP Services, Inc., a Delaware
Corporation**

**San Bernardino County
Transportation Authority**

By: _____
Edward Salcedo, Jr.
President

By: _____
Curt Hagman
President, Board of Directors

Date: _____

Date: _____

APPROVED AS TO FORM

By: _____
Jeanne Salcedo
Secretary

By: _____
Julianna K. Tillquist
General Counsel

Date: _____

Date: _____

CONCURRENCE

By: _____
Beatriz Valdez
Director of Special Projects and
Strategic Initiatives

Date: _____

Attachment: 22-1002768 - GCAP Services, Inc. - PDF (8656 : On-Call Labor Compliance)

**EXHIBIT “A”
“SCOPE OF WORK”**

Attachment: 22-1002768 - GCAP Services, Inc. - PDF (8656 : On-Call Labor Compliance)

“SCOPE OF WORK”

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A. **DESCRIPTION OF SERVICES**

The San Bernardino County Transportation Authority (SBCTA) receives Federal, State and Local funds for the construction of various Public Works projects. As a condition of receiving this funding, SBCTA is required to follow Federal and State statutes and guidelines, which impose upon SBCTA a wide range of prevailing wage labor compliance responsibilities. The prevailing wage requirements are identified in the Public Works contracts issued by SBCTA and by Federal (if applicable) and State labor codes. A prime consultant and contractor and any tier subcontractor, by entering into or performing work under SBCTA Public Works projects, agree to comply with all provisions of Federal (if applicable) and State labor codes applicable to Public Works projects.

SBCTA will utilize CONSULTANT services on an “On-Call” basis to act as SBCTA’s Labor Compliance Officer and provide labor compliance oversight and technical support associated with various types (construction and pre-construction activities) of public works projects. The CONSULTANT will demonstrate detailed knowledge of Caltrans and California Division of Labor Standards Enforcement (DSLE) Compliance Monitoring Unit (CMU), the United States Department of Labor Regulations and Guidelines, and equal employment opportunity compliance monitoring requirements as well as knowledge of the Davis Bacon Act, the Copeland “Anti-Kickback” Act, the Contract Work Hour and Safety Standards Act.

The CONSULTANT is to coordinate, audit, train, advice and oversee agency wide labor compliance and Equal Employment Opportunity (EEO) compliance for all projects overseen by SBCTA, that includes requirements of the United State Department of Labor (DOL) and the California Division of Labor Standards Enforcement (DSLE) Compliance Monitoring Unit (CMU). The CONSULTANT will also provide labor compliance review and monitoring of consultant services (Pre-Construction activities) covered by prevailing wage requirements.

Federal and State oversight agencies provide intermittent audits/reviews of SBCTA’s labor compliance monitoring activities to assess SBCTA’s compliance with these requirements. It’s SBCTA’s responsibility to ensure these requirements are being met by the consultants and prime contractors and any tier subcontractor, and to take appropriate corrective action when these requirements have not been met. The CONSULTANT will take the lead in coordinating and addressing any State or Federal compliance review and monitoring.

CONSULTANT shall provide qualified personnel to perform a wide variety of labor compliance services, EEO and contract administration duties as outlined in this Scope of Services for the Program.

SBCTA designates a Project Manager to coordinate all construction and construction related activities. The CONSULTANT shall receive direction from SBCTA through the Project Manager, or designee. SBCTA’s Project Manager will be the main contact and primary source of information between SBCTA, CONSULTANT, cities, outside agencies, supporting consultants and the public.

B. **PERFORMANCE REQUIREMENTS**

Labor Compliance Officer: CONSULTANT shall furnish a Program Manager to coordinate CONSULTANT operations with SBCTA. The Program Manager shall be responsible for all matters related to CONSULTANT personnel and operations. The Program Manager shall also serve as the Labor Compliance Officer (LCO). The LCO shall be assigned to direct and coordinate activities under this contract. Staff may be assigned to each specific project responsibilities as needed.

Labor Compliance Monitoring Staff: The number of CONSULTANT personnel assigned to the contract will vary throughout the duration of the Contract. CONSULTANT personnel will be assigned, in varying levels of responsibility, as needed by the CONSULTANT to meet the SBCTA's various construction activities and schedules.

CONSULTANT shall be knowledgeable of and comply with all applicable local, state, and federal regulations. CONSULTANT personnel shall cooperate and consult with SBCTA, State, and City officials during the course of the contract. CONSULTANT personnel shall keep accurate and timely records and document all work performed by the CONSULTANT.

Many of the Public Works projects undertaken by SBCTA are funded by United States Department of Transportation, including Federal Highway Administration (FHWA) and Federal Transit Administration (FTA). Depending on the funding source, SBCTA relies upon the guidance and protocol established by the Federal government and State of California and Caltrans for monitoring prevailing wage labor compliance, as specified in the following documents:

1. All applicable Federal requirements, including, but not limited to U.S. Department of Labor guidelines Sections 5333(b) Federal Transit Law; U.S. Department of Labor regulations; 29 CFR Part 5, Davis Bacon Act, 40 USC 276 a-276a(7) and the Contract Work Hour and Safety Standards Act, 40 USC 327 – 332; and Fair Labor Standards Act, as amended, 29 USC 206-207.
2. All applicable California Department of Transportation (Caltrans) manuals, including, but not limited to, Labor Compliance Manual, Construction Manual and Local Assistance Procedures Manual.
3. All applicable State of California requirements, including, but not limited to the Department of Labor.

While these documents are very thorough in prescribing the protocol to be implemented in monitoring labor compliance, it is often difficult to discern how the defined responsibilities translate to SBCTA and SBCTA Labor Compliance Consultants. It is the responsibility of the CONSULTANT to ensure that SBCTA is compliant with and adheres to all necessary State and Federal requirements.

C. DUTIES AND RESPONSIBILITIES

1. Program Administration:

The following roles and responsibilities are prescribed for SBCTA Public Works construction projects:

- a. Resident Engineer: The Resident Engineer (RE) is part of the SBCTA Construction Management team and is responsible for the enforcement of the labor contract provisions at the project level. The Resident Engineer may have additional staff and/or consultants to assist in this task.
- b. Program Manager/CONSULTANT: For Architectural & Engineering contracts, certain labor categories require the payment of prevailing wages. CONSULTANT is to review and monitor these contracts for labor compliance activities and proper payment of prevailing wages.

Be accessible to SBCTA at all times during regular business hours.

The Program Manager will assume the following functional responsibilities:

- 1) Review, monitor, train, and provide general direction for CONSULTANT personnel.
 - 2) Assign personnel to on an as-needed basis.
 - 3) Administer personal leave.
 - 4) Prepare monthly reports for delivery to SBCTA.
- c. Labor Compliance Officer/CONSULTANT: CONSULTANT is responsible for providing quality assurance on all labor compliance activities undertaken by SBCTA and its consultants and coordinating with the CMU.

This role includes the following duties participation in the Pre-Proposal/Pre-Bid Meeting, Preconstruction Conference, Document Tracking, Field Activity review, Certified Billing Review, Contractor Certified Payroll Reviews and/or Owner Operator Listings, Labor Requirements Enforcement and other related activities.

Other duties include the periodic review of project specific labor compliance monitoring activities performed by SBCTA and/or construction management labor compliance consultants and preparation of an internal report documenting the review findings. The report findings are to be used by SBCTA as an instrument to continually improve labor compliance practices on SBCTA Public Works projects. LCO duties include, but are not limited to, document reviews, field activity support, billing reviews, certified payroll review, investigations of labor complaints, enforcement of labor compliance requirements, training, and supporting SBCTA during administrative hearings.

- d. The Compliance Monitoring Unit or “CMU” is a component within the California Division of Labor Standards Enforcement (DLSE) that was created to monitor and enforce prevailing wage requirements on public works projects that receive state bond funding and on other projects that are legally required to use the CMU. The CMU began operations on January 1, 2012, following the adoption of AB 436 and approval of revisions to program regulations. By actively monitoring compliance on an ongoing basis while work is being performed, the CMU will play a special role in ensuring that public works construction workers are promptly paid the proper prevailing wage rates

and in helping maintain a level playing field for contractors who comply with the law. The CONSULTANT shall assist the SBCTA in managing and implementing this new requirement on all Prevailing Wage projects.

2. Pre-Proposal/ Pre Bid Conference:

As requested by SBCTA, CONSULTANT may need to attend the Pre-Proposal/Pre-Bid meeting to discuss Labor Compliance requirements with attendees. During the procurement process, CONSULTANT may be asked to draft responses to written questions submitted by proposers or bidders related to Prevailing Wage requirements.

3. Preconstruction Conference:

SBCTA, the Resident Engineer and the LCO shall participate in the project preconstruction conference to disseminate prevailing wage requirements to the project's prime contractor and its subcontractor team.

The content of the prevailing wage presentation shall be coordinated with SBCTA and the Resident Engineer prior to the preconstruction meeting, and shall cover the topics presented in the Caltrans Labor Compliance Manual (CLCM) Chapter 4 and as required by the CMU.

The preconstruction package should be provided to the general contractor and subcontractors' staff responsible for labor compliance that includes, but is not limited to the following items:

- Checklist
- Posters
- State and Federal wage determinations
- Labor Compliance Address labels and email addresses
- Forms

Items to cover during the presentation include the following:

- Explain correct payroll procedures
- Describe any recent labor law changes
- Obtain contractor's signature on preconstruction checklist
- Explain the CMU process and registration

4. Document Tracking:

SBCTA is responsible for monitoring the submittal of all required labor compliance documents submitted by the prime contractor and any tier subcontractor. The LCO in coordination with SBCTA shall monitor and audit this documentation on periodic basis. The following items provide the mechanism by which SBCTA and LCO are to monitor compliance with the document tracking requirements of SBCTA Public Works Projects:

A. Maintain project labor compliance files in accordance with the filing system prescribed in the Fair Labor Standards Act and Caltrans Labor Compliance Manual (CLCM), (CLCM § 1-204). Please refer to Wage and Hour Division [Fact sheet #21: Recordkeeping Requirements](#)

under the Fair Labor Standards Act (FLSA). These files are to be maintained for three years from final payment.

B. Assess Resident Engineer's Daily Reports and Resident Engineer's Weekly Status Reports (CLCM § 1-207). The Resident Engineer's Daily Reports provide a daily account of the activity on a project. From the Daily Reports, the Resident Engineer shall review and determine the contractors performing on the project for each day. Special attention shall be paid to the identification of lower tier subcontractors on the Daily Reports. These reports shall also provide information on the number and classification of workers performing daily on the project. The RE's Daily Reports shall be reviewed and assessed to ensure this information is appropriately captured by the RE. Weekly status reports provide a list of contractors and owner operators working on the project during the reporting week.

C. Labor Compliance Document Tracking System (CLCM § 1-208): SBCTA and the Resident Engineer are required to implement the use of a document tracking system to track the submittal of all required labor compliance forms/documents from each contractor performing on the project. The document tracking system may be in hardcopy or softcopy format, or a computer-based database may be used. Forms to be tracked include, but are not limited the following:

- a. Payroll Report
- b. Statement of Compliance
- c. Fringe Benefit Statement
- d. Owner Operator Listing (OOL)
- e. OOL Statement of Compliance
- f. Training Fund Contribution Report (CAC 2)
- g. Agreement to Train Apprentices (DAS Form 7)
- h. Apprentices on Public Works (DAS Form 10)
- i. Application of Certificate of Exemption (DAS Form 11)
- j. Public Works Contract Award Information (DAS Form 140)
- k. Federal-Aid Highway Construction Contractors EEO Report (FHWA Form 1391)
- l. FTA EEO-04
- m. PWC-100 Form
- n. Summary of 1391 (FHWA Form 1392)
- o. DBE Substitution Report
- p. DBE Utilization Final Report
- q. DVBE Utilization Final Report

The prime contractor must furnish weekly certified payrolls to SBCTA or to the CMU, depending, (including certified payrolls for each project subcontractor), who in turn will provide these documents to SBCTA or SBCTA's Labor Compliance Consultant. The due dates for these documents are specified in the contract documents. The Resident Engineer shall process document intake in accordance with CLCM § 1-209A.

D. Missing Document Request Process: Resident Engineer shall request from prime contractor, orally or in writing, any missing/delinquent labor compliance documents either by the prime or any tier subcontractor, per the requirements identified in the Public Works contract document. The LCO shall work with the project Resident Engineer to enforce the

contract requirements in the event of untimely or inadequate responses. CLCM § 1-301 Deductions and Withholds provide guidance on how to use withholding of funds to enforce the submittal of required labor compliance documents.

E. Process 3rd party requests for Certified Payroll information, in accordance with the guidance provided at CLCM §§ 1-401 through 403.

5. Field Activity:

Key information for the prime and subcontractor performance in meeting prevailing wage requirements is attained from the field by the RE or the CMU either through passive monitoring, such as receiving an employee complaint, or through active monitoring, such as through the performance of site visits to verify posting requirements or to perform employee interviews. The following activities are to be undertaken by Resident Engineer/CMU with oversight by the LCO.

A. Process Employee Complaints: SBCTA shall document all labor compliance related complaints received. All complaints are to be taken seriously, and must be investigated with findings documented in the labor compliance files for the project, consistent with the procedures specified in CLCM §§ 1-601 through 603. Any investigation resulting in the determination of non-compliance by the prime or any tier subcontractor must be dealt with through enforcement actions defined in the contract documents.

B. Verify Prime Contractor Job Site Postings: The prime contractor is required to post various labor compliance posters and documents at the job site. LCO must verify these postings at the start of the project and reverify the postings through the life of the project. The required postings will be identified at the beginning of the project.

C. Assess Accuracy of Resident Engineer Daily Reports: It is anticipated that the Resident Engineer's Daily Logs will provide an accurate account of the contractors performing on the job site as well as the number and classification of workers performing on the job site. As an added level of assurance, SBCTA and the LCO shall, during any site visit, compare their findings with the information contained in the Resident Engineer's Daily Logs. Any discrepancies shall be addressed with the Resident Engineer, leading to improved record keeping by both parties in the future.

D. Worker and Owner Operator Interviews: SBCTA and LCO shall perform employee interviews at a quantity, frequency and manner consistent with that prescribed in the CLCM §§ 1-501 through 502. Worker interviews shall account for at least 10% of all work-hours performed on the project.

6. Billing Review:

As part of LCO responsibility, the assessment of prime contractor change order invoicing against information submitted in certified payroll reports is to be performed, following the procedures identified in CLCM § 2-108.

SBCTA and LCO* shall review change order invoicing that uses man hour counts as its basis for billing against certified payroll reports for the period covered in the invoice to assess accuracy of the invoicing.

**** The Resident Engineer may perform this task if responsible for reviewing invoicing documentation.***

7. Certified Payroll Reviews

Certified payroll reviews are to be performed to identify errors in the payment of prevailing wages to workers employed on the project, as reported on certified payroll, and to identify the accuracy of information reported by comparing information gained from other sources and from the field. The certified payroll review activities to be performed on a monthly basis (complete weeks will be reviewed) by SBCTA and its Labor Compliance Consultant include:

A. From field reviews and inspection of Resident Engineer Daily Reports, identify the complete list of contractors (prime and any tier subcontractors) performing on the project during the audit month.

B. For any contractor new to the project identified above, audit all certified payroll and related information for a complete one month period. An audit of each worker for this period will help identify and resolve human error issues in the reporting of prevailing wage payments on the project. For other contractors, those that have previously performed on the project, perform spot audits at a rate of at least 10% of the work-hours for the monthly period. Complete procedures for performing certified payroll audits are provided in the CLCM §§ 2-101 through 107. These procedures include the following items:

- Check total workforce and their classifications against Resident Engineer Daily Reports
- Check hours against Resident Engineer Diaries and Employee interviews for that period, if any.
- Check prevailing wage rates based on worker classifications.
- Assess applicability and appropriateness of overtime pay, including weekends and holidays.
- Check the ratio of apprentices on project and their pay scale. (See CLCM §§ 2-301 through 305 for procedures).
- Validate other aspects of Certified Payroll data, including deductions, against supporting information submitted for all certified payrolls
- Assess applicability and appropriateness of travel and subsistence pay.
- Review appropriate paperwork for all apprentices on project.
- Check appropriateness of payments to owner operators on project as reported in owner operator listings.

In the event inadequate certified payroll and related documentation has been identified through the audit process above, SBCTA and LCO shall work with the Resident Engineer to resolve the inadequate certified payroll matter consistent with the enforcement requirements identified in the project contract.

8. Labor Requirement Enforcement

SBCTA and the LCO shall work with the project Resident Engineer to enforce the prevailing wage labor compliance requirements of the project. The activities to be performed by LCO include:

- A. Prepare report on potential prevailing wage violation(s) identified through monitoring activity.
- B. Working with the Resident Engineer, prepare written notification to prime contractor of potential prevailing wage violations and a provide list of remedies with timeframes for prime contractor to respond. Sanctions for the potential prevailing wage violations shall also be identified in the notification, consistent with the sanctions prescribed in the project contract.
- C. Provide on-going support to Resident Engineer in resolving the potential prevailing wage violations.

D. **DELIVERABLES**

- 1. Quarterly Audits of construction management labor compliance services on all projects in format approved by SBCTA.
- 2. Monthly review of all consultant certified payroll review and fringe benefit statements for all employees who are subject to the State and/or Federal prevailing wage rates.
- 3. Monthly Status Report of all pending issues and the status of said issues.
- 4. Collection of FHWA Form 1391 and submittal of FHWA Form 1391 to FHWA by September each year.

E. **EQUIPMENT AND MATERIALS TO BE PROVIDED BY CONSULTANT**

CONSULTANT shall provide all necessary office space, equipment including software, materials, supplies, miscellaneous tools, and safety equipment required for its personnel to perform the services accurately, efficiently, and safely.

F. **MATERIALS TO BE FURNISHED BY SBCTA**

None

G. **STANDARDS**

- 1. Federal and State of California requirements.
- 2. Caltrans standards.

H. **LIMITATIONS TO AUTHORITY**

CONSULTANT does not have the authority to:

1. Assume any of the responsibilities of SBCTA's consultants, contractors, contractors' Superintendent, or subcontractors.
2. Offer or receive incentives, inducements, or other forms of remuneration to or from the consultant or contractor to perform services or work outside the terms of any executed contracts for this Project.

J. THIRD PARTY RELATIONSHIPS

This Contract is intended to provide unique services for specific duties. SBCTA, however, is solely responsible for and will be the sole point of contact for all contractual matters related to the Labor Compliance duties. CONSULTANT shall take direction only from SBCTA and shall regularly inform only SBCTA of progress, outstanding issues, and all labor compliance and EEO related matters.

During the course of the Project, CONSULTANT may find occasion to meet with State CMU, Caltrans, City or County representatives, the design engineer, Project consultants, or other third parties who have assisted with the various projects. These entities may, from time to time, offer suggestions and/or recommendations regarding the Project or elements of the Project.

While SBCTA enjoys a close relationship with and has considerable confidence in the capabilities of these other parties, CONSULTANT shall not act on any suggestions, solicited or unsolicited, without obtaining specific direction from SBCTA. All oral and written communication with outside agencies or consultants related to the contract shall be directed only to SBCTA. Distribution of contract or labor compliance review related communication and information should be at the sole discretion of SBCTA representatives.

M. PERSONNEL QUALIFICATIONS AND RESPONSIBILITIES

The quantity and qualifications of field personnel to be assigned will be determined by the scope of the Public Works Project and the degree of difficulty of required tasks to be performed. All personnel and personnel assignments are subject to approval by SBCTA. While some areas of responsibility may overlap, as a guideline, CONSULTANT personnel assigned to this contract should have the following minimum qualifications or a combination of education and experience:

1. Program Manager
 - a. A minimum of six (6) years' experience providing similar LCO services is desired.
 - b. The LCO will demonstrate detailed knowledge of Caltrans, Federal Department of Labor and State of California Division of Labor Standards Enforcement (DSLE) Compliance Monitoring Unit (CMU) requirements and equal employment opportunity compliance monitoring.

- c. A thorough understanding of Caltrans Labor compliance practices and procedures.

EXHIBIT “B”
“PRICE PROPOSAL”

Attachment: 22-1002768 - GCAP Services, Inc. - PDF (8656 : On-Call Labor Compliance)

PRICE PROPOSAL



**Price List – Attachment B for:
(Time and Materials)**

RFP No. 22-1002768

Key Personnel

Name	Classification/Title	Job Function	Hourly Rate
Sylvia Linn	LCO/Program Manager	Oversight/Governance/PM	\$ 150.00
Kim Morales	Senior LC Analyst	Oversight/LC Monitoring	\$ 110.00
Stephannie Gabaldon	LC Analyst II	LC Monitoring	\$ 100.00
Ariana Fernandez	LC Analyst II	LC Monitoring/Reporting	\$ 100.00
Celeste Maldonado	LC Analyst I	LC Monitoring/Reporting	\$ 95.00
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$

Other Direct Cost Schedule (ODC)

All ODC's are to be proposed at cost-without mark-ups.

Type of ODC	Unit Cost	Estimated Budget Amount
Mileage	\$ 0.585	\$ TBD
	\$	\$
	\$	\$
	\$	\$
	\$	\$

GCAP Services, Inc.

Proposer

Signature of Authorized Person

4/15/2022

Date

Attachment: 22-1002768 - GCAP Services, Inc. - PDF (8656 : On-Call Labor Compliance)

General Contract Information

Contract No: 22-1002769 Amendment No.: _____Contract Class: Payable Department: Special ProjectsVendor No.: 03797 Vendor Name: Cumming Management Group Inc.Description: On-Call Labor Compliance

Dollar Amount

Original Contract	\$	166,666.00	Original Contingency	\$	-
Prior Amendments			Prior Amendments	\$	-
Prior Contingency Released	\$	-	Prior Contingency Released (-)	\$	-
Current Amendment			Current Amendment	\$	-
Total/Revised Contract Value	\$	166,666.00	Total Contingency Value	\$	-
Total Dollar Authority (Contract Value and Contingency)				\$	166,666.00

Contract Authorization

Board of Directors _____ Date: 7/6/2022 _____ Committee _____ Item # _____

Contract Management (Internal Purposes Only)

Other Contracts _____ Sole Source? No _____ No Budget Adjustment _____Local _____ Professional Services (Non-A&E) _____ N/A _____

Accounts Payable

Estimated Start Date: 7/31/2022 Expiration Date: 7/31/2025 Revised Expiration Date: _____NHS: N/A QMP/QAP: N/A Prevailing Wage: N/A

						Total Contract Funding:		Total Contingency:	
						\$	166,666.00	\$	-
Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name		
GL								166,666.00	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-

Shaneka Morris

Bea Valdez

Project Manager (Print Name)

Task Manager (Print Name)

Additional Notes: multi funded depending on the project.

Attachment: 22-1002769 Cumming Management Group, Inc. CSS-print (8656 : On-Call Labor Compliance)

CONTRACT NO. 22-1002769**BY AND BETWEEN****SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY****AND****CUMMING MANAGEMENT GROUP, INC.****FOR****ON-CALL LABOR COMPLIANCE SERVICES**

This contract ("Contract") is made and entered into by and between the San Bernardino County Transportation Authority ("SBCTA"), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715, and Cumming Management Group, Inc., ("CONSULTANT"), whose address is 25220 Hancock Ave., Ste. 440, Murrieta, CA 92562. SBCTA and CONSULTANT are each a "Party" and are collectively the "Parties".

RECITALS:

WHEREAS, SBCTA requires certain work services as described in Exhibit "A" of this Contract; and

WHEREAS, CONSULTANT has confirmed that CONSULTANT has the requisite professional qualifications, personnel and experience and is fully capable and qualified to perform the services identified herein; and

WHEREAS, CONSULTANT desires to perform all Work identified herein and to do so for the compensation and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1. SCOPE OF WORK

- 1.1 CONSULTANT agrees to perform the work and services set forth in Exhibit A "Scope of Work" ("Work"), in accordance with all applicable professional standards which are generally accepted in the State of California, in accordance with the terms and conditions expressed herein and in the sequence, time, and manner defined herein, but only upon SBCTA's issuance of and in accordance with the terms and instructions contained in one or more written Contract Task Orders ("CTO") executed by both parties. The word "Work" includes, without limitation, the performance, fulfillment and discharge by CONSULTANT of all obligations, duties, tasks, and services imposed upon or assumed by CONSULTANT hereunder; and the

Work performed hereunder shall be completed to the satisfaction of SBCTA, with SBCTA's satisfaction being based on prevailing applicable professional standards.

- 1.2 The Project Manager for this Contract is Shaneka M. Morris, or such other designee as shall be designated in written notice to CONSULTANT from time to time by SBCTA's Director of Special Projects and Strategic Initiatives or his or her designee. The Project Manager shall have authority to act on behalf of SBCTA in administering this Contract, including giving notices (including, without limitation, notices of default and/or termination), technical directions and approvals; issuing, executing and amending CTOs; and demanding performance and accepting work performed, but is not authorized to receive or issue payments or execute amendments to the Contract itself.

ARTICLE 2. CONTRACT TERM

The Contract term shall commence upon issuance of a written Notice To Proceed or Notice of Executed Contract (NTP) issued by SBCTA's Procurement Division, and shall continue in full force and effect through July 31, 2025, until otherwise terminated, or unless extended as hereinafter provided by written amendment, except that all indemnity and defense obligations hereunder shall survive termination of this Contract. CONSULTANT shall not be compensated for any Work performed or costs incurred prior to issuance of the NTP.

SBCTA at its sole discretion may extend the original term of the Contract for two (2) one (1) year option terms. The maximum term of this Contract, including the Option Term(s), if exercised, will not exceed July 31, 2027.

ARTICLE 3. COMPENSATION

- 3.1 Total compensation to CONSULTANT for full and complete performance of Services in compliance with all the terms and conditions of this Contract and any CTOs issued shall not exceed the amount set forth in 3.2 below.
- 3.2 The total Not-To-Exceed Amount for all CTOs issued to CONSULTANT is Five Hundred Thousand (\$500,000). All services shall be reimbursed pursuant to the hourly labor rates identified in Exhibit B "Price Proposal" and the executed CTO. The hourly labor rates identified in Exhibit B shall remain fixed for the term of this Contract and shall include CONSULTANT's direct labor costs, indirect costs, and profit. All expenses shall be reimbursed for the amount identified in Exhibit B. SBCTA will not reimburse for any expenses not shown in Exhibit B.
- 3.3 As need for Labor Compliance Services arises, SBCTA will issue a request for CTOs based on services and costs identified in 3.2, above. SBCTA does not guarantee any certain number of CTOs will be issued during the term of this Contract. Award of CTOs is at the sole discretion of SBCTA.
- 3.4 Intentionally Omitted.
- 3.5 The Cost Principles and Procedures set forth in 48 CFR, Ch. 1, subch. E, Part 31, as constituted on the effective date of this Contract shall be utilized to determine allowability of costs under this Contract and may be modified from time to time by written amendment of the Contract.

- 3.5.1 CONSULTANT agrees to comply with Federal Department of Transportation procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- 3.5.2 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Ch. 1, subch. E, Part 31, or 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, shall be repaid by CONSULTANT to SBCTA.
- 3.6 Any Work provided by CONSULTANT not specifically covered by the Scope of Work shall not be compensated without prior written authorization from SBCTA. It shall be CONSULTANT's responsibility to recognize and notify SBCTA in writing when services not covered by the Scope of Work have been requested or are required. All changes and/or modifications to the Scope of Work shall be made in accordance with the "CHANGES" Article in this Contract. Any additional services agreed to in accordance with this Contract shall become part of the Work.

ARTICLE 4. INVOICING

- 4.1 Payment to CONSULTANT as provided herein shall be payable in four (4) week billing period payments, forty-five (45) calendar days after receipt of an acceptable invoice by SBCTA of an invoice prepared in accordance with instructions below. Payment shall not be construed to be an acceptance of Work.
- 4.2 CONSULTANT shall prepare invoices in a form satisfactory to and approved by SBCTA, which shall be accompanied by documentation supporting each element of measurement and/or cost. Each invoice will be for a four-week billing period and will be marked with SBCTA'S contract number, description and task order number, if applicable. Invoices shall be submitted within thirty (30) calendar days for the period covered by the invoice except for the month of June, which will require the invoice to be submitted by July 10th. Invoices shall include request for payment for Work (including additional services authorized by SBCTA) completed by CONSULTANT during each billing period and shall include back-up information sufficient to establish the validity of the invoice. Any invoice submitted which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to CONSULTANT. Any costs incurred by CONSULTANT in connection with the resubmission of a proper invoice shall be at CONSULTANT's sole expense. The final invoice shall be marked "FINAL" and will be submitted within 60 calendar days after SBCTA has received and approved all Work and deliverables. Invoices should be e-mailed to SBCTA at the following address:

ap@gosbcta.com

For large files over 30 megabytes, invoices can be submitted using this link:

<https://sanbag-lfweb.sanbag.ca.gov/Forms/Invoice-submission>

- 4.3 CONSULTANT shall include a statement and release with each invoice, satisfactory to SBCTA, that CONSULTANT has fully performed the Work invoiced pursuant to the Contract for the period covered, that all information included with the invoice is true and correct, and that all payments to and claims of CONSULTANT and its subconsultants for Work during the period will be satisfied upon making of such payment. SBCTA shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such statement and release.

- 4.4 Intentionally Omitted
- 4.5 No payment will be made prior to approval of any Work, nor for any Work performed prior to the NTP or the issuance of an applicable CTO, nor for any Work under any amendment to the Contract until SBCTA's Awarding Authority takes action.
- 4.6 CONSULTANT agrees to promptly pay each subconsultant for the satisfactory completion of all Work performed under this Contract no later than ten (10) calendar days from the receipt of payment from SBCTA. CONSULTANT also agrees to return any retainage payments to each subconsultant within ten (10) calendar days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval by SBCTA. SBCTA reserves the right to request documentation from CONSULTANT showing payment has been made to its subconsultants. SBCTA also reserves the right, at its own sole discretion, to issue joint checks to CONSULTANT and any subconsultant(s), which shall constitute payment to CONSULTANT in compliance with the terms of this Contract. This clause applies to both DBE and non-DBE subconsultants.
- 4.7 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Ch. 1, subch. E, Part 31 are subject to repayment by CONSULTANT to SBCTA.

ARTICLE 5. TAXES, DUTIES AND FEES

Except to the extent expressly provided elsewhere in this Contract, CONSULTANT shall pay when due, and the compensation set forth herein, shall be inclusive of all: a) local, municipal, State, and federal sales and use taxes; b) excise taxes; c) taxes on personal property owned by CONSULTANT; and d) other governmental fees and taxes or charges of whatever nature applicable to CONSULTANT to enable it to conduct business.

ARTICLE 6. AVAILABILITY OF FUNDS

The award and performance of this Contract is contingent on the availability of funds. If funds are not appropriated and/or allocated and available to SBCTA for the continuance of Work performed by CONSULTANT, Work directly or indirectly involved may be suspended or terminated by SBCTA at the end of the period for which funds are available. When SBCTA becomes aware that any portion of Work will or may be affected by a shortage of funds, it will promptly notify CONSULTANT. Nothing herein shall relieve SBCTA from its obligation to compensate CONSULTANT for work already performed pursuant to this Contract. No penalty shall accrue to SBCTA in the event this provision is exercised.

ARTICLE 7. PERMITS AND LICENSES

CONSULTANT shall, without additional compensation, keep current all governmental permits, certificates and licenses (including professional licenses) and required registrations necessary for CONSULTANT to perform Work identified herein.

ARTICLE 8. DOCUMENTATION AND RIGHT TO AUDIT

- 8.1 CONSULTANT shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a

period of three (3) years from the date of final payment by SBCTA, or until the conclusion of all litigation, appeals or claims related to this Contract, whichever is longer. CONSULTANT shall provide SBCTA, the California State Auditor, or other authorized representatives of SBCTA access to Consultants' records which are directly related to this Contract for the purpose of inspection, auditing or copying during the entirety of the records maintenance period above. CONSULTANT further agrees to maintain separate records for costs of Work performed by amendment. CONSULTANT shall allow SBCTA and its representatives or agents to reproduce any materials as reasonably necessary.

- 8.2 The cost proposal and/or invoices for this Contract are subject to audit by SBCTA and/or any state or federal agency funding this Work at any time. After CONSULTANT receives any audit recommendations, the cost or price proposal shall be adjusted by CONSULTANT and approved by SBCTA's Project Manager to conform to the audit recommendations. CONSULTANT agrees that individual items of cost identified in the audit report may be incorporated into the Contract at SBCTA's sole discretion. Refusal by CONSULTANT to incorporate the audit or post award recommendations will be considered a breach of the Contract and cause for termination of the Contract. Any dispute concerning the audit findings of this Contract shall be reviewed by SBCTA's Chief Financial Officer. CONSULTANT may request a review by submitting the request in writing to SBCTA within thirty (30) calendar days after issuance of the audit report
- 8.3 Subcontracts in excess of \$25,000 shall contain this provision.

ARTICLE 9. RESPONSIBILITY OF CONSULTANT

- 9.1 CONSULTANT shall be responsible for the professional quality, technical accuracy, and assurance of compliance with all applicable federal, State and local laws and regulations and other Work furnished by CONSULTANT under the Contract. The Contract includes reference to the appropriate standards for Work performance stipulated in the Contract.
- 9.2 In addition to any other requirements of this Contract or duties and obligations imposed on CONSULTANT by law, CONSULTANT shall, as an integral part of its Work, employ quality control procedures that identify potential risks and uncertainties related to scope, schedule, cost, quality, and the Work performed by CONSULTANT within the areas of CONSULTANT's expertise. At any time during performance of the Scope of Work, should CONSULTANT observe, encounter, or identify any unusual circumstances or uncertainties which could pose potential risk to SBCTA, CONSULTANT shall immediately document such matters and notify SBCTA in writing.. Notifications under this paragraph shall be specific, clear and timely, and in a form which will enable SBCTA to understand and evaluate the magnitude and effect of the risk and/or uncertainties involved.

ARTICLE 10. REPORTING AND DELIVERABLES

All reports and deliverables shall be submitted in accordance with Exhibit A "Scope of Work". At a minimum, CONSULTANT shall submit monthly progress reports with their monthly invoices. The report shall be sufficiently detailed for SBCTA to determine if CONSULTANT is performing to expectations and is on schedule; to provide communication of interim findings; and to sufficiently address any difficulties or problems encountered, so remedies can be developed.

ARTICLE 11. TECHNICAL DIRECTION

- 11.1 Performance of Work under this Contract shall be subject to the technical direction of SBCTA's Project Manager, identified in Section 1.2, upon issuance of the NTP and/or subsequently by written notice during the Contract. The term "Technical Direction" is defined to include, without limitation:
- 11.1.1 Directions to CONSULTANT which redirect the Contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the Scope of Work.
 - 11.1.2 Provision of written information to CONSULTANT which assists in the interpretation of reports or technical portions of the Scope of Work described herein.
 - 11.1.3 Review and, where required by the Contract, approval of technical reports and technical information to be delivered by CONSULTANT to SBCTA under the Contract.
 - 11.1.4 SBCTA's Project Manager may modify this Contract for certain administrative modifications without issuing a written amendment. Administrative modifications are limited to: substitutions of personnel identified in the Contract, including Key Personnel and subconsultants; modifications to classifications, hourly rates and names of personnel in Exhibit B; and modifications of the address of the CONSULTANT. All such modifications will be documented in writing between the Parties.
- 11.2 Technical Direction must be within the Scope of Work under this Contract. SBCTA's Project Manager does not have the authority to, and may not, issue any Technical Direction which:
- 11.2.1 Increases or decreases the Scope of Work;
 - 11.2.2 Directs CONSULTANT to perform Work outside the original intent of the Scope of Work;
 - 11.2.3 Constitutes a change as defined in the "CHANGES" Article of the Contract;
 - 11.2.4 In any manner causes an increase or decrease in the Contract price as identified in the "COMPENSATION" Article or the time required for Contract performance;
 - 11.2.5 Changes any of the expressed terms, conditions or specifications of the Contract, unless identified herein;
 - 11.2.6 Interferes with CONSULTANT's right to perform the terms and conditions of the Contract unless identified herein; or
 - 11.2.7 Approves any demand or claims for additional payment.
- 11.3 Failure of CONSULTANT and SBCTA's Project Manager to agree that the Technical Direction is within the scope of the Contract, or a failure to agree upon the Contract action to be taken with respect thereto, shall be subject to the provisions of the "DISPUTES" Article herein.
- 11.4 All Technical Direction shall be issued in writing by SBCTA's Project Manager.

11.5 CONSULTANT shall proceed promptly with the performance of Technical Direction issued by SBCTA's Project Manager, in the manner prescribed by this Article and within their authority under the provisions of this Article. If, in the opinion of CONSULTANT, any instruction or direction by SBCTA's Project Manager falls within one of the categories defined in sections 11.2.1 through 11.2.7 above, CONSULTANT shall not proceed but shall notify SBCTA in writing within five (5) working days after receipt of any such instruction or direction and shall request SBCTA to modify the Contract accordingly. Upon receiving the notification from CONSULTANT, SBCTA shall:

11.5.1 Advise CONSULTANT in writing within thirty (30) calendar days after receipt of CONSULTANT's letter that the Technical Direction is or is not within the scope of this Contract.

11.5.2. Advise CONSULTANT within a reasonable time whether SBCTA will or will not issue a written amendment.

ARTICLE 12. CHANGES

12.1 The Work shall be subject to changes by additions, deletions, or revisions made by SBCTA. CONSULTANT will be advised of any such changes by written notification from SBCTA describing the change. This notification will not be binding on SBCTA until SBCTA's Awarding Authority has approved an amendment to this Contract.

12.2 Promptly after such written notification of change is given to CONSULTANT by SBCTA, the Parties will attempt to negotiate a mutually agreeable adjustment to compensation or time of performance, and amend the Contract accordingly.

ARTICLE 13. EQUAL EMPLOYMENT OPPORTUNITY

13.1 During the term of this Contract, CONSULTANT shall not willfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, gender, sex, marital status, gender identity, gender expression, sexual orientation, age, or military or veteran status. CONSULTANT agrees to comply with the provisions of Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

13.2 The CONSULTANT and all subconsultants shall comply with all provisions of Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin. In addition, CONSULTANT and all subconsultants will ensure their services are consistent with and comply with obligations and procedures outlined in SBCTA's current Board-adopted Title VI Program, including the Public Participation Plan and the Language Assistance Plan.

ARTICLE 14. CONFLICT OF INTEREST

CONSULTANT agrees that it presently has no interest, financial or otherwise, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Work required under this Contract or be contrary to the interests of SBCTA as to the Program. CONSULTANT further agrees that in the performance of this Contract, no person having any such interest shall be employed. CONSULTANT is obligated to fully disclose to SBCTA, in writing, any conflict of interest issues as soon as they are known to CONSULTANT. CONSULTANT agrees that CONSULTANT and its staff shall comply with SBCTA's Conflict of Interest Policy, No. 10102.

ARTICLE 15. KEY PERSONNEL

The personnel specified below are considered to be essential to the Work being performed under this Contract. Prior to diverting any of the specified individuals to other projects, or reallocation of any tasks or hours of Work that are the responsibility of Key Personnel to other personnel, CONSULTANT shall notify SBCTA in writing in advance and shall submit justifications (including proposed substitutions, resumes and payroll information to support any changes to the labor rates) in sufficient detail to permit evaluation of the impact on the Project. Diversion or reallocation of Key Personnel shall not be made without prior written consent of SBCTA's Project Manager. CONSULTANT shall not substitute any Key Personnel without the prior written consent of SBCTA. In the event that the Parties cannot agree as to the substitution of Key Personnel, SBCTA may terminate this Contract. Key Personnel are:

Name	Job Classification/Function
Eileen Ta	Compliance Director/Program Manager
Toby Bautista	Senior Compliance Manager
Stephanie Eaves	Compliance Manager
Nelson Cebrian	Compliance Analyst
Edith Bolanos	Compliance Analyst

ARTICLE 16. REPRESENTATIONS

All Work supplied by CONSULTANT under this Contract shall be supplied by personnel who are qualified, careful, skilled, experienced and competent in their respective trades or professions. CONSULTANT agrees that they are supplying professional services, findings, and/or recommendations in the performance of this Contract and agrees with SBCTA that the same shall conform to professional standards that are generally accepted in the profession in the State of California.

ARTICLE 17. PROPRIETARY RIGHTS/CONFIDENTIALITY

- 17.1 If, as a part of this Contract, CONSULTANT is required to produce materials, documents data, or information ("Products"), then CONSULTANT, if requested by SBCTA, shall deliver to SBCTA the original of all such Products, which shall become the sole property of SBCTA.
- 17.2 All materials, documents, data or information obtained from SBCTA's data files or any SBCTA-owned medium furnished to CONSULTANT in the performance of this Contract will at all times remain the property of SBCTA. Such data or information may not be used or copied for direct or indirect use outside of this Project by CONSULTANT without the express written consent of SBCTA.

- 17.3 Except as reasonably necessary for the performance of the Work, CONSULTANT agrees that it, its employees, agents and subconsultants will hold in confidence and not divulge to third parties, without prior written consent of SBCTA, any information obtained by CONSULTANT from or through SBCTA unless (a) the information was known to CONSULTANT prior to obtaining same from SBCTA, or (b) the information was at the time of disclosure to CONSULTANT, or thereafter becomes, part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONSULTANT or its employees, agents, or subconsultants, or (c) the information was obtained by CONSULTANT from a third party who did not receive the same, directly or indirectly, from SBCTA and who had, to CONSULTANT's knowledge and belief, the right to disclose the same. Any materials and information referred to in this Article, which are produced by CONSULTANT shall remain confidential until released in writing by SBCTA, except to the extent such materials and information become subject to disclosure by SBCTA under the California Public Records Act, or other law, or otherwise become public information through no fault of CONSULTANT, or its employees or agents.
- 17.4 CONSULTANT shall not use SBCTA's name or photographs in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SBCTA.
- 17.5 All press releases, or press inquiries relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SBCTA unless otherwise agreed to in writing by both Parties.
- 17.6 CONSULTANT, its employees, agents and subconsultants shall be required to comply with SBCTA's Confidentiality Policy; anyone who may have access to Personally Identifiable Information ("PII") and/or Sensitive Security Information ("SSI") will be required to execute a Confidentiality Agreement.

ARTICLE 18. TERMINATION

- 18.1 Termination for Convenience - SBCTA shall have the right at any time, with or without cause, to terminate further performance of Work by giving thirty (30) calendar days written notice to CONSULTANT specifying the date of termination. On the date of such termination stated in said notice, CONSULTANT shall promptly discontinue performance of Work and shall preserve Work in progress and completed Work, pending SBCTA's instruction, and shall turn over such Work in accordance with SBCTA's instructions.
- 18.1.1 CONSULTANT shall deliver to SBCTA all deliverables prepared by CONSULTANT or its subconsultants or furnished to CONSULTANT by SBCTA. Upon such delivery, CONSULTANT may then invoice SBCTA for payment in accordance with the terms herein.
- 18.1.2 If CONSULTANT has fully and completely performed all obligations under this Contract up to the date of termination, CONSULTANT shall be entitled to receive from SBCTA as complete and full settlement for such termination a pro rata share of the Contract cost based upon the percentage of all contracted Work satisfactorily executed to the date of termination.

18.1.3 CONSULTANT shall be entitled to receive the actual costs incurred by CONSULTANT to return CONSULTANT's tools and equipment, if any, to it or its suppliers' premises, or to turn over Work in progress in accordance with SBCTA's instructions plus the actual cost necessarily incurred in effecting the termination.

18.2 Termination for Cause - In the event CONSULTANT shall file a petition in bankruptcy court, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy court shall be filed against CONSULTANT, or a receiver shall be appointed on account of its insolvency, or if CONSULTANT shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice, SBCTA may, without prejudice to any other rights or remedies SBCTA may have, and in compliance with applicable Bankruptcy Laws: (a) hold in abeyance further payments to CONSULTANT; (b) stop any Work of CONSULTANT or its subconsultants related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONSULTANT specifying the date of termination. In the event of such termination by SBCTA, SBCTA may take possession of the deliverables and finished Work by whatever method SBCTA may deem expedient. A waiver by SBCTA of one default of CONSULTANT shall not be considered to be a waiver of any subsequent default of CONSULTANT, of the same or any other provision, nor be deemed to waive, amend, or modify any term of this Contract.

18.2.1 CONSULTANT shall deliver to SBCTA all finished and unfinished deliverables under this Contract prepared by CONSULTANT or its subconsultants or furnished to CONSULTANT by SBCTA within ten (10) working days of said notice.

18.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to SBCTA, satisfactory in form and content to SBCTA and verified by SBCTA. In no event shall CONSULTANT be entitled to any payment for prospective profits or any damages because of such termination.

ARTICLE 19. STOP WORK ORDER

Upon failure of CONSULTANT or its subconsultants to comply with any of the requirements of this Contract, SBCTA shall have the right to stop any or all Work affected by such failure until such failure is remedied or to terminate this Contract in accordance with Article 18 "Termination".

ARTICLE 20. CLAIMS

SBCTA shall not be bound to any adjustments in the Contract amount or schedule unless expressly agreed to by SBCTA in writing. SBCTA shall not be liable to CONSULTANT for any claim asserted by CONSULTANT after final payment has been made under this Contract.

ARTICLE 21. INSURANCE

21.1 Prior to commencing the Work, subject to the provisions of Article 21.2 “General Provisions”, and at all times during the performance of the Work and for such additional periods as required herein, CONSULTANT and all sub-consultants of every tier performing any Work under this contract shall, at CONSULTANT’s and sub-consultant's sole expense, procure and maintain broad form insurance coverage at least as broad as the following minimum requirements specified below:

21.1.1 Professional Liability. The policies must include the following:

- A limit of liability not less than \$3,000,000 per claim
- An annual aggregate limit of not less than \$5,000,000
- Coverage shall be appropriate for the CONSULTANT’s profession and provided services to include coverage for errors and omissions arising out of the CONSULTANT’s professional services, or services of any person employed by the CONSULTANT, or any person for whose acts, errors, mistakes or omissions the CONSULTANT may be legally liable.
- If Coverage is on a claims made basis:
 - Policy shall contain a retroactive date for coverage of prior acts, which date will be prior to the date the CONSULTANT begins to perform Work under this Contract.
 - CONSULTANT shall secure and maintain “tail” coverage for a minimum of Five (5) years after Contract completion.

21.1.2 Worker’s Compensation/Employer’s Liability. The policies must include the following:

- Coverage A. Statutory Benefits
- Coverage B. Employer’s Liability
- Bodily Injury by accident - \$1,000,000 per accident
- Bodily Injury by disease - \$1,000,000 policy limit/\$1,000,000 each employee

Such policies shall contain a waiver of subrogation in favor of the parties named as Indemnitees below. Such insurance shall be in strict accordance with the applicable workers’ compensation laws in effect during performance of the Work by CONSULTANT or any subconsultant of any tier. All subconsultants of any tier performing any portion of the Work for CONSULTANT shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with a waiver of subrogation in favor of CONSULTANT and all parties named as Indemnitees below. Where coverage is provided through the California State Compensation Insurance Fund, the requirement for a minimum A.M. Best rating does not apply.

21.1.3. Commercial General Liability. The policy must include the following:

- Consultant shall maintain commercial general liability (CGL) insurance (Insurance Services Office (ISO) Form CG 00 01), and if necessary excess/umbrella

commercial liability insurance, with a combined limit of liability of not less than **\$5,000,000 each occurrence.**

- The policy shall, at a minimum, include coverage for any and all of the following: bodily injury, property damage, personal injury, broad form contractual liability (including coverage to the maximum extent possible for the indemnifications in this Contract), premises-operations (including explosion, collapse and underground coverage), duty to defend in addition to (without reducing) the limits of the policy(ies), and products and completed operations.
 - \$2,000,000 per occurrence limit for property damage or bodily injury
 - \$2,000,000 per occurrence limit for personal injury and advertising injury
 - \$2,000,000 per occurrence limits for products/completed operations coverage (ISO Form 20 37 10 01) if SBCTA's Risk Manager determines it is in SBCTA's best interests to require such coverage,
- If a general aggregate applies, it shall apply separately to this project/location. The contract number and brief explanation of the project/work must be indicated under "Description of Operations/Locations" (ISO Form CG 25 03 or CG 25 04).
- Coverage is to be on an "occurrence" form. "Claims made" and "modified occurrence" forms are not acceptable.
- A copy of the declaration page or endorsement page listing all policy endorsements for the CGL policy must be included.

All subconsultants of any tier performing any portion of the Work for CONSULTANT shall also obtain and maintain the CGL insurance coverage with limits not less than:

- Each occurrence limit: \$2,000,000
- General aggregate limit: \$2,000,000
- Personal injury and advertising limit \$2,000,000
- Products-completed operations aggregate limit \$2,000,000

All subconsultants' and sub-subconsultants' deductibles or self-insured retentions must be acceptable to SBCTA's Risk Manager.

21.1.4 Umbrella/Excess CGL. The policy must include the following:

- If the CONSULTANT elects to include an umbrella or excess policy to cover any of the total limits required beyond the primary commercial general liability policy limits and/or the primary commercial automobile liability policy limits, then the policy must include the following:
 - The umbrella or excess policy shall follow form over the CONSULTANT's primary general liability coverage and shall provide a separate aggregate limit for products and completed operations coverage.
 - The umbrella or excess policy shall not contain any restrictions or exclusions beyond what is contained in the primary policy.
 - The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

- The umbrella or excess policy must also extend coverage over the automobile policy if it is to be used in combination with the primary automobile policy to meet the total insurance requirement limits.

There shall be no statement limiting the coverage provided to the parties listed as additionally insureds or as indemnitees below.

21.1.5 Commercial Auto. The policy must include the following:

- A total limit of liability of not less than **\$5,000,000** each accident. This total limits of liability may be met by combining the limits of the primary auto policy with an umbrella or excess policy in accordance with subparagraph 4 (Umbrella/Excess CGL) of Section A of this Article.
- Such insurance shall cover liability arising out of any vehicle, including owned, hired, leased, borrowed and non-owned vehicles assigned to or used in performance of the CONSULTANT services.
- Combined Bodily Injury and Property Damage Liability insurance. The commercial automobile liability insurance shall be written on the most recent edition of ISO Form CA 00 01 or equivalent acceptable to SBCTA.

21.1.6 Pollution Liability - Intentionally Omitted

21.1.7 Cyber (Technology) Liability Insurance -

- Policy form appropriate to the Consultant's profession and work hereunder, with limits not less than \$2,000,000 per occurrence.
- Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Consultant in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security.
- The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
- The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of SBCTA in the care, custody, or control of the CONSULTANT.
 - If not covered under the CONSULTANT's liability policy, such "property" coverage of SBCTA may be endorsed onto the CONSULTANT's Cyber Liability Policy as covered property as follows:
 - Cyber Liability coverage in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of SBCTA that will be in the care, custody, or control of CONSULTANT.

21.1.8 Railroad Protective Liability - Intentionally Omitted

21.2. General Provisions

- 21.2.1 Qualifications of Insurance Carriers. If policies are written by insurance carriers authorized and admitted to do business in the state of California, then the insurance carriers must have a current A.M. Best rating of A-VIII or better and if policies are written by insurance carriers that are non-admitted but authorized to conduct business in the state of California, then they must meet the current A.M. Best rating of A-X or better, unless otherwise approved in writing by SBCTA's Risk Manager.
- 21.2.2 Additional Insured Coverage. All policies, except those for Workers' Compensation and Professional Liability insurance, shall be endorsed by ISO Form CG 20 10 11 85, or if not available, then ISO Form CG 20 38, to name San Bernardino County Transportation Authority and its officers, directors, members, employees, and agents, as additional insureds ("Additional Insureds"). With respect to general liability arising out of or connected with work or operations performed by or on behalf of the CONSULTANT under this Contract, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for SBCTA to vicarious liability, but shall allow coverage for SBCTA to the full extent provided by the policy.
- 21.2.3 Proof of Coverage. Evidence of insurance in a form acceptable to SBCTA's Risk Manager, including declarations pages of each policy, certificates of insurance and the required additional insured endorsements, shall be provided to SBCTA's Procurement Analyst prior to issuance of the NTP or prior to commencing any Work, as SBCTA specifies. Certificate(s) of insurance, as evidence of the required insurance shall: be executed by a duly authorized representative of each insurer; show compliance with the insurance requirements set forth in this Article; set forth deductible amounts applicable to each policy; list all exclusions which are added by endorsement to each policy; and also include the Contract Number and the SBCTA Project Manager's name on the face of the certificate. If requested in writing by SBCTA, CONSULTANT shall submit complete copies of all required insurance policies within ten (10) business days of a written request by SBCTA.
- 21.2.4 Deductibles and Self-Insured Retention. Regardless of the allowance of exclusions or deductibles by SBCTA, CONSULTANT shall be responsible for any deductible or self-insured retention (SIR) amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Article. CONSULTANT will pay, and shall require its sub-CONSULTANT to pay, all deductibles, co-pay obligations, premiums and any other sums due under the insurance required in this Article. Any deductibles or self-insured retentions must be declared to and approved in writing by SBCTA's Risk Manager. Without SBCTA's Risk Manager's expressed written approval, no deductibles or SIR will be allowed. At the option of SBCTA, if the deductible or SIR is approved and it is greater than \$10,000 or one (1) percent of the amount of coverage required under this Contract, whichever is less, the CONSULTANT shall guarantee that either: (1) the insurer shall reduce or eliminate

such deductibles or self-insured retentions as respects to SBCTA, its directors, officials, officers, employees and agents; or, (2) the CONSULTANT shall procure a bond guaranteeing the amount of the deductible or self-insured retention. SBCTA shall have the right to review any and all financial records that SBCTA, in its sole discretion, deems necessary to approve any deductible or SIR. SBCTA will have the right, but not the obligation, to pay any deductible or SIR due under any insurance policy. If SBCTA pays any sums due under any insurance required above, SBCTA may withhold said sums from any amounts due to CONSULTANT. The Consultant's policies will neither obligate nor prohibit SBCTA or any other Additional Insured from paying any portion of any Consultant's deductible or SIR.

- 21.2.5 CONSULTANT's and Subconsultants' Insurance will be Primary. All policies required to be maintained by the CONSULTANT or any subconsultant, with the exception of Professional Liability and Worker's Compensation, shall be endorsed, with a form at least as broad as ISO Form CG 20 01 04 13, to be primary coverage, and any coverage carried by any of the Additional Insureds shall be excess and non-contributory. Further, none of CONSULTANT's or subconsultants', automobile, general liability or other liability policies (primary or excess) will contain any cross-liability exclusion barring coverage for claims by an additional insured against a named insured.
- 21.2.6 Waiver of Subrogation Rights. To the fullest extent permitted by law, CONSULTANT hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other consultant, subconsultant or sub-subconsultant performing work or rendering services on behalf of SBCTA, in connection with the subject matter of the WORK. To the fullest extent permitted by law, CONSULTANT shall require similar written express waivers and insurance clauses from each of its subconsultants of every tier. CONSULTANT shall require all of the policies and coverages required in this Article to waive all rights of subrogation against the Additional Insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided shall not prohibit CONSULTANT from waiving the right of subrogation prior to a loss or claim.
- 21.2.7 Cancellation. If any insurance company elects to cancel or non-renew coverage for any reason, CONSULTANT will provide SBCTA thirty (30) days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONSULTANT will provide SBCTA ten (10) days prior written notice. In any event, CONSULTANT will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance coverage required herein which CONSULTANT receives within one business day after CONSULTANT receives it by submitting it to SBCTA at insurance@gosbcta.com, to the attention of SBCTA's Procurement Analyst, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of this Contract.
- 21.2.8 Enforcement. SBCTA may take any steps as are necessary to assure CONSULTANT's compliance with its insurance obligations as identified within this Article. Failure to continuously maintain insurance coverage as provided herein is a material breach of contract. In the event the CONSULTANT fails to obtain or maintain any insurance

coverage required, SBCTA may, but is not required to, maintain this coverage and charge the expense to the CONSULTANT or withhold such expense from amounts owed CONSULTANT, or terminate this Contract. The insurance required or provided shall in no way limit or relieve CONSULTANT of its duties and responsibility under the Contract, including but not limited to obligation to indemnify, defend and hold harmless the Indemnitees named below. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve CONSULTANT of liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions as available to it under any other provision of the Contract or law. Nothing contained herein shall relieve CONSULTANT, or any subconsultant of any tier, of their obligations to exercise due care in the performance of their duties in connection with the Work and to complete the Work in strict compliance with the Contract.

- 21.2.9 No Waiver. Failure of SBCTA to enforce in a timely manner any of the provisions of this Article shall not act as a waiver to enforcement of any of these provisions at a later date.
- 21.2.10 Subconsultant Insurance. Insurance required of the CONSULTANT shall be also provided by subconsultants or by CONSULTANT on behalf of all subconsultants to cover their services performed under this Contract. CONSULTANT may reduce types and the amounts of insurance limits provided by subconsultant(s) to be proportionate to the amount of the subconsultant's contract and the level of liability exposure for the specific type of work performed by the subconsultant. CONSULTANT shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to subconsultant.
- 21.2.11 Higher limits. If CONSULTANT maintains higher limits than the minimums shown above, SBCTA shall be entitled to coverage for the higher limits maintained by CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SBCTA.
- 21.2.12 Special Risks or Circumstances. SBCTA reserves the right to modify any or all of the above insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

ARTICLE 22. INDEMNITY

22.1 To the extent, but only to the extent, that CONSULTANT's Work falls within the scope of Civil Code Section 2782.8, the following indemnification is applicable:

CONSULTANT shall indemnify and defend (with legal counsel reasonably approved by SBCTA) SBCTA and its authorized officers, employees, agents and volunteers (collectively "Indemnitees"), from any and all losses, damages, liability, actions, and/or costs for claims that arise out of, pertain to, or are related to the negligence, recklessness, or willful misconduct of the professional.

22.2 For all other Work, CONSULTANT agrees to indemnify, defend (with legal counsel reasonably approved by SBCTA) and hold harmless SBCTA and its authorized officers, employees, agents and volunteers ("Indemnitees"), from any and all claims, actions, losses, damages and/or liability (Claims) arising out of this Contract from any cause whatsoever, including acts, errors, or omissions of any person and for any costs or expenses incurred by SBCTA on account of any

claim, except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. CONSULTANT's indemnification obligation applies to SBCTA's "active" as well as "passive" negligence, but does not apply to SBCTA's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

ARTICLE 23. ERRORS AND OMISSIONS

CONSULTANT shall be responsible for the professional quality, technical accuracy, and coordination of all Work required under this Contract. CONSULTANT shall be liable for SBCTA's costs resulting from errors or deficiencies in Work furnished under this Contract, including, but not limited to, any fines, penalties, damages, and costs required because of an error or deficiency in the Work provided by CONSULTANT under this Contract.

ARTICLE 24. OWNERSHIP OF DOCUMENTS

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by CONSULTANT under this Contract shall become the sole property of SBCTA when prepared, whether delivered to SBCTA or not.

ARTICLE 25. SUBCONTRACTS

- 25.1 CONSULTANT shall not subcontract performance of all or any portion of Work under this Contract, except to those subconsultants listed in CONSULTANT's proposal, without first notifying SBCTA in writing of the intended subcontracting and obtaining SBCTA's written approval of the subcontracting and the subconsultant. The definition of subconsultant and the requirements for subconsultants hereunder shall include all subcontracts at any tier.
- 25.2 CONSULTANT agrees that any and all subconsultants of CONSULTANT performing Work under this Contract will comply with the terms and conditions of this Contract applicable to the portion of Work performed by them. CONSULTANT shall incorporate all applicable provisions of this Contract into their subcontracts regardless of the tier. If requested by SBCTA, CONSULTANT shall furnish SBCTA a copy of the proposed subcontract for SBCTA's approval of the terms and conditions thereof and shall not execute such subcontract until SBCTA has approved such terms and conditions. SBCTA's approval shall not be unreasonably withheld.
- 25.3 Approval by SBCTA of any Work to be subcontracted and the subconsultant to perform said Work will not relieve CONSULTANT of any responsibility or liability in regard to the acceptable and complete performance of said Work. Any substitution of subconsultants must be approved in writing by SBCTA. CONSULTANT shall have sole responsibility for managing all of their subconsultants, including resolution of any disputes between CONSULTANT and its subconsultants.

ARTICLE 26. RECORD INSPECTION AND AUDITING

SBCTA or any of its designees, representatives, or agents shall at all times have access during normal business hours to CONSULTANT's operations and products wherever they are in preparation or progress, and CONSULTANT shall provide sufficient, safe, and proper facilities for such access and inspection thereof. Inspection or lack of inspection by SBCTA shall not be deemed to be a waiver of

any of their rights to require CONSULTANT to comply with the Contract or to subsequently reject unsatisfactory Work or products.

ARTICLE 27. INDEPENDENT CONTRACTOR

CONSULTANT is and shall be at all times an independent contractor. Accordingly, all Work provided by CONSULTANT shall be done and performed by CONSULTANT under the sole supervision, direction and control of CONSULTANT. SBCTA shall rely on CONSULTANT for results only and shall have no right at any time to direct or supervise CONSULTANT or CONSULTANT's employees in the performance of Work or as to the manner, means and methods by which Work is performed. All personnel furnished by CONSULTANT pursuant to this Contract, and all representatives of CONSULTANT, shall be and remain the employees or agents of CONSULTANT or of CONSULTANT's subconsultant(s) at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of SBCTA.

ARTICLE 28. ATTORNEY'S FEES

If any legal action is instituted to enforce or declare any Party's rights under the Contract, each Party, including the prevailing Party, must bear its own costs and attorneys' fees. This Article shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a Party hereto and payable under the "Indemnity" provision of the Contract.

ARTICLE 29. GOVERNING LAW AND VENUE

This Contract shall be subject to the law and jurisdiction of the State of California. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any Party to this Contract will be the Superior Court of California, San Bernardino County. Each Party hereby waives any law or rule of court that would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County.

ARTICLE 30. FEDERAL, STATE AND LOCAL LAWS

CONSULTANT warrants that in the performance of this Contract it shall comply with all applicable federal, State and local laws, ordinances, rules and regulations.

ARTICLE 31. PRECEDENCE

- 31.1 The Contract consists of these Contract Articles, Exhibit A “Scope of Work”, and Exhibit B “Price Proposal”, SBCTA’s Request for Proposal and CONSULTANT’s proposal, all of which are incorporated into this Contract by this reference.
- 31.2 The following order of precedence shall apply: first, the Contract Articles; second, Exhibits A and B; third, SBCTA’s Request for Proposal; and last, CONSULTANT’s proposal. In the event of a conflict between the Contract Articles and the Scope of Work, the Contract Articles will prevail.
- 31.3 In the event of an express conflict between the documents listed in this Article, or between any other documents which are a part of the Contract, CONSULTANT shall notify SBCTA in writing within three (3) business days of its discovery of the conflict and shall comply with SBCTA's resolution of the conflict.

ARTICLE 32. COMMUNICATIONS AND NOTICES

Notices sent by mail shall be by United States Mail, postage paid, certified mail (return receipt requested). Any and all notices permitted or required to be given hereunder shall be deemed duly given and received: (a) upon actual delivery, if delivery is personally made or if made by fax or email during regular business hours; (b) the first business day following delivery by fax or email when not made during regular business hours; or (c) on the fourth business day after deposit of such notice into the United States Mail. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective Parties may designate from time to time by a notice given in accordance with this Article. CONSULTANT shall notify SBCTA of any contact information changes within ten (10) business days of the change.

To Cumming Management Group, Inc.	To SBCTA
25220 Hancock Avenue, Suite 440	1170 W. 3rd Street, 2nd Floor
Murrieta, CA 92562	San Bernardino, CA 92410-1715
Attn: Anthony Sanchez	Attn: Shaneka Morris
Email: asanchez@cumming-group.com	Email: Smorris@gosbcta.com
Phone: 323-855-4710	Phone: (909) 884-8276
2 nd Contact: Eileen Ta	Copy: Procurement Manager
Email: eta@cumming-group.com	Email: procurement@gosbcta.com

ARTICLE 33. DISPUTES

- 33.1 In the event any dispute, other than an audit, arises between the Parties in connection with this Contract (including but not limited to disputes over payments, reimbursements, costs, expenses, Work to be performed, Scope of Work and/or time of performance), the dispute shall be decided by SBCTA’s Director of Special Projects and Strategic Initiatives within thirty (30) calendar days after notice thereof in writing, which notice shall include a particular statement of the grounds of the dispute. If CONSULTANT does not agree with the decision, then CONSULTANT shall have ten (10) calendar days after receipt of the decision in which to file a written appeal thereto with SBCTA’s Executive Director. If the Executive Director fails to resolve the dispute in a manner acceptable to CONSULTANT, then such dispute may be reviewed by a court of competent jurisdiction.

33.2 During resolution of the dispute, CONSULTANT shall proceed with performance of this Contract with due diligence.

ARTICLE 34. GRATUITIES

CONSULTANT, its employees, agents, or representatives shall not offer or give to any officer, official, agent or employee of SBCTA, any gift, entertainment, payment, loan, or other gratuity.

ARTICLE 35. REVIEW AND ACCEPTANCE

All Work performed by CONSULTANT shall be subject to periodic review and approval by SBCTA at any and all places where such performance may be carried on. Failure of SBCTA to make such review or to discover defective work shall not prejudice the rights of SBCTA at the time of final acceptance. All Work performed by CONSULTANT shall be subject to periodic and final review and acceptance by SBCTA upon completion of all Work.

ARTICLE 36. CONFIDENTIALITY

Any SBCTA communications or materials to which CONSULTANT or its subconsultants or agents have access, or materials prepared by CONSULTANT under the terms of this Contract, shall be held in confidence by CONSULTANT, who shall exercise reasonable precautions to prevent the disclosure of confidential information to anyone except as expressly authorized by SBCTA. Any communications with or work product of SBCTA's legal counsel to which CONSULTANT or its subconsultants or agents have access in performing work under this Contract shall be subject to the attorney-client privilege and attorney work product doctrine and shall be confidential. CONSULTANT shall not release any reports, information or promotional material, or allow for the use of any photos related to this Contract, for any purpose without prior written approval of SBCTA. CONSULTANT agrees to inform itself and make its employees, agents, and subconsultants aware of the requirements of SBCTA's privacy and confidentiality policies and to abide by the same.

ARTICLE 37. EVALUATION OF CONSULTANT

CONSULTANT's performance may be evaluated by SBCTA periodically throughout the Contract performance period, such as at the completion of certain milestones as identified in Scope of Work and/or at the completion of the Contract. A copy of the evaluation will be given to CONSULTANT for their information. The evaluation information shall be retained as part of the Contract file and may be used to evaluate CONSULTANT if they submit a proposal on a future RFP issued by SBCTA.

ARTICLE 38. SAFETY

CONSULTANT shall strictly comply with OSHA regulations and local, municipal, state, and federal safety and health laws, orders and regulations applicable to CONSULTANT's operations in the performance of Work under this Contract. CONSULTANT shall comply with all safety instructions issued by SBCTA or its representatives.

ARTICLE 39. DRUG FREE WORKPLACE

CONSULTANT agrees to comply with the Drug Free Workplace Act of 1990 per Government Code section 8350 et seq.

ARTICLE 40. ASSIGNMENT

CONSULTANT shall not assign this Contract in whole or in part, voluntarily, by operation of law, or otherwise, without first obtaining the written consent of SBCTA. SBCTA's exercise of consent shall be within its sole discretion. Any purported assignment without SBCTA's prior written consent shall be void and of no effect, and shall constitute a material breach of this Contract. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the Parties.

ARTICLE 41. AMENDMENTS

The Contract may only be changed by a written amendment duly executed by the Parties. Work authorized under an amendment shall not commence until the amendment has been duly executed.

ARTICLE 42. PREVAILING WAGES

42.1 The State of California's General Prevailing Wage Rates are not applicable to this Contract.

ARTICLE 43. CONTINGENT FEE

CONSULTANT warrants by execution of this Contract that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, SBCTA has the right to terminate this Contract without liability, pay only for the value of the Work actually performed, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 44. FORCE MAJEURE

CONSULTANT shall not be in default under this Contract in the event that the Work performed by CONSULTANT is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, and natural disasters such as floods, earthquakes, landslides, and fires, or other catastrophic events which are beyond the reasonable control of CONSULTANT and which CONSULTANT could not reasonably be expected to have prevented or controlled. "Other catastrophic events" does not include the financial inability of CONSULTANT to perform or failure of CONSULTANT to obtain either any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of CONSULTANT.

ARTICLE 45. WARRANTY

CONSULTANT warrants that all Work performed shall be in accordance with the Contract and all applicable professional standards. In the event of a breach of this provision, CONSULTANT shall take the necessary actions to correct the breach at CONSULTANT's sole expense. If CONSULTANT does not take the necessary action to correct the breach, SBCTA, without waiving any other rights or

remedies it may have, may take the necessary steps to correct the breach, and the CONSULTANT shall promptly reimburse SBCTA for all expenses and costs incurred.

ARTICLE 46. ENTIRE DOCUMENT

- 46.1 This Contract constitutes the sole and only agreement governing the Work and supersedes any prior understandings, written or oral, between the Parties respecting the services which are the subject of this Contract. All previous proposals, offers, and other communications, written or oral, relative to this Contract are superseded except to the extent that they have been expressly incorporated into this Contract.
- 46.2 No agent, official, employee or representative of SBCTA has any authority to bind SBCTA to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Contract, and CONSULTANT hereby stipulates that it has not relied, and will not rely, on same.
- 46.3 Both Parties have been represented or had the full opportunity to be represented by legal counsel of their own choosing in the negotiation and preparation of this Contract. Therefore, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning and not for or against either Party.

ARTICLE 47. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

CONSULTANT shall comply with all applicable provisions of the Americans with Disabilities Act in performing Work under this Contract.

ARTICLE 48. EFFECTIVE DATE

The date that this Contract is executed by SBCTA shall be the Effective Date of the Contract.

-----SIGNATURES ARE ON THE FOLLOWING PAGE-----

IN WITNESS WHEREOF, the Parties hereto have executed this Contract below.

**CUMMING MANAGEMENT GROUP,
INC. A CALIFORNIA
CORPORATION**

**SAN BERNARDINO COUNTY
TRANSPORTATION
AUTHORITY**

By: _____
Anthony Sanchez
Executive Vice President

Date: _____

By: _____
Curt Hagman
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____
Julianna K. Tillquist
General Counsel

Date: _____

CONCURRENCE

By: _____
Beatriz Valdez
Director of Special Projects and
Strategic Initiatives

Date: _____

Attachment: 22-1002769 - Cumming Management Group, Inc. - PDF (8656 : On-Call Labor Compliance)

EXHIBIT “A”
“SCOPE OF WORK”

Attachment: 22-1002769 - Cumming Management Group, Inc. - PDF (8656 : On-Call Labor Compliance)

“SCOPE OF WORK”

INDEX

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A. DESCRIPTION OF SERVICES

The San Bernardino County Transportation Authority (SBCTA) receives Federal, State and Local funds for the construction of various Public Works projects. As a condition of receiving this funding, SBCTA is required to follow Federal and State statutes and guidelines, which impose upon SBCTA a wide range of prevailing wage labor compliance responsibilities. The prevailing wage requirements are identified in the Public Works contracts issued by SBCTA and by Federal (if applicable) and State labor codes. A prime consultant and contractor and any tier subcontractor, by entering into or performing work under SBCTA Public Works projects, agree to comply with all provisions of Federal (if applicable) and State labor codes applicable to Public Works projects.

SBCTA will utilize CONSULTANT services on an “On-Call” basis to act as SBCTA’s Labor Compliance Officer and provide labor compliance oversight and technical support associated with various types (construction and pre-construction activities) of public works projects. The CONSULTANT will demonstrate detailed knowledge of Caltrans and California Division of Labor Standards Enforcement (DSLE) Compliance Monitoring Unit (CMU), the United States Department of Labor Regulations and Guidelines, and equal employment opportunity compliance monitoring requirements as well as knowledge of the Davis Bacon Act, the Copeland “Anti-Kickback” Act, the Contract Work Hour and Safety Standards Act.

The CONSULTANT is to coordinate, audit, train, advice and oversee agency wide labor compliance and Equal Employment Opportunity (EEO) compliance for all projects overseen by SBCTA, that includes requirements of the United State Department of Labor (DOL) and the California Division of Labor Standards Enforcement (DSLE) Compliance Monitoring Unit (CMU). The CONSULTANT will also provide labor compliance review and monitoring of consultant services (Pre-Construction activities) covered by prevailing wage requirements.

Federal and State oversight agencies provide intermittent audits/reviews of SBCTA’s labor compliance monitoring activities to assess SBCTA’s compliance with these requirements. It’s SBCTA’s responsibility to ensure these requirements are being met by the consultants and prime contractors and any tier subcontractor, and to take appropriate corrective action when these requirements have not been met. The CONSULTANT will take the lead in coordinating and addressing any State or Federal compliance review and monitoring.

CONSULTANT shall provide qualified personnel to perform a wide variety of labor compliance services, EEO and contract administration duties as outlined in this Scope of Services for the Program.

SBCTA designates a Project Manager to coordinate all construction and construction related activities. The CONSULTANT shall receive direction from SBCTA through the Project Manager, or designee. SBCTA’s Project Manager will be the main contact and primary source of information between SBCTA, CONSULTANT, cities, outside agencies, supporting consultants and the public.

B. PERFORMANCE REQUIREMENTS

Labor Compliance Officer: CONSULTANT shall furnish a Program Manager to coordinate CONSULTANT operations with SBCTA. The Program Manager shall be responsible for all matters related to CONSULTANT personnel and operations. The Program Manager shall also serve as the Labor Compliance Officer (LCO). The LCO shall be assigned to direct and coordinate activities under this contract. Staff may be assigned to each specific project responsibilities as needed.

Labor Compliance Monitoring Staff: The number of CONSULTANT personnel assigned to the contract will vary throughout the duration of the Contract. CONSULTANT personnel will be assigned, in varying levels of responsibility, as needed by the CONSULTANT to meet the SBCTA's various construction activities and schedules.

CONSULTANT shall be knowledgeable of and comply with all applicable local, state, and federal regulations. CONSULTANT personnel shall cooperate and consult with SBCTA, State, and City officials during the course of the contract. CONSULTANT personnel shall keep accurate and timely records and document all work performed by the CONSULTANT.

Many of the Public Works projects undertaken by SBCTA are funded by United States Department of Transportation, including Federal Highway Administration (FHWA) and Federal Transit Administration (FTA). Depending on the funding source, SBCTA relies upon the guidance and protocol established by the Federal government and State of California and Caltrans for monitoring prevailing wage labor compliance, as specified in the following documents:

1. All applicable Federal requirements, including, but not limited to U.S. Department of Labor guidelines Sections 5333(b) Federal Transit Law; U.S. Department of Labor regulations; 29 CFR Part 5, Davis Bacon Act, 40 USC 276 a-276a(7) and the Contract Work Hour and Safety Standards Act, 40 USC 327 – 332; and Fair Labor Standards Act, as amended, 29 USC 206-207.
2. All applicable California Department of Transportation (Caltrans) manuals, including, but not limited to, Labor Compliance Manual, Construction Manual and Local Assistance Procedures Manual.
3. All applicable State of California requirements, including, but not limited to the Department of Labor.

While these documents are very thorough in prescribing the protocol to be implemented in monitoring labor compliance, it is often difficult to discern how the defined responsibilities translate to SBCTA and SBCTA Labor Compliance Consultants. It is the responsibility of the CONSULTANT to ensure that SBCTA is compliant with and adheres to all necessary State and Federal requirements.

C. DUTIES AND RESPONSIBILITIES

1. Program Administration:

The following roles and responsibilities are prescribed for SBCTA Public Works construction projects:

- a. Resident Engineer: The Resident Engineer (RE) is part of the SBCTA Construction Management team and is responsible for the enforcement of the labor contract provisions at the project level. The Resident Engineer may have additional staff and/or consultants to assist in this task.
- b. Program Manager/CONSULTANT: For Architectural & Engineering contracts, certain labor categories require the payment of prevailing wages. CONSULTANT is to review and monitor these contracts for labor compliance activities and proper payment of prevailing wages.

Be accessible to SBCTA at all times during regular business hours.

The Program Manager will assume the following functional responsibilities:

- 1) Review, monitor, train, and provide general direction for CONSULTANT personnel.
 - 2) Assign personnel to on an as-needed basis.
 - 3) Administer personal leave.
 - 4) Prepare monthly reports for delivery to SBCTA.
- c. Labor Compliance Officer/CONSULTANT: CONSULTANT is responsible for providing quality assurance on all labor compliance activities undertaken by SBCTA and its consultants and coordinating with the CMU.

This role includes the following duties participation in the Pre-Proposal/Pre-Bid Meeting, Preconstruction Conference, Document Tracking, Field Activity review, Certified Billing Review, Contractor Certified Payroll Reviews and/or Owner Operator Listings, Labor Requirements Enforcement and other related activities.

Other duties include the periodic review of project specific labor compliance monitoring activities performed by SBCTA and/or construction management labor compliance consultants and preparation of an internal report documenting the review findings. The report findings are to be used by SBCTA as an instrument to continually improve labor compliance practices on SBCTA Public Works projects. LCO duties include, but are not limited to, document reviews, field activity support, billing reviews, certified payroll review, investigations of labor complaints, enforcement of labor compliance requirements, training, and supporting SBCTA during administrative hearings.

- d. The Compliance Monitoring Unit or “CMU” is a component within the California Division of Labor Standards Enforcement (DLSE) that was created to monitor and enforce prevailing wage requirements on public works projects that receive state bond funding and on other projects that are legally required to use the CMU. The CMU began operations on January 1, 2012, following the adoption of AB 436 and approval of revisions to program regulations. By actively monitoring compliance on an ongoing basis while work is being performed, the CMU will play a special role in ensuring that public works construction workers are promptly paid the proper prevailing wage rates

and in helping maintain a level playing field for contractors who comply with the law. The CONSULTANT shall assist the SBCTA in managing and implementing this new requirement on all Prevailing Wage projects.

2. Pre-Proposal/ Pre Bid Conference:

As requested by SBCTA, CONSULTANT may need to attend the Pre-Proposal/Pre-Bid meeting to discuss Labor Compliance requirements with attendees. During the procurement process, CONSULTANT may be asked to draft responses to written questions submitted by proposers or bidders related to Prevailing Wage requirements.

3. Preconstruction Conference:

SBCTA, the Resident Engineer and the LCO shall participate in the project preconstruction conference to disseminate prevailing wage requirements to the project's prime contractor and its subcontractor team.

The content of the prevailing wage presentation shall be coordinated with SBCTA and the Resident Engineer prior to the preconstruction meeting, and shall cover the topics presented in the Caltrans Labor Compliance Manual (CLCM) Chapter 4 and as required by the CMU.

The preconstruction package should be provided to the general contractor and subcontractors' staff responsible for labor compliance that includes, but is not limited to the following items:

- Checklist
- Posters
- State and Federal wage determinations
- Labor Compliance Address labels and email addresses
- Forms

Items to cover during the presentation include the following:

- Explain correct payroll procedures
- Describe any recent labor law changes
- Obtain contractor's signature on preconstruction checklist
- Explain the CMU process and registration

4. Document Tracking:

SBCTA is responsible for monitoring the submittal of all required labor compliance documents submitted by the prime contractor and any tier subcontractor. The LCO in coordination with SBCTA shall monitor and audit this documentation on periodic basis. The following items provide the mechanism by which SBCTA and LCO are to monitor compliance with the document tracking requirements of SBCTA Public Works Projects:

A. Maintain project labor compliance files in accordance with the filing system prescribed in the Fair Labor Standards Act and Caltrans Labor Compliance Manual (CLCM), (CLCM § 1-204). Please refer to Wage and Hour Division [Fact sheet #21: Recordkeeping Requirements](#)

under the Fair Labor Standards Act (FLSA). These files are to be maintained for three years from final payment.

B. Assess Resident Engineer's Daily Reports and Resident Engineer's Weekly Status Reports (CLCM § 1-207). The Resident Engineer's Daily Reports provide a daily account of the activity on a project. From the Daily Reports, the Resident Engineer shall review and determine the contractors performing on the project for each day. Special attention shall be paid to the identification of lower tier subcontractors on the Daily Reports. These reports shall also provide information on the number and classification of workers performing daily on the project. The RE's Daily Reports shall be reviewed and assessed to ensure this information is appropriately captured by the RE. Weekly status reports provide a list of contractors and owner operators working on the project during the reporting week.

C. Labor Compliance Document Tracking System (CLCM § 1-208): SBCTA and the Resident Engineer are required to implement the use of a document tracking system to track the submittal of all required labor compliance forms/documents from each contractor performing on the project. The document tracking system may be in hardcopy or softcopy format, or a computer-based database may be used. Forms to be tracked include, but are not limited the following:

- a. Payroll Report
- b. Statement of Compliance
- c. Fringe Benefit Statement
- d. Owner Operator Listing (OOL)
- e. OOL Statement of Compliance
- f. Training Fund Contribution Report (CAC 2)
- g. Agreement to Train Apprentices (DAS Form 7)
- h. Apprentices on Public Works (DAS Form 10)
- i. Application of Certificate of Exemption (DAS Form 11)
- j. Public Works Contract Award Information (DAS Form 140)
- k. Federal-Aid Highway Construction Contractors EEO Report (FHWA Form 1391)
- l. FTA EEO-04
- m. PWC-100 Form
- n. Summary of 1391 (FHWA Form 1392)
- o. DBE Substitution Report
- p. DBE Utilization Final Report
- q. DVBE Utilization Final Report

The prime contractor must furnish weekly certified payrolls to SBCTA or to the CMU, depending, (including certified payrolls for each project subcontractor), who in turn will provide these documents to SBCTA or SBCTA's Labor Compliance Consultant. The due dates for these documents are specified in the contract documents. The Resident Engineer shall process document intake in accordance with CLCM § 1-209A.

D. Missing Document Request Process: Resident Engineer shall request from prime contractor, orally or in writing, any missing/delinquent labor compliance documents either by the prime or any tier subcontractor, per the requirements identified in the Public Works contract document. The LCO shall work with the project Resident Engineer to enforce the

contract requirements in the event of untimely or inadequate responses. CLCM § 1-301 Deductions and Withholds provide guidance on how to use withholding of funds to enforce the submittal of required labor compliance documents.

E. Process 3rd party requests for Certified Payroll information, in accordance with the guidance provided at CLCM §§ 1-401 through 403.

5. Field Activity:

Key information for the prime and subcontractor performance in meeting prevailing wage requirements is attained from the field by the RE or the CMU either through passive monitoring, such as receiving an employee complaint, or through active monitoring, such as through the performance of site visits to verify posting requirements or to perform employee interviews. The following activities are to be undertaken by Resident Engineer/CMU with oversight by the LCO.

A. Process Employee Complaints: SBCTA shall document all labor compliance related complaints received. All complaints are to be taken seriously, and must be investigated with findings documented in the labor compliance files for the project, consistent with the procedures specified in CLCM §§ 1-601 through 603. Any investigation resulting in the determination of non-compliance by the prime or any tier subcontractor must be dealt with through enforcement actions defined in the contract documents.

B. Verify Prime Contractor Job Site Postings: The prime contractor is required to post various labor compliance posters and documents at the job site. LCO must verify these postings at the start of the project and reverify the postings through the life of the project. The required postings will be identified at the beginning of the project.

C. Assess Accuracy of Resident Engineer Daily Reports: It is anticipated that the Resident Engineer's Daily Logs will provide an accurate account of the contractors performing on the job site as well as the number and classification of workers performing on the job site. As an added level of assurance, SBCTA and the LCO shall, during any site visit, compare their findings with the information contained in the Resident Engineer's Daily Logs. Any discrepancies shall be addressed with the Resident Engineer, leading to improved record keeping by both parties in the future.

D. Worker and Owner Operator Interviews: SBCTA and LCO shall perform employee interviews at a quantity, frequency and manner consistent with that prescribed in the CLCM §§ 1-501 through 502. Worker interviews shall account for at least 10% of all work-hours performed on the project.

6. Billing Review:

As part of LCO responsibility, the assessment of prime contractor change order invoicing against information submitted in certified payroll reports is to be performed, following the procedures identified in CLCM § 2-108.

SBCTA and LCO* shall review change order invoicing that uses man hour counts as its basis for billing against certified payroll reports for the period covered in the invoice to assess accuracy of the invoicing.

**** The Resident Engineer may perform this task if responsible for reviewing invoicing documentation.***

7. Certified Payroll Reviews

Certified payroll reviews are to be performed to identify errors in the payment of prevailing wages to workers employed on the project, as reported on certified payroll, and to identify the accuracy of information reported by comparing information gained from other sources and from the field. The certified payroll review activities to be performed on a monthly basis (complete weeks will be reviewed) by SBCTA and its Labor Compliance Consultant include:

A. From field reviews and inspection of Resident Engineer Daily Reports, identify the complete list of contractors (prime and any tier subcontractors) performing on the project during the audit month.

B. For any contractor new to the project identified above, audit all certified payroll and related information for a complete one month period. An audit of each worker for this period will help identify and resolve human error issues in the reporting of prevailing wage payments on the project. For other contractors, those that have previously performed on the project, perform spot audits at a rate of at least 10% of the work-hours for the monthly period. Complete procedures for performing certified payroll audits are provided in the CLCM §§ 2-101 through 107. These procedures include the following items:

- Check total workforce and their classifications against Resident Engineer Daily Reports
- Check hours against Resident Engineer Diaries and Employee interviews for that period, if any.
- Check prevailing wage rates based on worker classifications.
- Assess applicability and appropriateness of overtime pay, including weekends and holidays.
- Check the ratio of apprentices on project and their pay scale. (See CLCM §§ 2-301 through 305 for procedures).
- Validate other aspects of Certified Payroll data, including deductions, against supporting information submitted for all certified payrolls
- Assess applicability and appropriateness of travel and subsistence pay.
- Review appropriate paperwork for all apprentices on project.
- Check appropriateness of payments to owner operators on project as reported in owner operator listings.

In the event inadequate certified payroll and related documentation has been identified through the audit process above, SBCTA and LCO shall work with the Resident Engineer to resolve the inadequate certified payroll matter consistent with the enforcement requirements identified in the project contract.

8. Labor Requirement Enforcement

SBCTA and the LCO shall work with the project Resident Engineer to enforce the prevailing wage labor compliance requirements of the project. The activities to be performed by LCO include:

- A. Prepare report on potential prevailing wage violation(s) identified through monitoring activity.
- B. Working with the Resident Engineer, prepare written notification to prime contractor of potential prevailing wage violations and a provide list of remedies with timeframes for prime contractor to respond. Sanctions for the potential prevailing wage violations shall also be identified in the notification, consistent with the sanctions prescribed in the project contract.
- C. Provide on-going support to Resident Engineer in resolving the potential prevailing wage violations.

D. **DELIVERABLES**

- 1. Quarterly Audits of construction management labor compliance services on all projects in format approved by SBCTA.
- 2. Monthly review of all consultant certified payroll review and fringe benefit statements for all employees who are subject to the State and/or Federal prevailing wage rates.
- 3. Monthly Status Report of all pending issues and the status of said issues.
- 4. Collection of FHWA Form 1391 and submittal of FHWA Form 1391 to FHWA by September each year.

E. **EQUIPMENT AND MATERIALS TO BE PROVIDED BY CONSULTANT**

CONSULTANT shall provide all necessary office space, equipment including software, materials, supplies, miscellaneous tools, and safety equipment required for its personnel to perform the services accurately, efficiently, and safely.

F. **MATERIALS TO BE FURNISHED BY SBCTA**

None

G. **STANDARDS**

- 1. Federal and State of California requirements.
- 2. Caltrans standards.

H. **LIMITATIONS TO AUTHORITY**

CONSULTANT does not have the authority to:

1. Assume any of the responsibilities of SBCTA's consultants, contractors, contractors' Superintendent, or subcontractors.
2. Offer or receive incentives, inducements, or other forms of remuneration to or from the consultant or contractor to perform services or work outside the terms of any executed contracts for this Project.

J. THIRD PARTY RELATIONSHIPS

This Contract is intended to provide unique services for specific duties. SBCTA, however, is solely responsible for and will be the sole point of contact for all contractual matters related to the Labor Compliance duties. CONSULTANT shall take direction only from SBCTA and shall regularly inform only SBCTA of progress, outstanding issues, and all labor compliance and EEO related matters.

During the course of the Project, CONSULTANT may find occasion to meet with State CMU, Caltrans, City or County representatives, the design engineer, Project consultants, or other third parties who have assisted with the various projects. These entities may, from time to time, offer suggestions and/or recommendations regarding the Project or elements of the Project.

While SBCTA enjoys a close relationship with and has considerable confidence in the capabilities of these other parties, CONSULTANT shall not act on any suggestions, solicited or unsolicited, without obtaining specific direction from SBCTA. All oral and written communication with outside agencies or consultants related to the contract shall be directed only to SBCTA. Distribution of contract or labor compliance review related communication and information should be at the sole discretion of SBCTA representatives.

M. PERSONNEL QUALIFICATIONS AND RESPONSIBILITIES

The quantity and qualifications of field personnel to be assigned will be determined by the scope of the Public Works Project and the degree of difficulty of required tasks to be performed. All personnel and personnel assignments are subject to approval by SBCTA. While some areas of responsibility may overlap, as a guideline, CONSULTANT personnel assigned to this contract should have the following minimum qualifications or a combination of education and experience:

1. Program Manager
 - a. A minimum of six (6) years' experience providing similar LCO services is desired.
 - b. The LCO will demonstrate detailed knowledge of Caltrans, Federal Department of Labor and State of California Division of Labor Standards Enforcement (DSLE) Compliance Monitoring Unit (CMU) requirements and equal employment opportunity compliance monitoring.

- c. A thorough understanding of Caltrans Labor compliance practices and procedures.

EXHIBIT “B”
“PRICE PROPOSAL”

Attachment: 22-1002769 - Cumming Management Group, Inc. - PDF (8656 : On-Call Labor Compliance)



Price Proposal

(Time and Materials)

Key Personnel

Name	Classification/Title	Job Function	Hourly Rate	
Eileen Ta	Compliance Dir./Program Mgr.	Compliance Oversight	\$	150
Toby Bautista	Sr. Compliance Manager	Labor Compliance Services	\$	140
Stephanie Eaves	Compliance Manager	Labor Compliance Services	\$	130
Nelson Cebrian	Compliance Analyst	Labor Compliance Services	\$	120
Edith Bolanos	Compliance Analyst	Labor Compliance Services	\$	120
TBD	Compliance Admin	Administrative Tasks	\$	100
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	

Other Direct Cost Schedule (ODC)

All ODC's are to be proposed at cost-without mark-ups.

Type of ODC	Unit Cost	Estimated Budget Amount	
Mileage	\$ IRS Established	\$	TBD
	\$ Rate	\$	
Reprographics	\$ At Cost: No	\$	TBD
	\$ Markup	\$	
	\$	\$	

Cumming Management Group, Inc.

Proposer

Signature of Authorized Person

April 27, 2022

Date

General Contract Information

Contract No: 23-1002832 Amendment No.: _____Contract Class: Payable Department: Special ProjectsVendor No.: 03314 Vendor Name: Gafcon, Inc.Description: On-Call Labor Compliance

Dollar Amount

Original Contract	\$	166,666.00	Original Contingency	\$	-
Prior Amendments			Prior Amendments	\$	-
Prior Contingency Released	\$	-	Prior Contingency Released (-)	\$	-
Current Amendment			Current Amendment	\$	-
Total/Revised Contract Value	\$	166,666.00	Total Contingency Value	\$	-
Total Dollar Authority (Contract Value and Contingency)				\$	166,666.00

Contract Authorization

Board of Directors _____ Date: 7/6/2022 _____ Committee _____ Item # _____

Contract Management (Internal Purposes Only)

Other Contracts _____ Sole Source? No _____ No Budget Adjustment _____

Local _____ Professional Services (Non-A&E) _____ N/A _____

Accounts Payable

Estimated Start Date: 7/31/2022 Expiration Date: 7/31/2025 Revised Expiration Date: _____NHS: N/A QMP/QAP: N/A Prevailing Wage: No

						Total Contract Funding:		Total Contingency:	
Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name	\$	\$
GL								166,666.00	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-
GL								-	-

Shaneka Morris

Bea Valdez

Project Manager (Print Name)

Task Manager (Print Name)

Additional Notes: multi funded depending on the project - CTO

Attachment: 23-1002832 Gafcon Inc. CSS-print (8656 : On-Call Labor Compliance)

CONTRACT NO. 23-1002832**BY AND BETWEEN****SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY****AND****GAFCON, INC.****FOR****ON-CALL LABOR COMPLIANCE SERVICES**

This contract ("Contract") is made and entered into by and between the San Bernardino County Transportation Authority ("SBCTA"), whose address is 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715, and GAFCON, Inc., ("CONSULTANT"), whose address is 5960 Cornerstone Court West, Suite 100, San Diego, CA 92121. SBCTA and CONSULTANT are each a "Party" and are collectively the "Parties".

RECITALS:

WHEREAS, SBCTA requires certain work services as described in Exhibit "A" of this Contract; and

WHEREAS, CONSULTANT has confirmed that CONSULTANT has the requisite professional qualifications, personnel and experience and is fully capable and qualified to perform the services identified herein; and

WHEREAS, CONSULTANT desires to perform all Work identified herein and to do so for the compensation and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1. SCOPE OF WORK

- 1.1 CONSULTANT agrees to perform the work and services set forth in Exhibit A "Scope of Work" ("Work"), in accordance with all applicable professional standards which are generally accepted in the State of California, in accordance with the terms and conditions expressed herein and in the sequence, time, and manner defined herein, but only upon SBCTA's issuance of and in accordance with the terms and instructions contained in one or more written Contract Task Orders ("CTO") executed by both parties. The word "Work" includes, without limitation, the performance, fulfillment and discharge by CONSULTANT of all obligations, duties, tasks, and services imposed upon or assumed by CONSULTANT hereunder; and the

Work performed hereunder shall be completed to the satisfaction of SBCTA, with SBCTA's satisfaction being based on prevailing applicable professional standards.

- 1.2 The Project Manager for this Contract is Shaneka M. Morris, or such other designee as shall be designated in written notice to CONSULTANT from time to time by SBCTA's Director of Special Projects and Strategic Initiatives or his or her designee. The Project Manager shall have authority to act on behalf of SBCTA in administering this Contract, including giving notices (including, without limitation, notices of default and/or termination), technical directions and approvals; issuing, executing and amending CTOs; and demanding performance and accepting work performed, but is not authorized to receive or issue payments or execute amendments to the Contract itself.

ARTICLE 2. CONTRACT TERM

The Contract term shall commence upon issuance of a written Notice To Proceed or Notice of Executed Contract (NTP) issued by SBCTA's Procurement Division, and shall continue in full force and effect through July 31, 2025, until otherwise terminated, or unless extended as hereinafter provided by written amendment, except that all indemnity and defense obligations hereunder shall survive termination of this Contract. CONSULTANT shall not be compensated for any Work performed or costs incurred prior to issuance of the NTP.

SBCTA at its sole discretion may extend the original term of the Contract for two (2) one (1) year option terms. The maximum term of this Contract, including the Option Term(s), if exercised, will not exceed July 31, 2027.

ARTICLE 3. COMPENSATION

- 3.1 Total compensation to CONSULTANT for full and complete performance of Services in compliance with all the terms and conditions of this Contract and any CTOs issued shall not exceed the amount set forth in 3.2 below.
- 3.2 The total Not-To-Exceed Amount for all CTOs issued to CONSULTANT is Five Hundred Thousand Dollars (\$500,000). All services shall be reimbursed pursuant to the hourly labor rates identified in Exhibit B "Price Proposal" and the executed CTO. The hourly labor rates identified in Exhibit B shall remain fixed for the term of this Contract and shall include CONSULTANT's direct labor costs, indirect costs, and profit. All expenses shall be reimbursed for the amount identified in Exhibit B. SBCTA will not reimburse for any expenses not shown in Exhibit B.
- 3.3 As need for Labor Compliance Services arises, SBCTA will issue a request for CTOs based on services and costs identified in 3.2, above. SBCTA does not guarantee any certain number of CTOs will be issued during the term of this Contract. Award of CTOs is at the sole discretion of SBCTA.
- 3.4 Intentionally Omitted.
- 3.5 The Cost Principles and Procedures set forth in 48 CFR, Ch. 1, subch. E, Part 31, as constituted on the effective date of this Contract shall be utilized to determine allowability of costs under this Contract and may be modified from time to time by written amendment of the Contract.

- 3.5.1 CONSULTANT agrees to comply with Federal Department of Transportation procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- 3.5.2 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Ch. 1, subch. E, Part 31, or 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, shall be repaid by CONSULTANT to SBCTA.
- 3.6 Any Work provided by CONSULTANT not specifically covered by the Scope of Work shall not be compensated without prior written authorization from SBCTA. It shall be CONSULTANT's responsibility to recognize and notify SBCTA in writing when services not covered by the Scope of Work have been requested or are required. All changes and/or modifications to the Scope of Work shall be made in accordance with the "CHANGES" Article in this Contract. Any additional services agreed to in accordance with this Contract shall become part of the Work.

ARTICLE 4. INVOICING

- 4.1 Payment to CONSULTANT as provided herein shall be payable in four (4) week billing period payments, forty-five (45) calendar days after receipt of an acceptable invoice by SBCTA of an invoice prepared in accordance with instructions below. Payment shall not be construed to be an acceptance of Work.
- 4.2 CONSULTANT shall prepare invoices in a form satisfactory to and approved by SBCTA, which shall be accompanied by documentation supporting each element of measurement and/or cost. Each invoice will be for a four-week billing period and will be marked with SBCTA'S contract number, description and task order number, if applicable. Invoices shall be submitted within thirty (30) calendar days for the period covered by the invoice except for the month of June, which will require the invoice to be submitted by July 10th. Invoices shall include request for payment for Work (including additional services authorized by SBCTA) completed by CONSULTANT during each billing period and shall include back-up information sufficient to establish the validity of the invoice. Any invoice submitted which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to CONSULTANT. Any costs incurred by CONSULTANT in connection with the resubmission of a proper invoice shall be at CONSULTANT's sole expense. The final invoice shall be marked "FINAL" and will be submitted within 60 calendar days after SBCTA has received and approved all Work and deliverables. Invoices should be e-mailed to SBCTA at the following address:

ap@gosbcta.com

For large files over 30 megabytes, invoices can be submitted using this link:

<https://sanbag-lfweb.sanbag.ca.gov/Forms/Invoice-submission>

- 4.3 CONSULTANT shall include a statement and release with each invoice, satisfactory to SBCTA, that CONSULTANT has fully performed the Work invoiced pursuant to the Contract for the period covered, that all information included with the invoice is true and correct, and that all payments to and claims of CONSULTANT and its subconsultants for Work during the period will be satisfied upon making of such payment. SBCTA shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such statement and release.

- 4.4 Intentionally Omitted
- 4.5 No payment will be made prior to approval of any Work, nor for any Work performed prior to the NTP or the issuance of an applicable CTO, nor for any Work under any amendment to the Contract until SBCTA's Awarding Authority takes action.
- 4.6 CONSULTANT agrees to promptly pay each subconsultant for the satisfactory completion of all Work performed under this Contract no later than ten (10) calendar days from the receipt of payment from SBCTA. CONSULTANT also agrees to return any retainage payments to each subconsultant within ten (10) calendar days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval by SBCTA. SBCTA reserves the right to request documentation from CONSULTANT showing payment has been made to its subconsultants. SBCTA also reserves the right, at its own sole discretion, to issue joint checks to CONSULTANT and any subconsultant(s), which shall constitute payment to CONSULTANT in compliance with the terms of this Contract. This clause applies to both DBE and non-DBE subconsultants.
- 4.7 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Ch. 1, subch. E, Part 31 are subject to repayment by CONSULTANT to SBCTA.

ARTICLE 5. TAXES, DUTIES AND FEES

Except to the extent expressly provided elsewhere in this Contract, CONSULTANT shall pay when due, and the compensation set forth herein, shall be inclusive of all: a) local, municipal, State, and federal sales and use taxes; b) excise taxes; c) taxes on personal property owned by CONSULTANT; and d) other governmental fees and taxes or charges of whatever nature applicable to CONSULTANT to enable it to conduct business.

ARTICLE 6. AVAILABILITY OF FUNDS

The award and performance of this Contract is contingent on the availability of funds. If funds are not appropriated and/or allocated and available to SBCTA for the continuance of Work performed by CONSULTANT, Work directly or indirectly involved may be suspended or terminated by SBCTA at the end of the period for which funds are available. When SBCTA becomes aware that any portion of Work will or may be affected by a shortage of funds, it will promptly notify CONSULTANT. Nothing herein shall relieve SBCTA from its obligation to compensate CONSULTANT for work already performed pursuant to this Contract. No penalty shall accrue to SBCTA in the event this provision is exercised.

ARTICLE 7. PERMITS AND LICENSES

CONSULTANT shall, without additional compensation, keep current all governmental permits, certificates and licenses (including professional licenses) and required registrations necessary for CONSULTANT to perform Work identified herein.

ARTICLE 8. DOCUMENTATION AND RIGHT TO AUDIT

- 8.1 CONSULTANT shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a

period of three (3) years from the date of final payment by SBCTA, or until the conclusion of all litigation, appeals or claims related to this Contract, whichever is longer. CONSULTANT shall provide SBCTA, the California State Auditor, or other authorized representatives of SBCTA access to Consultants' records which are directly related to this Contract for the purpose of inspection, auditing or copying during the entirety of the records maintenance period above. CONSULTANT further agrees to maintain separate records for costs of Work performed by amendment. CONSULTANT shall allow SBCTA and its representatives or agents to reproduce any materials as reasonably necessary.

- 8.2 The cost proposal and/or invoices for this Contract are subject to audit by SBCTA and/or any state or federal agency funding this Work at any time. After CONSULTANT receives any audit recommendations, the cost or price proposal shall be adjusted by CONSULTANT and approved by SBCTA's Project Manager to conform to the audit recommendations. CONSULTANT agrees that individual items of cost identified in the audit report may be incorporated into the Contract at SBCTA's sole discretion. Refusal by CONSULTANT to incorporate the audit or post award recommendations will be considered a breach of the Contract and cause for termination of the Contract. Any dispute concerning the audit findings of this Contract shall be reviewed by SBCTA's Chief Financial Officer. CONSULTANT may request a review by submitting the request in writing to SBCTA within thirty (30) calendar days after issuance of the audit report
- 8.3 Subcontracts in excess of \$25,000 shall contain this provision.

ARTICLE 9. RESPONSIBILITY OF CONSULTANT

- 9.1 CONSULTANT shall be responsible for the professional quality, technical accuracy, and assurance of compliance with all applicable federal, State and local laws and regulations and other Work furnished by CONSULTANT under the Contract. The Contract includes reference to the appropriate standards for Work performance stipulated in the Contract.
- 9.2 In addition to any other requirements of this Contract or duties and obligations imposed on CONSULTANT by law, CONSULTANT shall, as an integral part of its Work, employ quality control procedures that identify potential risks and uncertainties related to scope, schedule, cost, quality, and the Work performed by CONSULTANT within the areas of CONSULTANT's expertise. At any time during performance of the Scope of Work, should CONSULTANT observe, encounter, or identify any unusual circumstances or uncertainties which could pose potential risk to SBCTA, CONSULTANT shall immediately document such matters and notify SBCTA in writing. Notifications under this paragraph shall be specific, clear and timely, and in a form which will enable SBCTA to understand and evaluate the magnitude and effect of the risk and/or uncertainties involved.

ARTICLE 10. REPORTING AND DELIVERABLES

All reports and deliverables shall be submitted in accordance with Exhibit A "Scope of Work". At a minimum, CONSULTANT shall submit monthly progress reports with their monthly invoices. The report shall be sufficiently detailed for SBCTA to determine if CONSULTANT is performing to expectations and is on schedule; to provide communication of interim findings; and to sufficiently address any difficulties or problems encountered, so remedies can be developed.

ARTICLE 11. TECHNICAL DIRECTION

- 11.1 Performance of Work under this Contract shall be subject to the technical direction of SBCTA's Project Manager, identified in Section 1.2, upon issuance of the NTP and/or subsequently by written notice during the Contract. The term "Technical Direction" is defined to include, without limitation:
- 11.1.1 Directions to CONSULTANT which redirect the Contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the Scope of Work.
 - 11.1.2 Provision of written information to CONSULTANT which assists in the interpretation of reports or technical portions of the Scope of Work described herein.
 - 11.1.3 Review and, where required by the Contract, approval of technical reports and technical information to be delivered by CONSULTANT to SBCTA under the Contract.
 - 11.1.4 SBCTA's Project Manager may modify this Contract for certain administrative modifications without issuing a written amendment. Administrative modifications are limited to: substitutions of personnel identified in the Contract, including Key Personnel and subconsultants; modifications to classifications, hourly rates and names of personnel in Exhibit B; and modifications of the address of the CONSULTANT. All such modifications will be documented in writing between the Parties.
- 11.2 Technical Direction must be within the Scope of Work under this Contract. SBCTA's Project Manager does not have the authority to, and may not, issue any Technical Direction which:
- 11.2.1 Increases or decreases the Scope of Work;
 - 11.2.2 Directs CONSULTANT to perform Work outside the original intent of the Scope of Work;
 - 11.2.3 Constitutes a change as defined in the "CHANGES" Article of the Contract;
 - 11.2.4 In any manner causes an increase or decrease in the Contract price as identified in the "COMPENSATION" Article or the time required for Contract performance;
 - 11.2.5 Changes any of the expressed terms, conditions or specifications of the Contract, unless identified herein;
 - 11.2.6 Interferes with CONSULTANT's right to perform the terms and conditions of the Contract unless identified herein; or
 - 11.2.7 Approves any demand or claims for additional payment.
- 11.3 Failure of CONSULTANT and SBCTA's Project Manager to agree that the Technical Direction is within the scope of the Contract, or a failure to agree upon the Contract action to be taken with respect thereto, shall be subject to the provisions of the "DISPUTES" Article herein.
- 11.4 All Technical Direction shall be issued in writing by SBCTA's Project Manager.

11.5 CONSULTANT shall proceed promptly with the performance of Technical Direction issued by SBCTA's Project Manager, in the manner prescribed by this Article and within their authority under the provisions of this Article. If, in the opinion of CONSULTANT, any instruction or direction by SBCTA's Project Manager falls within one of the categories defined in sections 11.2.1 through 11.2.7 above, CONSULTANT shall not proceed but shall notify SBCTA in writing within five (5) working days after receipt of any such instruction or direction and shall request SBCTA to modify the Contract accordingly. Upon receiving the notification from CONSULTANT, SBCTA shall:

11.5.1 Advise CONSULTANT in writing within thirty (30) calendar days after receipt of CONSULTANT's letter that the Technical Direction is or is not within the scope of this Contract.

11.5.2. Advise CONSULTANT within a reasonable time whether SBCTA will or will not issue a written amendment.

ARTICLE 12. CHANGES

12.1 The Work shall be subject to changes by additions, deletions, or revisions made by SBCTA. CONSULTANT will be advised of any such changes by written notification from SBCTA describing the change. This notification will not be binding on SBCTA until SBCTA's Awarding Authority has approved an amendment to this Contract.

12.2 Promptly after such written notification of change is given to CONSULTANT by SBCTA, the Parties will attempt to negotiate a mutually agreeable adjustment to compensation or time of performance, and amend the Contract accordingly.

ARTICLE 13. EQUAL EMPLOYMENT OPPORTUNITY

13.1 During the term of this Contract, CONSULTANT shall not willfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, gender, sex, marital status, gender identity, gender expression, sexual orientation, age, or military or veteran status. CONSULTANT agrees to comply with the provisions of Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

13.2 The CONSULTANT and all subconsultants shall comply with all provisions of Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin. In addition, CONSULTANT and all subconsultants will ensure their services are consistent with and comply with obligations and procedures outlined in SBCTA's current Board-adopted Title VI Program, including the Public Participation Plan and the Language Assistance Plan.

ARTICLE 14. CONFLICT OF INTEREST

CONSULTANT agrees that it presently has no interest, financial or otherwise, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Work required under this Contract or be contrary to the interests of SBCTA as to the Program. CONSULTANT further agrees that in the performance of this Contract, no person having any such interest shall be employed. CONSULTANT is obligated to fully disclose to SBCTA, in writing, any conflict of interest issues as soon as they are known to CONSULTANT. CONSULTANT agrees that CONSULTANT and its staff shall comply with SBCTA's Conflict of Interest Policy, No. 10102.

ARTICLE 15. KEY PERSONNEL

The personnel specified below are considered to be essential to the Work being performed under this Contract. Prior to diverting any of the specified individuals to other projects, or reallocation of any tasks or hours of Work that are the responsibility of Key Personnel to other personnel, CONSULTANT shall notify SBCTA in writing in advance and shall submit justifications (including proposed substitutions, resumes and payroll information to support any changes to the labor rates) in sufficient detail to permit evaluation of the impact on the Project. Diversion or reallocation of Key Personnel shall not be made without prior written consent of SBCTA's Project Manager. CONSULTANT shall not substitute any Key Personnel without the prior written consent of SBCTA. In the event that the Parties cannot agree as to the substitution of Key Personnel, SBCTA may terminate this Contract. Key Personnel are:

Name	Job Classification/Function
Lizette Rodriguez	Director of Labor Compliance
Brent Bishop	Senior Project Manager
Cassandra Dotta	Analyst/Field Auditor

ARTICLE 16. REPRESENTATIONS

All Work supplied by CONSULTANT under this Contract shall be supplied by personnel who are qualified, careful, skilled, experienced and competent in their respective trades or professions. CONSULTANT agrees that they are supplying professional services, findings, and/or recommendations in the performance of this Contract and agrees with SBCTA that the same shall conform to professional standards that are generally accepted in the profession in the State of California.

ARTICLE 17. PROPRIETARY RIGHTS/CONFIDENTIALITY

- 17.1 If, as a part of this Contract, CONSULTANT is required to produce materials, documents data, or information ("Products"), then CONSULTANT, if requested by SBCTA, shall deliver to SBCTA the original of all such Products, which shall become the sole property of SBCTA.
- 17.2 All materials, documents, data or information obtained from SBCTA's data files or any SBCTA-owned medium furnished to CONSULTANT in the performance of this Contract will at all times remain the property of SBCTA. Such data or information may not be used or copied for direct or indirect use outside of this Project by CONSULTANT without the express written consent of SBCTA.

- 17.3 Except as reasonably necessary for the performance of the Work, CONSULTANT agrees that it, its employees, agents and subconsultants will hold in confidence and not divulge to third parties, without prior written consent of SBCTA, any information obtained by CONSULTANT from or through SBCTA unless (a) the information was known to CONSULTANT prior to obtaining same from SBCTA, or (b) the information was at the time of disclosure to CONSULTANT, or thereafter becomes, part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONSULTANT or its employees, agents, or subconsultants, or (c) the information was obtained by CONSULTANT from a third party who did not receive the same, directly or indirectly, from SBCTA and who had, to CONSULTANT's knowledge and belief, the right to disclose the same. Any materials and information referred to in this Article, which are produced by CONSULTANT shall remain confidential until released in writing by SBCTA, except to the extent such materials and information become subject to disclosure by SBCTA under the California Public Records Act, or other law, or otherwise become public information through no fault of CONSULTANT, or its employees or agents.
- 17.4 CONSULTANT shall not use SBCTA's name or photographs in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SBCTA.
- 17.5 All press releases, or press inquiries relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SBCTA unless otherwise agreed to in writing by both Parties.
- 17.6 CONSULTANT, its employees, agents and subconsultants shall be required to comply with SBCTA's Confidentiality Policy; anyone who may have access to Personally Identifiable Information ("PII") and/or Sensitive Security Information ("SSI") will be required to execute a Confidentiality Agreement.

ARTICLE 18. TERMINATION

- 18.1 Termination for Convenience - SBCTA shall have the right at any time, with or without cause, to terminate further performance of Work by giving thirty (30) calendar days written notice to CONSULTANT specifying the date of termination. On the date of such termination stated in said notice, CONSULTANT shall promptly discontinue performance of Work and shall preserve Work in progress and completed Work, pending SBCTA's instruction, and shall turn over such Work in accordance with SBCTA's instructions.
- 18.1.1 CONSULTANT shall deliver to SBCTA all deliverables prepared by CONSULTANT or its subconsultants or furnished to CONSULTANT by SBCTA. Upon such delivery, CONSULTANT may then invoice SBCTA for payment in accordance with the terms herein.
- 18.1.2 If CONSULTANT has fully and completely performed all obligations under this Contract up to the date of termination, CONSULTANT shall be entitled to receive from SBCTA as complete and full settlement for such termination a pro rata share of the Contract cost based upon the percentage of all contracted Work satisfactorily executed to the date of termination.

18.1.3 CONSULTANT shall be entitled to receive the actual costs incurred by CONSULTANT to return CONSULTANT's tools and equipment, if any, to it or its suppliers' premises, or to turn over Work in progress in accordance with SBCTA's instructions plus the actual cost necessarily incurred in effecting the termination.

18.2 Termination for Cause - In the event CONSULTANT shall file a petition in bankruptcy court, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy court shall be filed against CONSULTANT, or a receiver shall be appointed on account of its insolvency, or if CONSULTANT shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice, SBCTA may, without prejudice to any other rights or remedies SBCTA may have, and in compliance with applicable Bankruptcy Laws: (a) hold in abeyance further payments to CONSULTANT; (b) stop any Work of CONSULTANT or its subconsultants related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONSULTANT specifying the date of termination. In the event of such termination by SBCTA, SBCTA may take possession of the deliverables and finished Work by whatever method SBCTA may deem expedient. A waiver by SBCTA of one default of CONSULTANT shall not be considered to be a waiver of any subsequent default of CONSULTANT, of the same or any other provision, nor be deemed to waive, amend, or modify any term of this Contract.

18.2.1 CONSULTANT shall deliver to SBCTA all finished and unfinished deliverables under this Contract prepared by CONSULTANT or its subconsultants or furnished to CONSULTANT by SBCTA within ten (10) working days of said notice.

18.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to SBCTA, satisfactory in form and content to SBCTA and verified by SBCTA. In no event shall CONSULTANT be entitled to any payment for prospective profits or any damages because of such termination.

ARTICLE 19. STOP WORK ORDER

Upon failure of CONSULTANT or its subconsultants to comply with any of the requirements of this Contract, SBCTA shall have the right to stop any or all Work affected by such failure until such failure is remedied or to terminate this Contract in accordance with Article 18 "Termination".

ARTICLE 20. CLAIMS

SBCTA shall not be bound to any adjustments in the Contract amount or schedule unless expressly agreed to by SBCTA in writing. SBCTA shall not be liable to CONSULTANT for any claim asserted by CONSULTANT after final payment has been made under this Contract.

ARTICLE 21. INSURANCE

21.1 Prior to commencing the Work, subject to the provisions of Article 21.2 “General Provisions”, and at all times during the performance of the Work and for such additional periods as required herein, CONSULTANT and all sub-consultants of every tier performing any Work under this contract shall, at CONSULTANT’s and sub-consultant's sole expense, procure and maintain broad form insurance coverage at least as broad as the following minimum requirements specified below:

21.1.1 Professional Liability. The policies must include the following:

- A limit of liability not less than \$3,000,000 per claim
- An annual aggregate limit of not less than \$5,000,000
- Coverage shall be appropriate for the CONSULTANT’s profession and provided services to include coverage for errors and omissions arising out of the CONSULTANT’s professional services, or services of any person employed by the CONSULTANT, or any person for whose acts, errors, mistakes or omissions the CONSULTANT may be legally liable.
- If Coverage is on a claims made basis:
 - Policy shall contain a retroactive date for coverage of prior acts, which date will be prior to the date the CONSULTANT begins to perform Work under this Contract.
 - CONSULTANT shall secure and maintain “tail” coverage for a minimum of Five (5) years after Contract completion.

21.1.2 Worker’s Compensation/Employer’s Liability. The policies must include the following:

- Coverage A. Statutory Benefits
- Coverage B. Employer’s Liability
- Bodily Injury by accident - \$1,000,000 per accident
- Bodily Injury by disease - \$1,000,000 policy limit/\$1,000,000 each employee

Such policies shall contain a waiver of subrogation in favor of the parties named as Indemnitees below. Such insurance shall be in strict accordance with the applicable workers’ compensation laws in effect during performance of the Work by CONSULTANT or any subconsultant of any tier. All subconsultants of any tier performing any portion of the Work for CONSULTANT shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with a waiver of subrogation in favor of CONSULTANT and all parties named as Indemnitees below. Where coverage is provided through the California State Compensation Insurance Fund, the requirement for a minimum A.M. Best rating does not apply.

21.1.3. Commercial General Liability. The policy must include the following:

- Consultant shall maintain commercial general liability (CGL) insurance (Insurance Services Office (ISO) Form CG 00 01), and if necessary excess/umbrella

commercial liability insurance, with a combined limit of liability of not less than **\$5,000,000 each occurrence.**

- The policy shall, at a minimum, include coverage for any and all of the following: bodily injury, property damage, personal injury, broad form contractual liability (including coverage to the maximum extent possible for the indemnifications in this Contract), premises-operations (including explosion, collapse and underground coverage), duty to defend in addition to (without reducing) the limits of the policy(ies), and products and completed operations.
 - \$2,000,000 per occurrence limit for property damage or bodily injury
 - \$2,000,000 per occurrence limit for personal injury and advertising injury
 - \$2,000,000 per occurrence limits for products/completed operations coverage (ISO Form 20 37 10 01) if SBCTA's Risk Manager determines it is in SBCTA's best interests to require such coverage,
- If a general aggregate applies, it shall apply separately to this project/location. The contract number and brief explanation of the project/work must be indicated under "Description of Operations/Locations" (ISO Form CG 25 03 or CG 25 04).
- Coverage is to be on an "occurrence" form. "Claims made" and "modified occurrence" forms are not acceptable.
- A copy of the declaration page or endorsement page listing all policy endorsements for the CGL policy must be included.

All subconsultants of any tier performing any portion of the Work for CONSULTANT shall also obtain and maintain the CGL insurance coverage with limits not less than:

- Each occurrence limit: \$2,000,000
- General aggregate limit: \$2,000,000
- Personal injury and advertising limit \$2,000,000
- Products-completed operations aggregate limit \$2,000,000

All subconsultants' and sub-subconsultants' deductibles or self-insured retentions must be acceptable to SBCTA's Risk Manager.

21.1.4 Umbrella/Excess CGL. The policy must include the following:

- If the CONSULTANT elects to include an umbrella or excess policy to cover any of the total limits required beyond the primary commercial general liability policy limits and/or the primary commercial automobile liability policy limits, then the policy must include the following:
 - The umbrella or excess policy shall follow form over the CONSULTANT's primary general liability coverage and shall provide a separate aggregate limit for products and completed operations coverage.
 - The umbrella or excess policy shall not contain any restrictions or exclusions beyond what is contained in the primary policy.
 - The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

- The umbrella or excess policy must also extend coverage over the automobile policy if it is to be used in combination with the primary automobile policy to meet the total insurance requirement limits.

There shall be no statement limiting the coverage provided to the parties listed as additionally insureds or as indemnitees below.

21.1.5 Commercial Auto. The policy must include the following:

- A total limit of liability of not less than **\$5,000,000** each accident. This total limits of liability may be met by combining the limits of the primary auto policy with an umbrella or excess policy in accordance with subparagraph 4 (Umbrella/Excess CGL) of Section A of this Article.
- Such insurance shall cover liability arising out of any vehicle, including owned, hired, leased, borrowed and non-owned vehicles assigned to or used in performance of the CONSULTANT services.
- Combined Bodily Injury and Property Damage Liability insurance. The commercial automobile liability insurance shall be written on the most recent edition of ISO Form CA 00 01 or equivalent acceptable to SBCTA.

21.1.6 Pollution Liability - Intentionally Omitted

21.1.7 Cyber (Technology) Liability Insurance -

- Policy form appropriate to the Consultant's profession and work hereunder, with limits not less than \$2,000,000 per occurrence.
- Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Consultant in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security.
- The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
- The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of SBCTA in the care, custody, or control of the CONSULTANT.
 - If not covered under the CONSULTANT's liability policy, such "property" coverage of SBCTA may be endorsed onto the CONSULTANT's Cyber Liability Policy as covered property as follows:
 - Cyber Liability coverage in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of SBCTA that will be in the care, custody, or control of CONSULTANT.

21.1.8 Railroad Protective Liability - Intentionally Omitted

21.2. General Provisions

- 21.2.1 Qualifications of Insurance Carriers. If policies are written by insurance carriers authorized and admitted to do business in the state of California, then the insurance carriers must have a current A.M. Best rating of A-VIII or better and if policies are written by insurance carriers that are non-admitted but authorized to conduct business in the state of California, then they must meet the current A.M. Best rating of A-X or better, unless otherwise approved in writing by SBCTA's Risk Manager.
- 21.2.2 Additional Insured Coverage. All policies, except those for Workers' Compensation and Professional Liability insurance, shall be endorsed by ISO Form CG 20 10 11 85, or if not available, then ISO Form CG 20 38, to name San Bernardino County Transportation Authority and its officers, directors, members, employees, and agents, as additional insureds ("Additional Insureds"). With respect to general liability arising out of or connected with work or operations performed by or on behalf of the CONSULTANT under this Contract, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for SBCTA to vicarious liability, but shall allow coverage for SBCTA to the full extent provided by the policy.
- 21.2.3 Proof of Coverage. Evidence of insurance in a form acceptable to SBCTA's Risk Manager, including declarations pages of each policy, certificates of insurance and the required additional insured endorsements, shall be provided to SBCTA's Procurement Analyst prior to issuance of the NTP or prior to commencing any Work, as SBCTA specifies. Certificate(s) of insurance, as evidence of the required insurance shall: be executed by a duly authorized representative of each insurer; show compliance with the insurance requirements set forth in this Article; set forth deductible amounts applicable to each policy; list all exclusions which are added by endorsement to each policy; and also include the Contract Number and the SBCTA Project Manager's name on the face of the certificate. If requested in writing by SBCTA, CONSULTANT shall submit complete copies of all required insurance policies within ten (10) business days of a written request by SBCTA.
- 21.2.4 Deductibles and Self-Insured Retention. Regardless of the allowance of exclusions or deductibles by SBCTA, CONSULTANT shall be responsible for any deductible or self-insured retention (SIR) amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Article. CONSULTANT will pay, and shall require its sub-CONSULTANT to pay, all deductibles, co-pay obligations, premiums and any other sums due under the insurance required in this Article. Any deductibles or self-insured retentions must be declared to and approved in writing by SBCTA's Risk Manager. Without SBCTA's Risk Manager's expressed written approval, no deductibles or SIR will be allowed. At the option of SBCTA, if the deductible or SIR is approved and it is greater than \$10,000 or one (1) percent of the amount of coverage required under this Contract, whichever is less, the CONSULTANT shall guarantee that either: (1) the insurer shall reduce or eliminate

such deductibles or self-insured retentions as respects to SBCTA, its directors, officials, officers, employees and agents; or, (2) the CONSULTANT shall procure a bond guaranteeing the amount of the deductible or self-insured retention. SBCTA shall have the right to review any and all financial records that SBCTA, in its sole discretion, deems necessary to approve any deductible or SIR. SBCTA will have the right, but not the obligation, to pay any deductible or SIR due under any insurance policy. If SBCTA pays any sums due under any insurance required above, SBCTA may withhold said sums from any amounts due to CONSULTANT. The Consultant's policies will neither obligate nor prohibit SBCTA or any other Additional Insured from paying any portion of any Consultant's deductible or SIR.

- 21.2.5 CONSULTANT's and Subconsultants' Insurance will be Primary. All policies required to be maintained by the CONSULTANT or any subconsultant, with the exception of Professional Liability and Worker's Compensation, shall be endorsed, with a form at least as broad as ISO Form CG 20 01 04 13, to be primary coverage, and any coverage carried by any of the Additional Insureds shall be excess and non-contributory. Further, none of CONSULTANT's or subconsultants', automobile, general liability or other liability policies (primary or excess) will contain any cross-liability exclusion barring coverage for claims by an additional insured against a named insured.
- 21.2.6 Waiver of Subrogation Rights. To the fullest extent permitted by law, CONSULTANT hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other consultant, subconsultant or sub-subconsultant performing work or rendering services on behalf of SBCTA, in connection with the subject matter of the WORK. To the fullest extent permitted by law, CONSULTANT shall require similar written express waivers and insurance clauses from each of its subconsultants of every tier. CONSULTANT shall require all of the policies and coverages required in this Article to waive all rights of subrogation against the Additional Insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided shall not prohibit CONSULTANT from waiving the right of subrogation prior to a loss or claim.
- 21.2.7 Cancellation. If any insurance company elects to cancel or non-renew coverage for any reason, CONSULTANT will provide SBCTA thirty (30) days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONSULTANT will provide SBCTA ten (10) days prior written notice. In any event, CONSULTANT will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance coverage required herein which CONSULTANT receives within one business day after CONSULTANT receives it by submitting it to SBCTA at insurance@gosbcta.com, to the attention of SBCTA's Procurement Analyst, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of this Contract.
- 21.2.8 Enforcement. SBCTA may take any steps as are necessary to assure CONSULTANT's compliance with its insurance obligations as identified within this Article. Failure to continuously maintain insurance coverage as provided herein is a material breach of contract. In the event the CONSULTANT fails to obtain or maintain any insurance

coverage required, SBCTA may, but is not required to, maintain this coverage and charge the expense to the CONSULTANT or withhold such expense from amounts owed CONSULTANT, or terminate this Contract. The insurance required or provided shall in no way limit or relieve CONSULTANT of its duties and responsibility under the Contract, including but not limited to obligation to indemnify, defend and hold harmless the Indemnitees named below. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve CONSULTANT of liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions as available to it under any other provision of the Contract or law. Nothing contained herein shall relieve CONSULTANT, or any subconsultant of any tier, of their obligations to exercise due care in the performance of their duties in connection with the Work and to complete the Work in strict compliance with the Contract.

- 21.2.9 No Waiver. Failure of SBCTA to enforce in a timely manner any of the provisions of this Article shall not act as a waiver to enforcement of any of these provisions at a later date.
- 21.2.10 Subconsultant Insurance. Insurance required of the CONSULTANT shall be also provided by subconsultants or by CONSULTANT on behalf of all subconsultants to cover their services performed under this Contract. CONSULTANT may reduce types and the amounts of insurance limits provided by subconsultant(s) to be proportionate to the amount of the subconsultant's contract and the level of liability exposure for the specific type of work performed by the subconsultant. CONSULTANT shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to subconsultant.
- 21.2.11 Higher limits. If CONSULTANT maintains higher limits than the minimums shown above, SBCTA shall be entitled to coverage for the higher limits maintained by CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SBCTA.
- 21.2.12 Special Risks or Circumstances. SBCTA reserves the right to modify any or all of the above insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

ARTICLE 22. INDEMNITY

- 22.1 To the extent, but only to the extent, that CONSULTANT's Work falls within the scope of Civil Code Section 2782.8, the following indemnification is applicable:

CONSULTANT shall indemnify and defend (with legal counsel reasonably approved by SBCTA) SBCTA and its authorized officers, employees, agents and volunteers (collectively "Indemnitees"), from any and all losses, damages, liability, actions, and/or costs for claims that arise out of, pertain to, or are related to the negligence, recklessness, or willful misconduct of the professional.

- 22.2 For all other Work, CONSULTANT agrees to indemnify, defend (with legal counsel reasonably approved by SBCTA) and hold harmless SBCTA and its authorized officers, employees, agents and volunteers ("Indemnitees"), from any and all claims, actions, losses, damages and/or liability (Claims) arising out of this Contract from any cause whatsoever, including acts, errors, or omissions of any person and for any costs or expenses incurred by SBCTA on account of any

claim, except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. CONSULTANT's indemnification obligation applies to SBCTA's "active" as well as "passive" negligence, but does not apply to SBCTA's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

ARTICLE 23. ERRORS AND OMISSIONS

CONSULTANT shall be responsible for the professional quality, technical accuracy, and coordination of all Work required under this Contract. CONSULTANT shall be liable for SBCTA's costs resulting from errors or deficiencies in Work furnished under this Contract, including, but not limited to, any fines, penalties, damages, and costs required because of an error or deficiency in the Work provided by CONSULTANT under this Contract.

ARTICLE 24. OWNERSHIP OF DOCUMENTS

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by CONSULTANT under this Contract shall become the sole property of SBCTA when prepared, whether delivered to SBCTA or not.

ARTICLE 25. SUBCONTRACTS

- 25.1 CONSULTANT shall not subcontract performance of all or any portion of Work under this Contract, except to those subconsultants listed in CONSULTANT's proposal, without first notifying SBCTA in writing of the intended subcontracting and obtaining SBCTA's written approval of the subcontracting and the subconsultant. The definition of subconsultant and the requirements for subconsultants hereunder shall include all subcontracts at any tier.
- 25.2 CONSULTANT agrees that any and all subconsultants of CONSULTANT performing Work under this Contract will comply with the terms and conditions of this Contract applicable to the portion of Work performed by them. CONSULTANT shall incorporate all applicable provisions of this Contract into their subcontracts regardless of the tier. If requested by SBCTA, CONSULTANT shall furnish SBCTA a copy of the proposed subcontract for SBCTA's approval of the terms and conditions thereof and shall not execute such subcontract until SBCTA has approved such terms and conditions. SBCTA's approval shall not be unreasonably withheld.
- 25.3 Approval by SBCTA of any Work to be subcontracted and the subconsultant to perform said Work will not relieve CONSULTANT of any responsibility or liability in regard to the acceptable and complete performance of said Work. Any substitution of subconsultants must be approved in writing by SBCTA. CONSULTANT shall have sole responsibility for managing all of their subconsultants, including resolution of any disputes between CONSULTANT and its subconsultants.

ARTICLE 26. RECORD INSPECTION AND AUDITING

SBCTA or any of its designees, representatives, or agents shall at all times have access during normal business hours to CONSULTANT's operations and products wherever they are in preparation or progress, and CONSULTANT shall provide sufficient, safe, and proper facilities for such access and inspection thereof. Inspection or lack of inspection by SBCTA shall not be deemed to be a waiver of

any of their rights to require CONSULTANT to comply with the Contract or to subsequently reject unsatisfactory Work or products.

ARTICLE 27. INDEPENDENT CONTRACTOR

CONSULTANT is and shall be at all times an independent contractor. Accordingly, all Work provided by CONSULTANT shall be done and performed by CONSULTANT under the sole supervision, direction and control of CONSULTANT. SBCTA shall rely on CONSULTANT for results only and shall have no right at any time to direct or supervise CONSULTANT or CONSULTANT's employees in the performance of Work or as to the manner, means and methods by which Work is performed. All personnel furnished by CONSULTANT pursuant to this Contract, and all representatives of CONSULTANT, shall be and remain the employees or agents of CONSULTANT or of CONSULTANT's subconsultant(s) at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of SBCTA.

ARTICLE 28. ATTORNEY'S FEES

If any legal action is instituted to enforce or declare any Party's rights under the Contract, each Party, including the prevailing Party, must bear its own costs and attorneys' fees. This Article shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a Party hereto and payable under the "Indemnity" provision of the Contract.

ARTICLE 29. GOVERNING LAW AND VENUE

This Contract shall be subject to the law and jurisdiction of the State of California. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any Party to this Contract will be the Superior Court of California, San Bernardino County. Each Party hereby waives any law or rule of court that would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County.

ARTICLE 30. FEDERAL, STATE AND LOCAL LAWS

CONSULTANT warrants that in the performance of this Contract it shall comply with all applicable federal, State and local laws, ordinances, rules and regulations.

ARTICLE 31. PRECEDENCE

- 31.1 The Contract consists of these Contract Articles, Exhibit A "Scope of Work", and Exhibit B "Price Proposal", SBCTA's Request for Proposal and CONSULTANT's proposal, all of which are incorporated into this Contract by this reference.
- 31.2 The following order of precedence shall apply: first, the Contract Articles; second, Exhibits A and B; third, SBCTA's Request for Proposal; and last, CONSULTANT's proposal. In the event of a conflict between the Contract Articles and the Scope of Work, the Contract Articles will prevail.

- 31.3 In the event of an express conflict between the documents listed in this Article, or between any other documents which are a part of the Contract, CONSULTANT shall notify SBCTA in writing within three (3) business days of its discovery of the conflict and shall comply with SBCTA's resolution of the conflict.

ARTICLE 32. COMMUNICATIONS AND NOTICES

Notices sent by mail shall be by United States Mail, postage paid, certified mail (return receipt requested). Any and all notices permitted or required to be given hereunder shall be deemed duly given and received: (a) upon actual delivery, if delivery is personally made or if made by fax or email during regular business hours; (b) the first business day following delivery by fax or email when not made during regular business hours; or (c) on the fourth business day after deposit of such notice into the United States Mail. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective Parties may designate from time to time by a notice given in accordance with this Article. CONSULTANT shall notify SBCTA of any contact information changes within ten (10) business days of the change.

To GAFCON, Inc.	To SBCTA
5960 Cornerstone Court West, Suite 100	1170 W. 3rd Street, 2nd Floor
San Diego, CA 92121	San Bernardino, CA 92410-1715
Attn: Lizette Rodriguez	Attn: Shaneka Morris
Email: LSantillan@gafcon.com	Email: Smorris@gosbcta.com
Phone: (858) 875-0051	Phone: (909) 884-8276
2 nd Contact:	Copy: Procurement Manager
Email:	Email: procurement@gosbcta.com

ARTICLE 33. DISPUTES

- 33.1 In the event any dispute, other than an audit, arises between the Parties in connection with this Contract (including but not limited to disputes over payments, reimbursements, costs, expenses, Work to be performed, Scope of Work and/or time of performance), the dispute shall be decided by SBCTA's Director of Special Projects and Strategic Initiatives within thirty (30) calendar days after notice thereof in writing, which notice shall include a particular statement of the grounds of the dispute. If CONSULTANT does not agree with the decision, then CONSULTANT shall have ten (10) calendar days after receipt of the decision in which to file a written appeal thereto with SBCTA's Executive Director. If the Executive Director fails to resolve the dispute in a manner acceptable to CONSULTANT, then such dispute may be reviewed by a court of competent jurisdiction.
- 33.2 During resolution of the dispute, CONSULTANT shall proceed with performance of this Contract with due diligence.

ARTICLE 34. GRATUITIES

CONSULTANT, its employees, agents, or representatives shall not offer or give to any officer, official, agent or employee of SBCTA, any gift, entertainment, payment, loan, or other gratuity.

ARTICLE 35. REVIEW AND ACCEPTANCE

All Work performed by CONSULTANT shall be subject to periodic review and approval by SBCTA at any and all places where such performance may be carried on. Failure of SBCTA to make such review or to discover defective work shall not prejudice the rights of SBCTA at the time of final acceptance. All Work performed by CONSULTANT shall be subject to periodic and final review and acceptance by SBCTA upon completion of all Work.

ARTICLE 36. CONFIDENTIALITY

Any SBCTA communications or materials to which CONSULTANT or its subconsultants or agents have access, or materials prepared by CONSULTANT under the terms of this Contract, shall be held in confidence by CONSULTANT, who shall exercise reasonable precautions to prevent the disclosure of confidential information to anyone except as expressly authorized by SBCTA. Any communications with or work product of SBCTA's legal counsel to which CONSULTANT or its subconsultants or agents have access in performing work under this Contract shall be subject to the attorney-client privilege and attorney work product doctrine and shall be confidential. CONSULTANT shall not release any reports, information or promotional material, or allow for the use of any photos related to this Contract, for any purpose without prior written approval of SBCTA. CONSULTANT agrees to inform itself and make its employees, agents, and subconsultants aware of the requirements of SBCTA's privacy and confidentiality policies and to abide by the same.

ARTICLE 37. EVALUATION OF CONSULTANT

CONSULTANT's performance may be evaluated by SBCTA periodically throughout the Contract performance period, such as at the completion of certain milestones as identified in Scope of Work and/or at the completion of the Contract. A copy of the evaluation will be given to CONSULTANT for their information. The evaluation information shall be retained as part of the Contract file and may be used to evaluate CONSULTANT if they submit a proposal on a future RFP issued by SBCTA.

ARTICLE 38. SAFETY

CONSULTANT shall strictly comply with OSHA regulations and local, municipal, state, and federal safety and health laws, orders and regulations applicable to CONSULTANT's operations in the performance of Work under this Contract. CONSULTANT shall comply with all safety instructions issued by SBCTA or its representatives.

ARTICLE 39. DRUG FREE WORKPLACE

CONSULTANT agrees to comply with the Drug Free Workplace Act of 1990 per Government Code section 8350 et seq.

ARTICLE 40. ASSIGNMENT

CONSULTANT shall not assign this Contract in whole or in part, voluntarily, by operation of law, or otherwise, without first obtaining the written consent of SBCTA. SBCTA's exercise of consent shall be within its sole discretion. Any purported assignment without SBCTA's prior written consent shall be void and of no effect, and shall constitute a material breach of this Contract. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the Parties.

ARTICLE 41. AMENDMENTS

The Contract may only be changed by a written amendment duly executed by the Parties. Work authorized under an amendment shall not commence until the amendment has been duly executed.

ARTICLE 42. PREVAILING WAGES

The State of California's General Prevailing Wage Rates are not applicable to this Contract.

ARTICLE 43. CONTINGENT FEE

CONSULTANT warrants by execution of this Contract that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, SBCTA has the right to terminate this Contract without liability, pay only for the value of the Work actually performed, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 44. FORCE MAJEURE

CONSULTANT shall not be in default under this Contract in the event that the Work performed by CONSULTANT is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, and natural disasters such as floods, earthquakes, landslides, and fires, or other catastrophic events which are beyond the reasonable control of CONSULTANT and which CONSULTANT could not reasonably be expected to have prevented or controlled. "Other catastrophic events" does not include the financial inability of CONSULTANT to perform or failure of CONSULTANT to obtain either any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of CONSULTANT.

ARTICLE 45. WARRANTY

CONSULTANT warrants that all Work performed shall be in accordance with the Contract and all applicable professional standards. In the event of a breach of this provision, CONSULTANT shall take the necessary actions to correct the breach at CONSULTANT's sole expense. If CONSULTANT does not take the necessary action to correct the breach, SBCTA, without waiving any other rights or remedies it may have, may take the necessary steps to correct the breach, and the CONSULTANT shall promptly reimburse SBCTA for all expenses and costs incurred.

ARTICLE 46. ENTIRE DOCUMENT

46.1 This Contract constitutes the sole and only agreement governing the Work and supersedes any prior understandings, written or oral, between the Parties respecting the services which are the subject of this Contract. All previous proposals, offers, and other communications, written or oral, relative to this Contract are superseded except to the extent that they have been expressly incorporated into this Contract.

- 46.2 No agent, official, employee or representative of SBCTA has any authority to bind SBCTA to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Contract, and CONSULTANT hereby stipulates that it has not relied, and will not rely, on same.
- 46.3 Both Parties have been represented or had the full opportunity to be represented by legal counsel of their own choosing in the negotiation and preparation of this Contract. Therefore, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning and not for or against either Party.

ARTICLE 47. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

CONSULTANT shall comply with all applicable provisions of the Americans with Disabilities Act in performing Work under this Contract.

ARTICLE 48. EFFECTIVE DATE

The date that this Contract is executed by SBCTA shall be the Effective Date of the Contract.

-----SIGNATURES ARE ON THE FOLLOWING PAGE-----

IN WITNESS WHEREOF, the Parties hereto have executed this Contract below.

**GAFCON, Inc., A California
Corporation**

**San Bernardino County
Transportation Authority**

By: _____
Robin Duveen
President

By: _____
Curt Hagman
President, Board of Directors

Date: _____

Date: _____

APPROVED AS TO FORM

By: _____
Paul Najar
Secretary

By: _____
Julianna K. Tillquist
General Counsel

Date: _____

Date: _____

CONCURRENCE

By: _____
Beatriz Valdez
Director of Special Projects and
Strategic Initiatives

Date: _____

EXHIBIT “A”
“SCOPE OF WORK”

Attachment: 23-1002832 - Gafcon, Inc - PDF (8656 : On-Call Labor Compliance)

“SCOPE OF WORK”

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A. **DESCRIPTION OF SERVICES**

The San Bernardino County Transportation Authority (SBCTA) receives Federal, State and Local funds for the construction of various Public Works projects. As a condition of receiving this funding, SBCTA is required to follow Federal and State statutes and guidelines, which impose upon SBCTA a wide range of prevailing wage labor compliance responsibilities. The prevailing wage requirements are identified in the Public Works contracts issued by SBCTA and by Federal (if applicable) and State labor codes. A prime consultant and contractor and any tier subcontractor, by entering into or performing work under SBCTA Public Works projects, agree to comply with all provisions of Federal (if applicable) and State labor codes applicable to Public Works projects.

SBCTA will utilize CONSULTANT services on an “On-Call” basis to act as SBCTA’s Labor Compliance Officer and provide labor compliance oversight and technical support associated with various types (construction and pre-construction activities) of public works projects. The CONSULTANT will demonstrate detailed knowledge of Caltrans and California Division of Labor Standards Enforcement (DSLE) Compliance Monitoring Unit (CMU), the United States Department of Labor Regulations and Guidelines, and equal employment opportunity compliance monitoring requirements as well as knowledge of the Davis Bacon Act, the Copeland “Anti-Kickback” Act, the Contract Work Hour and Safety Standards Act.

The CONSULTANT is to coordinate, audit, train, advice and oversee agency wide labor compliance and Equal Employment Opportunity (EEO) compliance for all projects overseen by SBCTA, that includes requirements of the United State Department of Labor (DOL) and the California Division of Labor Standards Enforcement (DSLE) Compliance Monitoring Unit (CMU). The CONSULTANT will also provide labor compliance review and monitoring of consultant services (Pre-Construction activities) covered by prevailing wage requirements.

Federal and State oversight agencies provide intermittent audits/reviews of SBCTA’s labor compliance monitoring activities to assess SBCTA’s compliance with these requirements. It’s SBCTA’s responsibility to ensure these requirements are being met by the consultants and prime contractors and any tier subcontractor, and to take appropriate corrective action when these requirements have not been met. The CONSULTANT will take the lead in coordinating and addressing any State or Federal compliance review and monitoring.

CONSULTANT shall provide qualified personnel to perform a wide variety of labor compliance services, EEO and contract administration duties as outlined in this Scope of Services for the Program.

SBCTA designates a Project Manager to coordinate all construction and construction related activities. The CONSULTANT shall receive direction from SBCTA through the Project Manager, or designee. SBCTA’s Project Manager will be the main contact and primary source of information between SBCTA, CONSULTANT, cities, outside agencies, supporting consultants and the public.

B. **PERFORMANCE REQUIREMENTS**

Labor Compliance Officer: CONSULTANT shall furnish a Program Manager to coordinate CONSULTANT operations with SBCTA. The Program Manager shall be responsible for all matters related to CONSULTANT personnel and operations. The Program Manager shall also serve as the Labor Compliance Officer (LCO). The LCO shall be assigned to direct and coordinate activities under this contract. Staff may be assigned to each specific project responsibilities as needed.

Labor Compliance Monitoring Staff: The number of CONSULTANT personnel assigned to the contract will vary throughout the duration of the Contract. CONSULTANT personnel will be assigned, in varying levels of responsibility, as needed by the CONSULTANT to meet the SBCTA's various construction activities and schedules.

CONSULTANT shall be knowledgeable of and comply with all applicable local, state, and federal regulations. CONSULTANT personnel shall cooperate and consult with SBCTA, State, and City officials during the course of the contract. CONSULTANT personnel shall keep accurate and timely records and document all work performed by the CONSULTANT.

Many of the Public Works projects undertaken by SBCTA are funded by United States Department of Transportation, including Federal Highway Administration (FHWA) and Federal Transit Administration (FTA). Depending on the funding source, SBCTA relies upon the guidance and protocol established by the Federal government and State of California and Caltrans for monitoring prevailing wage labor compliance, as specified in the following documents:

1. All applicable Federal requirements, including, but not limited to U.S. Department of Labor guidelines Sections 5333(b) Federal Transit Law; U.S. Department of Labor regulations; 29 CFR Part 5, Davis Bacon Act, 40 USC 276 a-276a(7) and the Contract Work Hour and Safety Standards Act, 40 USC 327 – 332; and Fair Labor Standards Act, as amended, 29 USC 206-207.
2. All applicable California Department of Transportation (Caltrans) manuals, including, but not limited to, Labor Compliance Manual, Construction Manual and Local Assistance Procedures Manual.
3. All applicable State of California requirements, including, but not limited to the Department of Labor.

While these documents are very thorough in prescribing the protocol to be implemented in monitoring labor compliance, it is often difficult to discern how the defined responsibilities translate to SBCTA and SBCTA Labor Compliance Consultants. It is the responsibility of the CONSULTANT to ensure that SBCTA is compliant with and adheres to all necessary State and Federal requirements.

C. DUTIES AND RESPONSIBILITIES

1. Program Administration:

The following roles and responsibilities are prescribed for SBCTA Public Works construction projects:

- a. Resident Engineer: The Resident Engineer (RE) is part of the SBCTA Construction Management team and is responsible for the enforcement of the labor contract provisions at the project level. The Resident Engineer may have additional staff and/or consultants to assist in this task.
- b. Program Manager/CONSULTANT: For Architectural & Engineering contracts, certain labor categories require the payment of prevailing wages. CONSULTANT is to review and monitor these contracts for labor compliance activities and proper payment of prevailing wages.

Be accessible to SBCTA at all times during regular business hours.

The Program Manager will assume the following functional responsibilities:

- 1) Review, monitor, train, and provide general direction for CONSULTANT personnel.
 - 2) Assign personnel to on an as-needed basis.
 - 3) Administer personal leave.
 - 4) Prepare monthly reports for delivery to SBCTA.
- c. Labor Compliance Officer/CONSULTANT: CONSULTANT is responsible for providing quality assurance on all labor compliance activities undertaken by SBCTA and its consultants and coordinating with the CMU.

This role includes the following duties participation in the Pre-Proposal/Pre-Bid Meeting, Preconstruction Conference, Document Tracking, Field Activity review, Certified Billing Review, Contractor Certified Payroll Reviews and/or Owner Operator Listings, Labor Requirements Enforcement and other related activities.

Other duties include the periodic review of project specific labor compliance monitoring activities performed by SBCTA and/or construction management labor compliance consultants and preparation of an internal report documenting the review findings. The report findings are to be used by SBCTA as an instrument to continually improve labor compliance practices on SBCTA Public Works projects. LCO duties include, but are not limited to, document reviews, field activity support, billing reviews, certified payroll review, investigations of labor complaints, enforcement of labor compliance requirements, training, and supporting SBCTA during administrative hearings.

- d. The Compliance Monitoring Unit or “CMU” is a component within the California Division of Labor Standards Enforcement (DLSE) that was created to monitor and enforce prevailing wage requirements on public works projects that receive state bond funding and on other projects that are legally required to use the CMU. The CMU began operations on January 1, 2012, following the adoption of AB 436 and approval of revisions to program regulations. By actively monitoring compliance on an ongoing basis while work is being performed, the CMU will play a special role in ensuring that public works construction workers are promptly paid the proper prevailing wage rates

and in helping maintain a level playing field for contractors who comply with the law. The CONSULTANT shall assist the SBCTA in managing and implementing this new requirement on all Prevailing Wage projects.

2. Pre-Proposal/ Pre Bid Conference:

As requested by SBCTA, CONSULTANT may need to attend the Pre-Proposal/Pre-Bid meeting to discuss Labor Compliance requirements with attendees. During the procurement process, CONSULTANT may be asked to draft responses to written questions submitted by proposers or bidders related to Prevailing Wage requirements.

3. Preconstruction Conference:

SBCTA, the Resident Engineer and the LCO shall participate in the project preconstruction conference to disseminate prevailing wage requirements to the project's prime contractor and its subcontractor team.

The content of the prevailing wage presentation shall be coordinated with SBCTA and the Resident Engineer prior to the preconstruction meeting, and shall cover the topics presented in the Caltrans Labor Compliance Manual (CLCM) Chapter 4 and as required by the CMU.

The preconstruction package should be provided to the general contractor and subcontractors' staff responsible for labor compliance that includes, but is not limited to the following items:

- Checklist
- Posters
- State and Federal wage determinations
- Labor Compliance Address labels and email addresses
- Forms

Items to cover during the presentation include the following:

- Explain correct payroll procedures
- Describe any recent labor law changes
- Obtain contractor's signature on preconstruction checklist
- Explain the CMU process and registration

4. Document Tracking:

SBCTA is responsible for monitoring the submittal of all required labor compliance documents submitted by the prime contractor and any tier subcontractor. The LCO in coordination with SBCTA shall monitor and audit this documentation on periodic basis. The following items provide the mechanism by which SBCTA and LCO are to monitor compliance with the document tracking requirements of SBCTA Public Works Projects:

A. Maintain project labor compliance files in accordance with the filing system prescribed in the Fair Labor Standards Act and Caltrans Labor Compliance Manual (CLCM), (CLCM § 1-204). Please refer to Wage and Hour Division [Fact sheet #21: Recordkeeping Requirements](#)

under the Fair Labor Standards Act (FLSA). These files are to be maintained for three years from final payment.

B. Assess Resident Engineer's Daily Reports and Resident Engineer's Weekly Status Reports (CLCM § 1-207). The Resident Engineer's Daily Reports provide a daily account of the activity on a project. From the Daily Reports, the Resident Engineer shall review and determine the contractors performing on the project for each day. Special attention shall be paid to the identification of lower tier subcontractors on the Daily Reports. These reports shall also provide information on the number and classification of workers performing daily on the project. The RE's Daily Reports shall be reviewed and assessed to ensure this information is appropriately captured by the RE. Weekly status reports provide a list of contractors and owner operators working on the project during the reporting week.

C. Labor Compliance Document Tracking System (CLCM § 1-208): SBCTA and the Resident Engineer are required to implement the use of a document tracking system to track the submittal of all required labor compliance forms/documents from each contractor performing on the project. The document tracking system may be in hardcopy or softcopy format, or a computer-based database may be used. Forms to be tracked include, but are not limited the following:

- a. Payroll Report
- b. Statement of Compliance
- c. Fringe Benefit Statement
- d. Owner Operator Listing (OOL)
- e. OOL Statement of Compliance
- f. Training Fund Contribution Report (CAC 2)
- g. Agreement to Train Apprentices (DAS Form 7)
- h. Apprentices on Public Works (DAS Form 10)
- i. Application of Certificate of Exemption (DAS Form 11)
- j. Public Works Contract Award Information (DAS Form 140)
- k. Federal-Aid Highway Construction Contractors EEO Report (FHWA Form 1391)
- l. FTA EEO-04
- m. PWC-100 Form
- n. Summary of 1391 (FHWA Form 1392)
- o. DBE Substitution Report
- p. DBE Utilization Final Report
- q. DVBE Utilization Final Report

The prime contractor must furnish weekly certified payrolls to SBCTA or to the CMU, depending, (including certified payrolls for each project subcontractor), who in turn will provide these documents to SBCTA or SBCTA's Labor Compliance Consultant. The due dates for these documents are specified in the contract documents. The Resident Engineer shall process document intake in accordance with CLCM § 1-209A.

D. Missing Document Request Process: Resident Engineer shall request from prime contractor, orally or in writing, any missing/delinquent labor compliance documents either by the prime or any tier subcontractor, per the requirements identified in the Public Works contract document. The LCO shall work with the project Resident Engineer to enforce the

contract requirements in the event of untimely or inadequate responses. CLCM § 1-301 Deductions and Withholds provide guidance on how to use withholding of funds to enforce the submittal of required labor compliance documents.

E. Process 3rd party requests for Certified Payroll information, in accordance with the guidance provided at CLCM §§ 1-401 through 403.

5. Field Activity:

Key information for the prime and subcontractor performance in meeting prevailing wage requirements is attained from the field by the RE or the CMU either through passive monitoring, such as receiving an employee complaint, or through active monitoring, such as through the performance of site visits to verify posting requirements or to perform employee interviews. The following activities are to be undertaken by Resident Engineer/CMU with oversight by the LCO.

A. Process Employee Complaints: SBCTA shall document all labor compliance related complaints received. All complaints are to be taken seriously, and must be investigated with findings documented in the labor compliance files for the project, consistent with the procedures specified in CLCM §§ 1-601 through 603. Any investigation resulting in the determination of non-compliance by the prime or any tier subcontractor must be dealt with through enforcement actions defined in the contract documents.

B. Verify Prime Contractor Job Site Postings: The prime contractor is required to post various labor compliance posters and documents at the job site. LCO must verify these postings at the start of the project and reverify the postings through the life of the project. The required postings will be identified at the beginning of the project.

C. Assess Accuracy of Resident Engineer Daily Reports: It is anticipated that the Resident Engineer's Daily Logs will provide an accurate account of the contractors performing on the job site as well as the number and classification of workers performing on the job site. As an added level of assurance, SBCTA and the LCO shall, during any site visit, compare their findings with the information contained in the Resident Engineer's Daily Logs. Any discrepancies shall be addressed with the Resident Engineer, leading to improved record keeping by both parties in the future.

D. Worker and Owner Operator Interviews: SBCTA and LCO shall perform employee interviews at a quantity, frequency and manner consistent with that prescribed in the CLCM §§ 1-501 through 502. Worker interviews shall account for at least 10% of all work-hours performed on the project.

6. Billing Review:

As part of LCO responsibility, the assessment of prime contractor change order invoicing against information submitted in certified payroll reports is to be performed, following the procedures identified in CLCM § 2-108.

SBCTA and LCO* shall review change order invoicing that uses man hour counts as its basis for billing against certified payroll reports for the period covered in the invoice to assess accuracy of the invoicing.

**** The Resident Engineer may perform this task if responsible for reviewing invoicing documentation.***

7. Certified Payroll Reviews

Certified payroll reviews are to be performed to identify errors in the payment of prevailing wages to workers employed on the project, as reported on certified payroll, and to identify the accuracy of information reported by comparing information gained from other sources and from the field. The certified payroll review activities to be performed on a monthly basis (complete weeks will be reviewed) by SBCTA and its Labor Compliance Consultant include:

A. From field reviews and inspection of Resident Engineer Daily Reports, identify the complete list of contractors (prime and any tier subcontractors) performing on the project during the audit month.

B. For any contractor new to the project identified above, audit all certified payroll and related information for a complete one month period. An audit of each worker for this period will help identify and resolve human error issues in the reporting of prevailing wage payments on the project. For other contractors, those that have previously performed on the project, perform spot audits at a rate of at least 10% of the work-hours for the monthly period. Complete procedures for performing certified payroll audits are provided in the CLCM §§ 2-101 through 107. These procedures include the following items:

- Check total workforce and their classifications against Resident Engineer Daily Reports
- Check hours against Resident Engineer Diaries and Employee interviews for that period, if any.
- Check prevailing wage rates based on worker classifications.
- Assess applicability and appropriateness of overtime pay, including weekends and holidays.
- Check the ratio of apprentices on project and their pay scale. (See CLCM §§ 2-301 through 305 for procedures).
- Validate other aspects of Certified Payroll data, including deductions, against supporting information submitted for all certified payrolls
- Assess applicability and appropriateness of travel and subsistence pay.
- Review appropriate paperwork for all apprentices on project.
- Check appropriateness of payments to owner operators on project as reported in owner operator listings.

In the event inadequate certified payroll and related documentation has been identified through the audit process above, SBCTA and LCO shall work with the Resident Engineer to resolve the inadequate certified payroll matter consistent with the enforcement requirements identified in the project contract.

8. Labor Requirement Enforcement

SBCTA and the LCO shall work with the project Resident Engineer to enforce the prevailing wage labor compliance requirements of the project. The activities to be performed by LCO include:

A. Prepare report on potential prevailing wage violation(s) identified through monitoring activity.

B. Working with the Resident Engineer, prepare written notification to prime contractor of potential prevailing wage violations and a provide list of remedies with timeframes for prime contractor to respond. Sanctions for the potential prevailing wage violations shall also be identified in the notification, consistent with the sanctions prescribed in the project contract.

C. Provide on-going support to Resident Engineer in resolving the potential prevailing wage violations.

D. **DELIVERABLES**

1. Quarterly Audits of construction management labor compliance services on all projects in format approved by SBCTA.
2. Monthly review of all consultant certified payroll review and fringe benefit statements for all employees who are subject to the State and/or Federal prevailing wage rates.
3. Monthly Status Report of all pending issues and the status of said issues.
4. Collection of FHWA Form 1391 and submittal of FHWA Form 1391 to FHWA by September each year.

E. **EQUIPMENT AND MATERIALS TO BE PROVIDED BY CONSULTANT**

CONSULTANT shall provide all necessary office space, equipment including software, materials, supplies, miscellaneous tools, and safety equipment required for its personnel to perform the services accurately, efficiently, and safely.

F. **MATERIALS TO BE FURNISHED BY SBCTA**

None

G. **STANDARDS**

1. Federal and State of California requirements.
2. Caltrans standards.

H. **LIMITATIONS TO AUTHORITY**

CONSULTANT does not have the authority to:

1. Assume any of the responsibilities of SBCTA's consultants, contractors, contractors' Superintendent, or subcontractors.
2. Offer or receive incentives, inducements, or other forms of remuneration to or from the consultant or contractor to perform services or work outside the terms of any executed contracts for this Project.

J. THIRD PARTY RELATIONSHIPS

This Contract is intended to provide unique services for specific duties. SBCTA, however, is solely responsible for and will be the sole point of contact for all contractual matters related to the Labor Compliance duties. CONSULTANT shall take direction only from SBCTA and shall regularly inform only SBCTA of progress, outstanding issues, and all labor compliance and EEO related matters.

During the course of the Project, CONSULTANT may find occasion to meet with State CMU, Caltrans, City or County representatives, the design engineer, Project consultants, or other third parties who have assisted with the various projects. These entities may, from time to time, offer suggestions and/or recommendations regarding the Project or elements of the Project.

While SBCTA enjoys a close relationship with and has considerable confidence in the capabilities of these other parties, CONSULTANT shall not act on any suggestions, solicited or unsolicited, without obtaining specific direction from SBCTA. All oral and written communication with outside agencies or consultants related to the contract shall be directed only to SBCTA. Distribution of contract or labor compliance review related communication and information should be at the sole discretion of SBCTA representatives.

M. PERSONNEL QUALIFICATIONS AND RESPONSIBILITIES

The quantity and qualifications of field personnel to be assigned will be determined by the scope of the Public Works Project and the degree of difficulty of required tasks to be performed. All personnel and personnel assignments are subject to approval by SBCTA. While some areas of responsibility may overlap, as a guideline, CONSULTANT personnel assigned to this contract should have the following minimum qualifications or a combination of education and experience:

1. Program Manager
 - a. A minimum of six (6) years' experience providing similar LCO services is desired.
 - b. The LCO will demonstrate detailed knowledge of Caltrans, Federal Department of Labor and State of California Division of Labor Standards Enforcement (DSLE) Compliance Monitoring Unit (CMU) requirements and equal employment opportunity compliance monitoring.

- c. A thorough understanding of Caltrans Labor compliance practices and procedures.

EXHIBIT “B”
“PRICE PROPOSAL”

Attachment: 23-1002832 - Gafcon, Inc - PDF (8656 : On-Call Labor Compliance)

PRICE PROPOSAL



**Price List – Attachment B for:
(Time and Materials)**

RFP No. 22-1002768

Key Personnel

Name	Classification/Title	Job Function	Hourly Rate	
Lizette Rodriguez	Director of Labor Relations	Oversight	\$	119.16
Brent Bishop	Senior Project Manager	Project Management	\$	110.13
Cassandra Dotta	Analyst/Field Auditor	Analysis/Field Interviews	\$	52.68
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	

Other Direct Cost Schedule (ODC)

All ODC's are to be proposed at cost-without mark-ups.

Type of ODC	Unit Cost		Estimated Budget Amount	
Mileage	\$.585	\$	TBD
	\$		\$	
	\$		\$	
	\$		\$	
	\$		\$	
	\$		\$	

Gafcon, Inc.

Proposer

04/27/2022

Signature of Authorized Person

Date

Attachment: 23-1002832 - Gafcon, Inc - PDF (8656 : On-Call Labor Compliance)

Minute Action

AGENDA ITEM: 7

Date: June 8, 2022

Subject:

Award Freeway Service Patrol Contracts - RFP No. 22-1002736 for Beats 9,14, and 31

Recommendation:

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

A. Award Contract No. 22-1002736 to Royal Coaches Auto Body & Towing for Freeway Service Patrol (FSP) Beat No. 9, from July 6, 2022, through December 31, 2027, for a not-to-exceed amount of \$3,102,514 for regular FSP services and for construction support for the Interstate 10 Corridor Contract 1 Project.

B. Approve a contract contingency for a not-to-exceed-amount of \$685,430 for Contract No. 22-1002736 for construction support and authorize the Executive Director or designee to release contingency as necessary.

C. Award Contract No. 22-1002738 to Royal Coaches Auto Body & Towing for FSP Beat No. 14, from July 6, 2022, through December 31, 2027, for a not-to-exceed amount of \$2,741,718.

D. Approve a contract contingency for a not-to-exceed amount of \$685,430 for Contract No. 22-1002738 for construction support and authorize the Executive Director or designee to release contingency as necessary.

E. Award Contract No. 22-1002737 to Royal Coaches Auto Body & Towing for FSP Beat No. 31, from July 6, 2022, through December 31, 2027, for a not-to-exceed amount of \$2,741,718.

F. Approve a contract contingency for a not-to-exceed amount of \$685,430 for Contract No. 22-1002737 for construction support and authorize the Executive Director or designee to release contingency.

Background:

The Freeway Service Patrol (FSP) consists of a fleet of tow trucks patrolling urban freeways for the purpose of assisting motorists with their disabled vehicles during peak periods of congestion. The stretch of highway that the fleet patrols up and down is referred to as a “Beat.” The FSP Program is extremely beneficial to the motoring public by reducing the amount of time a motorist is in an unsafe condition in traffic lanes, reducing traffic delays, as well as decreasing fuel consumption, vehicular emissions and secondary incidents. San Bernardino County Transportation Authority (SBCTA) began its program in January 2006 and has nine (9) separate Beats in operation assisting more than 7,100 motorists each month.

The contracts for Beats 14 and 31 were initially set to expire on Feb 28, 2022, and the contract for Beat 9 was initially set to expire on April 30, 2022. The contracts for Beats 9, 14, and 31 were extended until December 31, 2022. Staff felt that the FSP Program would be better served if there was the opportunity to conduct outreach to tow operators in the region. Staff was concerned that the impacts of the COVID-19 pandemic, along with a supply chain micro-chip shortage that is greatly impacting the tow industry, would have an impact on the number of tow firms that would potentially submit proposals.

Entity: San Bernardino County Transportation Authority

Prior to the release of a Request for Proposal (RFP), staff performed outreach that consisted of various components with the goal to increase the participation of tow operators in the FSP Program.

Outreach includes:

1. **Mail Outreach:** Mailed more than 100 FSP Outreach flyers to tow operators in the Inland Empire region that could qualify for the minimum requirements.
2. **Email Outreach:** Emailed more than 100 FSP Outreach flyers to tow operators in the Inland Empire region that could qualify for the minimum requirements.
3. **Telephone Outreach:** Called more than 20 tow operators in the Inland Empire region that could qualify for the minimum requirements.
4. **PlanetBids:** RFP was electronically distributed to approximately 57 bidders registered on PlanetBids.

These efforts helped in bringing knowledge and awareness about the FSP Program to various companies in the area. Although they may not have proposed this time around, they are now aware and can better prepare for future opportunities.

On March 3, 2022, RFP No. 22-1002736 for Beats 9, 14 and 31 was released to cover the following areas:

1. Beat 9: Interstate 10 (I-10) Indian Hill Boulevard (Los Angeles County line) to Haven Avenue.
2. Beat 14: Interstate 215 (I-215) Center Street from Riverside County line to Devore Road.
3. Beat 31: State Route 210 (SR-210) Los Angeles County line to Citrus Avenue.

Please note there is a contingency amount built into the Contract for Beat 9 for SBCTA led Construction FSP (CFSP) services for the I-10 Corridor Contract 1 Project. SBCTA staff coordinated with the I-10 Corridor Contract 1 Project team to determine the best hours of operation needed for CFSP. It was determined that Beat 9 coincides with the construction service area needed for coverage. It is anticipated that CFSP support may be needed through the summer of 2023.

The RFP was posted on SBCTA's website and notifications of the RFP were sent out to 57 vendors registered on PlanetBids and downloaded by nine (9) firms. Public Notice ads were placed in the local newspaper. A non-mandatory Pre-Proposal meeting took place on March 15, 2022, and was attended by two (2) companies. Addendum No. 1 was issued on March 21, 2022, to include the Pre-Proposal Conference sign-in sheet and responses to questions received prior to the submittal deadline. Addendum No. 2 was issued on March 30, 2022, to provide clarification on price sheets as well as extending the RFP due date by one (1) business day.

Nine (9) proposals were received by the date and time specified in the RFP. The Procurement Analyst conducted a responsiveness review and found all nine (9) proposals to be responsive.

The Evaluation Committee that reviewed the proposals consisted of one (1) representative from the California Highway Patrol (CHP) local office, one (1) staff member from Riverside County Transportation Commission (RCTC), and one (1) staff member from SBCTA. After an initial review, the Evaluation Committee made their "short list" recommendations based on the following criteria:

1. Qualifications of the Firm - experience in performing FSP and similar work, working with public agencies and review of client references;
2. Staffing and Project Organization - qualifications of key staff assigned and adequacy of labor commitment;

3. Work Plan - depth of Proposer's understanding of requirements and overall quality of work plan, ability to recruit and retain drivers and ability to meet backup vehicle requirements;
4. Cost and Price - reasonableness of the total price and competitiveness of this amount with other proposals received and the basis on which prices are quoted (labor, equipment, materials, gas, profit, and so on).

All three (3) firms bid on all three (3) of the FSP Beats. All three (3) proposing firms made the short-list. The Evaluation Committee conducted interviews at SBCTA's office. Each Proposer was asked a series of questions and the Evaluation Committee reviewed a video tour of each tow yard.

Royal Coaches Auto Body & Towing ranked number one for Beats 9, 14, and 31. Royal Coaches Auto Body & Towing is best suited to perform the services for Beats 9, 14, and 31 for a variety of reasons, including that the firm ranked first in technical score and overall score. The firm clearly demonstrated a thorough understanding of the scope of work (SOW) and proposed an overall solid team, and has demonstrated exceptional experience. Royal Coaches Auto Body & Towing has extensive experience with law enforcement tow programs. They emphasized the importance of maintaining high standards and providing great customer service. In addition, Royal Coaches Auto Body & Towing received excellent references. The hourly rates for all three (3) contracts is identical. Years one (1) through three (3) of the contract are contracted at \$91.11 per hour, and the hourly rate for years four (4) through five (5) of the contract is \$97.98.

Staff recommends the approval of Contract No. 22-1002736 with Royal Coaches Auto Body & Towing for Beat 9, Contract No. 22-1002738 with Royal Coaches Auto Body & Towing for Beat 14, and Contract No. 22-1002737 with Royal Coaches Auto Body & Towing for Beat 31. Staff is also recommending that the Board of Directors (Board) approve CFSP work for a not-to-exceed amount of \$360,796 for Contract No. 22-1002736, for Beat 9 in order for SBCTA led CFSP support along the I-10 Corridor Contract 1 Project to continue uninterrupted.

Staff is also recommending that the Board approve and authorize the Executive Director or designee to release contingency funds for Contract No.'s 22-1002736, 22-1002738, and 22-1002737 in a not-to-exceed amount of \$685,430 for each contract. The California Department of Transportation (Caltrans) led extra work construction projects are fully funded by the Caltrans Cooperative Agreement No. 20-1002356 (08A3133). Caltrans has notified SBCTA that an extension is in process for Cooperative Agreement No. 20-1002356 (08A3133). Moreover, the contingency will not be utilized if Caltrans' Cooperative Agreements are not renewed.

The SOW is attached and incorporated into each contract as Exhibit A. The pricing information is attached and incorporated into each contract as Exhibit B. Upon Board approval, the contracts will be executed and mobilization will start on July 6, 2022, with full FSP service for Beats 9, 14 and 31 starting on January 1, 2023. The approval of these contracts will ensure no disruption of service to the motoring public.

Financial Impact:

Funds for the regular FSP services in the amount of \$2,741,718 each for three (3) beats, is included in the Proposed Fiscal Year (FY) 2022/2023 Budget under task 0704, 80% is funded by State FSP funds and 20% by Department of Motor Vehicle funds. The contract contingency of \$685,430 each for all three beats/contracts, for Caltrans led CFSP projects is fully funded by the Caltrans Cooperative Agreement No. 20-1002356 (08A3133) (and future Caltrans Cooperative Agreements) and this revenue source is included in the Proposed FY 2022/2023 Budget task 0704. The amount of \$360,796 is fully funded by the SBCTA led I-10 Express Lanes

General Policy Committee Agenda Item

June 8, 2022

Page 4

Construction Project. Future funding to reimburse the contractors in subsequent fiscal years will be included in those respective budgets.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel, Procurement Manager and Risk Manager have reviewed this item and the draft contracts.

Responsible Staff:

Cheryl Wilson, Management Analyst II

Approved
General Policy Committee
Date: June 8, 2022
Witnessed By:

Contract Summary Sheet

7.a

General Contract Information

Contract No: 22-1002736 Amendment No.: _____

Contract Class: Payable Department: Air Quality and Mobility

Vendor No.: 03251 Vendor Name: Royal Coaches Auto Body & Towing

Description: FREEWAY SERVICE PATROL BEAT 9

List Any Related Contract Nos.: _____

Dollar Amount

Original Contract	\$	3,102,514.00	Original Contingency	\$	685,430.00
Prior Amendments	\$	-	Prior Amendments	\$	-
Current Amendment			Current Amendment	\$	-
Total/Revised Contract Value	\$	3,102,514.00	Total Contingency Value	\$	685,430.00
Total Dollar Authority (Contract Value and Contingency)				\$	3,787,944.00

Contract Authorization

Board of Directors _____ Date: 7/6/2022 _____ Committee _____ Item # _____

Contract Management (Internal Purposes Only)

Other Contracts _____ Sole Source? No _____ No Budget Adjustment _____

State/Local _____ Professional Services (Non-A&E) _____

Accounts Payable

Estimated Start Date: 7/6/2022 Expiration Date: 12/31/2027 Revised Expiration Date: _____

NHS: N/A QMP/QAP: N/A Prevailing Wage: No

Total Contract Funding: _____ Total Contingency: _____

Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name	\$	3,102,514.00	\$	685,430.00
GL:	4120	40	0820	0823	52001	41100000	MSI Valley IC	360,796.00	-		
GL:	2810	15	0704	0000	52001	42212001	SAFE	548,315.60	-		
GL:	2820	15	0704	0000	52001	42213016	FSP	274,297.80	-		
GL:	2820	15	0704	0000	52001	42213017	FSP	274,157.80	-		
GL:	2702	15	0704	0170	52001	42217712	FSP SB1	274,157.80	-		
GL:	2702	15	0704	0171	52001	42217712	FSP SB1	274,157.80	-		
GL:	2702	15	0704	0170	52001	42217714	FSP SB1	274,157.80	-		
GL:	2702	15	0704	0171	52001	42217714	FSP SB1	274,157.80	-		
GL:	2702	15	0704	0170	52001	42217716	FSP SB1	274,157.80	-		
GL:	2702	15	0704	0171	52001	42217716	FSP SB1	274,157.80	-		
GL:	2625	15	0704	0172	52001	42211503	Caltrans	-	685,430.00		

Cheryl Wilson

Steve Smith

Project Manager (Print Name)

Task Manager (Print Name)

The amount for revenue 41100000 is for the I-10 express lanes FSP construction support estimated for approximately six (6) months estimate from 1/1/23-6/30/23. The revenue 41100000 is not factored into the calculation for the 20% match for the SB1 and FSP Grants. No match requirement for revenue 42211503 (and future Caltrans CFSP MOUs), this revenue source is 100% reimbursable by Caltrans for Construction Freeway Service Patrol (CFSP) extra work support.

Attachment: 22-1002736 CSS [Revision 1] (8546 : Award Freeway Service Patrol Contracts - RFP No. 22-1002736 for Beats 9,14, and 31)

CONTRACT NO. 22-1002736**BY AND BETWEEN****SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY****AND****ROYAL COACHES AUTO BODY & TOWING****FOR****FREEWAY SERVICE PATROL BEAT 9**

This contract (referred to as "Contract"), is made and entered into by and between the San Bernardino County Transportation Authority ("SBCTA"), whose address is: 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715; and Royal Coaches Auto Body & Towing ("CONTRACTOR"), whose address is: 1487 Ramona Blvd. Baldwin Park, CA 91706. SBCTA and CONTRACTOR are each a "Party" and collectively the "Parties".

RECITALS:

WHEREAS, SBCTA requires certain work services as described in Exhibit "A" of this Contract and;

WHEREAS, CONTRACTOR has confirmed that CONTRACTOR has the requisite professional qualifications, personnel and experience and is fully capable and qualified to perform the services identified herein; and

WHEREAS, CONTRACTOR desires to perform all Work identified herein and to do so for the compensation and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1. PROJECT DESCRIPTION/SCOPE OF WORK

- 1.1 CONTRACTOR agrees to perform the work and services set forth in Exhibit A "Scope of Work" ("Work"), in accordance with all applicable professional standards which are generally accepted in the State of California, in accordance with the terms and conditions expressed herein and in the sequence, time, and manner defined herein. The word "Work" includes without limitation, the performance, fulfillment and discharge by CONTRACTOR of all obligations, duties, tasks, and services imposed upon or assumed by CONTRACTOR hereunder; and the Work performed hereunder shall be completed to the satisfaction of SBCTA, with SBCTA's satisfaction being based on prevailing applicable professional standards.
- 1.2 CONTRACTOR warrants that all employees and sub-contractors shall have sufficient skill and experience to perform the Work assigned to them. CONTRACTOR further represents and warrants to SBCTA that its employees and sub-contractors have all licenses, permits,

qualifications (including medical certification) and approvals of whatever nature that are required to perform the Work, and that such licenses and approvals shall be maintained throughout the term of this Contract. CONTRACTOR shall perform, at its own cost and expense and without compensation from SBCTA, any Work necessary to correct errors or omissions which are caused by the CONTRACTOR's failure to comply with the standard of care provided for herein, and shall be fully responsible to SBCTA for all damages and other liabilities provided for in the indemnification provisions of this Contract arising from the CONTRACTOR's errors and omissions. Any employee of CONTRACTOR or its sub-contractors who is determined by SBCTA to be a threat to the safety of persons or property shall be promptly removed by the CONTRACTOR from the duties under the Freeway Services Patrol ("FSP") Program as defined in Exhibit "A" and shall not be re-employed to perform any of the Work on the FSP Program.

- 1.3 The Project Manager for this Contract is Cheryl Wilson or such other designee as shall be designated in written notice to CONTRACTOR from time to time by the Executive Director of SBCTA or his or her designee. The Project Manager shall have authority to act on behalf of SBCTA in administering this Contract, including giving notices (including without limitation, notices of default and/or termination), technical directions and approvals; demanding performance and accepting work performed, but is not authorized to receive or issue payments or execute amendments to the Contract itself.

ARTICLE 2. CONTRACT TERM

The Contract term shall commence upon issuance of a written Notice To Proceed (NTP) issued by SBCTA's Procurement Analyst, and shall continue in full force and effect through December 31, 2027 or until otherwise terminated, or unless extended as hereinafter provided by written amendment, except that all indemnity and defense obligations hereunder shall survive termination of this Contract. CONTRACTOR shall not be compensated for any Work performed or costs incurred prior to issuance of the NTP.

ARTICLE 3. COMPENSATION

- 3.1 Total compensation to CONTRACTOR for full and complete performance of the Scope of Work, identified herein and, in compliance with all the terms and conditions of this Contract, shall be on a FSP Time & Materials basis for all obligations incurred in, or application to, CONTRACTOR's performance of Work, and for which CONTRACTOR shall furnish all personnel, facilities, equipment, materials, supplies, and Services (except as may be explicitly set forth in this Contract as furnished by SBCTA) shall not exceed the amount set forth in section 3.2 below.
- 3.2 The total Contract Not-To-Exceed Amount is Three Million One Hundred Two Thousand Five Hundred Fourteen Dollars (\$3,102,514). All Work provided under this Contract is to be performed as set forth in Exhibit A "Scope of Work". The hourly labor rates identified in Exhibit B shall remain fixed for the term of this Contract and include CONTRACTOR's direct labor costs, indirect costs, and profit. SBCTA will not compensate CONTRACTOR for any expenses not shown in Exhibit B or agreed to and approved by SBCTA as required under this Contract.

- 3.3 The hourly rates under this contract are identified in Exhibit “B”. Identified below are the amounts authorized to be compensated for the following:
- 3.3.1 Extra Time: Will be compensated in one-minute increments when a truck goes beyond the end of its normal shift
 - 3.3.2 Non-Penalized Down Time: Assessed in one-minute increments when a truck is out of service” without violation, as set forth in Exhibit “C”.
 - 3.3.3 Penalized Down Time: Assessed at three (3) times the hourly rate, broken down into one minute increments, when a truck is “out of service” in violation of the Contract, as set forth in Exhibit “C”.
 - 3.3.4 Final extra time and penalty times shall be assessed at the sole discretion of SBCTA.
- 3.4 Intentionally Omitted
- 3.5 The Cost Principles and Procedures set forth in 48 CFR, Ch. 1, subch. E, Part 31, as constituted on the effective date of this Contract, shall be utilized to determine allowability of costs under this Contract and may be modified from time to time by written amendment of the Contract.
- 3.5.1 CONTRACTOR agrees to comply with Federal requirements in accordance with 2 CFR, Parts 200 and 1201, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
 - 3.5.2 Any costs for which payment has been made to CONTRACTOR that are determined by subsequent audit to be unallowable under 48 CFR, Ch. 1, subch. E, Part 31, or 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, shall be repaid by CONTRACTOR to SBCTA.
- 3.6 Any Work provided by CONTRACTOR not specifically covered by the Scope of Work shall not be compensated without prior written authorization from SBCTA. It shall be CONTRACTOR’s responsibility to recognize and notify SBCTA in writing when services not covered by the Scope of Work have been requested or are required. All changes and/or modifications to the Scope of Work shall be made in accordance with the “CHANGES” Article in this Contract. Any additional services agreed to in accordance with this Contract shall become part of the Work.
- 3.7 All subcontracts in excess of \$25,000 shall contain the above provisions.

ARTICLE 4. INVOICING

- 4.1 Payment to CONTRACTOR as provided herein shall be payable in monthly billing period payments, forty-five (45) calendar days after receipt of an acceptable invoice by SBCTA of an invoice prepared in accordance with instructions below. Payment shall not be construed to be an acceptance of Work.
- 4.2 CONTRACTOR shall prepare invoices in a form satisfactory to and approved by SBCTA, and it shall be accompanied by documentation supporting each element of measurement and/or cost. Each invoice will be for a monthly billing period and will be marked with SBCTA'S contract number, description and task order number, if applicable. Invoices shall be submitted within fifteen (15) calendar days for the period covered by the invoice, except for the month of June, for which the invoice must be submitted by July 10th. Invoices shall include request for payment for Work (including additional services authorized by SBCTA) completed by CONTRACTOR during each billing period and shall include back-up information sufficient to establish the validity of the invoice. Any invoice submitted which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to CONTRACTOR. Any costs incurred by CONTRACTOR in connection with the resubmission of a proper invoice shall be at CONTRACTOR'S sole expense. The final invoice shall be marked "FINAL" and will be submitted within 60 calendar days after SBCTA has received and approved all Work and deliverables. Invoices should be e-mailed to SBCTA at the following address:
ap@gosbcta.com
- 4.3 CONTRACTOR shall include a statement and release with each invoice, satisfactory to SBCTA, that CONTRACTOR has fully performed the Work invoiced pursuant to the Contract for the period covered, that all information included with the invoice is true and correct, and that all payments to and claims of CONTRACTOR for its Work during the period will be satisfied upon making of such payment. SBCTA shall not be obligated to make payments to CONTRACTOR until CONTRACTOR furnishes such statement and release.
- 4.4 INTENTIONALLY OMITTED
- 4.5 No payment will be made prior to approval of any Work, nor for any Work performed prior to the NTP or the issuance of an applicable CTO, nor for any Work under any amendment to the Contract until SBCTA'S Awarding Authority takes action.
- 4.6 INTENTIONALLY OMITTED
- 4.7 INTENTIONALLY OMITTED
- 4.8 CONTRACTOR agrees that throughout the term of this Contract, it shall not enter into any other FSP service contracts with any other public entities within the Southern California region, pursuant to which CONTRACTOR agrees to charge "FSP" service fees less than those charged under this Contract for substantially the same level of "FSP" services contemplated by this Contract. Should SBCTA establish that CONTRACTOR has agreed to charge such lower fees to another government agency, CONTRACTOR agrees to reduce its fees under the Contract to the lower fees charged to the other governmental agency and

to refund SBCTA an amount equal to the difference between the fees provided in this Contract and the lower fees charged to the other government agency.

4.9 **EXTRA WORK:**

At any time during the term of this Contract, SBCTA may request CONTRACTOR to perform Extra Work. "Extra Work" shall mean any work which is determined by SBCTA to be necessary for proper completion of the Work, but which the parties did not reasonably anticipate would be necessary at the time of the execution of this Contract. Such work includes Construction FSP services, Weekend FSP services, and coverage of other Beats for which Contractors are selected in SBCTA's sole determination based on their Beat proximity and performance. "Extra Work" shall be compensated at the hourly rate as identified in Exhibit "B". CONTRACTOR shall not perform, nor be compensated for, Extra Work except as specifically authorized by SBCTA in writing prior to performance. Authorization for Extra Work up to \$25,000.00 will be subject to prior verification of then-existing contract authority and must be pursuant to SBCTA program manager's prior written approval, which may be provided via email. Authorization for "Extra Work" above \$25,000.00 must be issued by a written contingency amendment or contract amendment as applicable. All terms and conditions of this Contract shall apply to any "Extra Work" performed.

4.10 **COVERAGE OF OTHER BEATS**

At times, other FSP Contractors will not be able to cover their shifts or complete their contractual obligations. A CONTRACTOR assigned to provide coverage on another contract/Beat is considered Extra Work and required to follow all FSP operational rules, policies and procedures for that Beat. CONTRACTOR's hourly rate for coverage shall be contracted FSP service hourly rate in this agreement.

In order for a CONTRACTOR to be considered for coverage of other Beats, the following criteria must be followed:

- CONTRACTOR is willing to provide coverage;
- CONTRACTOR is in good standing with CHP and SBCTA;
- There are funds available to cover the cost of the providing the coverage;
- CONTRACTORS should consider distance to the location of additional coverage and Log Book requirements before accepting service under this section;

4.11 **CONSTRUCTION FSP:** Construction FSP (CFSP) services are FSP services that are provided along a segment of highway that falls within a construction zone. This work is paid for with funds from specific projects and not the FSP State Highway Account/FSP SB1 funds. This is considered to be Extra Work as described in Section 4.9, and will all require the authorization of SBCTA's Program Manager in writing as well as a written contingency amendment or contract amendment as appropriate. There are three types of CFSP services that can occur:

1. Caltrans requested CFSP: Caltrans led projects that are part of the Caltrans/SBCTA CFSP Cooperative agreement No. 20-1002437 (and future

Caltrans Cooperative Agreements). These projects will also require the issuance of a Caltrans Task Order (CTO), and is contingent upon Caltrans funding availability.

2. SBCTA requested CFSP: SBCTA led projects that will be funded by SBCTA.
3. City requested CFSP: City led projects that will be funded by the City.

Construction FSP services will typically be performed during non-regular SBCTA FSP hours. Should there be any cancellation of work, the following schedule will be followed for compensation of cancelled work :

- If the CONTRACTOR is scheduled to patrol the construction site, and is notified of a cancellation with less than a 24-hour notice, the CONTRACTOR will be compensated for three (3) hours of the agreed upon hourly truck rate.
- If the CONTRACTOR is notified during a CFSP beat that CFSP has been cancelled, the FSP operator will be paid for the entire shift period up to a maximum of eight (8) hours.

For purposes of CFSP, a shift period is defined as: the actual time of the CFSP shift assigned or a maximum of eight (8) contract truck hours, whichever is less.

The supervising FSP CHP Officer for the CFSP beat will make the final determination as to whether the CONTRACTOR will continue the CFSP beat or will return to its office.

ARTICLE 5. MOBILIZATION COSTS PAYMENT

The mobilization costs payment was made to CONTRACTOR to help offset pre-start date costs. CONTRACTOR shall pay back the Zero (\$0) dollar payment made at the time that the limited Notice to Proceed was provided. CONTRACTOR shall pay back this payment in twelve (12) equal monthly installments to be deducted from their monthly invoice by the Project Manager.

Failure to pay back the entirety of the Mobilization costs will result in withholding remaining balance from the final payment in the event of early termination.

ARTICLE 6. TAXES, DUTIES AND FEES

Except to the extent expressly provided elsewhere in this Contract, CONTRACTOR shall pay when due, and the compensation set forth herein, shall be inclusive of all: a) local, municipal, State, and federal sales and use taxes; b) excise taxes; c) taxes on personal property owned by CONTRACTOR; and d) other governmental fees and taxes or charges of whatever nature applicable to CONTRACTOR to enable it to conduct business.

ARTICLE 7. AVAILABILITY OF FUNDS

The award and performance of this Contract is contingent on the availability of funds. If funds are not appropriated and/or allocated and available to SBCTA for the continuance of Work performed by CONTRACTOR, Work directly or indirectly involved may be suspended or terminated by SBCTA at the end of the period for which funds are available. When SBCTA becomes aware that any portion of Work will or may be affected by a shortage of funds, it will promptly notify CONTRACTOR. Nothing herein shall relieve SBCTA from its obligation to compensate

CONTRACTOR for work already performed pursuant to this Contract. No penalty shall accrue to SBCTA in the event this provision is exercised.

ARTICLE 8. PERMITS AND LICENSES

CONTRACTOR shall, without additional compensation, keep current all governmental permits, certificates and licenses (including professional licenses) and required registrations necessary for CONTRACTOR to perform Work identified herein.

ARTICLE 9. DOCUMENTATION AND RIGHT TO AUDIT

- 9.1 CONTRACTOR shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a period of three (3) years from the date of final payment by SBCTA, or until the conclusion of all litigation, appeals or claims related to this Contract, whichever is longer. CONTRACTOR shall provide SBCTA, the California State Auditor, or other authorized representatives of SBCTA, access to CONTRACTOR's records which are directly related to this Contract for the purpose of inspection, auditing or copying during the entirety of the records maintenance period above. CONTRACTOR further agrees to maintain separate records for costs of Work performed by amendment. CONTRACTOR shall allow SBCTA, its representatives and agents to reproduce any materials as reasonably necessary.
- 9.2 The cost proposal and/or invoices for this Contract are subject to audit by SBCTA and/or any state or federal agency funding this Project at any time. After CONTRACTOR receives any audit recommendations, the cost or price proposal shall be adjusted by CONTRACTOR and approved by SBCTA's Project Manager to conform to the audit recommendations. CONTRACTOR agrees that individual items of cost identified in the audit report may be incorporated into the Contract at SBCTA's sole discretion. Refusal by CONTRACTOR to incorporate the audit or post award recommendations will be considered a breach of the Contract and cause for termination of the Contract. Any dispute concerning the audit findings of this Contract shall be reviewed by SBCTA's Chief Financial Officer. CONTRACTOR may request a review by submitting the request in writing to SBCTA within thirty (30) calendar days after issuance of the audit report

ARTICLE 10. RESPONSIBILITY OF CONTRACTOR

- 10.1 CONTRACTOR shall be responsible for the professional quality, technical accuracy, and assurance of compliance with all applicable federal, State and local laws and regulations and other Work furnished by CONTRACTOR under the Contract. The Contract includes reference to the appropriate standards for Work performance stipulated in the Contract.
- 10.2 Damage Complaints – CONTRACTOR shall notify CHP of a damage complaint from a motorist assisted by CONTRACTOR within 8 hours of CONTRACTOR's receipt of the complaint. CONTRACTOR's notice to CHP shall include the nature of the damage alleged. CONTRACTOR shall call the complainant within 24 hours of receipt of the complaint. If necessary, within 48 hours of receipt of the complaint, CONTRACTOR shall send an authorized representative and/or a representative of CONTRACTOR's insurer to inspect the vehicle and complete an incident report. If the investigation shows that CONTRACTOR caused the damage to the vehicle, CONTRACTOR shall negotiate in a

good faith effort to resolve the claim, and shall report to the CHP the result of the negotiations. All complaints shall be resolved within a reasonable period of time after original notice.

- 10.3 Damage Complaint Review Committee –The committee is comprised of CHP and SBCTA representatives. The committee will investigate damage complaints if necessary and make recommendations to the CONTRACTOR.
- 10.4 In addition to any other requirements of this Contract or duties and obligations imposed on CONTRACTOR by law, CONTRACTOR shall, as an integral part of its Work, employ quality control procedures that identify potential risks and uncertainties related to scope, schedule, cost, quality and safety of the Project and the Work performed by CONTRACTOR within the areas of CONTRACTOR's expertise. At any time during performance of the Scope of Work, should CONTRACTOR observe, encounter, or identify any unusual circumstances or uncertainties which could pose potential risk to SBCTA or the Project, CONTRACTOR shall immediately document such matters and notify SBCTA in writing. CONTRACTOR shall also similarly notify SBCTA in regard to the possibility of any natural catastrophe, or potential failure, or any situation that exceeds assumptions and could precipitate a failure of any part of the Project. Notifications under this paragraph shall be specific, clear and timely, and in a form which will enable SBCTA to understand and evaluate the magnitude and effect of the risk and/or uncertainties involved.

ARTICLE 11. REPORTING

All reports shall be submitted in accordance with Exhibit A "Scope of Work". At a minimum, CONTRACTOR shall submit quarterly asset inventory reports. The report shall be sufficiently detailed for SBCTA to sufficiently address any difficulties or problems encountered with SBCTA owned property, so remedies can be developed.

ARTICLE 12. TECHNICAL DIRECTION

- 12.1 Performance of Work under this Contract shall be subject to the technical direction of SBCTA's Project Manager who is identified in Section 1.2, above. The term "Technical Direction" is defined to include, without limitation:
- 12.1.1 Directions to CONTRACTOR, which redirect the Contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the Scope of Work.
 - 12.1.2 Provision of written information to CONTRACTOR, which assists in the interpretation of reports, or technical portions of the Scope of Work described herein.
 - 12.1.3 Review and, where required by the Contract, approval of technical reports, and technical information to be delivered by CONTRACTOR to SBCTA under the Contract.
 - 12.1.4 SBCTA's Project Manager may modify this Contract for certain administrative modifications without issuing a written amendment. Administrative modifications

are limited to: substitutions of personnel identified in the Contract, including Key Personnel; modifications to classifications, hourly rates and names of personnel; and modifications of the address of the CONTRACTOR. All such modifications will be documented in writing between the Parties.

- 12.2 Technical Direction must be within the Scope of Work under this Contract. Except as provided with regard to Extra Work in Section 4.9, SBCTA's Project Manager does not have the authority to, and may not, issue any Technical Direction which:

12.2.1 Increases or decreases the Scope of Work;

12.2.2 Directs CONTRACTOR to perform Work outside the original intent of the Scope of Work;

12.2.3 Constitutes a change as defined in the "CHANGES" Article of the Contract;

12.2.4 In any manner causes an increase or decrease in the Contract price as identified in the "COMPENSATION" Article or the time required for Contract performance;

12.2.5 Changes any of the expressed terms, conditions or specifications of the Contract; unless identified herein;

12.2.6 Interferes with CONTRACTOR's right to perform the terms and conditions of the Contract unless identified herein; or

12.2.7 Approves any demand or claims for additional payment.

- 12.3 Failure of CONTRACTOR and SBCTA's Project Manager to agree that the Technical Direction is within the scope of the Contract, or a failure to agree upon the Contract action to be taken with respect thereto, shall be subject to the provisions of "DISPUTES" Article herein.

- 12.4 All Technical Direction shall be issued in writing by SBCTA's Project Manager.

- 12.5 CONTRACTOR shall proceed promptly with the performance of Technical Direction issued by SBCTA's Project Manager, in the manner prescribed by this Article and within their authority under the provisions of this Article. If, in the opinion of CONTRACTOR, any instruction or direction by SBCTA's Project Manager falls within one of the categories defined in sections 11.2.1 through 11.2.7 above, CONTRACTOR shall not proceed but shall notify SBCTA in writing within five (5) working days after receipt of any such instruction or direction and shall request SBCTA to modify the Contract accordingly. Upon receiving the notification from CONTRACTOR, SBCTA shall:

12.5.1 Advise CONTRACTOR in writing within thirty (30) calendar days after receipt of CONTRACTOR's letter that the Technical Direction is or is not within the scope of this Contract.

12.5.2. Advise CONTRACTOR within a reasonable time whether SBCTA will or will not issue a written amendment.

ARTICLE 13. CHANGES

- 13.1 The Work shall be subject to changes by additions, deletions, or revisions made by SBCTA. CONTRACTOR will be advised of any such changes by written notification from SBCTA describing the change. Except as provided in Section 4.9, this notification will not be binding on SBCTA until SBCTA's Awarding Authority has approved an amendment to this Contract.
- 13.2 Promptly after such written notification of change is given to CONTRACTOR by SBCTA, the Parties will attempt to negotiate a mutually agreeable adjustment to compensation or time of performance, and amend the Contract accordingly, except as provided in Section 4.9.

ARTICLE 14. EQUAL EMPLOYMENT OPPORTUNITY

- 14.1 During the term of this Contract, CONTRACTOR shall not willfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, gender, sex, marital status, gender identity, gender expression, sexual orientation, age, or military and veteran status. CONTRACTOR agrees to comply with the provisions of Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.
- 14.2 The CONTRACTOR and all subconsultants shall comply with all provisions of Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin. In addition, CONTRACTOR and all subconsultants will ensure their services are consistent with and comply with obligations and procedures outlined in SBCTA's current Board-adopted Title VI Program, including the Public Participation Plan and the Language Assistance Plan.

ARTICLE 15. CONFLICT OF INTEREST

CONTRACTOR agrees that it presently has no interest, financial or otherwise, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Work required under this Contract or be contrary to the interests of SBCTA. CONTRACTOR further agrees that no person having any such interest shall be employed in the performance of this Contract. CONTRACTOR is obligated to fully disclose to SBCTA, in writing, any conflict of interest issues as soon as they are known to CONTRACTOR. .

ARTICLE 16. KEY PERSONNEL

The personnel specified below are considered to be essential to the Work being performed under this Contract. Prior to diverting any of the specified individuals to other projects, or reallocation of any tasks or hours of Work that are the responsibility of key personnel to other personnel, CONTRACTOR shall notify SBCTA in writing in advance and shall submit justifications

(including proposed substitutions, resumes and payroll information to support any changes to the labor rates) in sufficient detail to permit evaluation of the impact on the Project. Diversion or reallocation of key personnel shall not be made without prior written consent of SBCTA's Project Manager. CONTRACTOR shall not substitute any key personnel without the prior written consent of SBCTA. In the event that the Parties cannot agree as to the substitution of key personnel, SBCTA may terminate this Contract. Key Personnel are:

Name	Job Classification/Function
William Salazar	President & CEO
Johnny Perez	FSP Program Manager
David Acevedo	Assistant Program Manager FSP Quality Assurance
German Fajardo	Assistant Program Manager Certificates and License Compliance
Miguel Coronado	Assistant Program Manager CFSP

ARTICLE 17. REPRESENTATIONS

All Work supplied by CONTRACTOR under this Contract shall be supplied by personnel who are qualified, careful, skilled, experienced and competent in their respective trades or professions. CONTRACTOR agrees that they are supplying professional services in the performance of this Contract and agrees with SBCTA that the same shall conform to professional standards that are generally accepted in the profession in the State of California.

ARTICLE 18. PROPRIETARY RIGHTS/CONFIDENTIALITY

- 18.1 If, as a part of this Contract, CONTRACTOR is required to produce materials, documents data, or information ("Products"), then CONTRACTOR, if requested by SBCTA, shall deliver to SBCTA the original of all such Products which shall become the sole property of SBCTA.
- 18.2 All materials, documents, data or information obtained from SBCTA's data files or any SBCTA-owned medium furnished to CONTRACTOR in the performance of this Contract will at all times remain the property of SBCTA. Such data or information may not be used or copied for direct or indirect use outside of this Project by CONTRACTOR without the express written consent of SBCTA.
- 18.3 Except as reasonably necessary for the performance of the Work, CONTRACTOR agrees that it, its employees and agents s will hold in confidence and not divulge to third parties without prior written consent of SBCTA, any information obtained by CONTRACTOR from or through SBCTA unless (a) the information was known to CONTRACTOR prior to obtaining same from SBCTA pursuant to a prior contract; or (b) the information was at the time of disclosure to CONTRACTOR, or thereafter becomes, part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONTRACTOR or its employees and agents, or (c) the information was obtained by CONTRACTOR from a third party who did not receive the same, directly or indirectly, from SBCTA and who had, to CONTRACTOR 's knowledge and belief, the right to disclose the same. Any materials and information referred to in this Article, which are produced by CONTRACTOR, until

released in writing by SBCTA, except to the extent such materials and information become subject to disclosure by SBCTA under the California Public Records Act, or other law, or otherwise become public information through no fault of CONTRACTOR, or its employees or agents.

- 18.4 CONTRACTOR shall not use SBCTA's name or photographs in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SBCTA.
- 18.5 All press releases, or press inquiries relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SBCTA unless otherwise agreed to in writing by both Parties.

ARTICLE 19. TERMINATION

- 19.1 Termination for Convenience - SBCTA shall have the right at any time, with or without cause, to terminate further performance of Work by giving thirty (30) calendar days written notice to CONTRACTOR specifying the date of termination. On the date of such termination stated in said notice, CONTRACTOR shall promptly discontinue performance of Work.
 - 19.1.1 If CONTRACTOR has fully and completely performed all obligations under this Contract up to the date of termination, CONTRACTOR shall be entitled to receive from SBCTA as complete and full settlement for such termination a pro rata share of the Contract cost based upon the percentage of all contracted Work satisfactorily executed to the date of termination.
 - 19.1.2 CONTRACTOR shall be entitled to receive the actual costs incurred by CONTRACTOR to return CONTRACTOR's tools and equipment, if any, to it or its suppliers' premises in accordance with SBCTA's instructions plus the actual cost necessarily incurred in effecting the termination.
- 19.2 Termination for Cause - In the event CONTRACTOR shall file a petition in bankruptcy court, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy court shall be filed against CONTRACTOR or a receiver shall be appointed on account of its insolvency, or if CONTRACTOR shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice, SBCTA may, without prejudice to any other rights or remedies SBCTA may have, and in compliance with applicable Bankruptcy Laws: (a) hold in abeyance further payments to CONTRACTOR; (b) stop any Work of CONTRACTOR related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONTRACTOR specifying the date of termination. In the event of such termination by SBCTA, SBCTA may take possession of SBCTA owned tools and equipment by whatever method SBCTA may deem expedient. A waiver by SBCTA of one default of CONTRACTOR shall not be considered to be a waiver of any subsequent default of

CONTRACTOR, of the same or any other provision, nor be deemed to waive, amend, or modify any term of this Contract.

19.2.1 CONTRACTOR shall deliver to SBCTA all SBCTA owned tools and equipment under this Contract prepared by CONTRACTOR or furnished to CONTRACTOR by SBCTA within ten (10) working days of said notice.

19.3 All claims for compensation of costs under any of the foregoing provisions shall be supported by documentation submitted to SBCTA, satisfactory in form and content to SBCTA and verified by SBCTA. In no event shall CONTRACTOR be entitled to any payment for prospective profits or any damages because of such termination.

ARTICLE 20. STOP WORK ORDER

Upon failure of CONTRACTOR to comply with any of the requirements of this Contract, SBCTA shall have the right to stop any or all Work affected by such failure until such failure is remedied or to terminate this Contract in accordance with section "Termination For Cause" above.

ARTICLE 21. CLAIMS

SBCTA shall not be bound to any adjustments in the Contract amount or schedule unless expressly agreed to by SBCTA in writing. SBCTA shall not be liable to CONTRACTOR for any claim asserted by CONTRACTOR after final payment has been made under this Contract.

ARTICLE 22. INSURANCE

22.1 Prior to commencing the Work, at all times during the performance of the Work and for such additional periods as required herein, CONTRACTOR shall, at CONTRACTOR's sole expense, procure and maintain road form insurance coverage at least as broad as the following minimum requirements specified below:

22.1.1 Worker's Compensation/Employer's Liability Insurance – The policies must include the following:

- Coverage A. Statutory Benefits
- Coverage B. Employer's Liability
- Bodily Injury by accident - \$1,000,000 per accident
- Bodily Injury by disease - \$1,000,000 policy limit/\$1,000,000 each employee

Such policies shall contain a waiver of subrogation in favor of the parties named as Indemnitees below. Such insurance shall be in strict accordance with the applicable workers' compensation laws in effect during performance of the Work by CONTRACTOR or any subcontractor of any tier. All subconsultants of any tier performing any portion of the Work for CONTRACTOR shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with a waiver of subrogation in favor of CONTRACTOR and all parties named as Indemnitees below. Where coverage is provided through the California State Compensation Insurance Fund, the requirement for a minimum A.M. Best rating does not apply..

22.1.2 Garage Liability/Commercial General Liability. The policy must include the following:

- CONTRACTOR shall maintain commercial general liability (CGL) insurance (Insurance Services Office (ISO) Form CG 00 01), and if necessary excess/umbrella commercial liability insurance, with a combined limit of liability of not less than **\$5,000,000 each occurrence**.
- The policy shall be appropriate for the CONTRACTORS business and at a minimum shall include, coverage for any and all of the following: bodily injury, property damage, personal injury, broad form contractual liability (including coverage to the maximum extent possible for the indemnifications in the CONTRACT), premises-operations (including explosion, collapse and underground coverage), duty to defend in addition to (without reducing) the limits of the policy (ies), and products and completed operations.
 - \$5,000,000 per occurrence for property damage or bodily injury
 - \$1,000,000 per occurrence limit for personal injury and advertising injury
 - \$2,000,000 per occurrence limits for products/completed operations coverage (ISO Form 20 37 10 01) if SBCTA's Risk Manager determines it is in SBCTA's best interests to require such coverage,
 - If a general aggregate applies, it shall apply separately to this project/location. The project name must be indicated under "Description of Operations/Locations" (ISO Form CG 25 03 or CG 25 04).
- Coverage is to be on an "occurrence" form. "Claims made" and "modified occurrence" forms are not acceptable.
- A copy of the declaration page or endorsement page listing all policy endorsements for the CGL policy must be included.

All sub-contractors of any tier performing any portion of the WORK for CONTRACTOR shall also obtain and maintain the CGL insurance coverage with limits equal to or above the limits required of the CONTRACTOR.

22.1.3 Umbrella/Excess CGL Insurance:

- If the CONTRACTOR elects to include an umbrella policy to cover any of the excess limits required beyond the commercial general liability policy and/or the commercial tow truck automobile liability policy, then the policy must include the following:
 - The umbrella or excess policy shall follow form over the CONTRACTOR's primary general liability coverage and shall provide a separate aggregate limit for products and completed operations coverage.
 - The umbrella or excess policy shall not contain any restrictions or exclusions beyond what is contained in the primary policy.
 - The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.
 - There shall be no statement limiting the coverage provided to the parties listed as additionally insured or as indemnitees below.

22.1.4 Commercial Tow Truck Auto Insurance - The policy must include the following and may be combined with the excess liability policy to provide limits of coverage not less than:

- Auto Liability limits of not less than \$5,000,000 per each accident.
- Combined Bodily Injury and Property Damage Liability insurance
- Coverage must include scheduled autos, hired or non-owned autos
- Garage Keepers liability shall be provided under this policy or the liability policy as a result of an endorsement or in a stand-alone Garage Keepers Coverage policy. Garage Keepers liability limits shall be equal to the estimated value of all vehicles that could be located at a single location or \$300,000 whichever is greater.
- On-Hook/Tow & Hitch Coverage -The policy must include the following:
 - No less than \$100,000 Limit
 - Coverages for physical damages from accidents or damages to property occurring while a vehicle is in tow with limits of no less than the replacement cost coverage with no coinsurance penalty provisions, or depreciation costs.
 - Cargo coverage shall be provided under this policy as a result of an endorsement or in a stand-alone Cargo Coverage policy.

The commercial tow truck automobile liability insurance shall be written on the most recent edition of ISO form or equivalent acceptable to SBCTA and shall include, without limitation, contractual liability coverage and additional insured status for the Additional Insureds named below. CONTRACTOR waives all rights of subrogation against the Additional Insureds named below, for recovery of loss, injury and/or damages to the extent such loss, injury and/or damages are covered by the commercial tow truck automobile liability insurance required herein.

22.1.5 Pollution Liability -- The policy must include the:

- \$1,000,000 per claim or occurrence limits/\$2,000,000 in the aggregate.
- Coverage shall be written on an ISO form appropriate for the CONTRACTOR's business and work under this contract.

22.2 General Provisions

22.2.1 Qualifications of Insurance Carriers. If policies are written by insurance carriers authorized and admitted to do business in the state of California, then the insurance carriers must have a current A.M. Best rating of A-VII or better and if policies are written by insurance carriers that are non-admitted but authorized to conduct business in the state of California, then they must meet the current A.M. Best rating of A-: X or better, unless otherwise approved in writing by SBCTA's Risk Manager.

22.2.2 Additional Insured Coverage. All policies, except those for Workers' Compensation insurance, shall be endorsed by ISO Form CG 20 12 11 85, or if not available, then ISO Form CG 20 26, to name San Bernardino County Transportation Authority and its officers, directors, members, employees, agents and volunteers, as additional insureds ("Additional Insureds"). California Highway Patrol (CHP) and California Department

- of Transportation (Caltrans) shall also be named additional insureds. With respect to general liability arising out of or connected with work or operations performed by or on behalf of the CONTRACTOR permitted under this CONTRACT, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for SBCTA to vicarious liability but shall allow coverage for SBCTA to the full extent provided by the policy.
- 22.2.3 Proof of Coverage. Evidence of insurance in a form acceptable to SBCTA's Risk Manager, including certificates of insurance and the required endorsements, shall be provided to SBCTA's Procurement Analyst prior to issuance of the NTP or prior to commencing any Work, as SBCTA specifies. Certificate(s) of insurance, as evidence of the required insurance shall: be executed by a duly authorized representative of each insurer; show compliance with the insurance requirements set forth in this Article; set forth deductible amounts applicable to each policy; list all exclusions which are added by endorsement to each policy; and also include the Contract Number and the SBCTA Project Manager's name on the face of the certificate. If requested in writing by SBCTA, CONTRACTOR shall submit complete copies of all required insurance policies within ten (10) business days of a written request by SBCTA.
- 22.2.4 Deductibles/Self-Insured Retention. Regardless of the allowance of exclusions or deductibles by SBCTA, CONTRACTOR shall be responsible for any deductible or self-insured retention (SIR) amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Article. CONTRACTOR will pay, and shall require its sub-CONTRACTORS to pay, all deductibles, co-pay obligations, premiums and any other sums due under the insurance required in this Article. Any deductibles or self-insured retentions must be declared to and approved in writing by SBCTA's Risk Manager. Without SBCTA's Risk Manager's expressed written approval no deductibles or SIR will be allowed. At the option of SBCTA, if the deductible or SIR is greater than \$10,000 or one (1) percent of the amount of coverage required under this Contract, whichever is less, the CONTRACTOR shall guarantee that either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to SBCTA, its directors, officials, officers, employees and agents; or, (2) the CONTRACTOR shall procure a bond guaranteeing the amount of the deductible or self-insured retention. SBCTA shall have the right to review any and all financial records that SBCTA, at its sole discretion deems necessary to approve any deductible or SIR. SBCTA will have the right, but not the obligation, to pay any deductible or SIR due under any insurance policy. If SBCTA pays any sums due under any insurance required above, SBCTA may withhold said sums from any amounts due to CONTRACTOR. The Contractor's policies will neither obligate nor prohibit SBCTA or any other Additional Insured, from paying any portion of any Contractor's deductible or SIR..
- 22.2.5 CONTRACTOR's and Sub-contractor' Insurance will be Primary. All policies required to be maintained by the CONTRACTOR or any subconsultant with the exception of Professional Liability and Worker's Compensation shall be endorsed, with a form at least as broad as ISO Form CG 20 01 04 13), to be primary coverage, and any coverage

carried by any of the Additional Insureds shall be excess and non-contributory. Further, none of CONTRACTOR's or subconsultants' pollution, automobile, general liability or other liability policies (primary or excess) will contain any cross-liability exclusion barring coverage for claims by an additional insured against a named insured.

- 22.2.6 Waiver of Subrogation Rights. To the fullest extent permitted by law, CONTRACTOR hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other consultant, subconsultant or sub-subconsultant performing work or rendering services on behalf of SBCTA, in connection with the planning, development and construction of the Project. To the fullest extent permitted by law, CONTRACTOR shall require similar written express waivers and insurance clauses from each of its subconsultants of every tier. CONTRACTOR shall require all of the policies and coverages required in Exhibit B to waive all rights of subrogation against the Additional Insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided shall not prohibit CONTRACTOR from waiving the right of subrogation prior to a loss or claim.
- 22.2.7 Cancellation. If any insurance company elects to cancel or non-renew coverage for any reason, CONTRACTOR will provide SBCTA thirty (30) days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONTRACTOR will provide SBCTA ten (10) days prior written notice. In any event, CONTRACTOR will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance coverage required herein which CONTRACTOR receives within one business day after CONTRACTOR receives it by submitting it to SBCTA at procurement@SBCTA.ca.gov to the attention of SBCTA's Procurement Analyst, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of this Contract.
- 22.2.8 Enforcement. SBCTA may take any steps as are necessary to assure CONTRACTOR's compliance with its insurance obligations as identified within this Article. Failure to continuously maintain insurance coverage as provided herein is a material breach of contract. In the event the CONTRACTOR fails to obtain or maintain any insurance coverage required, SBCTA may, but is not required to, maintain this coverage and charge the expense to the CONTRACTOR or withhold such expense from amounts owed CONTRACTOR, or terminate this Contract. The insurance required or provided shall in no way limit or relieve CONTRACTOR of its duties and responsibility under the Contract, including but not limited to obligation to indemnify, defend and hold harmless the Indemnitees named below. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve CONTRACTOR for liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions as available to it under any other provision of the Contract or law. Nothing contained herein shall relieve CONTRACTOR, of their obligations to exercise due care in the performance of their duties in connection with the Work, and to complete the Work in strict compliance with the Contract.
- 22.2.9 No Waiver. Failure of SBCTA to enforce in a timely manner any of the provisions of this Article shall not act as a waiver to enforcement of any of these provisions at a later date.

22.2.10 Higher limits. If CONTRACTOR maintains higher limits than the minimums shown above, SBCTA shall be entitled to coverage for the higher limits maintained by CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SBCTA.

22.2.11 Special Risks or Circumstances. SBCTA, acting through its Executive Director, reserves the right to modify any or all of the above insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances, as determined by the Executive Director to be in the best interests of SBCTA.

ARTICLE 23. INDEMNITY

23.1 INTENTIONALLY OMITTED.

23.2 For all Work and obligations under this Contract, CONSULTANT agrees to indemnify, defend (with legal counsel reasonably approved by SBCTA) and hold harmless SBCTA, California Department of Transportation (Caltrans), SBCTA's Entities and their authorized officers, employees, agents and volunteers ("Indemnitees"), from any and all claims, actions, losses, damages and/or liability (Claims) arising out of this Contract from any cause whatsoever, including acts, errors, or omissions of any person and for any costs or expenses incurred by SBCTA on account of any claim, except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. CONSULTANT's indemnification obligation applies to SBCTA's "active" as well as "passive" negligence, but does not apply to SBCTA's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

ARTICLE 24. ERRORS AND OMISSIONS

CONTRACTOR shall be responsible for the professional quality, technical accuracy, and coordination of all Work required under this Contract. CONTRACTOR shall be liable for SBCTA costs resulting from errors or deficiencies, in Work furnished under this Contract, including, but not limited to any fines, penalties, damages, and costs required because of an error or deficiency in the Work provided by CONTRACTOR under this Contract.

ARTICLE 25. OWNERSHIP OF DOCUMENTS

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by CONTRACTOR under this Contract shall become the sole property of SBCTA when prepared, whether delivered to SBCTA or not.

ARTICLE 26. SUBCONTRACTS

CONTRACTOR shall not subcontract performance of all or any portion of work/employees under this contract.

ARTICLE 27. RECORD INSPECTION AND AUDITING

SBCTA, or any of its designees, representatives or agents shall at all times have access during normal business hours to CONTRACTOR's operations and products wherever they are in preparation or progress, and CONTRACTOR shall provide sufficient, safe, and proper facilities for such access and inspection thereof. Inspection or lack of inspection by SBCTA shall not be deemed to be a waiver of any of their rights to require CONTRACTOR to comply with the Contract or to subsequently reject unsatisfactory Work or products.

ARTICLE 28. INDEPENDENT CONTRACTOR

CONTRACTOR is and shall be at all times an independent contractor. Accordingly, all Work provided by CONTRACTOR shall be done and performed by CONTRACTOR under the sole supervision, direction and control of CONTRACTOR. SBCTA shall rely on CONTRACTOR for results only, and shall have no right at any time to direct or supervise CONTRACTOR or CONTRACTOR's employees in the performance of Work or as to the manner, means and methods by which Work is performed. All personnel furnished by CONTRACTOR pursuant to this Contract, and all representatives of CONTRACTOR, shall be and remain the employees or agents of CONTRACTOR at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of SBCTA.

ARTICLE 29. ATTORNEY'S FEES

If any legal action is instituted to enforce or declare any Party's rights under the Contract, each Party, including the prevailing Party, must bear its own costs and attorneys' fees. This Article shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a Party hereto and payable under the "Indemnity" provision of the Contract.

ARTICLE 30. GOVERNING LAW AND VENUE

This Contract shall be subject to the law and jurisdiction of the State of California. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any Party to this Contract will be the Superior Court of California, San Bernardino County. Each Party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County.

ARTICLE 31. FEDERAL, STATE AND LOCAL LAWS

CONTRACTOR warrants that in the performance of this Contract, it shall comply with all applicable federal, State and local laws, ordinances, rules and regulations.

ARTICLE 32. PRECEDENCE

31.1 The Contract consists of this Contract's Articles, Exhibit A "Scope of Work", and Exhibit B "Price Form", Exhibit "C" Summary of FSP Violations and Penalties, the Standard Operating Procedures Manual, issued by the California Highway Patrol, SBCTA's Request

for Proposal and CONTRACTOR's proposal, all of which are incorporated into this Contract by this reference.

- 31.2 The following order of precedence shall apply: first, the Contract Articles; second the Standard Operating Procedures (SOP) manual; third, Exhibits A and B and C (equal precedence); fourth, SBCTA's Request for Proposal; and last, CONTRACTOR's proposal. In the event of a conflict between the Contract Articles and the Scope of Work, the Contract Articles will prevail.
- 31.3 In the event of an express conflict between the documents listed in this Article, or between any other documents, which are a part of the Contract, CONTRACTOR shall notify SBCTA in writing within three (3) business days of its discovery of the conflict and shall comply with SBCTA's resolution of the conflict.

ARTICLE 33. COMMUNICATIONS AND NOTICES

Notices sent by mail shall be by United States Mail, postage paid, certified mail (return receipt requested). Any and all notices permitted or required to be given hereunder shall be deemed duly given and received: (a) upon actual delivery, if delivery is personally made or if made by fax or email during regular business hours; (b) the first business day following delivery by fax when not made during regular business hours; or (c) on the fourth business day after deposit of such notice into the United States Mail. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective Parties may designate from time to time by a notice given in accordance with this Article. CONTRACTOR shall notify SBCTA of any contact information changes within ten (10) business days of the change.

To CONTRACTOR	To SBCTA
1487 Ramona Blvd	1170 W. 3rd Street, 2nd Floor
Baldwin Park, CA 91706	San Bernardino, CA 92410-1715
Attn: William Salazar	Attn: Cheryl Wilson
	cc: Procurement Manager
Phone: (626) 960-1824	Phone: (909) 884-8276
Email: bill@royalcoaches.com	Email: cwilson@gosbcta.com

ARTICLE 34. DISPUTES

- 33.1 In the event any dispute, other than an audit, arises between the Parties in connection with this Contract (including but not limited to disputes over payments, costs, expenses, Work to be performed, Scope of Work and/or time of performance), the dispute shall be decided by SBCTA's Procurement Manager within thirty (30) calendar days after notice thereof in writing which shall include a particular statement of the grounds of the dispute. If CONTRACTOR does not agree with the decision, then CONTRACTOR shall have ten (10) calendar days after receipt of the decision in which to file a written appeal thereto with SBCTA's Executive Director. If the Executive Director fails to resolve the dispute in a manner acceptable to CONTRACTOR, then such dispute is reviewable by a court of competent jurisdiction.

33.2 During resolution of the dispute, CONTRACTOR shall proceed with performance of this Contract with due diligence.

ARTICLE 35. GRATUITIES

CONTRACTOR, its employees, agents, or representatives shall not offer or give to any officer, official, agent or employee of SBCTA, any gift, entertainment, payment, loan, or other gratuity.

ARTICLE 36. REVIEW AND ACCEPTANCE

All Work performed by CONTRACTOR shall be subject to periodic review and approval by SBCTA at any and all places where such performance may be carried on. Failure of SBCTA to make such review, or to discover defective work, shall not prejudice the rights of SBCTA at the time of final acceptance. All Work performed by CONTRACTOR shall be subject to periodic and final review.

ARTICLE 37. CONFIDENTIALITY

Any SBCTA communications or materials to which CONTRACTOR or agents have access, or materials prepared by CONTRACTOR under the terms of this Contract, shall be held in confidence by CONTRACTOR, who shall exercise reasonable precautions to prevent the disclosure of confidential information to anyone except as expressly authorized by SBCTA. Any communications with or work product of SBCTA's legal counsel to which CONTRACTOR or agents have access in performing work under this Contract shall be subject to the attorney-client privilege and attorney work product doctrine, and shall be confidential. CONTRACTOR shall not release any reports, information or promotional material or allow for the use of any photos related to this Contract for any purpose without prior written approval of SBCTA.

ARTICLE 38. EVALUATION OF CONTRACTOR

CONTRACTOR's performance may be evaluated by SBCTA periodically throughout the Contract performance period. A copy of the evaluation will be given to CONTRACTOR for its information. The evaluation information shall be retained as part of the Contract file and may be used to evaluate CONTRACTOR if it submits a proposal on a future RFP issued by SBCTA.

ARTICLE 39. DRIVING RECORD AND CRIMINAL HISTORY CHECK

Pursuant to California Vehicle Code Sections 2430 *et seq.*, CONTRACTOR and its employees performing Work under this Contract are required to have a current, valid California driver's license and must undergo a Criminal History Check and driver's license check. Only after a completed CHP 234F and CHP 234 supplemental is received and accepted by CHP will a check of driver's license and criminal history be performed. Criminal history checks will be completed by CHP upon the acceptance of a CHP 234F. Any employee of the CONTRACTOR not meeting the requirements identified herein will be automatically excluded from performing Work under this Contract. In addition, SBCTA and/or CHP may, in their sole discretion, require CONTRACTOR to replace any employee or potential employee who is determined to be unsuitable to represent the FSP Program based on the Criminal History Check.

ARTICLE 40. SAFETY

CONTRACTOR shall strictly comply with OSHA regulations and local, municipal, state, and federal safety and health laws, orders and regulations applicable to CONTRACTOR's operations in the performance of Work under this Contract. CONTRACTOR shall comply with all safety instructions issued by SBCTA or their representatives.

ARTICLE 41. DRUG FREE WORKPLACE

CONTRACTOR agrees to comply with the Drug Free Workplace Act of 1990 per Government Code section 8350 et seq.

ARTICLE 42. ASSIGNMENT

CONTRACTOR shall not assign this Contract in whole or in part, voluntarily, by operation of law, or otherwise, without first obtaining the written consent of SBCTA. SBCTA's exercise of consent shall be within its sole discretion. Any purported assignment without SBCTA's prior written consent shall be void and of no effect, and shall constitute a material breach of this Contract. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the Parties.

ARTICLE 43. AMENDMENTS

The Contract may only be changed by a written amendment duly executed by the Parties. Work authorized under an amendment shall not commence until the amendment has been duly executed.

ARTICLE 44. PREVAILING WAGES

INTENTIONALLY OMITTED

ARTICLE 45. CONTINGENT FEE

CONTRACTOR warrants, by execution of this Contract, that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONTRACTOR for the purpose of securing business. For breach or violation of this warranty, SBCTA has the right to terminate this Contract without liability, pay only for the value of the Work actually performed, or in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 46. FORCE MAJEURE

CONTRACTOR shall not be in default under this Contract in the event that the Work performed by CONTRACTOR is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, and natural disasters such as floods, earthquakes, landslides, and fires, or other catastrophic events which are beyond the reasonable control of CONTRACTOR and which CONTRACTOR could not reasonably be expected to have prevented or controlled. "Other catastrophic events" does not include the

financial inability of CONTRACTOR to perform or failure of CONTRACTOR to obtain either any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of CONTRACTOR.

ARTICLE 47. WARRANTY

CONTRACTOR warrants that all Work performed shall be in accordance with the Contract and all applicable professional standards. In the event of a breach of this provision, CONTRACTOR shall take the necessary actions to correct the breach at CONTRACTOR's sole expense. If CONTRACTOR does not take the necessary action to correct the breach, SBCTA, without waiving any other rights or remedies it may have, may take the necessary steps to correct the breach, and the CONTRACTOR shall promptly reimburse SBCTA for all expenses and costs incurred.

ARTICLE 48. ENTIRE DOCUMENT

- 48.1 This Contract constitutes the sole and only agreement governing the Work and supersedes any prior understandings, written or oral, between the Parties respecting the Project. All previous proposals, offers, and other communications, written or oral, relative to this Contract, are superseded except to the extent that they have been expressly incorporated into this Contract.
- 48.2 No agent, official, employee or representative of SBCTA has any authority to bind SBCTA to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Contract, and CONTRACTOR hereby stipulates that it has not relied, and will not rely, on same.
- 48.3 Both Parties have been represented or had the full opportunity to be represented by legal counsel of their own choosing in the negotiation and preparation of this Contract. Therefore, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning, and not for or against either Party.

ARTICLE 49. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

CONTRACTOR shall comply with all applicable provisions of the Americans with Disabilities Act in performing Work under this Contract.

ARTICLE 50. MOST FAVORED NATIONS CLAUSE

CONTRACTOR agrees that, throughout the term of this Contract, it shall not enter into any FSP services agreement with any other government agency pursuant to which CONTRACTOR agrees to charge FSP service fees less than those provided for by this Contract for substantially the same level of FSP service. Should SBCTA establish that CONTRACTOR has agreed to provide substantially similar FSP services to one or more other government agencies at lower fees, CONTRACTOR agrees to reduce the fees charged to SBCTA to the lower amount charged to the other government agency.

ARTICLE 51. EFFECTIVE DATE

The date that this Contract is executed by SBCTA shall be the Effective Date of the Contract.

-----SIGNATURES ARE ON THE FOLLOWING PAGE-----

DRAFT

IN WITNESS WHEREOF, the Parties hereto have executed this Contract below.

**ROYAL COACHES AUTO BODY &
TOWING, a California Corporation**

**SAN BERNARDINO COUNTY
TRANSPORTATION
AUTHORITY**

By: _____
William Salazar
President

Date: _____

By: _____
William Salazar
Secretary

Date: _____

By: _____
Curt Hagman
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____
Juanda Lowder Daniel
Assistant General Counsel

CONCURRENCE

By: _____
Shaneka Morris
Procurement Manager

EXHIBIT A – “SCOPE OF WORK”

EXHIBIT A
SCOPE OF WORK
CONTRACT 22-1002736
FREEWAY SERVICE PATROL

BEAT 9- INTERSTATE 10 (I-10) FROM INDIAN HILL BOULEVARD (LOS ANGELES COUNTY LINE) TO HAVEN AVENUE

1.0 Summary of Scope of Work.

Mobilization (NTP I) July 6, 2022- December 31, 2022:

The deliverables associated with Mobilization of this CONTRACT include the project ramp-up/preparation, the purchase of two FSP Tow Trucks, and equipment installations in accordance with section 4.0 "Equipment Requirements". Moreover driver trainings, and inspections in accordance with section 5.0 "Drivers."

FSP Tow Operations (NTP II) (January 1, 2023- December 31, 2027):

CONTRACTOR shall provide the rapid removal of disabled vehicles and those involved in minor accidents from the freeway. Each Beat shall require the appropriate number of Freeway Service Patrol (FSP) Certified Trucks:

Two (2) primary certified FSP tow trucks and one (1) certified back-up FSP tow truck for Beat 9.

The CONTRACTOR's FSP trucks shall be exclusively dedicated to providing FSP services during the designated hours of operation. All FSP tow truck maintenance activities for the primary and back-up tow trucks shall be conducted during non-designated service hours.

CONTRACTOR's FSP Certified Tow Truck Drivers ("Driver or Drivers") shall assist motorists involved in minor accidents and those with disabled vehicles. When and where conditions warrant, service may take place on the freeway shoulders. Where conditions do not warrant, Drivers will move the vehicles from the freeway to provide services pursuant to the Standard Operating Procedures (SOP) Manual. The Drivers shall continuously patrol their assigned Beat, respond to California Highway Patrol (CHP) dispatched calls for service, and use the designated turnaround locations and designated drop locations assigned by CHP.

The Drivers may be required to change flat tires, provide "jump" starts, provide one gallon of gasoline or diesel fuel, temporarily tape cooling system hoses, and refill radiators. These services are not all-inclusive. Where conditions permit, safe removal of small debris may also be required. The Drivers are to spend a maximum of ten (10) minutes per disablement in attempting to mobilize a vehicle.

If a disabled vehicle cannot be mobilized within the ten-minute (10) time limit, it shall be offered to be towed to a designated drop location identified by the CHP. The motorist can request the FSP Driver to contact the CHP Communications Center to request a CHP Rotation Tow or other services. A Driver shall not be allowed to tow as an independent CONTRACTOR from an incident that occurred during the FSP shift. This is only allowed after the shift is over and the CONTRACTOR is called as a Rotation Tow by CHP. If called as a Rotation Tow Operator after an FSP shift, the Driver must remove all FSP markings such as vests, uniforms and any sort of FSP signage.

All FSP services shall be provided at no cost to the motorist. The Drivers shall not accept any gratuities, gifts or money to perform any other services, recommend secondary tows, or recommend repair/body shop businesses. The CONTRACTOR shall follow the SOP Manual. The CHP is responsible for the day-to-day field supervision of the FSP Program; therefore, policies and procedures are outlined in the SOP Manual. To promote a safe work environment and to maintain a high level of professionalism, the CONTRACTOR and their Drivers must follow the SOP Manual as this document and all updates will be incorporated into the CONTRACTOR's agreement. Please note that the SOP Manual is updated as needed, and that the CONTRACTOR is responsible to operate and adhere to the most recent version of the SOP Manual at all times.

There may be some instances where the Driver may be requested to provide assistance to CHP Officers in the field. When a CHP Officer in the field directs a Driver to complete a task, the Driver shall follow those directions provided, given the task does not endanger the Driver or the public and is within the Driver's skills and training. The Driver shall only advise the officer of the possible dangers. If the task is not within the FSP policy, an FSP CHP Officer should be notified of the incident. Drivers should not tell the CHP Officer they will not perform the task requested UNLESS they believe they are unable to perform the task safely. Afterwards, CHP will take the necessary steps to avoid future misunderstandings between the Officer and FSP.

At times, SBCTA, a city, and/or the California Department of Transportation (Caltrans) will have construction projects on the highways that may require Construction FSP. Typically this will take place along a highway segment that is a construction zone with no inside or outside shoulder areas, or the shoulders available are not wide enough to accommodate vehicles. This work is paid for with funds from specific projects and not the FSP State Highway Account/FSP SB1 funds. This is considered to be Extra Work as described in Section 4.9 of the contract, and will all require the authorization of SBCTA's Program Manager in writing as well as a written contingency amendment or contract amendment as appropriate. There are three types of CFSP services that can occur:

1. Caltrans requested CFSP: Caltrans led projects that are part of the Caltrans/SBCTA CFSP Cooperative agreement No. 20-1002437. These projects will also require the issuance of a Caltrans task order.
2. SBCTA requested CFSP: SBCTA led projects that will be funded by SBCTA.
3. City requested CFSP: City led projects that will be funded by the City.

CONTRACTOR or its designated management-level representative shall attend the required FSP Technical Advisory Committee (TAC) meeting every other month. The FSP TAC will encompass focused and informal/formal discussions concerning but not limited to: scope, services, schedule,

and current progress of services, relevant cost issues, and future project objectives. CONTRACTOR shall be responsible for having a representative attend all meetings (FSP TAC meetings) who has the ability to make management-level decisions on the behalf of the CONTRACTOR while at the meeting. If the CONTRACTOR cannot have a management-level representative at a meeting, CONTRACTOR shall notify SBCTA and CHP at least two (2) business days prior to the meeting. Management-level attendance at these meetings shall be considered part of the CONTRACTOR's contractual responsibility. Meetings are scheduled for the entire calendar year; CHP provides the schedule via email.

Please refer to Contract Exhibit "C" for further details on violations and penalties.

2.0 Contract Representatives.

SBCTA, Caltrans, and the CHP will jointly oversee the FSP services (referred to, singularly or jointly, as "FSP Management"). CHP is responsible for dispatch services to incident locations within the tow truck's patrol limits, otherwise referred to as "Beats". The dispatching will be done in accordance with the contract for the service. An SOP Manual will be provided to the successful CONTRACTOR explaining the types of incidents to which a Driver may be dispatched. Please note that this SOP Manual is updated as needed and that the CONTRACTOR is responsible to adhere to the most current version of the SOP Manual at all times. Also note that SBCTA's contract with the successful Proposer(s) will incorporate the SOP Manual and any updates; thus, adhering to the SOP Manual is a contractual requirement.

3.0 Service Location.

The FSP operates on selected freeway segments referred to as "Beats". Each Beat has specific turnaround locations and designated drop locations identified by the CHP. The limits are identified in the Scope of Work (SOW).

SBCTA reserves the right, at any time during the contract's term, to adjust Beat specifications (length of the Beat for example) and Beat hours to better accommodate demand for the service. These changes can occur during the course of the contract through written permission (e.g., email). The CONTRACTOR may be requested by CHP to go beyond the limits of its assigned Beat area to assist a motorist in an adjacent Beat area. Drivers may be permitted to do this only upon CHP request. SBCTA reserves the right to add or delete holidays to the work schedule. Travel time to and from the Beat will be at the expense of the CONTRACTOR.

4.0 Equipment Requirements.

A. Tow Truck Requirements.

Primary FSP Tow Trucks will be exclusively dedicated to FSP services during the hours of FSP operations. They are not required to be exclusive during non-FSP hours.

The FSP Program will utilize, at a minimum, Class A tow trucks with a minimum gross vehicle weight rating of 14,000 pounds, dual wheel chassis, and four (4) ton recovery equipment rating.

All trucks proposed for use in the FSP Program must be less than one (1) year old with a maximum of 50,000 miles and a clear, non-salvage title on the chassis and working parts of the truck. The truck must be free of any mechanical defects or physical damage at the onset of the contract. Lastly, the truck shall have seating capabilities for five (5) adults.

The CHP, in conjunction with SBCTA, will verify the original purchase dates to ensure compliance.

All FSP Tow Trucks must be Department of Transportation (DOT) compliant, as well as California Air Resources Board (CARB) compliant. This includes an engine that has been certified by CARB, as required by law in the State of California. Any tow truck that is utilized for the FSP Program must comply with emission standards set forth by DOT and CARB, as well as all Local, State and Federal laws applicable to that truck, and as outlined in the RFP.

Prior to commencement of service, the CHP will inspect each tow truck designated for the FSP Program in San Bernardino County to ensure that it meets the tow truck specifications and to ensure that it meets or exceeds safety requirements. These inspections will occur prior to the start of service. Succeeding inspections will occur periodically as determined by the FSP CHP officers. Documentation of the vehicle identification number and successful completion of the inspection will be kept on file at the CHP office and CONTRACTOR's local office. Any unsafe, poorly maintained FSP Certified Tow Truck(s) or improperly equipped FSP Certified Tow Truck(s) shall not be allowed into service, and if discovered during the shift, shall be removed from service or repaired as directed by the CHP. The CONTRACTOR shall be fined three (3) times the hourly contract rate in one (1) minute increments for ALL service time lost. The CONTRACTOR will be required to have a FSP Certified Back-Up Tow Truck available for service during their FSP Beat(s) shift(s).

Please note that FSP Certified Back-Up Tow Trucks for existing FSP tow operator contracts with other FSP agencies (i.e., not with SBCTA) do not qualify as meeting the certified SBCTA FSP back-up truck requirement(s).

FSP tow trucks bearing the service patrol title, the FSP logo, and the vehicle identification number shall be painted all white (includes the hood, fenders, doors, boom and bed area). No trim will be allowed. Lettering shall be in block lettering and shall be no less than two inches by two inches and no greater than four inches in height. Lettering can **ONLY** be black in color and will be bold style parallel to the ground. Letters shall be placed on the lower body of the truck toward the cab. Names, phone numbers, advertising of any kind or any other lettering on the boom shall be prohibited during FSP operational hours. The overall look of the truck must be approved by CHP prior to service implementation; therefore, any questions regarding this policy is highly recommended to be discussed with the FSP CHP officers prior to implementing, as truck compliance with current State FSP standards is required. No other accessory equipment or signage (bumper stickers, employment advertisement, and so forth) shall be mounted or installed without prior FSP CHP officer approval. This includes but is not limited to brass, chrome wheel covers, window tint, etc.

Please refer to Contract Exhibit "C" for further details on violations and penalties.

SBCTA follows and relies on the policies and procedures set forth in the SOP Manual developed by the County of San Bernardino FSP CHP Program. Please note that the SBCTA FSP equipment list is subject to change at any time, and may be different from FSP Program equipment lists found in other counties. For the most updated SBCTA FSP equipment list, please refer to the latest SOP Manual.

Each FSP tow truck shall be equipped in accordance with the SOP Manual and shall include the following, please note that if a company decides to add on any of the **OPTIONAL** equipment, and is something CHP would test for proficiency, they will do so for every driver that is tested from that company:

1. Wheel lift towing equipment, with a minimum lift rating of 4,000 pounds, with wheel lift extended. All tow equipment shall include proper safety straps.
2. Boom with a minimum static rating of 8,000 pounds.
3. Winch Cable - 8,000 pound rating on the first layer of cable.
4. Wire rope- 100 ft., 5/16-inch diameter, with a working limit of 3,500 pounds.
5. Towing slings rated at 3,000 pounds minimum **OPTIONAL**
6. Two (2) Tow chains 3/8" alloy or OEM specs. J/T hooks assembly.
7. Rubber faced push bumper.
8. Mounted spotlight capable of directing a beam both front and rear.
9. Amber warning lights with front and rear directional flashing capability, with on/off switch in cab.
10. Public address system.
11. Power outlets ("hot boxes"), front and rear mounted, with outlets compatible to 12-volt booster cables.
12. Heavy duty, 60+ amp battery.
13. Radios with the ability to communicate with the CONTRACTOR's base office (Verizon).
14. Programmable scanners capable of scanning between the 39 and 48 MHz used by the CHP. Scanners need to be capable of scanning CHP Police frequencies, and must be mounted for safety concerns.
15. Suitable cab lighting.
16. Trailer hitch capable of handling a 1 7/8-inch ball and 2-inch ball.
17. One (1) 1 7/8-inch ball and one (1) - inch ball.
18. Rear work lights (4)
19. Safety chain D-ring or eyelet mounted on rear of truck.
20. Motorcycle Straps (2)
21. Diesel fuel in plastic jerry cans (5 gallons)
22. Unleaded gasoline in plastic jerry cans (5 gallons)
23. Safety chains min. 5 ft. min. 5/16" Alloy or OEM Spec. (2)
24. First aid kit (small 5" x 9") (1)
25. Fire extinguisher aggregate rating of at least
4 B-C units (1)
26. Pry bar - 36" or longer (1)
27. Radiator water in plastic container (5 gallons)
28. Sling crossbar spacer blocks **OPTIONAL** (2)

- 29. 4" x 4" x 48" wooden cross beam (1)
- 30. 4" x 4" x 60" wooden cross beam (1)
- 31. 24" wide street broom (1)
- 32. Square point shovel (1)
- 33. Highway flares 360 minutes min.
- 34. Cones 18" height, reflectorized with tape
- 35. Hydraulic Floor Jack: 2-ton AND
2-ton jack stand (1)
- 36. Wheel chock (1)
- 37. Four-way lug wrench (1 std.) (1)
- 38. Four way lug wrench (1 metric)
- 39. Rechargeable compressor or refillable air bottle,
hoses and fittings to fit tire valve stems, 100
psi capacity (1)
- 40. Flashlight and spare batteries or charger (1)
- 41. Tail lamps/stop lamps, portable remote
with extension cord (1 set)
- 42. Booster cables, 25 ft. long minimum,
3-gauge copper wire with heavy-duty clamps
and one end adapted to truck's power outlets (1 set)
- 43. Funnel, multi-purpose, flexible spout (1)
- 44. Pop-Up Dolly (with tow straps), minimum weight capacity of 3,900 pounds
portable for removing otherwise un-towable vehicles (1)
- 45. Dolly Steel Pry bar (1)
- 46. Five (5)-gallon can with lid filled with clean absorb-all (1)
- 47. Empty trash can with lid (five gallon) (1)
- 48. Lock out set (1)
- 49. Safety glasses

Each FSP Certified Tow Truck will be required to have a toolbox with the following minimum number of tools/supplies. A tool kit for small equipment items is required. The list may be supplemented at the CONTRACTOR's option and expense.

- 50. Screwdrivers-
 - i. Standard-1/8", 3/16", 1/4", 5/16" (1 each, min.)
 - ii. Phillips head - #1 and #2 (1 each, min.)
- 51. Needle nose pliers (1)
- 52. Adjustable rib joint pliers, 2" min. capacity (1)
- 53. Crescent wrench - 8" (1)
- 54. Crescent wrench - 12" (1)
- 55. Four (4) lb. hammer (1)
- 56. Rubber mallet (1)
- 57. Electrical tape, roll (1)
- 58. Duct tape, 20 yard roll (1)
- 59. Tire pressure gauge (1)

- 60. Mechanic's wire (roll) (1)
- 61. Bolt cutters (1)

The Driver shall be required to complete a pre-operation shift inspection log of the vehicle as well as inventory of the required equipment prior to the start of each shift. An Inspection form, which is in the tablet FSP data collection software, shall be completed by the Driver prior to the start of each shift and be available for inspection by the CHP and/or SBCTA. Any equipment that is malfunctioning or missing must be replaced prior to the start of the shift. All equipment on the truck shall be secured.

Installation of FSP related equipment:

Upon execution of the contract, SBCTA will designate and cover the cost of the selected installer for the SBCTA FSP digital radio equipment and SBCTA's Automatic Vehicle Locator (AVL) equipment. SBCTA covers the initial cost of the FSP digital radio and the AVL equipment as well. Please note that SBCTA, along with the installer, must be able to access the required primary and back up FSP Tow Trucks no later than ten (10) business days prior to the start date of the Beat(s). No exceptions. If SBCTA is not able to access the required primary and back up FSP tow trucks by the tenth (10th) business day deadline, the CONTRACTOR shall be assessed a fine as detailed in Exhibit "C" of the contract.

At times, equipment such as an "outside speaker", or a handheld "mic," and/or "FSP Tablet" for example, may need to be replaced due to normal wear and tear. If SBCTA-provided equipment needs to be replaced due to normal wear and tear, SBCTA will provide the CONTRACTOR with replacement equipment at no charge. However, please note that if FSP-related equipment needs to be replaced due to negligence by the CONTRACTOR or any of its staff, including Drivers, the cost of the equipment and the installation expense will be deducted from the CONTRACTOR'S invoice/payment that same month or the following month (depending on when the incident occurred). CONTRACTORS, Supervisors and Drivers are required to contact SBCTA and one of the FSP CHP officers immediately when any SBCTA FSP equipment is damaged, failing or has failed, and the CONTRACTOR will be provided with a replacement part by SBCTA or by one of the FSP CHP officers. If a replacement part is not immediately available, then the CONTRACTOR will be asked to have their "FSP Certified Back-Up Tow Truck" on the Beat to cover the shift.

With the written permission of SBCTA (email is allowed), the CONTRACTOR may install some replacement equipment (e.g., an "outside speaker" or a "mic") as long as the CONTRACTOR installs the equipment per SBCTA and SBCTA FSP standards. If a CONTRACTOR is given the authorization to install FSP-related equipment, and has any questions regarding "installation standards", the CONTRACTOR is to contact SBCTA or one of the FSP CHP officers for further instructions/information. If provided the authorization by SBCTA or FSP CHP, the CONTRACTOR must install equipment in the safest possible manner, and the installation of the equipment must comply with all FSP equipment guidelines and San Bernardino FSP installation standards for safety reasons.

Please note that equipment requirements are subject to change at any time. For the most updated equipment list, please refer to the latest SOP Manual.

B. FSP Certified Back-Up Tow Truck.

The CONTRACTOR shall be required to have one FSP Certified Back-Up Tow Truck available for each Beat during FSP service hours that is in full compliance with this Contract, unless otherwise authorized by SBCTA in writing. The FSP Certified Back-Up Tow Truck should be used when a primary FSP Certified Tow Truck is unavailable. The FSP Certified Back-Up Tow Truck shall meet the same requirements for equipment, set-up and color as a primary Certified FSP Tow Truck. It shall meet all the vehicle equipment specifications. Please refer to Exhibit “C” of the contract for further details on violations and penalties. FSP Certified Tow Trucks are subject to inspections during FSP services hours and non-FSP service hours by CHP.

As noted above, Primary FSP Tow Trucks will be exclusively dedicated to SBCTA FSP services during the hours of FSP operations. However, FSP Certified Back-Up Tow Trucks are not required to be exclusive to the SBCTA FSP Program during FSP service hours and non-FSP service hours. If a FSP Certified Back-Up Tow Truck is needed to replace one of the primary FSP Certified Tow Trucks on Beat, the CONTRACTOR shall meet all Contract obligations as outlined, which includes the vehicle’s availability to work the Beat area within the 45 (forty-five) minute time period (after which point penalties begin to accrue).

C. Vehicle Breakdown and Other Missed Service.

A FSP Certified Back-Up Tow Truck must be in service on the Beat within 45 (forty-five) minutes of the time when a primary FSP Tow Truck is taken out of service for any reason. The CONTRACTOR shall not be paid for the time period that the contractually required trucks are not in service. If a vehicle is not made available within the 45 (forty-five) minute time period, the CONTRACTOR shall be fined three (3) times the hourly contract rate in one (1) minute increments until a FSP Certified Back-Up Tow Truck is provided. This 45 (forty-five) minute period prior to the imposition of fines shall not apply to trucks removed from service for failure to meet specifications or safety requirements as set forth in accordance with section 4.0 “Equipment Requirements” paragraph A “Tow Truck Requirements”, in which case fines shall begin immediately. If a FSP Certified Tow Truck is not ready due to a breakdown at the start of a shift, the fine time will be calculated from the start of the shift. If the entire shift is missed, the CONTRACTOR shall be fined for the entire shift at three (3) times the hourly rate. FSP Tow Truck maintenance shall be performed during non-FSP service hours.

In the event that a FSP Certified Back-Up Tow Truck is required to continue the shift, the Driver must complete a new inspection worksheet and mileage log prior to the commencement of driving the tow truck and notify one of the FSP CHP Officers/Supervisors immediately. In addition, the Driver must indicate in the “notes” section of the FSP Tablet (per section 4.0 “Equipment Requirements” paragraph E “Communications Equipment”) that the CONTRACTOR has switched to an FSP Certified Back-Up Tow Truck.

In addition, failure to have a FSP Certified Back-Up Tow Truck Driver available is not an allowable excuse for failing to have a FSP Certified Back-Up Tow Truck on the Beat within the 45 (forty-five) minute time period.

Please refer to Contract Exhibit “C” for further details on violations and penalties.

Please note: Existing FSP tow operator contracts with the Riverside County Transportation Commission (RCTC) or any other FSP service do not qualify as meeting the back-up tow truck requirement noted above.

D. Vehicle Identification.

It shall be the Driver's sole responsibility to place detachable FSP markings on each vehicle during the service hours and to remove or cover the FSP markings immediately upon completion of each shift. SBCTA will supply each CONTRACTOR with the appropriate number of detachable markings for each Beat(s). If a marking is lost or damaged, the CONTRACTOR shall be responsible for the cost of the replacement markings. All FSP markings shall be returned immediately at the termination of the contract. The cost of any item or equipment supplied by SBCTA, Caltrans or CHP that is not returned shall be deducted from the CONTRACTOR's final payment.

FSP markings as well as vehicle numbers shall be required on both sides of all FSP tow trucks. The detachable markings (magnetic or other forms of FSP signage) provided by SBCTA must be placed on the center of both doors (front driver and passenger doors) of the vehicle. The Driver shall be required to keep the title and logos clean, straight and in readable condition throughout the service patrol's operation. The CONTRACTOR is also required to keep all FSP-related signage completely flat, clean, out of direct sunlight and out of public view when being stored.

E. Communications Equipment.

Each FSP vehicle shall be equipped with various communication devices that will enable the Driver to communicate with the CHP Communications Center and FSP CHP Officers. All vehicles shall be equipped with an AVL system, radios, and handheld Tablet Computers for data collection. The AVL system, radio system, and handheld Tablet Computers shall be purchased, owned, supplied, and installed by SBCTA only. SBCTA shall select the equipment installation vendor.

The CONTRACTOR shall be responsible for maintaining the security of the SBCTA-owned vehicle communication equipment. The CONTRACTOR shall be liable for any damage other than normal wear and tear to the communication equipment. The CONTRACTOR shall also be liable for the full replacement value of the communication equipment installed in the trucks while in the care, custody and control of the equipment. SBCTA shall pay for repair of normal wear and tear to equipment. However, SBCTA will deduct from CONTRACTOR's monthly invoice, any repair fees and/or the full replacement cost of any SBCTA equipment damaged or altered due to CONTRACTOR's improper use or negligence. SBCTA-supplied vehicle equipment shall be returned immediately (within one to three business days – pursuant to direction by SBCTA FSP staff) upon contract termination. The cost of any equipment not returned shall be deducted from the CONTRACTOR's final payment.

Programmable scanners capable of scanning between the 39 and 48 MHz used by CHP shall be supplied by the CONTRACTOR and shall be installed and securely mounted in all FSP Certified Tow Trucks by the CONTRACTOR.

The CONTRACTOR is also required to use Push to Talk Plus for Verizon Wireless (or equivalent direct connect device that will pair with Verizon Push to Talk Plus CHP devices). ***Special Note: If you are considering purchasing something else other than a Verizon Push to Talk Plus device, please confirm with SBCTA and/or CHP as to whether or not the device will be compatible with existing CHP equipment. Equipment purchased for the FSP Program must be compatible with FSP CHP officer devices which are currently Verizon Push to Talk Plus devices*** in order to facilitate proper communication with the CHP Communications Center and FSP CHP field supervisors. Verizon phones shall be purchased, owned, maintained, and paid for by the CONTRACTOR. The CONTRACTOR will also be responsible for all operating costs of the Verizon cell phones. In addition, Drivers are not permitted to take pictures or video, or to capture any other images while performing FSP duties during FSP operational hours, or capture any FSP-related images during non-FSP service hours. These actions will not be tolerated and a Driver that is found doing this will not be permitted to work in the FSP Program. Drivers are not permitted to download or share any data or images related to the FSP Program. If any FSP-related data or images are found on any social media outlet or networks not authorized by SBCTA, the driver or drivers associated with the incident will be removed from the program.

Data input to the Tablet Computer shall not be allowed while the vehicle is being operated/driven. Use of other devices, such as cellphones, while driving/operating a vehicle is subject to California State Law.

The FSP vehicles shall be equipped with a public address system. The public address system shall have the capability to audibly transmit instructions from the cab of the FSP vehicle to the motorist of the disabled vehicle when the FSP vehicle is directly to the rear of the disabled vehicle.

The CONTRACTOR shall purchase and maintain a computer workstation (not a laptop) with high speed internet access and email to communicate with SBCTA, staff, and FSP CHP officers. Please note email is the primary means by which FSP Management (SBCTA, CHP, and Caltrans) communicate various operations messages. It is essential that a representative of the CONTRACTOR check the email daily.

It is the CONTRACTOR's responsibility to ensure that all Tablet Computers are operational at all times. The exterior protective case of the Tablet Computer shall be cleaned regularly, and the screen protector shall be inspected for functionality and serviceability. **Damaged/Worn items shall be reported to SBCTA within three (3) hours of identification of a problem.** All Tablet Computers must be kept in a secure location. Tablet Computers shall not be left in any tow or during non-FSP operational hours. During FSP operational hours, Tablet Computers must be with the Driver in their FSP Tow Truck; at all other times, Tablet Computers must be connected to a battery charger in the designated secure workstation of the CONTRACTOR'S facility. Any other location is not permitted.

CONTRACTOR shall immediately report any issues with the Tablet Computers to SBCTA or the FSP CHP Officers. CONTRACTOR is responsible for ensuring its Tablet Computers are operating at all times.

The CONTRACTOR shall provide SBCTA, FSP CHP Officers, and their designees, access to the Tablet Computers at any time during the course of the contract. If upon inspection SBCTA determines that the Tablet Computers are not being properly charged/stored, the CONTRACTOR will be subject to fines as outlined in Exhibit "C" of the Contract.

The CONTRACTOR shall provide a quarterly inspection report to SBCTA indicating the status of all equipment. SBCTA will provide the quarterly report submittal form to the CONTRACTOR. Accurate completion and timely return of this form is a contract requirement.

F. Equipment Modifications.

Modifying FSP communication/tracking equipment so that it does not function properly to SBCTA's specifications, is disconnected, or is moved (without FSP Management authorization) from its original installed location is strictly prohibited. This includes, but is not limited to: breaking evidence tape/connection sealer on equipment connections, cutting wires or cable, moving mounted equipment (speakers, microphones, antennas, etc.), rerouting any wiring, not putting radio equipment back in its original installed location, disconnecting any connectors, etc. Interfering with the operations of the equipment is strictly prohibited.

If modification and/or interference is suspected, SBCTA shall conduct an inspection of the equipment on/near the Beat area or the vehicle may be sent to a designated location determined by SBCTA. CONTRACTOR shall not access the AVL equipment in any way until SBCTA has arranged an inspection.

- 1) If any alterations are found with AVL-related equipment owned by SBCTA, the CONTRACTOR shall be fined, at a minimum, two complete FSP shifts (7 - 9 hours) at three (3) times the hourly penalty rate. The final penalty shall be determined and assessed by FSP Management.
- 2) SBCTA shall designate the AVL installer and technician that will review and repair the AVL systems.
- 3) In the event of alterations, CONTRACTOR is responsible for any expenses, including but not limited to transportation, labor, repair, and replacement, incurred to repair the AVL equipment/system for the SBCTA FSP tow operations. Costs incurred to repair and document the equipment will be deducted from payment of the CONTRACTORS monthly invoice.

Please refer to Contract Exhibit "C" for further details on violations and penalties.

5.0 Drivers.

All Drivers shall be required to have a safe driving record and valid California Class C driver's license. All Drivers shall be at least 18 years of age at the time of background check. All Drivers shall be subject to driving record and criminal background checks through the CHP.

FSP Driver Certification Requirements

The following are required to be completed before the issuing of a California Tow Truck FSP driver Certificate DL64:

1. CHP 234F Form (Tow FSP Driver/FSP Driver Information) submitted to CHP.
2. Successfully pass a driving record and criminal history check.
3. Pay all processing fees.
4. Submit to fingerprinting.
5. Successfully pass a CHP-administered Proficiency Test.
6. Complete a SHRP 2 /TIMS training course and provide a certificate of completion.
7. Attend and pass a FSP driver certification class.
8. Obtain a Medical Examiner's Certificate (MEC) MCSA-5875.
9. Issued a FSP Driver Identification Card.
10. Successfully complete ten (10) shifts of ride-a-longs with an approved FSP driver trainer.

Drivers shall be sufficiently experienced in the tasks of tow truck operations and proficient with all required FSP equipment to provide safe and proper service. Drivers from other FSP service areas will be evaluated by the CHP on a case-by-case basis. All Drivers must be capable of demonstrating their tow operating abilities prior to formal CHP training. Additionally, the Drivers will be required to exercise good, sound judgment in carrying out their duties.

The CONTRACTOR's Drivers shall be required to inform the CHP Communications Center at any time they leave the assigned Beat, whether to replenish expendable items such as gasoline or fire extinguisher, to take breaks, etc. The Driver shall be required to immediately notify the CHP Communications Center upon a tow truck breakdown.

Each Driver shall be responsible for accurately entering the following into their Tablet Computer:

- Inspection worksheet prior to the commencement of driving the tow truck. This must be completed at the tow yard, prior to leaving the yard and driving to the Beat.
- Log of mileage prior to commencement of driving the tow truck on the Beat. This must be completed in a safe location at or near the Beat location, prior to beginning the shift.

The Driver shall also be required to complete an assist record, on the Tablet Computer, for each incident.

Driver will be required to utilize a Tablet Computer to input the mileage log, inspection worksheet, and each assist, which will include location, vehicle make, model, license number,

type of assistance provided, etc. Driver will be trained to use the Tablet Computers to enter accurate data using SBCTA data collection software.

Other important forms Driver must complete and turn in when assisting motorists are the Liability Release Forms and the Damage Release Forms. It is critical these forms are completed in a clear and accurate manner and returned to SBCTA as quickly as possible and no longer than a maximum of thirty (30) business days from the date of the assist. Any CONTRACTOR who fails to complete and turn in these required forms may be subject to penalties as outlined in Exhibit "C" of the contract.

The CONTRACTOR is required to participate in the California Department of Motor Vehicles (DMV) Pull Notice Program.

If a Driver is convicted of a crime listed in California Public Resources Code Section 5164 or California Vehicle Code 13377, the CONTRACTOR may be required to remove that Driver from the FSP program. If a Driver is charged with any such crimes, the CONTRACTOR may be required to suspend that Driver from duties under this Contract pending the outcome of the criminal case. If the Driver is not convicted, or is ultimately convicted of a lesser crime not described above, CHP may direct SBCTA to have the CONTRACTOR remove that Driver from the duties under the FSP program.

Mandatory CHP refresher training classes/meetings shall be scheduled during non-FSP hours. A minimum of four (4) hours refresher training per year is required. The SBCTA FSP Program conducts a one hour refresher training class/meeting each quarter, for a total of four hours of on-going training each year. CONTRACTOR shall pay all Drivers and Back-Up Drivers for attendance at the required training.

As required by California Vehicle Code Sections 2430.5 and 2431, all applicants and owners are required to have a driver's license and criminal history check. After CHP receives and accepts a completed CHP 234F, CHP will perform a driver's license and criminal history check. CHP will perform background checks ONLY upon acceptance of a CHP 234F.

The driver's license check will consist of confirming that the applicant has a valid driver's license and the applicant's point count is within standards set forth in the SOP.

The criminal history check will consist of a livescan background check to determine whether the applicant meets the criteria for a Driver Certificate, as outlined in California Vehicle Code Section 13377 and the FSP contract. **The cost of the livescan will be at the CONTRACTOR's expense.**

If the applicant passes the preliminary check, then the applicant shall submit to fingerprinting to complete the background check at the CONTRACTOR's expense.

In addition, SBCTA and/or CHP may, in their sole discretion, require a CONTRACTOR to replace any Driver or potential Driver who is determined not to be a suitable representative of the FSP Program to the public based on the background check or any other reason.

Driver Equipment.

CONTRACTOR is responsible for providing Drivers with specified uniforms, black protective toe boots, nameplates, and other equipment. The equipment includes navy blue jump suits or shirts and pants. If coveralls are worn, they shall have a collar with a zipper. Optionally, drivers may wear a standard navy blue (long-sleeve only) uniform shirt, with a fluorescent orange (must be only 2.5" wide) trim, with a ½" silver reflective tape down the middle. This allowed reflective tape must be on both sleeves as indicated in the updated contractor exhibit. The only approved trim color is fluorescent orange with a ½" silver reflective tape in the middle. The fluorescent tape cannot be wider than the allowed 2.5" wide. All uniforms shall be clean, properly maintained, and replaced whenever excessively worn.

A detachable brass or gold nameplate shall be worn with the first initial of the first name and full last name of the Driver. Letters shall not exceed ½" tall; nameplate must be approved by an FSP CHP officer. The nameplate shall be worn above the right chest pocket on the vest.

A safety vest with reflective stripes shall be worn; SBCTA will supply vests. A small FSP logo shall be sewn/silkscreened on the front of the safety vest over the left front pocket of the uniform, and a small FSP logo shall be sewn/silkscreened on the left sleeve of the vest. A large FSP logo shall be sewn/silkscreened across the middle portion of the back of each safety vest. SBCTA will supply vests to the CONTRACTOR with the FSP logos already sewn/silkscreened on per CHP's required FSP logo placement locations. The brass or gold nameplate with the Driver's first initial of first name and full last name shall be displayed on the front of the safety vest over the right front pocket. **The CONTRACTOR is responsible for obtaining FSP CHP officer approval of the Driver nameplates, and the CONTRACTOR is responsible for the purchase and placement of the Driver nameplate.** An FSP logo is not required to be sewn/applied on the navy blue Driver uniform.

All Drivers shall wear black work boots with protective (steel or composite) toe.

During cold weather, a navy blue jacket may also be worn at the Driver's option, if it meets all the uniform specifications. The CONTRACTOR and/or the Driver may contact CHP for any uniform questions or clarifications.

Rain gear shall be waterproofed material, navy blue or yellow in color.

Hats, if worn, shall be baseball type cap, navy blue in color. An "FSP" logo may be sewn/silkscreened on the hat above the brim. No other logos/names shall be accepted. A beanie may also be worn which must be navy blue in color and worn only with a jacket or long sleeve shirt under the vest. A picture of the uniform is provided toward the end of this scope of work.

CONTRACTOR should refer to the most current SOP Manual in making sure it is following the most recent Driver equipment requirements.

6.0 Local Office.

The CONTRACTOR shall provide a local office for contract administration purposes. This office shall be staffed by either the CONTRACTOR or its representative, who is authorized to conduct business and make decisions on behalf of the CONTRACTOR. The office shall have business hours coinciding with CONTRACTOR's Beat(s) hours of operation. Through the Proposal document shown in section 7.0 of the Scope of Work, Contractor Representative Form, the CONTRACTOR shall designate representatives who will be available at the office during hours of operation to make decisions on behalf of the CONTRACTOR. The office shall be established within close proximity to the CONTRACTOR's Beat(s) and shall be located in Riverside, San Bernardino, Los Angeles or Orange counties. A FSP Certified Back-Up Tow Truck and a FSP Certified Back-Up Tow Truck Driver must be available within a 45 minute request regardless of the CONTRACTOR's office location.

The CONTRACTOR shall also provide telephone, scanner and email through which they, or a responsible representative authorized to conduct business and make decisions on behalf of the CONTRACTOR, can be reached during the non-service hours of operation for the length of the contract. During non-business hours, an answering machine, provided at the CONTRACTOR'S expense, shall be available to log calls, take complaints, etc. An email address that is monitored daily shall be provided for "noticing" purposes during operational and non-service hours. The CONTRACTOR will be responsible for having a company representative monitor and review messages/notices on a daily basis and respond in a timely manner. Please see Exhibit "C" of this contract for penalties associated with failure to respond to communications from CHP and/or SBCTA.

7.0 Beat Descriptions.

SAN BERNARDINO COUNTY FREEWAY SERVICE PATROL BEAT DESCRIPTIONS

Beat #	Beat Description	One-Way Length in Miles	# Primary FSP Trucks in both AM and PM	# FSP certified Back-Up Tow Trucks
9	I-10 FROM INDIAN HILL BOULEVARD (LOS ANGELES COUNTY LINE) TO HAVEN AVENUE	8.16	2	1

Beat 9 is currently scheduled to operate from **5:30 a.m. to 8:30 a.m.** and from 2:00 p.m. to 7:00 pm (Monday through Thursdays). On Fridays, the PM shift begins at 12:00 p.m. to 7:00 p.m.

Beat 9 requires two (2) Primary FSP Certified Tow Trucks and one (1) Primary FSP Certified Back up Tow Truck available during all FSP operational service hours.

Beat 9 may be asked to participate in possible SBCTA's "FSP Extra Work weekend contingency services", on an as needed basis. Possible hours of operation may include Saturdays and Sundays from 10:00 a.m. to 6:00 p.m. Extra work is not guaranteed. The actual amount of weekend hours

or number of weekend trucks are not guaranteed. Written notice from SBCTA shall be required for commencement and termination of “FSP Extra Work weekend contingency services”.

SBCTA reserves the right to change Beat operating times and operational requirements (i.e., length of Beat and hours of operation) during the course of the Contract.

Please refer to Attached Map of Beat areas

“Extra Work” for emergency coverage may be assigned for any of the nine (9) SBCTA FSP service areas:

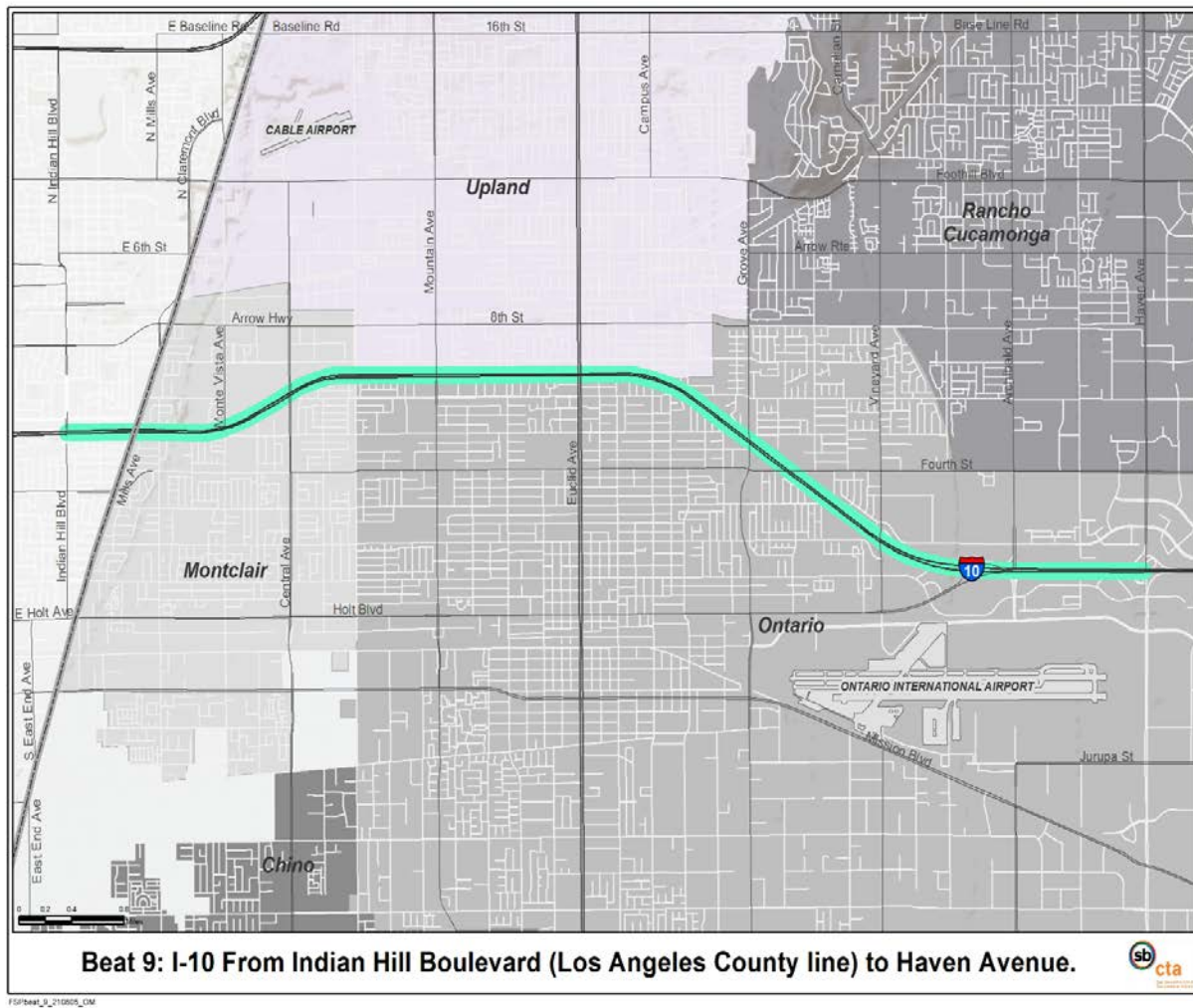
1. Beat 5: State Route 60 (SR-60) Reservoir Street (Los Angeles County line) to Milliken Avenue
2. Beat 9: Interstate 10 (I-10) Indian Hill (Los Angeles County line) to Haven Avenue
3. Beat 10: Interstate 10 (I-10) Haven Avenue to Sierra Avenue
4. Beat 11: Interstate 10 (I-10) Sierra Avenue to Waterman Avenue
5. Beat 14: Interstate 215 (I-215) Center Street (Riverside County line) to Devore Road
6. Beat 23: Interstate 15 (I-15) Jurupa Street (Riverside County line) to Sierra Avenue
7. Beat 27: Interstate 15 (I-15) Sierra Avenue to Oak Hill Road
8. Beat 29: Interstate 10 (I-10) Waterman Avenue to Yucaipa Boulevard
9. Beat 31: State Route 210 (SR-210) Los Angeles County line to Citrus Avenue

Beat 9 is the priority Beat for this CONTRACT, which means that should a primary truck go down; the “Extra Work” Beat truck shall be deployed back to the primary Beat. SBCTA shall evaluate all travel times made from the “Extra Work” Beat to the primary Beat in a penalty time situation on a monthly basis. Final penalty determination shall be made by CHP and SBCTA.

The contractor shall hold to all required standards addressing truck image and maintenance for the FSP Certified Back-Up Tow Truck being used during “Extra Work”, as CHP shall retain all rights to inspect and put the trucks out of service for non-compliance. Penalties shall still apply. In the event that the “Extra Work” Beat truck must be sent to cover the primary Beat, no penalty time shall be assessed for not having that back-up truck on the “Extra Work” Beat.

SBCTA reserves the right to change Beat hours and operational requirements during the course of the Contract. Written notice from SBCTA shall be required for commencement and termination of “Extra Work”.

BEAT MAP



8.0 FSP Holidays.

PRELIMINARY LIST OF FREEWAY SERVICE PATROL HOLIDAYS

Services are to be provided Monday through Friday at the hours designated in the Contract with the exception of the following holidays:

1. Martin Luther King, Jr. Day (Monday)
2. Presidents' Day (Monday)
3. Memorial Day (Monday)
4. Independence Day (July 4 - varies)
5. Labor Day (Monday)
6. Veterans Day (varies)
7. Thanksgiving Day (Thursday)
8. Day after Thanksgiving (Friday)
9. Christmas Day (December 25 - varies)
10. New Year's Day (January 1 – varies)

Approximate total service hours per primary vehicle per year is estimated to be 2,030 hours Monday through Friday for years one (1) through three (3) of the agreement, and estimated to be 1,910 hours for years four (4) through five (5) for Beat 9.

An estimated possible 750 “**Extra Work**” contingency hours may be needed for FSP weekend service Saturday through Sunday for Beat 9.

An estimated possible 3,960 “**Extra Work**” contingency hours may be needed for FSP construction support for the I-10 Express Lanes construction phase for Beat 9.

Please note “Extra Work” contingency hours are not guaranteed.

All Beats may be asked to participate in possible SBCTA’s “FSP Extra Work weekend contingency services”, on an as needed basis. Possible hours of operation may include Saturdays and Sundays from 10:00 a.m. to 6:00 p.m. Extra work is not guaranteed. The actual amount of weekend hours or number of weekend trucks are not guaranteed. Written notice from SBCTA shall be required for commencement and termination of “FSP Extra Work weekend contingency services”.

Each SBCTA tow operator agreement contains a clause regarding the Construction Freeway Service Patrol (CFSP). The goal of CFSP is to assist in construction zones outside of regular FSP hours or locations. The work is provided as “Extra Work” due to the uncertainty of the hours or changes in construction.

In addition to the above service hours, at the discretion of SBCTA and the CHP, additional service may be requested on certain “high traffic days” prior to or following certain holidays (e.g., July 4th, Labor Day, Sunday following Thanksgiving Day, Memorial Day). CONTRACTORS will be notified at least one week prior when FSP service hours are altered due to when certain holidays fall on the calendar. Each year could be different. Please note that FSP service hours can be altered for other unforeseen purposes as well.

9.0 FSP UNIFORM REQUIREMENTS





STRIPE EXAMPLES:



EXHIBIT B - "PRICE FORM"

EXHIBIT B

Contract: 22-1002736

Compensation and Payment

Overview Contract No. 22-1002736 with Royal Coaches Auto Body & Towing for Beat 9

Beat 9 Term

NTP I: July 6, 2022-December 31, 2022**NTP II:** January 1, 2023-December 31, 2027

Beat 9 Term I-10 Express Lanes Construction Support estimated January 1, 2023-July 1, 2023

NTP I JULY 6, 2022- DECEMBER 31, 2022						
PERIOD OF PERFORMANCE/ NTP I DELIVERABLES FSP Tow Truck Purchase, Mobilization, AVL and Radio installation, FSP Driver Training, Project ramp-up, and Tow Vehicle inspections JULY 6, 2022- DECEMBER 31, 2022	ESTIMATED BASELINE HOURS	ESTIMATED WEEKEND HOURS SUBJECT TO SBCTA APPROVAL	7% MORE HOURS	ESTIMATED TOTAL HOURS	HOURLY RATE	NOT-TO EXCEED AMOUNT
	N/A	N/A	N/A	N/A	\$0.00	\$0

BEAT 9- FSP SUPPORT I-10 EXPRESS LANES CONSTRUCTION SUPPORT COMPENSATION AND PAYMENT PROVISIONS NTP II JANUARY 1, 2023- JULY 1, 2023 (ESTIMATED SCHEDULE) (APPROXIMATELY SIX (6) MONTHS) REQUIRED TRUCKS TBD DEPENDING ON SBCTA PROJECT AVAILABILITY AND NEED SBCTA LED CONSTRUCTION FREEWAY SERVICE PATROL (CFSP)						
PERIOD OF PERFORMANCE/ NTP II DELIVERABLES FSP SUPPORT SERVICES	ESTIMATED BASELINE HOURS	ESTIMATED *WEEKEND HOURS Subject to SBCTA Approval*	7% MORE HOURS	ESTIMATED TOTAL HOURS	HOURLY RATE	NOT-TO-EXCEED AMOUNT (TOTAL HOURS X HOURLY RATE) X 2 TRUCKS)
YEAR 1: I-10 EXPRESS LANES CONSTRUCTION SUPPORT (1/1/23-7/1/23) ESTIMATED SCHEDULE * EXPRESS LANES CONSTRUCTION SUPPORT HOURS ARE NOT GUARANTEED AND SUBJECT TO PROJECT AVAILABILITY AND SBCTA APPROVAL*	3,960	N/A	N/A	3,960	\$91.11	\$360,796
TOTAL BEAT 9 I-10 EXPRESS LANES FSP SUPPORT						\$360,796

BEAT 9- FSP SUPPORT NON I-10 EXPRESS LANES CONSTRUCTION SUPPORT COMPENSATION AND PAYMENT PROVISIONS NTP II JANUARY 1, 2023- DECEMBER 31, 2027 Two Primary FSP Tow Trucks plus one certified FSP Back Up Tow Truck is required						
PERIOD OF PERFORMANCE/ NTP II DELIVERABLES FSP SUPPORT SERVICES	ESTIMATED BASELINE HOURS	ESTIMATED WEEKEND HOURS *Subject to SBCTA Approval*	7% MORE HOURS	ESTIMATED TOTAL HOURS	HOURLY RATE	NOT-TO-EXCEED AMOUNT (TOTAL HOURS X HOURLY RATE) X 2 TRUCKS)
YEAR 1: FY 22/23-FY 23/24 (1/1/23-12/31/23)	2,030	750	195	2,975	\$91.11	\$542,105
YEAR 2: FY 23/24-FY 24/25 (1/1/24-12/31/24)	2,030	750	195	2,975	\$91.11	\$542,105
YEAR 3: FY 24/25-FY 25/26 (1/1/25-12/31/25)	2,030	750	195	2,975	\$91.11	\$542,105
YEAR 4: FY 25/26-FY 26/27 (1/1/26-12/31/26)	1,910	750	186	2,846	\$97.98	\$557,702
YEAR 5: FY 26/27-FY 27/28 (1/1/27-12/31/27)	1,910	750	186	2,846	\$97.98	\$557,702
TOTAL FSP SUPPORT BEAT 9 NON I-10 EXPRESS LANES CONSTRUCTION SUPPORT	9,910	3,750	956	14,616		\$2,741,718

TOTAL CONTRACT 22-1002736 BEAT 9 NTP II (January 1, 2023- December 31, 2027) (I-10 EXPRESS LANES FSP SUPPORT + REGULAR FSP SUPPORT)	\$3,102,514
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NTP II YEAR 1-3 EXTRA TIME, NON PENALIZED DOWN TIME AND PENALIZED DOWN TIME PER MINUTE RATES Extra Time: \$1.52 per minute Non-Penalized Down Time: \$1.52 per minute Penalized Down Time: \$4.56 Per Minute	
NTP II YEAR 4-5 EXTRA TIME, NON PENALIZED DOWN TIME AND PENALIZED DOWN TIME PER MINUTE RATES Extra Time: \$1.63 per minute Non-Penalized Down Time: \$1.63 per minute	
WEEKEND HOURS, EXTRA WORK HOURS, CFSP CALTRANS SUPPORT HOURS AND CFSP I-10 EXPRESS LANES SUPPORT HOURS ARE NOT GUARANTEED AND SUBJECT TO SBCTA APPROVAL	

EXHIBIT C – "PENALTIES"

EXHIBIT C

SUMMARY OF FSP VIOLATIONS AND PENALTIES

Below is a list of penalties that can be assessed to a Contractor if not in compliance with the policies and procedures of the Freeway Service Patrol Program. All final penalties shall be assessed by the determination of SBCTA.

Relevant section	Description of violation	Penalty
12.0	Contractor does not have two (2) primary and one (1) back-up (wheel lift) tow trucks "FSP" ready for SBCTA to install equipment and for CHP to inspect seven (7) business days prior to the start of a Beat.	Flat \$1,000 fine. In addition, should the trucks not be ready by the start of shift, the Contractor shall be fined three times the hourly rate in one minute increments for every minute compliance is not met.
5.0	Not meeting tow truck requirements outlined in the contract.	Three (3) times the hourly contract rate in one (1) minute increments until requirement is met. If entire shift is missed, Contractor shall be fined for the entire shift at three (3) times the hourly rate.
5.0 B	Not having a certified FSP "back-up" tow truck and/or Driver	Three (3) times the hourly contract rate in one (1) minute increments until requirement is met. If entire shift is missed, Contractor shall be fined for the entire shift at three (3) times the hourly rate.
5.0 C	Wheel lift Tow truck not made available <u>within 45 minutes</u> due to equipment/truck breakdown.	The CONTRACTOR has 45 minutes to correct the problem if the breakdown occurs during the shift, the penalty for the forty five (45) minute period will be calculated in one (1) minute increments on a straight hourly rate. Time beyond 45 minutes will be calculated as penalized time (Three (3) times the hourly contract rate in one (1) minute increments). Exact penalized down time rate is detailed in the Contract. If a truck is not ready due to a breakdown at the beginning of a shift, penalty will begin at the beginning of the shift at the penalized rate. If entire shift is missed, Contractor shall be fined for the entire shift at three (3) times the hourly rate
12.0	Contractor fines 9.B.4 Contractor fines are assessed for violations of the FSP contract or the SOP that are not directly related to FSP truck operations. This includes but not limited to: Failing to turn required paperwork in on time (Surveys, inspection sheets, etc.), damage to FSP Program equipment, or not supplying Driver the proper equipment as required in the FSP Contract.	The fine amount shall not exceed \$50.00 for each individual occurrence or violation, with the exception of replacement costs.
5.0 E	Tablet Computers not being charged in designated location during non-FSP operational hours.	\$50.00 per tablet
5.0 E	Email correspondence from CHP/SBCTA not being acknowledged. It is critical that the email address that the CONTRACTOR provides is working at all times. CONTRACTOR is required to report problems with email system immediately to SBCTA.	\$100.00 per day of no response
5.0 E	Lost/damaged equipment	Full cost if lost or damaged beyond normal wear and tear. If equipment is repairable, the cost of the repair shall be deducted from contractors invoice.

SOP	Contractor did not follow proper tip procedure per the SOP on Page 40, Section 6.B.	\$50.00 per occurrence
5.0 F	Tampering with FSP AVL equipment	2 FSP shifts (7 hours) at the CONTRACTOR'S penalty rate (3 times the normal hourly rate) plus AVL Technician's transportation, labor, repair and/or replacement costs.
5.0 G	Damage Release/Release of liability forms not completed, not filled out properly, or not submitted within thirty (30) calendar days from the date on the form.	\$5.00-50.00 per incident at the discretion of Commission.
5.0 G	Duplicate customer six digit survey number >10%	\$50 and up. Case by case basis as determined by FSP Management.

Contract Summary Sheet

7.g

General Contract Information

Contract No: 22-1002738 Amendment No.: _____
 Contract Class: Payable Department: Air Quality and Mobility
 Vendor No.: 03251 Vendor Name: Royal Coaches Auto Body & Towing
 Description: FREEWAY SERVICE PATROL BEAT 14
 List Any Related Contract Nos.: _____

Dollar Amount

Original Contract	\$	2,741,718.00	Original Contingency	\$	685,430.00
Prior Amendments	\$	-	Prior Amendments	\$	-
Current Amendment			Current Amendment	\$	-
Total/Revised Contract Value	\$	2,741,718.00	Total Contingency Value	\$	685,430.00
Total Dollar Authority (Contract Value and Contingency)				\$	3,427,148.00

Contract Authorization

Board of Directors _____ Date: 7/6/2022 _____ Committee _____ Item # _____

Contract Management (Internal Purposes Only)

Other Contracts _____ Sole Source? No _____ No Budget Adjustment _____
 State/Local _____ Professional Services (Non-A&E) _____

Accounts Payable

Estimated Start Date: 7/6/2022 Expiration Date: 12/31/2027 Revised Expiration Date: _____

NHS: N/A QMP/QAP: N/A Prevailing Wage: No
 Total Contract Funding: _____ Total Contingency: _____

Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name	\$		\$
GL: 2810	15	0704	0000	52001	42212001		SAFE	548,315.60		-
GL: 2820	15	0704	0000	52001	42213016		FSP	274,297.80		-
GL: 2820	15	0704	0000	52001	42213017		FSP	274,157.80		-
GL: 2702	15	0704	0170	52001	42217712		FSP SB1	274,157.80		-
GL: 2702	15	0704	0171	52001	42217712		FSP SB1	274,157.80		-
GL: 2702	15	0704	0170	52001	42217714		FSP SB1	274,157.80		-
GL: 2702	15	0704	0171	52001	42217714		FSP SB1	274,157.80		-
GL: 2702	15	0704	0170	52001	42217716		FSP SB1	274,157.80		-
GL: 2702	15	0704	0171	52001	42217716		FSP SB1	274,157.80		-
GL: 2625	15	0704	0172	52001	42211503		Caltrans Reimb	-		685,430.00

CHERYL WILSON

Steve Smith

Project Manager (Print Name)

Task Manager (Print Name)

No match requirement for revenue 42211503 (and future Caltrans CFSP MOUs), this revenue source is 100% reimbursable by Caltrans for Construction Freeway Service Patrol (CFSP) extra work support.

Attachment: 22-1002738 CSS [Revision 1] (8546 : Award Freeway Service Patrol Contracts - RFP No. 22-1002736 for Beats 9,14, and 31)

CONTRACT NO. 22-1002738**BY AND BETWEEN****SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY****AND****ROYAL COACHES AUTO BODY & TOWING****FOR****FREEWAY SERVICE PATROL BEAT 14**

This contract (referred to as "Contract"), is made and entered into by and between the San Bernardino County Transportation Authority ("SBCTA"), whose address is: 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715; and Royal Coaches Auto Body & Towing ("CONTRACTOR"), whose address is: 1487 Ramona Blvd. Baldwin Park, CA 91706. SBCTA and CONTRACTOR are each a "Party" and collectively the "Parties".

RECITALS:

WHEREAS, SBCTA requires certain work services as described in Exhibit "A" of this Contract and;

WHEREAS, CONTRACTOR has confirmed that CONTRACTOR has the requisite professional qualifications, personnel and experience and is fully capable and qualified to perform the services identified herein; and

WHEREAS, CONTRACTOR desires to perform all Work identified herein and to do so for the compensation and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1. PROJECT DESCRIPTION/SCOPE OF WORK

- 1.1 CONTRACTOR agrees to perform the work and services set forth in Exhibit A "Scope of Work" ("Work"), in accordance with all applicable professional standards which are generally accepted in the State of California, in accordance with the terms and conditions expressed herein and in the sequence, time, and manner defined herein. The word "Work" includes without limitation, the performance, fulfillment and discharge by CONTRACTOR of all obligations, duties, tasks, and services imposed upon or assumed by CONTRACTOR hereunder; and the Work performed hereunder shall be completed to the satisfaction of SBCTA, with SBCTA's satisfaction being based on prevailing applicable professional standards.
- 1.2 CONTRACTOR warrants that all employees and sub-contractors shall have sufficient skill and experience to perform the Work assigned to them. CONTRACTOR further represents

and warrants to SBCTA that its employees and sub-contractors have all licenses, permits, qualifications (including medical certification) and approvals of whatever nature that are required to perform the Work, and that such licenses and approvals shall be maintained throughout the term of this Contract. CONTRACTOR shall perform, at its own cost and expense and without compensation from SBCTA, any Work necessary to correct errors or omissions which are caused by the CONTRACTOR's failure to comply with the standard of care provided for herein, and shall be fully responsible to SBCTA for all damages and other liabilities provided for in the indemnification provisions of this Contract arising from the CONTRACTOR's errors and omissions. Any employee of CONTRACTOR or its sub-contractors who is determined by SBCTA to be a threat to the safety of persons or property shall be promptly removed by the CONTRACTOR from the duties under the Freeway Services Patrol ("FSP") Program as defined in Exhibit "A" and shall not be re-employed to perform any of the Work on the FSP Program.

- 1.3 The Project Manager for this Contract is Cheryl Wilson or such other designee as shall be designated in written notice to CONTRACTOR from time to time by the Executive Director of SBCTA or his or her designee. The Project Manager shall have authority to act on behalf of SBCTA in administering this Contract, including giving notices (including without limitation, notices of default and/or termination), technical directions and approvals; demanding performance and accepting work performed, but is not authorized to receive or issue payments or execute amendments to the Contract itself.

ARTICLE 2. CONTRACT TERM

The Contract term shall commence upon issuance of a written Notice To Proceed (NTP) issued by SBCTA's Procurement Analyst, and shall continue in full force and effect through December 31, 2027 or until otherwise terminated, or unless extended as hereinafter provided by written amendment, except that all indemnity and defense obligations hereunder shall survive termination of this Contract. CONTRACTOR shall not be compensated for any Work performed or costs incurred prior to issuance of the NTP.

ARTICLE 3. COMPENSATION

- 3.1 Total compensation to CONTRACTOR for full and complete performance of the Scope of Work, identified herein and, in compliance with all the terms and conditions of this Contract, shall be on a FSP Time & Materials basis for all obligations incurred in, or application to, CONTRACTOR's performance of Work, and for which CONTRACTOR shall furnish all personnel, facilities, equipment, materials, supplies, and Services (except as may be explicitly set forth in this Contract as furnished by SBCTA) shall not exceed the amount set forth in section 3.2 below.
- 3.2 The total Contract Not-To-Exceed Amount is Two Million, Seven Hundred Forty One Thousand, Seven Hundred Eighteen Dollars (\$2,741,718.00). All Work provided under this Contract is to be performed as set forth in Exhibit A "Scope of Work". The hourly labor rates identified in Exhibit B shall remain fixed for the term of this Contract and include CONTRACTOR's direct labor costs, indirect costs, and profit. SBCTA will not compensate CONTRACTOR for any expenses not shown in Exhibit B or agreed to and approved by SBCTA as required under this Contract.

- 3.3 The hourly rates under this contract are identified in Exhibit “B”. Identified below are the amounts authorized to be compensated for the following:
- 3.3.1 Extra Time: Will be compensated in one-minute increments when a truck goes beyond the end of its normal shift
 - 3.3.2 Non-Penalized Down Time: Assessed in one-minute increments when a truck is “out of service” without violation, as set forth in Exhibit “C”.
 - 3.3.3 Penalized Down Time: Assessed at three (3) times the hourly rate, broken down into one minute increments, when a truck is “out of service” in violation of the Contract, as set forth in Exhibit “C”.
 - 3.3.4 Final extra time and penalty times shall be assessed at the sole discretion of SBCTA.
- 3.4 Intentionally Omitted
- 3.5 The Cost Principles and Procedures set forth in 48 CFR, Ch. 1, subch. E, Part 31, as constituted on the effective date of this Contract, shall be utilized to determine allowability of costs under this Contract and may be modified from time to time by written amendment of the Contract.
- 3.5.1 CONTRACTOR agrees to comply with Federal requirements in accordance with 2 CFR, Parts 200 and 1201, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
 - 3.5.2 Any costs for which payment has been made to CONTRACTOR that are determined by subsequent audit to be unallowable under 48 CFR, Ch. 1, subch. E, Part 31, or 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, shall be repaid by CONTRACTOR to SBCTA.
- 3.6 Any Work provided by CONTRACTOR not specifically covered by the Scope of Work shall not be compensated without prior written authorization from SBCTA. It shall be CONTRACTOR’s responsibility to recognize and notify SBCTA in writing when services not covered by the Scope of Work have been requested or are required. All changes and/or modifications to the Scope of Work shall be made in accordance with the “CHANGES” Article in this Contract. Any additional services agreed to in accordance with this Contract shall become part of the Work.
- 3.7 All subcontracts in excess of \$25,000 shall contain the above provisions.

ARTICLE 4. INVOICING

- 4.1 Payment to CONTRACTOR as provided herein shall be payable in monthly billing period payments, forty-five (45) calendar days after receipt of an acceptable invoice by SBCTA of an invoice prepared in accordance with instructions below. Payment shall not be construed to be an acceptance of Work.
- 4.2 CONTRACTOR shall prepare invoices in a form satisfactory to and approved by SBCTA, and it shall be accompanied by documentation supporting each element of measurement and/or cost. Each invoice will be for a monthly billing period and will be marked with SBCTA'S contract number, description and task order number, if applicable. Invoices shall be submitted within fifteen (15) calendar days for the period covered by the invoice, except for the month of June, for which the invoice must be submitted by July 10th. Invoices shall include request for payment for Work (including additional services authorized by SBCTA) completed by CONTRACTOR during each billing period and shall include back-up information sufficient to establish the validity of the invoice. Any invoice submitted which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to CONTRACTOR. Any costs incurred by CONTRACTOR in connection with the resubmission of a proper invoice shall be at CONTRACTOR'S sole expense. The final invoice shall be marked "FINAL" and will be submitted within 60 calendar days after SBCTA has received and approved all Work and deliverables. Invoices should be e-mailed to SBCTA at the following address:
ap@gosbcta.com
- 4.3 CONTRACTOR shall include a statement and release with each invoice, satisfactory to SBCTA, that CONTRACTOR has fully performed the Work invoiced pursuant to the Contract for the period covered, that all information included with the invoice is true and correct, and that all payments to and claims of CONTRACTOR for its Work during the period will be satisfied upon making of such payment. SBCTA shall not be obligated to make payments to CONTRACTOR until CONTRACTOR furnishes such statement and release.
- 4.4 INTENTIONALLY OMITTED
- 4.5 No payment will be made prior to approval of any Work, nor for any Work performed prior to the NTP or the issuance of an applicable CTO, nor for any Work under any amendment to the Contract until SBCTA'S Awarding Authority takes action.
- 4.6 INTENTIONALLY OMITTED
- 4.7 INTENTIONALLY OMITTED
- 4.8 CONTRACTOR agrees that throughout the term of this Contract, it shall not enter into any other FSP service contracts with any other public entities within the Southern California region, pursuant to which CONTRACTOR agrees to charge "FSP" service fees less than those charged under this Contract for substantially the same level of "FSP" services contemplated by this Contract. Should SBCTA establish that CONTRACTOR has agreed to charge such lower fees to another government agency, CONTRACTOR agrees to reduce its fees under the Contract to the lower fees charged to the other governmental agency and

to refund SBCTA an amount equal to the difference between the fees provided in this Contract and the lower fees charged to the other government agency.

4.9 **EXTRA WORK:**

At any time during the term of this Contract, SBCTA may request CONTRACTOR to perform Extra Work. "Extra Work" shall mean any work which is determined by SBCTA to be necessary for proper completion of the Work, but which the parties did not reasonably anticipate would be necessary at the time of the execution of this Contract. Such work includes Construction FSP services, Weekend FSP services, and coverage of other Beats for which Contractors are selected in SBCTA's sole determination based on their Beat proximity and performance. "Extra Work" shall be compensated at the hourly rate as identified in Exhibit "B". CONTRACTOR shall not perform, nor be compensated for, Extra Work except as specifically authorized by SBCTA in writing prior to performance. Authorization for Extra Work up to \$25,000.00 will be subject to prior verification of then-existing contract authority and must be pursuant to SBCTA program manager's prior written approval, which may be provided via email. Authorization for "Extra Work" above \$25,000.00 must be issued by a written contingency amendment or contract amendment as applicable. All terms and conditions of this Contract shall apply to any "Extra Work" performed.

4.10 **COVERAGE OF OTHER BEATS**

At times, other FSP Contractors will not be able to cover their shifts or complete their contractual obligations. A CONTRACTOR assigned to provide coverage on another contract/Beat is considered Extra Work and required to follow all FSP operational rules, policies and procedures for that Beat. CONTRACTOR's hourly rate for coverage shall be contracted FSP service hourly rate in this agreement.

In order for a CONTRACTOR to be considered for coverage of other Beats, the following criteria must be followed:

- CONTRACTOR is willing to provide coverage;
- CONTRACTOR is in good standing with CHP and SBCTA;
- There are funds available to cover the cost of the providing the coverage;
- CONTRACTORS should consider distance to the location of additional coverage and Log Book requirements before accepting service under this section;

4.11 **CONSTRUCTION FSP:** Construction FSP (CFSP) services are FSP services that are provided along a segment of highway that falls within a construction zone. This work is paid for with funds from specific projects and not the FSP State Highway Account/FSP SB1 funds. This is considered to be Extra Work as described in Section 4.9, and will all require the authorization of SBCTA's Program Manager in writing as well as a written contingency amendment or contract amendment as appropriate. There are three types of CFSP services that can occur:

1. Caltrans requested CFSP: Caltrans led projects that are part of the Caltrans/SBCTA CFSP Cooperative agreement No. 20-1002437. These projects will also require the issuance of a Caltrans Task Order (CTO).
2. SBCTA requested CFSP: SBCTA led projects that will be funded by SBCTA.
3. City requested CFSP: City led projects that will be funded by the City.

Construction FSP services will typically be performed during non-regular SBCTA FSP hours. Should there be any cancellation of work, the following schedule will be followed for compensation of cancelled work :

- If the CONTRACTOR is scheduled to patrol the construction site, and is notified of a cancellation with less than a 24-hour notice, the CONTRACTOR will be compensated for three (3) hours of the agreed upon hourly truck rate.
- If the CONTRACTOR is notified during a CFSP beat that CFSP has been cancelled, the FSP operator will be paid for the entire shift period up to a maximum of eight (8) hours.

For purposes of CFSP, a shift period is defined as: the actual time of the CFSP shift assigned or a maximum of eight (8) contract truck hours, whichever is less.

The supervising FSP CHP Officer for the CFSP beat will make the final determination as to whether the CONTRACTOR will continue the CFSP beat or will return to its office.

ARTICLE 5. MOBILIZATION COSTS PAYMENT

The mobilization costs payment was made to CONTRACTOR to help offset pre-start date costs. CONTRACTOR shall pay back the Zero Dollars (\$ 0) payment made at the time that the limited Notice to Proceed was provided. CONTRACTOR shall pay back this payment in twelve (12) equal monthly installments to be deducted from their monthly invoice by the Project Manager.

Failure to pay back the entirety of the Mobilization costs will result in withholding remaining balance from the final payment in the event of early termination.

ARTICLE 6. TAXES, DUTIES AND FEES

Except to the extent expressly provided elsewhere in this Contract, CONTRACTOR shall pay when due, and the compensation set forth herein, shall be inclusive of all: a) local, municipal, State, and federal sales and use taxes; b) excise taxes; c) taxes on personal property owned by CONTRACTOR; and d) other governmental fees and taxes or charges of whatever nature applicable to CONTRACTOR to enable it to conduct business.

ARTICLE 7. AVAILABILITY OF FUNDS

The award and performance of this Contract is contingent on the availability of funds. If funds are not appropriated and/or allocated and available to SBCTA for the continuance of Work performed by CONTRACTOR, Work directly or indirectly involved may be suspended or terminated by SBCTA at the end of the period for which funds are available. When SBCTA becomes aware that any portion of Work will or may be affected by a shortage of funds, it will promptly notify CONTRACTOR. Nothing herein shall relieve SBCTA from its obligation to compensate

CONTRACTOR for work already performed pursuant to this Contract. No penalty shall accrue to SBCTA in the event this provision is exercised.

ARTICLE 8. PERMITS AND LICENSES

CONTRACTOR shall, without additional compensation, keep current all governmental permits, certificates and licenses (including professional licenses) and required registrations necessary for CONTRACTOR to perform Work identified herein.

ARTICLE 9. DOCUMENTATION AND RIGHT TO AUDIT

- 9.1 CONTRACTOR shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a period of three (3) years from the date of final payment by SBCTA, or until the conclusion of all litigation, appeals or claims related to this Contract, whichever is longer. CONTRACTOR shall provide SBCTA, the California State Auditor, or other authorized representatives of SBCTA, access to CONTRACTOR's records which are directly related to this Contract for the purpose of inspection, auditing or copying during the entirety of the records maintenance period above. CONTRACTOR further agrees to maintain separate records for costs of Work performed by amendment. CONTRACTOR shall allow SBCTA, its representatives and agents to reproduce any materials as reasonably necessary.
- 9.2 The cost proposal and/or invoices for this Contract are subject to audit by SBCTA and/or any state or federal agency funding this Project at any time. After CONTRACTOR receives any audit recommendations, the cost or price proposal shall be adjusted by CONTRACTOR and approved by SBCTA's Project Manager to conform to the audit recommendations. CONTRACTOR agrees that individual items of cost identified in the audit report may be incorporated into the Contract at SBCTA's sole discretion. Refusal by CONTRACTOR to incorporate the audit or post award recommendations will be considered a breach of the Contract and cause for termination of the Contract. Any dispute concerning the audit findings of this Contract shall be reviewed by SBCTA's Chief Financial Officer. CONTRACTOR may request a review by submitting the request in writing to SBCTA within thirty (30) calendar days after issuance of the audit report

ARTICLE 10. RESPONSIBILITY OF CONTRACTOR

- 10.1 CONTRACTOR shall be responsible for the professional quality, technical accuracy, and assurance of compliance with all applicable federal, State and local laws and regulations and other Work furnished by CONTRACTOR under the Contract. The Contract includes reference to the appropriate standards for Work performance stipulated in the Contract.
- 10.2 Damage Complaints – CONTRACTOR shall notify CHP of a damage complaint from a motorist assisted by CONTRACTOR within 8 hours of CONTRACTOR's receipt of the complaint. CONTRACTOR's notice to CHP shall include the nature of the damage alleged. CONTRACTOR shall call the complainant within 24 hours of receipt of the complaint. If necessary, within 48 hours of receipt of the complaint, CONTRACTOR shall send an authorized representative and/or a representative of CONTRACTOR's insurer to inspect the vehicle and complete an incident report. If the investigation shows that CONTRACTOR caused the damage to the vehicle, CONTRACTOR shall negotiate in a

good faith effort to resolve the claim, and shall report to the CHP the result of the negotiations. All complaints shall be resolved within a reasonable period of time after original notice.

- 10.3 Damage Complaint Review Committee –The committee is comprised of CHP and SBCTA representatives. The committee will investigate damage complaints if necessary and make recommendations to the CONTRACTOR.
- 10.4 In addition to any other requirements of this Contract or duties and obligations imposed on CONTRACTOR by law, CONTRACTOR shall, as an integral part of its Work, employ quality control procedures that identify potential risks and uncertainties related to scope, schedule, cost, quality and safety of the Project and the Work performed by CONTRACTOR within the areas of CONTRACTOR's expertise. At any time during performance of the Scope of Work, should CONTRACTOR observe, encounter, or identify any unusual circumstances or uncertainties which could pose potential risk to SBCTA or the Project, CONTRACTOR shall immediately document such matters and notify SBCTA in writing. CONTRACTOR shall also similarly notify SBCTA in regard to the possibility of any natural catastrophe, or potential failure, or any situation that exceeds assumptions and could precipitate a failure of any part of the Project. Notifications under this paragraph shall be specific, clear and timely, and in a form which will enable SBCTA to understand and evaluate the magnitude and effect of the risk and/or uncertainties involved.

ARTICLE 11. REPORTING

All reports shall be submitted in accordance with Exhibit A "Scope of Work". At a minimum, CONTRACTOR shall submit quarterly asset inventory reports. The report shall be sufficiently detailed for SBCTA to sufficiently address any difficulties or problems encountered with SBCTA owned property, so remedies can be developed.

ARTICLE 12. TECHNICAL DIRECTION

- 12.1 Performance of Work under this Contract shall be subject to the technical direction of SBCTA's Project Manager who is identified in Section 1.2, above. The term "Technical Direction" is defined to include, without limitation:
- 12.1.1 Directions to CONTRACTOR, which redirect the Contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the Scope of Work.
- 12.1.2 Provision of written information to CONTRACTOR, which assists in the interpretation of reports, or technical portions of the Scope of Work described herein.
- 12.1.3 Review and, where required by the Contract, approval of technical reports, and technical information to be delivered by CONTRACTOR to SBCTA under the Contract.
- 12.1.4 SBCTA's Project Manager may modify this Contract for certain administrative modifications without issuing a written amendment. Administrative modifications

are limited to: substitutions of personnel identified in the Contract, including Key Personnel; modifications to classifications, hourly rates and names of personnel; and modifications of the address of the CONTRACTOR. All such modifications will be documented in writing between the Parties.

- 12.2 Technical Direction must be within the Scope of Work under this Contract. Except as provided with regard to Extra Work in Section 4.9, SBCTA's Project Manager does not have the authority to, and may not, issue any Technical Direction which:

12.2.1 Increases or decreases the Scope of Work;

12.2.2 Directs CONTRACTOR to perform Work outside the original intent of the Scope of Work;

12.2.3 Constitutes a change as defined in the "CHANGES" Article of the Contract;

12.2.4 In any manner causes an increase or decrease in the Contract price as identified in the "COMPENSATION" Article or the time required for Contract performance;

12.2.5 Changes any of the expressed terms, conditions or specifications of the Contract; unless identified herein;

12.2.6 Interferes with CONTRACTOR's right to perform the terms and conditions of the Contract unless identified herein; or

12.2.7 Approves any demand or claims for additional payment.

- 12.3 Failure of CONTRACTOR and SBCTA's Project Manager to agree that the Technical Direction is within the scope of the Contract, or a failure to agree upon the Contract action to be taken with respect thereto, shall be subject to the provisions of "DISPUTES" Article herein.

- 12.4 All Technical Direction shall be issued in writing by SBCTA's Project Manager.

- 12.5 CONTRACTOR shall proceed promptly with the performance of Technical Direction issued by SBCTA's Project Manager, in the manner prescribed by this Article and within their authority under the provisions of this Article. If, in the opinion of CONTRACTOR, any instruction or direction by SBCTA's Project Manager falls within one of the categories defined in sections 11.2.1 through 11.2.7 above, CONTRACTOR shall not proceed but shall notify SBCTA in writing within five (5) working days after receipt of any such instruction or direction and shall request SBCTA to modify the Contract accordingly. Upon receiving the notification from CONTRACTOR, SBCTA shall:

12.5.1 Advise CONTRACTOR in writing within thirty (30) calendar days after receipt of CONTRACTOR's letter that the Technical Direction is or is not within the scope of this Contract.

12.5.2. Advise CONTRACTOR within a reasonable time whether SBCTA will or will not issue a written amendment.

ARTICLE 13. CHANGES

- 13.1 The Work shall be subject to changes by additions, deletions, or revisions made by SBCTA. CONTRACTOR will be advised of any such changes by written notification from SBCTA describing the change. Except as provided in Section 4.9, this notification will not be binding on SBCTA until SBCTA's Awarding Authority has approved an amendment to this Contract.
- 13.2 Promptly after such written notification of change is given to CONTRACTOR by SBCTA, the Parties will attempt to negotiate a mutually agreeable adjustment to compensation or time of performance, and amend the Contract accordingly, except as provided in Section 4.9.

ARTICLE 14. EQUAL EMPLOYMENT OPPORTUNITY

- 14.1 During the term of this Contract, CONTRACTOR shall not willfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, gender, sex, marital status, gender identity, gender expression, sexual orientation, age, or military and veteran status. CONTRACTOR agrees to comply with the provisions of Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.
- 14.2 The CONTRACTOR and all subconsultants shall comply with all provisions of Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin. In addition, CONTRACTOR and all subconsultants will ensure their services are consistent with and comply with obligations and procedures outlined in SBCTA's current Board-adopted Title VI Program, including the Public Participation Plan and the Language Assistance Plan.

ARTICLE 15. CONFLICT OF INTEREST

CONTRACTOR agrees that it presently has no interest, financial or otherwise, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Work required under this Contract or be contrary to the interests of SBCTA. CONTRACTOR further agrees that no person having any such interest shall be employed in the performance of this Contract. CONTRACTOR is obligated to fully disclose to SBCTA, in writing, any conflict of interest issues as soon as they are known to CONTRACTOR. .

ARTICLE 16. KEY PERSONNEL

The personnel specified below are considered to be essential to the Work being performed under this Contract. Prior to diverting any of the specified individuals to other projects, or reallocation of any tasks or hours of Work that are the responsibility of key personnel to other personnel, CONTRACTOR shall notify SBCTA in writing in advance and shall submit justifications

(including proposed substitutions, resumes and payroll information to support any changes to the labor rates) in sufficient detail to permit evaluation of the impact on the Project. Diversion or reallocation of key personnel shall not be made without prior written consent of SBCTA's Project Manager. CONTRACTOR shall not substitute any key personnel without the prior written consent of SBCTA. In the event that the Parties cannot agree as to the substitution of key personnel, SBCTA may terminate this Contract. Key Personnel are:

Name	Job Classification/Function
William Salazar	President & CEO
Johnny Perez	FSP Program Manager
David Acevedo	Assistant Program Manager FSP Quality Assurance
German Fajardo	Assistant Program Manager Certificates and License Compliance
Miguel Coronado	Assistant Program Manager CFSP

ARTICLE 17. REPRESENTATIONS

All Work supplied by CONTRACTOR under this Contract shall be supplied by personnel who are qualified, careful, skilled, experienced and competent in their respective trades or professions. CONTRACTOR agrees that they are supplying professional services in the performance of this Contract and agrees with SBCTA that the same shall conform to professional standards that are generally accepted in the profession in the State of California.

ARTICLE 18. PROPRIETARY RIGHTS/CONFIDENTIALITY

- 18.1 If, as a part of this Contract, CONTRACTOR is required to produce materials, documents data, or information ("Products"), then CONTRACTOR, if requested by SBCTA, shall deliver to SBCTA the original of all such Products which shall become the sole property of SBCTA.
- 18.2 All materials, documents, data or information obtained from SBCTA's data files or any SBCTA-owned medium furnished to CONTRACTOR in the performance of this Contract will at all times remain the property of SBCTA. Such data or information may not be used or copied for direct or indirect use outside of this Project by CONTRACTOR without the express written consent of SBCTA.
- 18.3 Except as reasonably necessary for the performance of the Work, CONTRACTOR agrees that it, its employees and agents s will hold in confidence and not divulge to third parties without prior written consent of SBCTA, any information obtained by CONTRACTOR from or through SBCTA unless (a) the information was known to CONTRACTOR prior to obtaining same from SBCTA pursuant to a prior contract; or (b) the information was at the time of disclosure to CONTRACTOR, or thereafter becomes, part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONTRACTOR or its employees and agents, or (c) the information was obtained by CONTRACTOR from a third party who did not receive the same, directly or indirectly, from SBCTA and who had, to CONTRACTOR 's knowledge and belief, the right to disclose the same. Any materials and information referred to in this Article, which are produced by CONTRACTOR, until

released in writing by SBCTA, except to the extent such materials and information become subject to disclosure by SBCTA under the California Public Records Act, or other law, or otherwise become public information through no fault of CONTRACTOR, or its employees or agents.

- 18.4 CONTRACTOR shall not use SBCTA's name or photographs in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SBCTA.
- 18.5 All press releases, or press inquiries relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SBCTA unless otherwise agreed to in writing by both Parties.

ARTICLE 19. TERMINATION

- 19.1 Termination for Convenience - SBCTA shall have the right at any time, with or without cause, to terminate further performance of Work by giving thirty (30) calendar days written notice to CONTRACTOR specifying the date of termination. On the date of such termination stated in said notice, CONTRACTOR shall promptly discontinue performance of Work.
 - 19.1.1 If CONTRACTOR has fully and completely performed all obligations under this Contract up to the date of termination, CONTRACTOR shall be entitled to receive from SBCTA as complete and full settlement for such termination a pro rata share of the Contract cost based upon the percentage of all contracted Work satisfactorily executed to the date of termination.
 - 19.1.2 CONTRACTOR shall be entitled to receive the actual costs incurred by CONTRACTOR to return CONTRACTOR's tools and equipment, if any, to it or its suppliers' premises in accordance with SBCTA's instructions plus the actual cost necessarily incurred in effecting the termination.
- 19.2 Termination for Cause - In the event CONTRACTOR shall file a petition in bankruptcy court, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy court shall be filed against CONTRACTOR or a receiver shall be appointed on account of its insolvency, or if CONTRACTOR shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice, SBCTA may, without prejudice to any other rights or remedies SBCTA may have, and in compliance with applicable Bankruptcy Laws: (a) hold in abeyance further payments to CONTRACTOR; (b) stop any Work of CONTRACTOR related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONTRACTOR specifying the date of termination. In the event of such termination by SBCTA, SBCTA may take possession of SBCTA owned tools and equipment by whatever method SBCTA may deem expedient. A waiver by SBCTA of one default of CONTRACTOR shall not be considered to be a waiver of any subsequent default of

CONTRACTOR, of the same or any other provision, nor be deemed to waive, amend, or modify any term of this Contract.

19.2.1 CONTRACTOR shall deliver to SBCTA all SBCTA owned tools and equipment under this Contract prepared by CONTRACTOR or furnished to CONTRACTOR by SBCTA within ten (10) working days of said notice.

19.3 All claims for compensation of costs under any of the foregoing provisions shall be supported by documentation submitted to SBCTA, satisfactory in form and content to SBCTA and verified by SBCTA. In no event shall CONTRACTOR be entitled to any payment for prospective profits or any damages because of such termination.

ARTICLE 20. STOP WORK ORDER

Upon failure of CONTRACTOR to comply with any of the requirements of this Contract, SBCTA shall have the right to stop any or all Work affected by such failure until such failure is remedied or to terminate this Contract in accordance with section "Termination For Cause" above.

ARTICLE 21. CLAIMS

SBCTA shall not be bound to any adjustments in the Contract amount or schedule unless expressly agreed to by SBCTA in writing. SBCTA shall not be liable to CONTRACTOR for any claim asserted by CONTRACTOR after final payment has been made under this Contract.

ARTICLE 22. INSURANCE

22.1 Prior to commencing the Work, at all times during the performance of the Work and for such additional periods as required herein, CONTRACTOR shall, at CONTRACTOR's sole expense, procure and maintain road form insurance coverage at least as broad as the following minimum requirements specified below:

22.1.1 Worker's Compensation/Employer's Liability Insurance – The policies must include the following:

- Coverage A. Statutory Benefits
- Coverage B. Employer's Liability
- Bodily Injury by accident - \$1,000,000 per accident
- Bodily Injury by disease - \$1,000,000 policy limit/\$1,000,000 each employee

Such policies shall contain a waiver of subrogation in favor of the parties named as Indemnitees below. Such insurance shall be in strict accordance with the applicable workers' compensation laws in effect during performance of the Work by CONTRACTOR or any subcontractor of any tier. All subconsultants of any tier performing any portion of the Work for CONTRACTOR shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with a waiver of subrogation in favor of CONTRACTOR and all parties named as Indemnitees below. Where coverage is provided through the California State Compensation Insurance Fund, the requirement for a minimum A.M. Best rating does not apply..

22.1.2 Garage Liability/Commercial General Liability. The policy must include the following:

- CONTRACTOR shall maintain commercial general liability (CGL) insurance (Insurance Services Office (ISO) Form CG 00 01), and if necessary excess/umbrella commercial liability insurance, with a combined limit of liability of not less than **\$5,000,000 each occurrence**.
- The policy shall be appropriate for the CONTRACTORS business and at a minimum shall include, coverage for any and all of the following: bodily injury, property damage, personal injury, broad form contractual liability (including coverage to the maximum extent possible for the indemnifications in the CONTRACT), premises-operations (including explosion, collapse and underground coverage), duty to defend in addition to (without reducing) the limits of the policy (ies), and products and completed operations.
 - \$5,000,000 per occurrence for property damage or bodily injury
 - \$1,000,000 per occurrence limit for personal injury and advertising injury
 - \$2,000,000 per occurrence limits for products/completed operations coverage (ISO Form 20 37 10 01) if SBCTA's Risk Manager determines it is in SBCTA's best interests to require such coverage,
 - If a general aggregate applies, it shall apply separately to this project/location. The project name must be indicated under "Description of Operations/Locations" (ISO Form CG 25 03 or CG 25 04).
- Coverage is to be on an "occurrence" form. "Claims made" and "modified occurrence" forms are not acceptable.
- A copy of the declaration page or endorsement page listing all policy endorsements for the CGL policy must be included.

All sub-contractors of any tier performing any portion of the WORK for CONTRACTOR shall also obtain and maintain the CGL insurance coverage with limits equal to or above the limits required of the CONTRACTOR.

22.1.3 Umbrella/Excess CGL Insurance:

- If the CONTRACTOR elects to include an umbrella policy to cover any of the excess limits required beyond the commercial general liability policy and/or the commercial tow truck automobile liability policy, then the policy must include the following:
 - The umbrella or excess policy shall follow form over the CONTRACTOR's primary general liability coverage and shall provide a separate aggregate limit for products and completed operations coverage.
 - The umbrella or excess policy shall not contain any restrictions or exclusions beyond what is contained in the primary policy.
 - The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.
 - There shall be no statement limiting the coverage provided to the parties listed as additionally insured or as indemnitees below.

22.1.4 Commercial Tow Truck Auto Insurance - The policy must include the following and may be combined with the excess liability policy to provide limits of coverage not less than:

- Auto Liability limits of not less than \$5,000,000 per each accident.
- Combined Bodily Injury and Property Damage Liability insurance
- Coverage must include scheduled autos, hired or non-owned autos
- Garage Keepers liability shall be provided under this policy or the liability policy as a result of an endorsement or in a stand-alone Garage Keepers Coverage policy. Garage Keepers liability limits shall be equal to the estimated value of all vehicles that could be located at a single location or \$300,000 whichever is greater.
- On-Hook/Tow & Hitch Coverage -The policy must include the following:
 - No less than \$100,000 Limit
 - Coverages for physical damages from accidents or damages to property occurring while a vehicle is in tow with limits of no less than the replacement cost coverage with no coinsurance penalty provisions, or depreciation costs.
 - Cargo coverage shall be provided under this policy as a result of an endorsement or in a stand-alone Cargo Coverage policy.

The commercial tow truck automobile liability insurance shall be written on the most recent edition of ISO form or equivalent acceptable to SBCTA and shall include, without limitation, contractual liability coverage and additional insured status for the Additional Insureds named below. CONTRACTOR waives all rights of subrogation against the Additional Insureds named below, for recovery of loss, injury and/or damages to the extent such loss, injury and/or damages are covered by the commercial tow truck automobile liability insurance required herein.

22.1.5 Pollution Liability -- The policy must include the:

- \$1,000,000 per claim or occurrence limits/\$2,000,000 in the aggregate.
- Coverage shall be written on an ISO form appropriate for the CONTRACTOR's business and work under this contract.

22.2 General Provisions

22.2.1 Qualifications of Insurance Carriers. If policies are written by insurance carriers authorized and admitted to do business in the state of California, then the insurance carriers must have a current A.M. Best rating of A-VII or better and if policies are written by insurance carriers that are non-admitted but authorized to conduct business in the state of California, then they must meet the current A.M. Best rating of A-: X or better, unless otherwise approved in writing by SBCTA's Risk Manager.

22.2.2 Additional Insured Coverage. All policies, except those for Workers' Compensation insurance, shall be endorsed by ISO Form CG 20 12 11 85, or if not available, then ISO Form CG 20 26, to name San Bernardino County Transportation Authority and its officers, directors, members, employees, agents and volunteers, as additional insureds ("Additional Insureds"). California Highway Patrol (CHP) and California Department

- of Transportation (Caltrans) shall also be named additional insureds. With respect to general liability arising out of or connected with work or operations performed by or on behalf of the CONTRACTOR permitted under this CONTRACT, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for SBCTA to vicarious liability but shall allow coverage for SBCTA to the full extent provided by the policy.
- 22.2.3 Proof of Coverage. Evidence of insurance in a form acceptable to SBCTA's Risk Manager, including certificates of insurance and the required endorsements, shall be provided to SBCTA's Procurement Analyst prior to issuance of the NTP or prior to commencing any Work, as SBCTA specifies. Certificate(s) of insurance, as evidence of the required insurance shall: be executed by a duly authorized representative of each insurer; show compliance with the insurance requirements set forth in this Article; set forth deductible amounts applicable to each policy; list all exclusions which are added by endorsement to each policy; and also include the Contract Number and the SBCTA Project Manager's name on the face of the certificate. If requested in writing by SBCTA, CONTRACTOR shall submit complete copies of all required insurance policies within ten (10) business days of a written request by SBCTA.
- 22.2.4 Deductibles or Self-Insured Retention. Regardless of the allowance of exclusions or deductibles by SBCTA, CONTRACTOR shall be responsible for any deductible or self-insured retention (SIR) amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Article. CONTRACTOR will pay, and shall require its sub-CONTRACTORS to pay, all deductibles, co-pay obligations, premiums and any other sums due under the insurance required in this Article. Any deductibles or self-insured retentions must be declared to and approved in writing by SBCTA's Risk Manager. Without SBCTA's Risk Manager's expressed written approval no deductibles or SIR will be allowed. At the option of SBCTA, if the deductible or SIR is greater than \$10,000 or one (1) percent of the amount of coverage required under this Contract, whichever is less, the CONTRACTOR shall guarantee that either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to SBCTA, its directors, officials, officers, employees and agents; or, (2) the CONTRACTOR shall procure a bond guaranteeing the amount of the deductible or self-insured retention. SBCTA shall have the right to review any and all financial records that SBCTA, at its sole discretion deems necessary to approve any deductible or SIR. SBCTA will have the right, but not the obligation, to pay any deductible or SIR due under any insurance policy. If SBCTA pays any sums due under any insurance required above, SBCTA may withhold said sums from any amounts due to CONTRACTOR. The Contractor's policies will neither obligate nor prohibit SBCTA or any other Additional Insured, from paying any portion of any Contractor's deductible or SIR..
- 22.2.5 CONTRACTOR's and Sub-contractor' Insurance will be Primary. All policies required to be maintained by the CONTRACTOR or any subconsultant with the exception of Professional Liability and Worker's Compensation shall be endorsed, with a form at least as broad as ISO Form CG 20 01 04 13), to be primary coverage, and any coverage

carried by any of the Additional Insureds shall be excess and non-contributory. Further, none of CONTRACTOR's or subconsultants' pollution, automobile, general liability or other liability policies (primary or excess) will contain any cross-liability exclusion barring coverage for claims by an additional insured against a named insured.

- 22.2.6 Waiver of Subrogation Rights. To the fullest extent permitted by law, CONTRACTOR hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other consultant, subconsultant or sub-subconsultant performing work or rendering services on behalf of SBCTA, in connection with the planning, development and construction of the Project. To the fullest extent permitted by law, CONTRACTOR shall require similar written express waivers and insurance clauses from each of its subconsultants of every tier. CONTRACTOR shall require all of the policies and coverages required in Exhibit B to waive all rights of subrogation against the Additional Insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided shall not prohibit CONTRACTOR from waiving the right of subrogation prior to a loss or claim.
- 22.2.7 Cancellation. If any insurance company elects to cancel or non-renew coverage for any reason, CONTRACTOR will provide SBCTA thirty (30) days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONTRACTOR will provide SBCTA ten (10) days prior written notice. In any event, CONTRACTOR will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance coverage required herein which CONTRACTOR receives within one business day after CONTRACTOR receives it by submitting it to SBCTA at procurement@SBCTA.ca.gov to the attention of SBCTA's Procurement Analyst, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of this Contract.
- 22.2.8 Enforcement. SBCTA may take any steps as are necessary to assure CONTRACTOR's compliance with its insurance obligations as identified within this Article. Failure to continuously maintain insurance coverage as provided herein is a material breach of contract. In the event the CONTRACTOR fails to obtain or maintain any insurance coverage required, SBCTA may, but is not required to, maintain this coverage and charge the expense to the CONTRACTOR or withhold such expense from amounts owed CONTRACTOR, or terminate this Contract. The insurance required or provided shall in no way limit or relieve CONTRACTOR of its duties and responsibility under the Contract, including but not limited to obligation to indemnify, defend and hold harmless the Indemnitees named below. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve CONTRACTOR for liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions as available to it under any other provision of the Contract or law. Nothing contained herein shall relieve CONTRACTOR, of their obligations to exercise due care in the performance of their duties in connection with the Work, and to complete the Work in strict compliance with the Contract.
- 22.2.9 No Waiver. Failure of SBCTA to enforce in a timely manner any of the provisions of this Article shall not act as a waiver to enforcement of any of these provisions at a later date.

22.2.10 Higher limits. If CONTRACTOR maintains higher limits than the minimums shown above, SBCTA shall be entitled to coverage for the higher limits maintained by CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SBCTA.

22.2.11 Special Risks or Circumstances. SBCTA, acting through its Executive Director, reserves the right to modify any or all of the above insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances, as determined by the Executive Director to be in the best interests of SBCTA.

ARTICLE 23. INDEMNITY

23.1 INTENTIONALLY OMITTED.

23.2 For all Work and obligations under this Contract, CONSULTANT agrees to indemnify, defend (with legal counsel reasonably approved by SBCTA) and hold harmless SBCTA, California Department of Transportation (Caltrans), SBCTA's Entities and their authorized officers, employees, agents and volunteers ("Indemnitees"), from any and all claims, actions, losses, damages and/or liability (Claims) arising out of this Contract from any cause whatsoever, including acts, errors, or omissions of any person and for any costs or expenses incurred by SBCTA on account of any claim, except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. CONSULTANT's indemnification obligation applies to SBCTA's "active" as well as "passive" negligence, but does not apply to SBCTA's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

ARTICLE 24. ERRORS AND OMISSIONS

CONTRACTOR shall be responsible for the professional quality, technical accuracy, and coordination of all Work required under this Contract. CONTRACTOR shall be liable for SBCTA costs resulting from errors or deficiencies, in Work furnished under this Contract, including, but not limited to any fines, penalties, damages, and costs required because of an error or deficiency in the Work provided by CONTRACTOR under this Contract.

ARTICLE 25. OWNERSHIP OF DOCUMENTS

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by CONTRACTOR under this Contract shall become the sole property of SBCTA when prepared, whether delivered to SBCTA or not.

ARTICLE 26. SUBCONTRACTS

CONTRACTOR shall not subcontract performance of all or any portion of work/employees under this contract.

ARTICLE 27. RECORD INSPECTION AND AUDITING

SBCTA, or any of its designees, representatives or agents shall at all times have access during normal business hours to CONTRACTOR's operations and products wherever they are in preparation or progress, and CONTRACTOR shall provide sufficient, safe, and proper facilities for such access and inspection thereof. Inspection or lack of inspection by SBCTA shall not be deemed to be a waiver of any of their rights to require CONTRACTOR to comply with the Contract or to subsequently reject unsatisfactory Work or products.

ARTICLE 28. INDEPENDENT CONTRACTOR

CONTRACTOR is and shall be at all times an independent contractor. Accordingly, all Work provided by CONTRACTOR shall be done and performed by CONTRACTOR under the sole supervision, direction and control of CONTRACTOR. SBCTA shall rely on CONTRACTOR for results only, and shall have no right at any time to direct or supervise CONTRACTOR or CONTRACTOR's employees in the performance of Work or as to the manner, means and methods by which Work is performed. All personnel furnished by CONTRACTOR pursuant to this Contract, and all representatives of CONTRACTOR, shall be and remain the employees or agents of CONTRACTOR at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of SBCTA.

ARTICLE 29. ATTORNEY'S FEES

If any legal action is instituted to enforce or declare any Party's rights under the Contract, each Party, including the prevailing Party, must bear its own costs and attorneys' fees. This Article shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a Party hereto and payable under the "Indemnity" provision of the Contract.

ARTICLE 30. GOVERNING LAW AND VENUE

This Contract shall be subject to the law and jurisdiction of the State of California. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any Party to this Contract will be the Superior Court of California, San Bernardino County. Each Party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County.

ARTICLE 31. FEDERAL, STATE AND LOCAL LAWS

CONTRACTOR warrants that in the performance of this Contract, it shall comply with all applicable federal, State and local laws, ordinances, rules and regulations.

ARTICLE 32. PRECEDENCE

31.1 The Contract consists of this Contract's Articles, Exhibit A "Scope of Work", and Exhibit B "Price Form", Exhibit "C" Summary of FSP Violations and Penalties, the Standard Operating Procedures Manual, issued by the California Highway Patrol, SBCTA's Request

for Proposal and CONTRACTOR's proposal, all of which are incorporated into this Contract by this reference.

- 31.2 The following order of precedence shall apply: first, the Contract Articles; second the Standard Operating Procedures (SOP) manual; third, Exhibits A and B and C (equal precedence); fourth, SBCTA's Request for Proposal; and last, CONTRACTOR's proposal. In the event of a conflict between the Contract Articles and the Scope of Work, the Contract Articles will prevail.
- 31.3 In the event of an express conflict between the documents listed in this Article, or between any other documents, which are a part of the Contract, CONTRACTOR shall notify SBCTA in writing within three (3) business days of its discovery of the conflict and shall comply with SBCTA's resolution of the conflict.

ARTICLE 33. COMMUNICATIONS AND NOTICES

Notices sent by mail shall be by United States Mail, postage paid, certified mail (return receipt requested). Any and all notices permitted or required to be given hereunder shall be deemed duly given and received: (a) upon actual delivery, if delivery is personally made or if made by fax or email during regular business hours; (b) the first business day following delivery by fax when not made during regular business hours; or (c) on the fourth business day after deposit of such notice into the United States Mail. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective Parties may designate from time to time by a notice given in accordance with this Article. CONTRACTOR shall notify SBCTA of any contact information changes within ten (10) business days of the change.

To CONTRACTOR	To SBCTA
1487 Ramona Blvd	1170 W. 3rd Street, 2nd Floor
Baldwin Park, CA 91706	San Bernardino, CA 92410-1715
Attn: William Salazar	Attn: Cheryl Wilson
	cc: Procurement Manager
Phone: (626) 960-1824	Phone: (909) 884-8276
Email: bill@royalcoaches.com	Email: cwilson@gosbcta.com

ARTICLE 34. DISPUTES

- 33.1 In the event any dispute, other than an audit, arises between the Parties in connection with this Contract (including but not limited to disputes over payments, costs, expenses, Work to be performed, Scope of Work and/or time of performance), the dispute shall be decided by SBCTA's Procurement Manager within thirty (30) calendar days after notice thereof in writing which shall include a particular statement of the grounds of the dispute. If CONTRACTOR does not agree with the decision, then CONTRACTOR shall have ten (10) calendar days after receipt of the decision in which to file a written appeal thereto with SBCTA's Executive Director. If the Executive Director fails to resolve the dispute in a manner acceptable to CONTRACTOR, then such dispute is reviewable by a court of competent jurisdiction.

33.2 During resolution of the dispute, CONTRACTOR shall proceed with performance of this Contract with due diligence.

ARTICLE 35. GRATUITIES

CONTRACTOR, its employees, agents, or representatives shall not offer or give to any officer, official, agent or employee of SBCTA, any gift, entertainment, payment, loan, or other gratuity.

ARTICLE 36. REVIEW AND ACCEPTANCE

All Work performed by CONTRACTOR shall be subject to periodic review and approval by SBCTA at any and all places where such performance may be carried on. Failure of SBCTA to make such review, or to discover defective work, shall not prejudice the rights of SBCTA at the time of final acceptance. All Work performed by CONTRACTOR shall be subject to periodic and final review.

ARTICLE 37. CONFIDENTIALITY

Any SBCTA communications or materials to which CONTRACTOR or agents have access, or materials prepared by CONTRACTOR under the terms of this Contract, shall be held in confidence by CONTRACTOR, who shall exercise reasonable precautions to prevent the disclosure of confidential information to anyone except as expressly authorized by SBCTA. Any communications with or work product of SBCTA's legal counsel to which CONTRACTOR or agents have access in performing work under this Contract shall be subject to the attorney-client privilege and attorney work product doctrine, and shall be confidential. CONTRACTOR shall not release any reports, information or promotional material or allow for the use of any photos related to this Contract for any purpose without prior written approval of SBCTA.

ARTICLE 38. EVALUATION OF CONTRACTOR

CONTRACTOR's performance may be evaluated by SBCTA periodically throughout the Contract performance period. A copy of the evaluation will be given to CONTRACTOR for its information. The evaluation information shall be retained as part of the Contract file and may be used to evaluate CONTRACTOR if it submits a proposal on a future RFP issued by SBCTA.

ARTICLE 39. DRIVING RECORD AND CRIMINAL HISTORY CHECK

Pursuant to California Vehicle Code Sections 2430 *et seq.*, CONTRACTOR and its employees performing Work under this Contract are required to have a current, valid California driver's license and must undergo a Criminal History Check and driver's license check. Only after a completed CHP 234F and CHP 234 supplemental is received and accepted by CHP will a check of driver's license and criminal history be performed. Criminal history checks will be completed by CHP upon the acceptance of a CHP 234F. Any employee of the CONTRACTOR not meeting the requirements identified herein will be automatically excluded from performing Work under this Contract. In addition, SBCTA and/or CHP may, in their sole discretion, require CONTRACTOR to replace any employee or potential employee who is determined to be unsuitable to represent the FSP Program based on the Criminal History Check.

ARTICLE 40. SAFETY

CONTRACTOR shall strictly comply with OSHA regulations and local, municipal, state, and federal safety and health laws, orders and regulations applicable to CONTRACTOR's operations in the performance of Work under this Contract. CONTRACTOR shall comply with all safety instructions issued by SBCTA or their representatives.

ARTICLE 41. DRUG FREE WORKPLACE

CONTRACTOR agrees to comply with the Drug Free Workplace Act of 1990 per Government Code section 8350 et seq.

ARTICLE 42. ASSIGNMENT

CONTRACTOR shall not assign this Contract in whole or in part, voluntarily, by operation of law, or otherwise, without first obtaining the written consent of SBCTA. SBCTA's exercise of consent shall be within its sole discretion. Any purported assignment without SBCTA's prior written consent shall be void and of no effect, and shall constitute a material breach of this Contract. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the Parties.

ARTICLE 43. AMENDMENTS

The Contract may only be changed by a written amendment duly executed by the Parties. Work authorized under an amendment shall not commence until the amendment has been duly executed.

ARTICLE 44. PREVAILING WAGES

INTENTIONALLY OMITTED

ARTICLE 45. CONTINGENT FEE

CONTRACTOR warrants, by execution of this Contract, that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONTRACTOR for the purpose of securing business. For breach or violation of this warranty, SBCTA has the right to terminate this Contract without liability, pay only for the value of the Work actually performed, or in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 46. FORCE MAJEURE

CONTRACTOR shall not be in default under this Contract in the event that the Work performed by CONTRACTOR is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, and natural disasters such as floods, earthquakes, landslides, and fires, or other catastrophic events which are beyond the reasonable control of CONTRACTOR and which CONTRACTOR could not reasonably be expected to have prevented or controlled. "Other catastrophic events" does not include the

financial inability of CONTRACTOR to perform or failure of CONTRACTOR to obtain either any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of CONTRACTOR.

ARTICLE 47. WARRANTY

CONTRACTOR warrants that all Work performed shall be in accordance with the Contract and all applicable professional standards. In the event of a breach of this provision, CONTRACTOR shall take the necessary actions to correct the breach at CONTRACTOR's sole expense. If CONTRACTOR does not take the necessary action to correct the breach, SBCTA, without waiving any other rights or remedies it may have, may take the necessary steps to correct the breach, and the CONTRACTOR shall promptly reimburse SBCTA for all expenses and costs incurred.

ARTICLE 48. ENTIRE DOCUMENT

- 48.1 This Contract constitutes the sole and only agreement governing the Work and supersedes any prior understandings, written or oral, between the Parties respecting the Project. All previous proposals, offers, and other communications, written or oral, relative to this Contract, are superseded except to the extent that they have been expressly incorporated into this Contract.
- 48.2 No agent, official, employee or representative of SBCTA has any authority to bind SBCTA to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Contract, and CONTRACTOR hereby stipulates that it has not relied, and will not rely, on same.
- 48.3 Both Parties have been represented or had the full opportunity to be represented by legal counsel of their own choosing in the negotiation and preparation of this Contract. Therefore, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning, and not for or against either Party.

ARTICLE 49. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

CONTRACTOR shall comply with all applicable provisions of the Americans with Disabilities Act in performing Work under this Contract.

ARTICLE 50. MOST FAVORED NATIONS CLAUSE

CONTRACTOR agrees that, throughout the term of this Contract, it shall not enter into any FSP services agreement with any other government agency pursuant to which CONTRACTOR agrees to charge FSP service fees less than those provided for by this Contract for substantially the same level of FSP service. Should SBCTA establish that CONTRACTOR has agreed to provide substantially similar FSP services to one or more other government agencies at lower fees, CONTRACTOR agrees to reduce the fees charged to SBCTA to the lower amount charged to the other government agency.

ARTICLE 51. EFFECTIVE DATE

The date that this Contract is executed by SBCTA shall be the Effective Date of the Contract.

-----SIGNATURES ARE ON THE FOLLOWING PAGE-----

DRAFT

IN WITNESS WHEREOF, the Parties hereto have executed this Contract below.

**ROYAL COACHES AUTO BODY &
TOWING, a California Corporation**

**SAN BERNARDINO COUNTY
TRANSPORTATION
AUTHORITY**

By: _____
William Salazar
President

By: _____
Curt Hagman
President, Board of Directors

Date: _____

Date: _____

By: _____
William Salazar
Secretary

APPROVED AS TO FORM

Date: _____

By: _____
Juanda Lowder Daniel
Assistant General Counsel

CONCURRENCE

By: _____
Shaneka Morris
Procurement Manager

Attachment: 22-1002738-PDF (8546 : Award Freeway Service Patrol Contracts - RFP No. 22-1002736 for Beats 9,14, and 31)

EXHIBIT A – “SCOPE OF WORK”

EXHIBIT A
SCOPE OF WORK
CONTRACT 22-1002738
FREEWAY SERVICE PATROL

BEAT 14- INTERSTATE 215 (I-215) CENTER STREET FROM RIVERSIDE COUNTY LINE TO DEVORE ROAD

1.0 Summary of Scope of Work.

Mobilization (NTP I) July 6, 2022- December 31, 2022:

The deliverables associated with Mobilization of this CONTRACT include the project ramp-up/preparation, the purchase of two FSP Tow Trucks, and equipment installations in accordance with section 4.0 "Equipment Requirements". Moreover driver trainings, and inspections in accordance with section 5.0 "Drivers."

FSP Tow Operations (NTP II) (January 1, 2023- December 31, 2027):

CONTRACTOR shall provide the rapid removal of disabled vehicles and those involved in minor accidents from the freeway. Each Beat shall require the appropriate number of Freeway Service Patrol (FSP) Certified Trucks:

Two (2) primary certified FSP tow trucks and one (1) certified back-up FSP tow truck for Beat 14.

The CONTRACTOR's FSP trucks shall be exclusively dedicated to providing FSP services during the designated hours of operation. All FSP tow truck maintenance activities for the primary and back-up tow trucks shall be conducted during non-designated service hours.

CONTRACTOR's FSP Certified Tow Truck Drivers ("Driver or Drivers") shall assist motorists involved in minor accidents and those with disabled vehicles. When and where conditions warrant, service may take place on the freeway shoulders. Where conditions do not warrant, Drivers will move the vehicles from the freeway to provide services pursuant to the Standard Operating Procedures (SOP) Manual. The Drivers shall continuously patrol their assigned Beat, respond to California Highway Patrol (CHP) dispatched calls for service, and use the designated turnaround locations and designated drop locations assigned by CHP.

The Drivers may be required to change flat tires, provide "jump" starts, provide one gallon of gasoline or diesel fuel, temporarily tape cooling system hoses, and refill radiators. These services are not all-inclusive. Where conditions permit, safe removal of small debris may also be required. The Drivers are to spend a maximum of ten (10) minutes per disablement in attempting to mobilize a vehicle.

If a disabled vehicle cannot be mobilized within the ten-minute (10) time limit, it shall be offered to be towed to a designated drop location identified by the CHP. The motorist can request the FSP Driver to contact the CHP Communications Center to request a CHP Rotation Tow or other

services. A Driver shall not be allowed to tow as an independent CONTRACTOR from an incident that occurred during the FSP shift. This is only allowed after the shift is over and the CONTRACTOR is called as a Rotation Tow by CHP. If called as a Rotation Tow Operator after an FSP shift, the Driver must remove all FSP markings such as vests, uniforms and any sort of FSP signage.

All FSP services shall be provided at no cost to the motorist. The Drivers shall not accept any gratuities, gifts or money to perform any other services, recommend secondary tows, or recommend repair/body shop businesses. The CONTRACTOR shall follow the SOP Manual. The CHP is responsible for the day-to-day field supervision of the FSP Program; therefore, policies and procedures are outlined in the SOP Manual. To promote a safe work environment and to maintain a high level of professionalism, the CONTRACTOR and their Drivers must follow the SOP Manual as this document and all updates will be incorporated into the CONTRACTOR's agreement. Please note that the SOP Manual is updated as needed, and that the CONTRACTOR is responsible to operate and adhere to the most recent version of the SOP Manual at all times.

There may be some instances where the Driver may be requested to provide assistance to CHP Officers in the field. When a CHP Officer in the field directs a Driver to complete a task, the Driver shall follow those directions provided, given the task does not endanger the Driver or the public and is within the Driver's skills and training. The Driver shall only advise the officer of the possible dangers. If the task is not within the FSP policy, an FSP CHP Officer should be notified of the incident. Drivers should not tell the CHP Officer they will not perform the task requested UNLESS they believe they are unable to perform the task safely. Afterwards, CHP will take the necessary steps to avoid future misunderstandings between the Officer and FSP.

At times, SBCTA, a city, and/or the California Department of Transportation (Caltrans) will have construction projects on the highways that may require Construction FSP. Typically this will take place along a highway segment that is a construction zone with no inside or outside shoulder areas, or the shoulders available are not wide enough to accommodate vehicles. This work is paid for with funds from specific projects and not the FSP State Highway Account/FSP SB1 funds. This is considered to be Extra Work as described in Section 4.9 of the contract, and will all require the authorization of SBCTA's Program Manager in writing as well as a written contingency amendment or contract amendment as appropriate. There are three types of CFSP services that can occur:

1. Caltrans requested CFSP: Caltrans led projects that are part of the Caltrans/SBCTA CFSP Cooperative agreement No. 20-1002437. These projects will also require the issuance of a Caltrans task order.
2. SBCTA requested CFSP: SBCTA led projects that will be funded by SBCTA.
3. City requested CFSP: City led projects that will be funded by the City.

CONTRACTOR or its designated management-level representative shall attend the required FSP Technical Advisory Committee (TAC) meeting every other month. The FSP TAC will encompass focused and informal/formal discussions concerning but not limited to: scope, services, schedule, and current progress of services, relevant cost issues, and future project objectives. CONTRACTOR shall be responsible for having a representative attend all meetings (FSP TAC meetings) who has the ability to make management-level decisions on the behalf of the

CONTRACTOR while at the meeting. If the CONTRACTOR cannot have a management-level representative at a meeting, CONTRACTOR shall notify SBCTA and CHP at least two (2) business days prior to the meeting. Management-level attendance at these meetings shall be considered part of the CONTRACTOR's contractual responsibility. Meetings are scheduled for the entire calendar year; CHP provides the schedule via email.

Please refer to Contract Exhibit "C" for further details on violations and penalties.

2.0 Contract Representatives.

SBCTA, Caltrans, and the CHP will jointly oversee the FSP services (referred to, singularly or jointly, as "FSP Management"). CHP is responsible for dispatch services to incident locations within the tow truck's patrol limits, otherwise referred to as "Beats". The dispatching will be done in accordance with the contract for the service. An SOP Manual will be provided to the successful CONTRACTOR explaining the types of incidents to which a Driver may be dispatched. Please note that this SOP Manual is updated as needed and that the CONTRACTOR is responsible to adhere to the most current version of the SOP Manual at all times. Also note that SBCTA's contract with the successful Proposer(s) will incorporate the SOP Manual and any updates; thus, adhering to the SOP Manual is a contractual requirement.

3.0 Service Location.

The FSP operates on selected freeway segments referred to as "Beats". Each Beat has specific turnaround locations and designated drop locations identified by the CHP. The limits are identified in the Scope of Work (SOW).

SBCTA reserves the right, at any time during the contract's term, to adjust Beat specifications (length of the Beat for example) and Beat hours to better accommodate demand for the service. These changes can occur during the course of the contract through written permission (e.g., email). The CONTRACTOR may be requested by CHP to go beyond the limits of its assigned Beat area to assist a motorist in an adjacent Beat area. Drivers may be permitted to do this only upon CHP request. SBCTA reserves the right to add or delete holidays to the work schedule. Travel time to and from the Beat will be at the expense of the CONTRACTOR.

4.0 Equipment Requirements.

A. Tow Truck Requirements.

Primary FSP Tow Trucks will be exclusively dedicated to FSP services during the hours of FSP operations. They are not required to be exclusive during non-FSP hours.

The FSP Program will utilize, at a minimum, Class A tow trucks with a minimum gross vehicle weight rating of 14,000 pounds, dual wheel chassis, and four (4) ton recovery equipment rating. All trucks proposed for use in the FSP Program must be less than one (1) year old with a maximum of 50,000 miles and a clear, non-salvage title on the chassis and working parts of the truck.

The truck must be free of any mechanical defects or physical damage at the onset of the contract. Lastly, the truck shall have seating capabilities for five (5) adults.

The CHP, in conjunction with SBCTA, will verify the original purchase dates to ensure compliance.

All FSP Tow Trucks must be Department of Transportation (DOT) compliant, as well as California Air Resources Board (CARB) compliant. This includes an engine that has been certified by CARB, as required by law in the State of California. Any tow truck that is utilized for the FSP Program must comply with emission standards set forth by DOT and CARB, as well as all Local, State and Federal laws applicable to that truck, and as outlined in the RFP.

Prior to commencement of service, the CHP will inspect each tow truck designated for the FSP Program in San Bernardino County to ensure that it meets the tow truck specifications and to ensure that it meets or exceeds safety requirements. These inspections will occur prior to the start of service. Succeeding inspections will occur periodically as determined by the FSP CHP officers. Documentation of the vehicle identification number and successful completion of the inspection will be kept on file at the CHP office and CONTRACTOR's local office. Any unsafe, poorly maintained FSP Certified Tow Truck(s) or improperly equipped FSP Certified Tow Truck(s) shall not be allowed into service, and if discovered during the shift, shall be removed from service or repaired as directed by the CHP. The CONTRACTOR shall be fined three (3) times the hourly contract rate in one (1) minute increments for ALL service time lost. The CONTRACTOR will be required to have a FSP Certified Back-Up Tow Truck available for service during their FSP Beat(s) shift(s).

Please note that FSP Certified Back-Up Tow Trucks for existing FSP tow operator contracts with other FSP agencies (i.e., not with SBCTA) do not qualify as meeting the certified SBCTA FSP back-up truck requirement(s).

FSP tow trucks bearing the service patrol title, the FSP logo, and the vehicle identification number shall be painted all white (includes the hood, fenders, doors, boom and bed area). No trim will be allowed. Lettering shall be in block lettering and shall be no less than two inches by two inches and no greater than four inches in height. Lettering can **ONLY** be black in color and will be bold style parallel to the ground. Letters shall be placed on the lower body of the truck toward the cab. Names, phone numbers, advertising of any kind or any other lettering on the boom shall be prohibited during FSP operational hours. The overall look of the truck must be approved by CHP prior to service implementation; therefore, any questions regarding this policy is highly recommended to be discussed with the FSP CHP officers prior to implementing, as truck compliance with current State FSP standards is required. No other accessory equipment or signage (bumper stickers, employment advertisement, and so forth) shall be mounted or installed without prior FSP CHP officer approval. This includes but is not limited to brass, chrome wheel covers, window tint, etc.

Please refer to Contract Exhibit "C" for further details on violations and penalties.

SBCTA follows and relies on the policies and procedures set forth in the SOP Manual developed by the County of San Bernardino FSP CHP Program. Please note that the SBCTA FSP equipment

list is subject to change at any time, and may be different from FSP Program equipment lists found in other counties. For the most updated SBCTA FSP equipment list, please refer to the latest SOP Manual.

Each FSP tow truck shall be equipped in accordance with the SOP Manual and shall include the following, please note that if a company decides to add on any of the OPTIONAL equipment, and is something CHP would test for proficiency, they will do so for every driver that is tested from that company:

1. Wheel lift towing equipment, with a minimum lift rating of 4,000 pounds, with wheel lift extended. All tow equipment shall include proper safety straps.
2. Boom with a minimum static rating of 8,000 pounds.
3. Winch Cable - 8,000 pound rating on the first layer of cable.
4. Wire rope- 100 ft., 5/16-inch diameter, with a working limit of 3,500 pounds.
5. Towing slings rated at 3,000 pounds minimum **OPTIONAL**
6. Two (2) Tow chains 3/8" alloy or OEM specs. J/T hooks assembly.
7. Rubber faced push bumper.
8. Mounted spotlight capable of directing a beam both front and rear.
9. Amber warning lights with front and rear directional flashing capability, with on/off switch in cab.
10. Public address system.
11. Power outlets ("hot boxes"), front and rear mounted, with outlets compatible to 12-volt booster cables.
12. Heavy duty, 60+ amp battery.
13. Radios with the ability to communicate with the CONTRACTOR's base office (Verizon).
14. Programmable scanners capable of scanning between the 39 and 48 MHz used by the CHP. Scanners need to be capable of scanning CHP Police frequencies, and must be mounted for safety concerns.
15. Suitable cab lighting.
16. Trailer hitch capable of handling a 1 7/8-inch ball and 2-inch ball.
17. One (1) 1 7/8-inch ball and one (1) - inch ball.
18. Rear work lights (4)
19. Safety chain D-ring or eyelet mounted on rear of truck.
20. Motorcycle Straps (2)
21. Diesel fuel in plastic jerry cans (5 gallons)
22. Unleaded gasoline in plastic jerry cans (5 gallons)
23. Safety chains min. 5 ft. min. 5/16" Alloy or OEM Spec. (2)
24. First aid kit (small 5" x 9") (1)
25. Fire extinguisher aggregate rating of at least
4 B-C units (1)
26. Pry bar - 36" or longer (1)
27. Radiator water in plastic container (5 gallons)
28. Sling crossbar spacer blocks **OPTIONAL** (2)
29. 4" x 4" x 48" wooden cross beam (1)
30. 4" x 4" x 60" wooden cross beam (1)

31. 24" wide street broom (1)
32. Square point shovel (1)
33. Highway flares 360 minutes min.
34. Cones 18" height, reflectorized with tape
35. Hydraulic Floor Jack: 2-ton AND
2-ton jack stand (1)
36. Wheel chock (1)
37. Four-way lug wrench (1 std.) (1)
38. Four way lug wrench (1 metric)
39. Rechargeable compressor or refillable air bottle,
hoses and fittings to fit tire valve stems, 100
psi capacity (1)
40. Flashlight and spare batteries or charger (1)
41. Tail lamps/stop lamps, portable remote
with extension cord (1 set)
42. Booster cables, 25 ft. long minimum,
3-gauge copper wire with heavy-duty clamps
and one end adapted to truck's power outlets (1 set)
43. Funnel, multi-purpose, flexible spout (1)
44. Pop-Up Dolly (with tow straps), minimum weight capacity of 3,900 pounds
portable for removing otherwise un-towable vehicles (1)
45. Dolly Steel Pry bar (1)
46. Five (5)-gallon can with lid filled with clean absorb-all (1)
47. Empty trash can with lid (five gallon) (1)
48. Lock out set (1)
49. Safety glasses

Each FSP Certified Tow Truck will be required to have a toolbox with the following minimum number of tools/supplies. A tool kit for small equipment items is required. The list may be supplemented at the CONTRACTOR's option and expense.

50. Screwdrivers-
 - i. Standard-1/8", 3/16", 1/4", 5/16" (1 each, min.)
 - ii. Phillips head - #1 and #2 (1 each, min.)
51. Needle nose pliers (1)
52. Adjustable rib joint pliers, 2" min. capacity (1)
53. Crescent wrench - 8" (1)
54. Crescent wrench - 12" (1)
55. Four (4) lb. hammer (1)
56. Rubber mallet (1)
57. Electrical tape, roll (1)
58. Duct tape, 20 yard roll (1)
59. Tire pressure gauge (1)
60. Mechanic's wire (roll) (1)
61. Bolt cutters (1)

The Driver shall be required to complete a pre-operation shift inspection log of the vehicle as well as inventory of the required equipment prior to the start of each shift. An Inspection form, which is in the tablet FSP data collection software, shall be completed by the Driver prior to the start of each shift and be available for inspection by the CHP and/or SBCTA. Any equipment that is malfunctioning or missing must be replaced prior to the start of the shift. All equipment on the truck shall be secured.

Installation of FSP related equipment:

Upon execution of the contract, SBCTA will designate and cover the cost of the selected installer for the SBCTA FSP digital radio equipment and SBCTA's Automatic Vehicle Locator (AVL) equipment. SBCTA covers the initial cost of the FSP digital radio and the AVL equipment as well. Please note that SBCTA, along with the installer, must be able to access the required primary and back up FSP Tow Trucks no later than ten (10) business days prior to the start date of the Beat(s). No exceptions. If SBCTA is not able to access the required primary and back up FSP tow trucks by the tenth (10th) business day deadline, the CONTRACTOR shall be assessed a fine as detailed in Exhibit "C" of the contract.

At times, equipment such as an "outside speaker", or a handheld "mic," and/or "FSP Tablet" for example, may need to be replaced due to normal wear and tear. If SBCTA-provided equipment needs to be replaced due to normal wear and tear, SBCTA will provide the CONTRACTOR with replacement equipment at no charge. However, please note that if FSP-related equipment needs to be replaced due to negligence by the CONTRACTOR or any of its staff, including Drivers, the cost of the equipment and the installation expense will be deducted from the CONTRACTOR'S invoice/payment that same month or the following month (depending on when the incident occurred). CONTRACTORS, Supervisors and Drivers are required to contact SBCTA and one of the FSP CHP officers immediately when any SBCTA FSP equipment is damaged, failing or has failed, and the CONTRACTOR will be provided with a replacement part by SBCTA or by one of the FSP CHP officers. If a replacement part is not immediately available, then the CONTRACTOR will be asked to have their "FSP Certified Back-Up Tow Truck" on the Beat to cover the shift.

With the written permission of SBCTA (email is allowed), the CONTRACTOR may install some replacement equipment (e.g., an "outside speaker" or a "mic") as long as the CONTRACTOR installs the equipment per SBCTA and SBCTA FSP standards. If a CONTRACTOR is given the authorization to install FSP-related equipment, and has any questions regarding "installation standards", the CONTRACTOR is to contact SBCTA or one of the FSP CHP officers for further instructions/information. If provided the authorization by SBCTA or FSP CHP, the CONTRACTOR must install equipment in the safest possible manner, and the installation of the equipment must comply with all FSP equipment guidelines and San Bernardino FSP installation standards for safety reasons.

Please note that equipment requirements are subject to change at any time. For the most updated equipment list, please refer to the latest SOP Manual.

B. FSP Certified Back-Up Tow Truck.

The CONTRACTOR shall be required to have one FSP Certified Back-Up Tow Truck available for each Beat during FSP service hours that is in full compliance with this Contract, unless otherwise authorized by SBCTA in writing. The FSP Certified Back-Up Tow Truck should be used when a primary FSP Certified Tow Truck is unavailable. The FSP Certified Back-Up Tow Truck shall meet the same requirements for equipment, set-up and color as a primary Certified FSP Tow Truck. It shall meet all the vehicle equipment specifications. Please refer to Exhibit “C” of the contract for further details on violations and penalties. FSP Certified Tow Trucks are subject to inspections during FSP services hours and non-FSP service hours by CHP.

As noted above, Primary FSP Tow Trucks will be exclusively dedicated to SBCTA FSP services during the hours of FSP operations. However, FSP Certified Back-Up Tow Trucks are not required to be exclusive to the SBCTA FSP Program during FSP service hours and non-FSP service hours. If a FSP Certified Back-Up Tow Truck is needed to replace one of the primary FSP Certified Tow Trucks on Beat, the CONTRACTOR shall meet all Contract obligations as outlined, which includes the vehicle’s availability to work the Beat area within the 45 (forty-five) minute time period (after which point penalties begin to accrue).

C. Vehicle Breakdown and Other Missed Service.

A FSP Certified Back-Up Tow Truck must be in service on the Beat within 45 (forty-five) minutes of the time when a primary FSP Tow Truck is taken out of service for any reason. The CONTRACTOR shall not be paid for the time period that the contractually required trucks are not in service. If a vehicle is not made available within the 45 (forty-five) minute time period, the CONTRACTOR shall be fined three (3) times the hourly contract rate in one (1) minute increments until a FSP Certified Back-Up Tow Truck is provided. This 45 (forty-five) minute period prior to the imposition of fines shall not apply to trucks removed from service for failure to meet specifications or safety requirements as set forth in accordance with section 4.0 “Equipment Requirements” paragraph A “Tow Truck Requirements”, in which case fines shall begin immediately. If a FSP Certified Tow Truck is not ready due to a breakdown at the start of a shift, the fine time will be calculated from the start of the shift. If the entire shift is missed, the CONTRACTOR shall be fined for the entire shift at three (3) times the hourly rate. FSP Tow Truck maintenance shall be performed during non-FSP service hours.

In the event that a FSP Certified Back-Up Tow Truck is required to continue the shift, the Driver must complete a new inspection worksheet and mileage log prior to the commencement of driving the tow truck and notify one of the FSP CHP Officers/Supervisors immediately. In addition, the Driver must indicate in the “notes” section of the FSP Tablet (per section 4.0 “Equipment Requirements” paragraph E “Communications Equipment”) that the CONTRACTOR has switched to an FSP Certified Back-Up Tow Truck.

In addition, failure to have a FSP Certified Back-Up Tow Truck Driver available is not an allowable excuse for failing to have a FSP Certified Back-Up Tow Truck on the Beat within the 45 (forty-five) minute time period.

Please refer to Contract Exhibit “C” for further details on violations and penalties.

Please note: Existing FSP tow operator contracts with the Riverside County Transportation Commission (RCTC) or any other FSP service do not qualify as meeting the back-up tow truck requirement noted above.

D. Vehicle Identification.

It shall be the Driver's sole responsibility to place detachable FSP markings on each vehicle during the service hours and to remove or cover the FSP markings immediately upon completion of each shift. SBCTA will supply each CONTRACTOR with the appropriate number of detachable markings for each Beat(s). If a marking is lost or damaged, the CONTRACTOR shall be responsible for the cost of the replacement markings. All FSP markings shall be returned immediately at the termination of the contract. The cost of any item or equipment supplied by SBCTA, Caltrans or CHP that is not returned shall be deducted from the CONTRACTOR's final payment.

FSP markings as well as vehicle numbers shall be required on both sides of all FSP tow trucks. The detachable markings (magnetic or other forms of FSP signage) provided by SBCTA must be placed on the center of both doors (front driver and passenger doors) of the vehicle. The Driver shall be required to keep the title and logos clean, straight and in readable condition throughout the service patrol's operation. The CONTRACTOR is also required to keep all FSP-related signage completely flat, clean, out of direct sunlight and out of public view when being stored.

E. Communications Equipment.

Each FSP vehicle shall be equipped with various communication devices that will enable the Driver to communicate with the CHP Communications Center and FSP CHP Officers. All vehicles shall be equipped with an AVL system, radios, and handheld Tablet Computers for data collection. The AVL system, radio system, and handheld Tablet Computers shall be purchased, owned, supplied, and installed by SBCTA only. SBCTA shall select the equipment installation vendor.

The CONTRACTOR shall be responsible for maintaining the security of the SBCTA-owned vehicle communication equipment. The CONTRACTOR shall be liable for any damage other than normal wear and tear to the communication equipment. The CONTRACTOR shall also be liable for the full replacement value of the communication equipment installed in the trucks while in the care, custody and control of the equipment. SBCTA shall pay for repair of normal wear and tear to equipment. However, SBCTA will deduct from CONTRACTOR's monthly invoice, any repair fees and/or the full replacement cost of any SBCTA equipment damaged or altered due to CONTRACTOR's improper use or negligence. SBCTA-supplied vehicle equipment shall be returned immediately (within one to three business days – pursuant to direction by SBCTA FSP staff) upon contract termination. The cost of any equipment not returned shall be deducted from the CONTRACTOR's final payment.

Programmable scanners capable of scanning between the 39 and 48 MHz used by CHP shall be supplied by the CONTRACTOR and shall be installed and securely mounted in all FSP Certified Tow Trucks by the CONTRACTOR.

The CONTRACTOR is also required to use Push to Talk Plus for Verizon Wireless (or equivalent direct connect device that will pair with Verizon Push to Talk Plus CHP devices). ***Special Note: If you are considering purchasing something else other than a Verizon Push to Talk Plus device, please confirm with SBCTA and/or CHP as to whether or not the device will be compatible with existing CHP equipment. Equipment purchased for the FSP Program must be compatible with FSP CHP officer devices which are currently Verizon Push to Talk Plus devices*** in order to facilitate proper communication with the CHP Communications Center and FSP CHP field supervisors. Verizon phones shall be purchased, owned, maintained, and paid for by the CONTRACTOR. The CONTRACTOR will also be responsible for all operating costs of the Verizon cell phones. In addition, Drivers are not permitted to take pictures or video, or to capture any other images while performing FSP duties during FSP operational hours, or capture any FSP-related images during non-FSP service hours. These actions will not be tolerated and a Driver that is found doing this will not be permitted to work in the FSP Program. Drivers are not permitted to download or share any data or images related to the FSP Program. If any FSP-related data or images are found on any social media outlet or networks not authorized by SBCTA, the driver or drivers associated with the incident will be removed from the program.

Data input to the Tablet Computer shall not be allowed while the vehicle is being operated/driven. Use of other devices, such as cellphones, while driving/operating a vehicle is subject to California State Law.

The FSP vehicles shall be equipped with a public address system. The public address system shall have the capability to audibly transmit instructions from the cab of the FSP vehicle to the motorist of the disabled vehicle when the FSP vehicle is directly to the rear of the disabled vehicle.

The CONTRACTOR shall purchase and maintain a computer workstation (not a laptop) with high speed internet access and email to communicate with SBCTA, staff, and FSP CHP officers. Please note email is the primary means by which FSP Management (SBCTA, CHP, and Caltrans) communicate various operations messages. It is essential that a representative of the CONTRACTOR check the email daily.

It is the CONTRACTOR's responsibility to ensure that all Tablet Computers are operational at all times. The exterior protective case of the Tablet Computer shall be cleaned regularly, and the screen protector shall be inspected for functionality and serviceability. **Damaged/Worn items shall be reported to SBCTA within three (3) hours of identification of a problem.** All Tablet Computers must be kept in a secure location. Tablet Computers shall not be left in any tow or during non-FSP operational hours. During FSP operational hours, Tablet Computers must be with the Driver in their FSP Tow Truck; at all other times, Tablet Computers must be connected to a battery charger in the designated secure workstation of the CONTRACTOR'S facility. Any other location is not permitted.

CONTRACTOR shall immediately report any issues with the Tablet Computers to SBCTA or the FSP CHP Officers. CONTRACTOR is responsible for ensuring its Tablet Computers are operating at all times.

The CONTRACTOR shall provide SBCTA, FSP CHP Officers, and their designees, access to the Tablet Computers at any time during the course of the contract. If upon inspection SBCTA determines that the Tablet Computers are not being properly charged/stored, the CONTRACTOR will be subject to fines as outlined in Exhibit "C" of the Contract.

The CONTRACTOR shall provide a quarterly inspection report to SBCTA indicating the status of all equipment. SBCTA will provide the quarterly report submittal form to the CONTRACTOR. Accurate completion and timely return of this form is a contract requirement.

F. Equipment Modifications.

Modifying FSP communication/tracking equipment so that it does not function properly to SBCTA's specifications, is disconnected, or is moved (without FSP Management authorization) from its original installed location is strictly prohibited. This includes, but is not limited to: breaking evidence tape/connection sealer on equipment connections, cutting wires or cable, moving mounted equipment (speakers, microphones, antennas, etc.), rerouting any wiring, not putting radio equipment back in its original installed location, disconnecting any connectors, etc. Interfering with the operations of the equipment is strictly prohibited.

If modification and/or interference is suspected, SBCTA shall conduct an inspection of the equipment on/near the Beat area or the vehicle may be sent to a designated location determined by SBCTA. CONTRACTOR shall not access the AVL equipment in any way until SBCTA has arranged an inspection.

- 1) If any alterations are found with AVL-related equipment owned by SBCTA, the CONTRACTOR shall be fined, at a minimum, two complete FSP shifts (7 - 9 hours) at three (3) times the hourly penalty rate. The final penalty shall be determined and assessed by FSP Management.
- 2) SBCTA shall designate the AVL installer and technician that will review and repair the AVL systems.
- 3) In the event of alterations, CONTRACTOR is responsible for any expenses, including but not limited to transportation, labor, repair, and replacement, incurred to repair the AVL equipment/system for the SBCTA FSP tow operations. Costs incurred to repair and document the equipment will be deducted from payment of the CONTRACTORS monthly invoice.

Please refer to Contract Exhibit "C" for further details on violations and penalties.

5.0 Drivers.

All Drivers shall be required to have a safe driving record and valid California Class C driver's license. All Drivers shall be at least 18 years of age at the time of background check. All Drivers shall be subject to driving record and criminal background checks through the CHP.

FSP Driver Certification Requirements

The following are required to be completed before the issuing of a California Tow Truck FSP driver Certificate DL64:

1. CHP 234F Form (Tow FSP Driver/FSP Driver Information) submitted to CHP.
2. Successfully pass a driving record and criminal history check.
3. Pay all processing fees.
4. Submit to fingerprinting.
5. Successfully pass a CHP-administered Proficiency Test.
6. Complete a SHRP 2 /TIMS training course and provide a certificate of completion.
7. Attend and pass a FSP driver certification class.
8. Obtain a Medical Examiner's Certificate (MEC) MCSA-5875.
9. Issued a FSP Driver Identification Card.
10. Successfully complete ten (10) shifts of ride-a-longs with an approved FSP driver trainer.

Drivers shall be sufficiently experienced in the tasks of tow truck operations and proficient with all required FSP equipment to provide safe and proper service. Drivers from other FSP service areas will be evaluated by the CHP on a case-by-case basis. All Drivers must be capable of demonstrating their tow operating abilities prior to formal CHP training. Additionally, the Drivers will be required to exercise good, sound judgment in carrying out their duties.

The CONTRACTOR's Drivers shall be required to inform the CHP Communications Center at any time they leave the assigned Beat, whether to replenish expendable items such as gasoline or fire extinguisher, to take breaks, etc. The Driver shall be required to immediately notify the CHP Communications Center upon a tow truck breakdown.

Each Driver shall be responsible for accurately entering the following into their Tablet Computer:

- Inspection worksheet prior to the commencement of driving the tow truck. This must be completed at the tow yard, prior to leaving the yard and driving to the Beat.
- Log of mileage prior to commencement of driving the tow truck on the Beat. This must be completed in a safe location at or near the Beat location, prior to beginning the shift.

The Driver shall also be required to complete an assist record, on the Tablet Computer, for each incident.

Driver will be required to utilize a Tablet Computer to input the mileage log, inspection worksheet, and each assist, which will include location, vehicle make, model, license number,

type of assistance provided, etc. Driver will be trained to use the Tablet Computers to enter accurate data using SBCTA data collection software.

Other important forms Driver must complete and turn in when assisting motorists are the Liability Release Forms and the Damage Release Forms. It is critical these forms are completed in a clear and accurate manner and returned to SBCTA as quickly as possible and no longer than a maximum of thirty (30) business days from the date of the assist. Any CONTRACTOR who fails to complete and turn in these required forms may be subject to penalties as outlined in Exhibit "C" of the contract.

The CONTRACTOR is required to participate in the California Department of Motor Vehicles (DMV) Pull Notice Program.

If a Driver is convicted of a crime listed in California Public Resources Code Section 5164 or California Vehicle Code 13377, the CONTRACTOR may be required to remove that Driver from the FSP program. If a Driver is charged with any such crimes, the CONTRACTOR may be required to suspend that Driver from duties under this Contract pending the outcome of the criminal case. If the Driver is not convicted, or is ultimately convicted of a lesser crime not described above, CHP may direct SBCTA to have the CONTRACTOR remove that Driver from the duties under the FSP program.

Mandatory CHP refresher training classes/meetings shall be scheduled during non-FSP hours. A minimum of four (4) hours refresher training per year is required. The SBCTA FSP Program conducts a one hour refresher training class/meeting each quarter, for a total of four hours of on-going training each year. CONTRACTOR shall pay all Drivers and Back-Up Drivers for attendance at the required training.

As required by California Vehicle Code Sections 2430.5 and 2431, all applicants and owners are required to have a driver's license and criminal history check. After CHP receives and accepts a completed CHP 234F, CHP will perform a driver's license and criminal history check. CHP will perform background checks ONLY upon acceptance of a CHP 234F.

The driver's license check will consist of confirming that the applicant has a valid driver's license and the applicant's point count is within standards set forth in the SOP.

The criminal history check will consist of a livescan background check to determine whether the applicant meets the criteria for a Driver Certificate, as outlined in California Vehicle Code Section 13377 and the FSP contract. **The cost of the livescan will be at the CONTRACTOR's expense.**

If the applicant passes the preliminary check, then the applicant shall submit to fingerprinting to complete the background check at the CONTRACTOR's expense.

In addition, SBCTA and/or CHP may, in their sole discretion, require a CONTRACTOR to replace any Driver or potential Driver who is determined not to be a suitable representative of the FSP Program to the public based on the background check or any other reason.

Driver Equipment.

CONTRACTOR is responsible for providing Drivers with specified uniforms, black protective toe boots, nameplates, and other equipment. The equipment includes navy blue jump suits or shirts and pants. If coveralls are worn, they shall have a collar with a zipper. Optionally, drivers may wear a standard navy blue (long-sleeve only) uniform shirt, with a fluorescent orange (must be only 2.5" wide) trim, with a ½" silver reflective tape down the middle. This allowed reflective tape must be on both sleeves as indicated in the updated contractor exhibit. The only approved trim color is fluorescent orange with a ½" silver reflective tape in the middle. The fluorescent tape cannot be wider than the allowed 2.5" wide. All uniforms shall be clean, properly maintained, and replaced whenever excessively worn.

A detachable brass or gold nameplate shall be worn with the first initial of the first name and full last name of the Driver. Letters shall not exceed ½" tall; nameplate must be approved by an FSP CHP officer. The nameplate shall be worn above the right chest pocket on the vest.

A safety vest with reflective stripes shall be worn; SBCTA will supply vests. A small FSP logo shall be sewn/silkscreened on the front of the safety vest over the left front pocket of the uniform, and a small FSP logo shall be sewn/silkscreened on the left sleeve of the vest. A large FSP logo shall be sewn/silkscreened across the middle portion of the back of each safety vest. SBCTA will supply vests to the CONTRACTOR with the FSP logos already sewn/silkscreened on per CHP's required FSP logo placement locations. The brass or gold nameplate with the Driver's first initial of first name and full last name shall be displayed on the front of the safety vest over the right front pocket. **The CONTRACTOR is responsible for obtaining FSP CHP officer approval of the Driver nameplates, and the CONTRACTOR is responsible for the purchase and placement of the Driver nameplate.** An FSP logo is not required to be sewn/applied on the navy blue Driver uniform.

All Drivers shall wear black work boots with protective (steel or composite) toe.

During cold weather, a navy blue jacket may also be worn at the Driver's option, if it meets all the uniform specifications. The CONTRACTOR and/or the Driver may contact CHP for any uniform questions or clarifications.

Rain gear shall be waterproofed material, navy blue or yellow in color.

Hats, if worn, shall be baseball type cap, navy blue in color. An "FSP" logo may be sewn/silkscreened on the hat above the brim. No other logos/names shall be accepted. A beanie may also be worn which must be navy blue in color and worn only with a jacket or long sleeve shirt under the vest. A picture of the uniform is provided toward the end of this scope of work.

CONTRACTOR should refer to the most current SOP Manual in making sure it is following the most recent Driver equipment requirements.

6.0 Local Office.

The CONTRACTOR shall provide a local office for contract administration purposes. This office shall be staffed by either the CONTRACTOR or its representative, who is authorized to conduct business and make decisions on behalf of the CONTRACTOR. The office shall have business hours coinciding with CONTRACTOR's Beat(s) hours of operation. Through the Proposal document shown in section 7.0 of the Scope of Work, Contractor Representative Form, the CONTRACTOR shall designate representatives who will be available at the office during hours of operation to make decisions on behalf of the CONTRACTOR. The office shall be established within close proximity to the CONTRACTOR's Beat(s) and shall be located in Riverside, San Bernardino, Los Angeles or Orange counties. A FSP Certified Back-Up Tow Truck and a FSP Certified Back-Up Tow Truck Driver must be available within a 45 minute request regardless of the CONTRACTOR's office location.

The CONTRACTOR shall also provide telephone, scanner and email through which they, or a responsible representative authorized to conduct business and make decisions on behalf of the CONTRACTOR, can be reached during the non-service hours of operation for the length of the contract. During non-business hours, an answering machine, provided at the CONTRACTOR'S expense, shall be available to log calls, take complaints, etc. An email address that is monitored daily shall be provided for "noticing" purposes during operational and non-service hours. The CONTRACTOR will be responsible for having a company representative monitor and review messages/notices on a daily basis and respond in a timely manner. Please see Exhibit "C" of this contract for penalties associated with failure to respond to communications from CHP and/or SBCTA.

7.0 Beat Descriptions.

SAN BERNARDINO COUNTY FREEWAY SERVICE PATROL

BEAT DESCRIPTIONS

Beat #	Beat Description	One-Way Length in Miles	# Primary FSP Trucks in both AM and PM	# FSP certified Back-Up Tow Trucks
14	I-215 CENTER STREET FROM RIVERSIDE COUNTY LINE TO DEVORE ROAD	10.02	2	1

Beat 14 is currently scheduled to operate from **5:30 a.m. to 8:30 a.m.** and from 2:00 p.m. to 7:00 pm (Monday through Thursdays). On Fridays, the PM shift begins at 12:00 p.m. to 7:00 p.m.

Beat 14, requires two (2) Primary FSP Certified Tow Trucks and one (1) Primary FSP Certified Back up Tow Truck available during all FSP operational service hours.

Beat 14 may be asked to participate in possible SBCTA's "FSP Extra Work weekend contingency services", on an as needed basis. Possible hours of operation may include Saturdays and Sundays from 10:00 a.m. to 6:00 p.m. Extra work is not guaranteed. The actual amount of weekend hours

or number of weekend trucks are not guaranteed. Written notice from SBCTA shall be required for commencement and termination of “FSP Extra Work weekend contingency services”.

SBCTA reserves the right to change Beat operating times and operational requirements (i.e., length of Beat and hours of operation) during the course of the Contract.

Please refer to Attached Map of Beat areas

“Extra Work” for emergency coverage may be assigned for any of the nine (9) SBCTA FSP service areas:

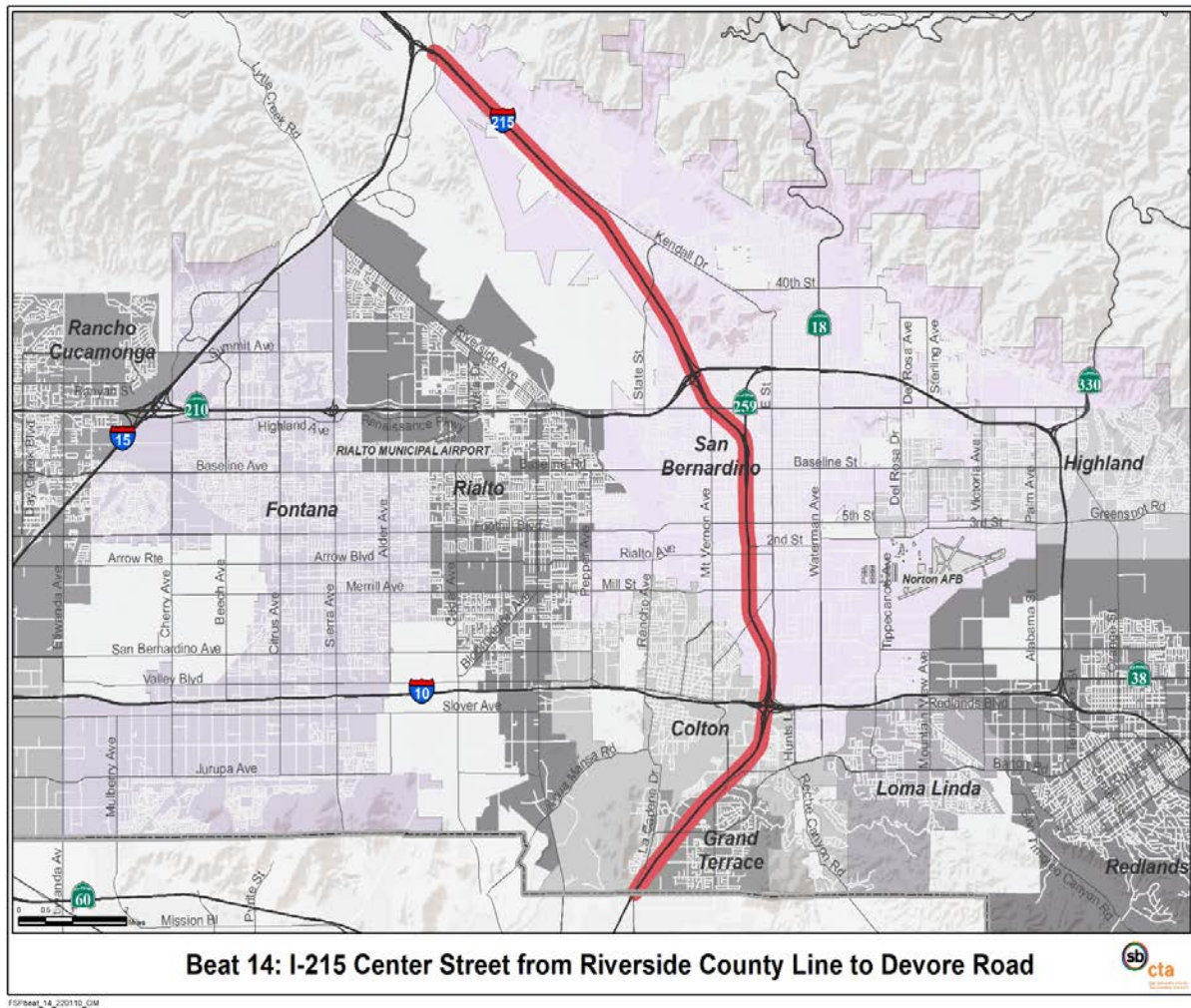
1. Beat 5: State Route 60 (SR-60) Reservoir Street (Los Angeles County line) to Milliken Avenue
2. Beat 9: Interstate 10 (I-10) Indian Hill (Los Angeles County line) to Haven Avenue
3. Beat 10: Interstate 10 (I-10) Haven Avenue to Sierra Avenue
4. Beat 11: Interstate 10 (I-10) Sierra Avenue to Waterman Avenue
5. Beat 14: Interstate 215 (I-215) Center Street (Riverside County line) to Devore Road
6. Beat 23: Interstate 15 (I-15) Jurupa Street (Riverside County line) to Sierra Avenue
7. Beat 27: Interstate 15 (I-15) Sierra Avenue to Oak Hill Road
8. Beat 29: Interstate 10 (I-10) Waterman Avenue to Yucaipa Boulevard
9. Beat 31: State Route 210 (SR-210) Los Angeles County line to Citrus Avenue

Beat 14 is the priority Beat for this CONTRACT, which means that should a primary truck go down; the “Extra Work” Beat truck shall be deployed back to the primary Beat. SBCTA shall evaluate all travel times made from the “Extra Work” Beat to the primary Beat in a penalty time situation on a monthly basis. Final penalty determination shall be made by CHP and SBCTA.

The contractor shall hold to all required standards addressing truck image and maintenance for the FSP Certified Back-Up Tow Truck being used during “Extra Work”, as CHP shall retain all rights to inspect and put the trucks out of service for non-compliance. Penalties shall still apply. In the event that the “Extra Work” Beat truck must be sent to cover the primary Beat, no penalty time shall be assessed for not having that back-up truck on the “Extra Work” Beat.

SBCTA reserves the right to change Beat hours and operational requirements during the course of the Contract. Written notice from SBCTA shall be required for commencement and termination of “Extra Work”.

Map of Beat Area



8.0 FSP Holidays.

PRELIMINARY LIST OF FREEWAY SERVICE PATROL HOLIDAYS

Services are to be provided Monday through Friday at the hours designated in the Contract with the exception of the following holidays:

1. Martin Luther King, Jr. Day (Monday)
2. Presidents' Day (Monday)
3. Memorial Day (Monday)
4. Independence Day (July 4 - varies)
5. Labor Day (Monday)
6. Veterans Day (varies)
7. Thanksgiving Day (Thursday)
8. Day after Thanksgiving (Friday)
9. Christmas Day (December 25 - varies)
10. New Year's Day (January 1 – varies)

Approximate total service hours per primary vehicle per year is estimated to be 2,030 hours, for years one (1) through three (3) of the CONTRACT, and estimated to be 1,910 hours for years four (4) through five (5) of the CONTRACT Monday through Friday for Beat: 14.

An estimated possible 750 “**Extra Work**” contingency hours may be needed for FSP weekend service Saturday through Sunday for Beat 14.

Please note “Extra Work” contingency hours are not guaranteed.

All Beats may be asked to participate in possible SBCTA’s “FSP Extra Work weekend contingency services”, on an as needed basis. Possible hours of operation may include Saturdays and Sundays from 10:00 a.m. to 6:00 p.m. Extra work is not guaranteed. The actual amount of weekend hours or number of weekend trucks are not guaranteed. Written notice from SBCTA shall be required for commencement and termination of “FSP Extra Work weekend contingency services”.

Each SBCTA tow operator agreement contains a clause regarding the Construction Freeway Service Patrol (CFSP). The goal of CFSP is to assist in construction zones outside of regular FSP hours or locations. The work is provided as “Extra Work” due to the uncertainty of the hours or changes in construction.

In addition to the above service hours, at the discretion of SBCTA and the CHP, additional service may be requested on certain “high traffic days” prior to or following certain holidays (e.g., July 4th, Labor Day, Sunday following Thanksgiving Day, Memorial Day). CONTRACTORS will be notified at least one week prior when FSP service hours are altered due to when certain holidays fall on the calendar. Each year could be different. Please note that FSP service hours can be altered for other unforeseen purposes as well.

9.0 FSP UNIFORM REQUIREMENTS



STRIPE EXAMPLES:

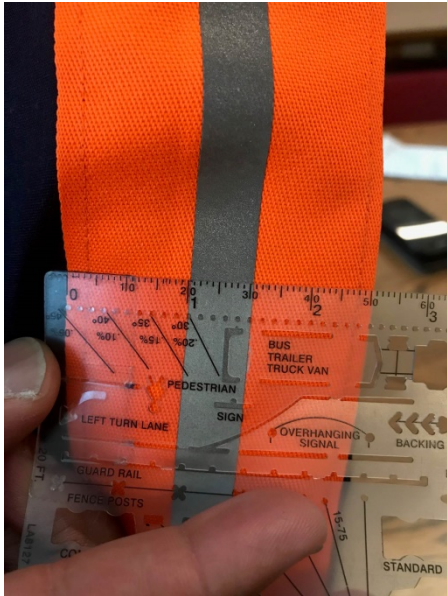


EXHIBIT B - "PRICE FORM"

Exhibit B

Contract: 22-1002738

Compensation and Payment

Overview Contract No. 22-1002738 with Royal Coaches Auto Body & Towing for Beat 14

Beat 14 Term

NTP I: July 6, 2022-December 31, 2022**NTP II:** January 1, 2023-December 31, 2027

Two Primary FSP Tow Trucks plus one certified FSP Back Up Tow Truck is required

NTP I JULY 6, 2022- DECEMBER 31, 2022						
PERIOD OF PERFORMANCE/ NTP I DELIVERABLES FSP Tow Truck Purchase, Mobilization, AVL and Radio installation, FSP Driver Training, Project ramp-up, and Tow Vehicle inspections	ESTIMATED BASELINE HOURS	ESTIMATED WEEKEND HOURS SUBJECT TO SBTA APPROVAL	7% MORE HOURS	ESTIMATED TOTAL HOURS	HOURLY RATE	NOT-TO EXCEED AMOUNT
JULY 6, 2022- DECEMBER 31, 2022	N/A	N/A	N/A	N/A	\$0.00	\$0

BEAT 14- FSP SUPPORT NTP II JANUARY 1, 2023- DECEMBER 31, 2027 Two Primary FSP Tow Trucks plus one certified FSP Back Up Tow Truck is required						
PERIOD OF PERFORMANCE/ NTP II DELIVERABLES FSP SUPPORT SERVICES	ESTIMATED BASELINE HOURS	ESTIMATED WEEKEND HOURS *Subject to SBCTA Approval*	7% MORE HOURS	ESTIMATED TOTAL HOURS	HOURLY RATE	NOT-TO-EXCEED AMOUNT (TOTAL HOURS X HOURLY RATE) X 2 TRUCKS)
YEAR 1: FY 22/23-FY 23/24 (1/1/23-12/31/23)	2,030	750	195	2,975	\$91.11	\$542,105
YEAR 2: FY 23/24-FY 24/25 (1/1/24-12/31/24)	2,030	750	195	2,975	\$91.11	\$542,105
YEAR 3: FY 24/25-FY 25/26 (1/1/25-12/31/25)	2,030	750	195	2,975	\$91.11	\$542,105
YEAR 4: FY 25/26-FY 26/27 (1/1/26-12/31/26)	1,910	750	186	2,846	\$97.98	\$557,702
YEAR 5: FY 26/27-FY 27/28 (1/1/27-12/31/27)	1,910	750	186	2,846	\$97.98	\$557,702
CONTRACT TOTAL	9,910	3,750	956	14,616		\$2,741,718

NTP II YEAR 1-3**EXTRA TIME, NON PENALIZED DOWN TIME AND****PENALIZED DOWN TIME PER MINUTE RATES**

Extra Time: \$1.52 per minute

Non-Penalized Down Time: \$1.52 per minute

Penalized Down Time: \$4.56 Per Minute

NTP II YEAR 4-5**EXTRA TIME, NON PENALIZED DOWN TIME AND****PENALIZED DOWN TIME PER MINUTE RATES**

Extra Time: \$1.63 per minute

Non-Penalized Down Time: \$1.63 per minute

Penalized Down Time: \$4.90 Per Minute

**WEEKEND HOURS, EXTRA WORK HOURS, CFSP
CALTRANS LED, AND SBCTA LED SUPPORT
PROJECTS
ARE NOT GUARANTEED AND SUBJECT TO SBCTA
APPROVAL**

Attachment: 22-1002738- Exhibit B (8546 : Award Freeway Service Patrol Contracts - RFP No. 22-1002736 for Beats 9,14, and 31)

EXHIBIT C – “PENALTIES”

EXHIBIT C

SUMMARY OF FSP VIOLATIONS AND PENALTIES

Below is a list of penalties that can be assessed to a Contractor if not in compliance with the policies and procedures of the Freeway Service Patrol Program. All final penalties shall be assessed by the determination of SBCTA.

Relevant section	Description of violation	Penalty
12.0	Contractor does not have two (2) primary and one (1) back-up (wheel lift) tow trucks "FSP" ready for SBCTA to install equipment and for CHP to inspect seven (7) business days prior to the start of a Beat.	Flat \$1,000 fine. In addition, should the trucks not be ready by the start of shift, the Contractor shall be fined three times the hourly rate in one minute increments for every minute compliance is not met.
5.0	Not meeting tow truck requirements outlined in the contract.	Three (3) times the hourly contract rate in one (1) minute increments until requirement is met. If entire shift is missed, Contractor shall be fined for the entire shift at three (3) times the hourly rate.
5.0 B	Not having a certified FSP "back-up" tow truck and/or Driver	Three (3) times the hourly contract rate in one (1) minute increments until requirement is met. If entire shift is missed, Contractor shall be fined for the entire shift at three (3) times the hourly rate.
5.0 C	Wheel lift Tow truck not made available <u>within 45 minutes</u> due to equipment/truck breakdown.	The CONTRACTOR has 45 minutes to correct the problem if the breakdown occurs during the shift, the penalty for the forty five (45) minute period will be calculated in one (1) minute increments on a straight hourly rate. Time beyond 45 minutes will be calculated as penalized time (Three (3) times the hourly contract rate in one (1) minute increments). Exact penalized down time rate is detailed in the Contract. If a truck is not ready due to a breakdown at the beginning of a shift, penalty will begin at the beginning of the shift at the penalized rate. If entire shift is missed, Contractor shall be fined for the entire shift at three (3) times the hourly rate
12.0	Contractor fines 9.B.4 Contractor fines are assessed for violations of the FSP contract or the SOP that are not directly related to FSP truck operations. This includes but not limited to: Failing to turn required paperwork in on time (Surveys, inspection sheets, etc.), damage to FSP Program equipment, or not supplying Driver the proper equipment as required in the FSP Contract.	The fine amount shall not exceed \$50.00 for each individual occurrence or violation, with the exception of replacement costs.
5.0 E	Tablet Computers not being charged in designated location during non-FSP operational hours.	\$50.00 per tablet
5.0 E	Email correspondence from CHP/SBCTA not being acknowledged. It is critical that the email address that the CONTRACTOR provides is working at all times. CONTRACTOR is required to report problems with email system immediately to SBCTA.	\$100.00 per day of no response
5.0 E	Lost/damaged equipment	Full cost if lost or damaged beyond normal wear and tear. If equipment is repairable, the cost of the repair shall be deducted from contractors invoice.

SOP	Contractor did not follow proper tip procedure per the SOP on Page 40, Section 6.B.	\$50.00 per occurrence
5.0 F	Tampering with FSP AVL equipment	2 FSP shifts (7 hours) at the CONTRACTOR'S penalty rate (3 times the normal hourly rate) plus AVL Technician's transportation, labor, repair and/or replacement costs.
5.0 G	Damage Release/Release of liability forms not completed, not filled out properly, or not submitted within thirty (30) calendar days from the date on the form.	\$5.00-50.00 per incident at the discretion of Commission.
5.0 G	Duplicate customer six digit survey number >10%	\$50 and up. Case by case basis as determined by FSP Management.

Contract Summary Sheet

7.m

General Contract Information

Contract No: 22-1002737 Amendment No.: _____

Contract Class: Payable Department: Air Quality and Mobility

Vendor No.: 03251 Vendor Name: Royal Coaches Auto Body & Towing

Description: FREEWAY SERVICE PATROL BEAT 31

List Any Related Contract Nos.: _____

Dollar Amount

Original Contract	\$	2,741,718.00	Original Contingency	\$	685,430.00
Prior Amendments	\$	-	Prior Amendments	\$	-
Current Amendment			Current Amendment	\$	-
Total/Revised Contract Value	\$	2,741,718.00	Total Contingency Value	\$	685,430.00
Total Dollar Authority (Contract Value and Contingency)				\$	3,427,148.00

Contract Authorization

Board of Directors _____ Date: 7/6/2022 _____ Committee _____ Item # _____

Contract Management (Internal Purposes Only)

Other Contracts _____ Sole Source? No _____ No Budget Adjustment _____

State/Local _____ Professional Services (Non-A&E) _____

Accounts Payable

Estimated Start Date: 7/6/2022 Expiration Date: 12/31/2027 Revised Expiration Date: _____

NHS: N/A QMP/QAP: N/A Prevailing Wage: No

Total Contract Funding: _____ Total Contingency: _____

Fund	Prog	Task	Sub-Task	Object	Revenue	PA Level	Revenue Code Name	\$		\$
GL: 2810	15	0704	0000	52001	42212001		SAFE	548,315.60		-
GL: 2820	15	0704	0000	52001	42213016		FSP	274,297.80		-
GL: 2820	15	0704	0000	52001	42213017		FSP	274,157.80		-
GL: 2702	15	0704	0170	52001	42217712		FSP SB1	274,157.80		-
GL: 2702	15	0704	0171	52001	42217712		FSP SB1	274,157.80		-
GL: 2702	15	0704	0170	52001	42217714		FSP SB1	274,157.80		-
GL: 2702	15	0704	0171	52001	42217714		FSP SB1	274,157.80		-
GL: 2702	15	0704	0170	52001	42217716		FSP SB1	274,157.80		-
GL: 2702	15	0704	0171	52001	42217716		FSP SB1	274,157.80		-
GL: 2625	15	0704	0172	52001	42211503		Caltrans Reimb	-		685,430.00

CHERYL WILSON

Steve Smith

Project Manager (Print Name)

Task Manager (Print Name)

No match requirement for revenue 42211503 (and future Caltrans CFSP MOUs), this revenue source is 100% reimbursable by Caltrans for Construction Freeway Service Patrol (CFSP) extra work support.

Attachment: 22-1002737 CSS [Revision 1] (8546 : Award Freeway Service Patrol Contracts - RFP No. 22-1002736 for Beats 9,14, and 31)

CONTRACT NO. 22-1002737**BY AND BETWEEN****SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY****AND****ROYAL COACHES AUTO BODY & TOWING****FOR****FREEWAY SERVICE PATROL BEAT 31**

This contract (referred to as “Contract”), is made and entered into by and between the San Bernardino County Transportation Authority (“SBCTA”), whose address is: 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715; and Royal Coaches Auto Body & Towing (“CONTRACTOR”), whose address is: 1487 Ramona Blvd. Baldwin Park, CA 91706. SBCTA and CONTRACTOR are each a “Party” and collectively the “Parties”.

RECITALS:

WHEREAS, SBCTA requires certain work services as described in Exhibit “A” of this Contract and;

WHEREAS, CONTRACTOR has confirmed that CONTRACTOR has the requisite professional qualifications, personnel and experience and is fully capable and qualified to perform the services identified herein; and

WHEREAS, CONTRACTOR desires to perform all Work identified herein and to do so for the compensation and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1. PROJECT DESCRIPTION/SCOPE OF WORK

- 1.1 CONTRACTOR agrees to perform the work and services set forth in Exhibit A “Scope of Work” (“Work”), in accordance with all applicable professional standards which are generally accepted in the State of California, in accordance with the terms and conditions expressed herein and in the sequence, time, and manner defined herein. The word “Work” includes without limitation, the performance, fulfillment and discharge by CONTRACTOR of all obligations, duties, tasks, and services imposed upon or assumed by CONTRACTOR hereunder; and the Work performed hereunder shall be completed to the satisfaction of SBCTA, with SBCTA’s satisfaction being based on prevailing applicable professional standards.
- 1.2 CONTRACTOR warrants that all employees and sub-contractors shall have sufficient skill and experience to perform the Work assigned to them. CONTRACTOR further represents and warrants to SBCTA that its employees and sub-contractors have all licenses, permits,

qualifications (including medical certification) and approvals of whatever nature that are required to perform the Work, and that such licenses and approvals shall be maintained throughout the term of this Contract. CONTRACTOR shall perform, at its own cost and expense and without compensation from SBCTA, any Work necessary to correct errors or omissions which are caused by the CONTRACTOR's failure to comply with the standard of care provided for herein, and shall be fully responsible to SBCTA for all damages and other liabilities provided for in the indemnification provisions of this Contract arising from the CONTRACTOR's errors and omissions. Any employee of CONTRACTOR or its sub-contractors who is determined by SBCTA to be a threat to the safety of persons or property shall be promptly removed by the CONTRACTOR from the duties under the Freeway Services Patrol ("FSP") Program as defined in Exhibit "A" and shall not be re-employed to perform any of the Work on the FSP Program.

- 1.3 The Project Manager for this Contract is Cheryl Wilson or such other designee as shall be designated in written notice to CONTRACTOR from time to time by the Executive Director of SBCTA or his or her designee. The Project Manager shall have authority to act on behalf of SBCTA in administering this Contract, including giving notices (including without limitation, notices of default and/or termination), technical directions and approvals; demanding performance and accepting work performed, but is not authorized to receive or issue payments or execute amendments to the Contract itself.

ARTICLE 2. CONTRACT TERM

The Contract term shall commence upon issuance of a written Notice To Proceed (NTP) issued by SBCTA's Procurement Analyst, and shall continue in full force and effect through December 31, 2027 or until otherwise terminated, or unless extended as hereinafter provided by written amendment, except that all indemnity and defense obligations hereunder shall survive termination of this Contract. CONTRACTOR shall not be compensated for any Work performed or costs incurred prior to issuance of the NTP.

ARTICLE 3. COMPENSATION

- 3.1 Total compensation to CONTRACTOR for full and complete performance of the Scope of Work, identified herein and, in compliance with all the terms and conditions of this Contract, shall be on a FSP Time & Materials basis for all obligations incurred in, or application to, CONTRACTOR's performance of Work, and for which CONTRACTOR shall furnish all personnel, facilities, equipment, materials, supplies, and Services (except as may be explicitly set forth in this Contract as furnished by SBCTA) shall not exceed the amount set forth in section 3.2 below.
- 3.2 The total Contract Not-To-Exceed Amount is Two Million, Seven Hundred Forty One Thousand, Seven Hundred Eighteen Dollars (\$2,741,718). All Work provided under this Contract is to be performed as set forth in Exhibit A "Scope of Work". The hourly labor rates identified in Exhibit B shall remain fixed for the term of this Contract and include CONTRACTOR's direct labor costs, indirect costs, and profit. SBCTA will not compensate CONTRACTOR for any expenses not shown in Exhibit B or agreed to and approved by SBCTA as required under this Contract.

- 3.3 The hourly rates under this contract are identified in Exhibit “B”. Identified below are the amounts authorized to be compensated for the following:
- 3.3.1 Extra Time: Will be compensated in one-minute increments when a truck goes beyond the end of its normal shift
 - 3.3.2 Non-Penalized Down Time: Assessed in one-minute increments when a truck is “out of service” without violation, as set forth in Exhibit “C”.
 - 3.3.3 Penalized Down Time: Assessed at three (3) times the hourly rate, broken down into one minute increments, when a truck is “out of service” in violation of the Contract, as set forth in Exhibit “C”.
 - 3.3.4 Final extra time and penalty times shall be assessed at the sole discretion of SBCTA.
- 3.4 Intentionally Omitted
- 3.5 The Cost Principles and Procedures set forth in 48 CFR, Ch. 1, subch. E, Part 31, as constituted on the effective date of this Contract, shall be utilized to determine allowability of costs under this Contract and may be modified from time to time by written amendment of the Contract.
- 3.5.1 CONTRACTOR agrees to comply with Federal requirements in accordance with 2 CFR, Parts 200 and 1201, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
 - 3.5.2 Any costs for which payment has been made to CONTRACTOR that are determined by subsequent audit to be unallowable under 48 CFR, Ch. 1, subch. E, Part 31, or 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, shall be repaid by CONTRACTOR to SBCTA.
- 3.6 Any Work provided by CONTRACTOR not specifically covered by the Scope of Work shall not be compensated without prior written authorization from SBCTA. It shall be CONTRACTOR’s responsibility to recognize and notify SBCTA in writing when services not covered by the Scope of Work have been requested or are required. All changes and/or modifications to the Scope of Work shall be made in accordance with the “CHANGES” Article in this Contract. Any additional services agreed to in accordance with this Contract shall become part of the Work.
- 3.7 All subcontracts in excess of \$25,000 shall contain the above provisions.

ARTICLE 4. INVOICING

- 4.1 Payment to CONTRACTOR as provided herein shall be payable in monthly billing period payments, forty-five (45) calendar days after receipt of an acceptable invoice by SBCTA of an invoice prepared in accordance with instructions below. Payment shall not be construed to be an acceptance of Work.
- 4.2 CONTRACTOR shall prepare invoices in a form satisfactory to and approved by SBCTA, and it shall be accompanied by documentation supporting each element of measurement and/or cost. Each invoice will be for a monthly billing period and will be marked with SBCTA'S contract number, description and task order number, if applicable. Invoices shall be submitted within fifteen (15) calendar days for the period covered by the invoice, except for the month of June, for which the invoice must be submitted by July 10th. Invoices shall include request for payment for Work (including additional services authorized by SBCTA) completed by CONTRACTOR during each billing period and shall include back-up information sufficient to establish the validity of the invoice. Any invoice submitted which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to CONTRACTOR. Any costs incurred by CONTRACTOR in connection with the resubmission of a proper invoice shall be at CONTRACTOR'S sole expense. The final invoice shall be marked "FINAL" and will be submitted within 60 calendar days after SBCTA has received and approved all Work and deliverables. Invoices should be e-mailed to SBCTA at the following address:
ap@gosbcta.com
- 4.3 CONTRACTOR shall include a statement and release with each invoice, satisfactory to SBCTA, that CONTRACTOR has fully performed the Work invoiced pursuant to the Contract for the period covered, that all information included with the invoice is true and correct, and that all payments to and claims of CONTRACTOR for its Work during the period will be satisfied upon making of such payment. SBCTA shall not be obligated to make payments to CONTRACTOR until CONTRACTOR furnishes such statement and release.
- 4.4 INTENTIONALLY OMITTED
- 4.5 No payment will be made prior to approval of any Work, nor for any Work performed prior to the NTP or the issuance of an applicable CTO, nor for any Work under any amendment to the Contract until SBCTA'S Awarding Authority takes action.
- 4.6 INTENTIONALLY OMITTED
- 4.7 INTENTIONALLY OMITTED
- 4.8 CONTRACTOR agrees that throughout the term of this Contract, it shall not enter into any other FSP service contracts with any other public entities within the Southern California region, pursuant to which CONTRACTOR agrees to charge "FSP" service fees less than those charged under this Contract for substantially the same level of "FSP" services contemplated by this Contract. Should SBCTA establish that CONTRACTOR has agreed to charge such lower fees to another government agency, CONTRACTOR agrees to reduce its fees under the Contract to the lower fees charged to the other governmental agency and

to refund SBCTA an amount equal to the difference between the fees provided in this Contract and the lower fees charged to the other government agency.

4.9 **EXTRA WORK:**

At any time during the term of this Contract, SBCTA may request CONTRACTOR to perform Extra Work. "Extra Work" shall mean any work which is determined by SBCTA to be necessary for proper completion of the Work, but which the parties did not reasonably anticipate would be necessary at the time of the execution of this Contract. Such work includes Construction FSP services, Weekend FSP services, and coverage of other Beats for which Contractors are selected in SBCTA's sole determination based on their Beat proximity and performance. "Extra Work" shall be compensated at the hourly rate as identified in Exhibit "B". CONTRACTOR shall not perform, nor be compensated for, Extra Work except as specifically authorized by SBCTA in writing prior to performance. Authorization for Extra Work up to \$25,000.00 will be subject to prior verification of then-existing contract authority and must be pursuant to SBCTA program manager's prior written approval, which may be provided via email. Authorization for "Extra Work" above \$25,000.00 must be issued by a written contingency amendment or contract amendment as applicable. All terms and conditions of this Contract shall apply to any "Extra Work" performed.

4.10 **COVERAGE OF OTHER BEATS**

At times, other FSP Contractors will not be able to cover their shifts or complete their contractual obligations. A CONTRACTOR assigned to provide coverage on another contract/Beat is considered Extra Work and required to follow all FSP operational rules, policies and procedures for that Beat. CONTRACTOR's hourly rate for coverage shall be contracted FSP service hourly rate in this agreement.

In order for a CONTRACTOR to be considered for coverage of other Beats, the following criteria must be followed:

- CONTRACTOR is willing to provide coverage;
- CONTRACTOR is in good standing with CHP and SBCTA;
- There are funds available to cover the cost of the providing the coverage;
- CONTRACTORS should consider distance to the location of additional coverage and Log Book requirements before accepting service under this section;

4.11 **CONSTRUCTION FSP:** Construction FSP (CFSP) services are FSP services that are provided along a segment of highway that falls within a construction zone. This work is paid for with funds from specific projects and not the FSP State Highway Account/FSP SB1 funds. This is considered to be Extra Work as described in Section 4.9, and will all require the authorization of SBCTA's Program Manager in writing as well as a written contingency amendment or contract amendment as appropriate. There are three types of CFSP services that can occur:

1. Caltrans requested CFSP: Caltrans led projects that are part of the Caltrans/SBCTA CFSP Cooperative agreement No. 20-1002437. These projects will also require the issuance of a Caltrans Task Order (CTO).
2. SBCTA requested CFSP: SBCTA led projects that will be funded by SBCTA.
3. City requested CFSP: City led projects that will be funded by the City.

Construction FSP services will typically be performed during non-regular SBCTA FSP hours. Should there be any cancellation of work, the following schedule will be followed for compensation of cancelled work :

- If the CONTRACTOR is scheduled to patrol the construction site, and is notified of a cancellation with less than a 24-hour notice, the CONTRACTOR will be compensated for three (3) hours of the agreed upon hourly truck rate.
- If the CONTRACTOR is notified during a CFSP beat that CFSP has been cancelled, the FSP operator will be paid for the entire shift period up to a maximum of eight (8) hours.

For purposes of CFSP, a shift period is defined as: the actual time of the CFSP shift assigned or a maximum of eight (8) contract truck hours, whichever is less.

The supervising FSP CHP Officer for the CFSP beat will make the final determination as to whether the CONTRACTOR will continue the CFSP beat or will return to its office.

ARTICLE 5. MOBILIZATION COSTS PAYMENT

The mobilization costs payment was made to CONTRACTOR to help offset pre-start date costs. CONTRACTOR shall pay back the Zero Dollar (\$0) payment made at the time that the limited Notice to Proceed was provided. CONTRACTOR shall pay back this payment in twelve (12) equal monthly installments to be deducted from their monthly invoice by the Project Manager.

Failure to pay back the entirety of the Mobilization costs will result in withholding remaining balance from the final payment in the event of early termination.

ARTICLE 6. TAXES, DUTIES AND FEES

Except to the extent expressly provided elsewhere in this Contract, CONTRACTOR shall pay when due, and the compensation set forth herein, shall be inclusive of all: a) local, municipal, State, and federal sales and use taxes; b) excise taxes; c) taxes on personal property owned by CONTRACTOR; and d) other governmental fees and taxes or charges of whatever nature applicable to CONTRACTOR to enable it to conduct business.

ARTICLE 7. AVAILABILITY OF FUNDS

The award and performance of this Contract is contingent on the availability of funds. If funds are not appropriated and/or allocated and available to SBCTA for the continuance of Work performed by CONTRACTOR, Work directly or indirectly involved may be suspended or terminated by SBCTA at the end of the period for which funds are available. When SBCTA becomes aware that any portion of Work will or may be affected by a shortage of funds, it will promptly notify CONTRACTOR. Nothing herein shall relieve SBCTA from its obligation to compensate

CONTRACTOR for work already performed pursuant to this Contract. No penalty shall accrue to SBCTA in the event this provision is exercised.

ARTICLE 8. PERMITS AND LICENSES

CONTRACTOR shall, without additional compensation, keep current all governmental permits, certificates and licenses (including professional licenses) and required registrations necessary for CONTRACTOR to perform Work identified herein.

ARTICLE 9. DOCUMENTATION AND RIGHT TO AUDIT

- 9.1 CONTRACTOR shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a period of three (3) years from the date of final payment by SBCTA, or until the conclusion of all litigation, appeals or claims related to this Contract, whichever is longer. CONTRACTOR shall provide SBCTA, the California State Auditor, or other authorized representatives of SBCTA, access to CONTRACTOR's records which are directly related to this Contract for the purpose of inspection, auditing or copying during the entirety of the records maintenance period above. CONTRACTOR further agrees to maintain separate records for costs of Work performed by amendment. CONTRACTOR shall allow SBCTA, its representatives and agents to reproduce any materials as reasonably necessary.
- 9.2 The cost proposal and/or invoices for this Contract are subject to audit by SBCTA and/or any state or federal agency funding this Project at any time. After CONTRACTOR receives any audit recommendations, the cost or price proposal shall be adjusted by CONTRACTOR and approved by SBCTA's Project Manager to conform to the audit recommendations. CONTRACTOR agrees that individual items of cost identified in the audit report may be incorporated into the Contract at SBCTA's sole discretion. Refusal by CONTRACTOR to incorporate the audit or post award recommendations will be considered a breach of the Contract and cause for termination of the Contract. Any dispute concerning the audit findings of this Contract shall be reviewed by SBCTA's Chief Financial Officer. CONTRACTOR may request a review by submitting the request in writing to SBCTA within thirty (30) calendar days after issuance of the audit report

ARTICLE 10. RESPONSIBILITY OF CONTRACTOR

- 10.1 CONTRACTOR shall be responsible for the professional quality, technical accuracy, and assurance of compliance with all applicable federal, State and local laws and regulations and other Work furnished by CONTRACTOR under the Contract. The Contract includes reference to the appropriate standards for Work performance stipulated in the Contract.
- 10.2 Damage Complaints – CONTRACTOR shall notify CHP of a damage complaint from a motorist assisted by CONTRACTOR within 8 hours of CONTRACTOR's receipt of the complaint. CONTRACTOR's notice to CHP shall include the nature of the damage alleged. CONTRACTOR shall call the complainant within 24 hours of receipt of the complaint. If necessary, within 48 hours of receipt of the complaint, CONTRACTOR shall send an authorized representative and/or a representative of CONTRACTOR's insurer to inspect the vehicle and complete an incident report. If the investigation shows that CONTRACTOR caused the damage to the vehicle, CONTRACTOR shall negotiate in a

good faith effort to resolve the claim, and shall report to the CHP the result of the negotiations. All complaints shall be resolved within a reasonable period of time after original notice.

- 10.3 Damage Complaint Review Committee –The committee is comprised of CHP and SBCTA representatives. The committee will investigate damage complaints if necessary and make recommendations to the CONTRACTOR.
- 10.4 In addition to any other requirements of this Contract or duties and obligations imposed on CONTRACTOR by law, CONTRACTOR shall, as an integral part of its Work, employ quality control procedures that identify potential risks and uncertainties related to scope, schedule, cost, quality and safety of the Project and the Work performed by CONTRACTOR within the areas of CONTRACTOR's expertise. At any time during performance of the Scope of Work, should CONTRACTOR observe, encounter, or identify any unusual circumstances or uncertainties which could pose potential risk to SBCTA or the Project, CONTRACTOR shall immediately document such matters and notify SBCTA in writing. CONTRACTOR shall also similarly notify SBCTA in regard to the possibility of any natural catastrophe, or potential failure, or any situation that exceeds assumptions and could precipitate a failure of any part of the Project. Notifications under this paragraph shall be specific, clear and timely, and in a form which will enable SBCTA to understand and evaluate the magnitude and effect of the risk and/or uncertainties involved.

ARTICLE 11. REPORTING

All reports shall be submitted in accordance with Exhibit A "Scope of Work". At a minimum, CONTRACTOR shall submit quarterly asset inventory reports. The report shall be sufficiently detailed for SBCTA to sufficiently address any difficulties or problems encountered with SBCTA owned property, so remedies can be developed.

ARTICLE 12. TECHNICAL DIRECTION

- 12.1 Performance of Work under this Contract shall be subject to the technical direction of SBCTA's Project Manager who is identified in Section 1.2, above. The term "Technical Direction" is defined to include, without limitation:
- 12.1.1 Directions to CONTRACTOR, which redirect the Contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the Scope of Work.
- 12.1.2 Provision of written information to CONTRACTOR, which assists in the interpretation of reports, or technical portions of the Scope of Work described herein.
- 12.1.3 Review and, where required by the Contract, approval of technical reports, and technical information to be delivered by CONTRACTOR to SBCTA under the Contract.
- 12.1.4 SBCTA's Project Manager may modify this Contract for certain administrative modifications without issuing a written amendment. Administrative modifications

are limited to: substitutions of personnel identified in the Contract, including Key Personnel; modifications to classifications, hourly rates and names of personnel; and modifications of the address of the CONTRACTOR. All such modifications will be documented in writing between the Parties.

- 12.2 Technical Direction must be within the Scope of Work under this Contract. Except as provided with regard to Extra Work in Section 4.9, SBCTA's Project Manager does not have the authority to, and may not, issue any Technical Direction which:

12.2.1 Increases or decreases the Scope of Work;

12.2.2 Directs CONTRACTOR to perform Work outside the original intent of the Scope of Work;

12.2.3 Constitutes a change as defined in the "CHANGES" Article of the Contract;

12.2.4 In any manner causes an increase or decrease in the Contract price as identified in the "COMPENSATION" Article or the time required for Contract performance;

12.2.5 Changes any of the expressed terms, conditions or specifications of the Contract; unless identified herein;

12.2.6 Interferes with CONTRACTOR's right to perform the terms and conditions of the Contract unless identified herein; or

12.2.7 Approves any demand or claims for additional payment.

- 12.3 Failure of CONTRACTOR and SBCTA's Project Manager to agree that the Technical Direction is within the scope of the Contract, or a failure to agree upon the Contract action to be taken with respect thereto, shall be subject to the provisions of "DISPUTES" Article herein.

- 12.4 All Technical Direction shall be issued in writing by SBCTA's Project Manager.

- 12.5 CONTRACTOR shall proceed promptly with the performance of Technical Direction issued by SBCTA's Project Manager, in the manner prescribed by this Article and within their authority under the provisions of this Article. If, in the opinion of CONTRACTOR, any instruction or direction by SBCTA's Project Manager falls within one of the categories defined in sections 11.2.1 through 11.2.7 above, CONTRACTOR shall not proceed but shall notify SBCTA in writing within five (5) working days after receipt of any such instruction or direction and shall request SBCTA to modify the Contract accordingly. Upon receiving the notification from CONTRACTOR, SBCTA shall:

12.5.1 Advise CONTRACTOR in writing within thirty (30) calendar days after receipt of CONTRACTOR's letter that the Technical Direction is or is not within the scope of this Contract.

12.5.2. Advise CONTRACTOR within a reasonable time whether SBCTA will or will not issue a written amendment.

ARTICLE 13. CHANGES

- 13.1 The Work shall be subject to changes by additions, deletions, or revisions made by SBCTA. CONTRACTOR will be advised of any such changes by written notification from SBCTA describing the change. Except as provided in Section 4.9, this notification will not be binding on SBCTA until SBCTA's Awarding Authority has approved an amendment to this Contract.
- 13.2 Promptly after such written notification of change is given to CONTRACTOR by SBCTA, the Parties will attempt to negotiate a mutually agreeable adjustment to compensation or time of performance, and amend the Contract accordingly, except as provided in Section 4.9.

ARTICLE 14. EQUAL EMPLOYMENT OPPORTUNITY

- 14.1 During the term of this Contract, CONTRACTOR shall not willfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, gender, sex, marital status, gender identity, gender expression, sexual orientation, age, or military and veteran status. CONTRACTOR agrees to comply with the provisions of Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.
- 14.2 The CONTRACTOR and all subconsultants shall comply with all provisions of Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin. In addition, CONTRACTOR and all subconsultants will ensure their services are consistent with and comply with obligations and procedures outlined in SBCTA's current Board-adopted Title VI Program, including the Public Participation Plan and the Language Assistance Plan.

ARTICLE 15. CONFLICT OF INTEREST

CONTRACTOR agrees that it presently has no interest, financial or otherwise, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Work required under this Contract or be contrary to the interests of SBCTA. CONTRACTOR further agrees that no person having any such interest shall be employed in the performance of this Contract. CONTRACTOR is obligated to fully disclose to SBCTA, in writing, any conflict of interest issues as soon as they are known to CONTRACTOR. .

ARTICLE 16. KEY PERSONNEL

The personnel specified below are considered to be essential to the Work being performed under this Contract. Prior to diverting any of the specified individuals to other projects, or reallocation of any tasks or hours of Work that are the responsibility of key personnel to other personnel, CONTRACTOR shall notify SBCTA in writing in advance and shall submit justifications

(including proposed substitutions, resumes and payroll information to support any changes to the labor rates) in sufficient detail to permit evaluation of the impact on the Project. Diversion or reallocation of key personnel shall not be made without prior written consent of SBCTA's Project Manager. CONTRACTOR shall not substitute any key personnel without the prior written consent of SBCTA. In the event that the Parties cannot agree as to the substitution of key personnel, SBCTA may terminate this Contract. Key Personnel are:

Name	Job Classification/Function
William Salazar	President & CEO
Johnny Perez	FSP Program Manager
David Acevedo	Assistant Program Manager FSP Quality Assurance
German Fajardo	Assistant Program Manager Certificates and License Compliance
Miguel Coronado	Assistant Program Manager CFSP

ARTICLE 17. REPRESENTATIONS

All Work supplied by CONTRACTOR under this Contract shall be supplied by personnel who are qualified, careful, skilled, experienced and competent in their respective trades or professions. CONTRACTOR agrees that they are supplying professional services in the performance of this Contract and agrees with SBCTA that the same shall conform to professional standards that are generally accepted in the profession in the State of California.

ARTICLE 18. PROPRIETARY RIGHTS/CONFIDENTIALITY

- 18.1 If, as a part of this Contract, CONTRACTOR is required to produce materials, documents data, or information ("Products"), then CONTRACTOR, if requested by SBCTA, shall deliver to SBCTA the original of all such Products which shall become the sole property of SBCTA.
- 18.2 All materials, documents, data or information obtained from SBCTA's data files or any SBCTA-owned medium furnished to CONTRACTOR in the performance of this Contract will at all times remain the property of SBCTA. Such data or information may not be used or copied for direct or indirect use outside of this Project by CONTRACTOR without the express written consent of SBCTA.
- 18.3 Except as reasonably necessary for the performance of the Work, CONTRACTOR agrees that it, its employees and agents s will hold in confidence and not divulge to third parties without prior written consent of SBCTA, any information obtained by CONTRACTOR from or through SBCTA unless (a) the information was known to CONTRACTOR prior to obtaining same from SBCTA pursuant to a prior contract; or (b) the information was at the time of disclosure to CONTRACTOR, or thereafter becomes, part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONTRACTOR or its employees and agents, or (c) the information was obtained by CONTRACTOR from a third party who did not receive the same, directly or indirectly, from SBCTA and who had, to CONTRACTOR 's knowledge and belief, the right to disclose the same. Any materials and information referred to in this Article, which are produced by CONTRACTOR, until

released in writing by SBCTA, except to the extent such materials and information become subject to disclosure by SBCTA under the California Public Records Act, or other law, or otherwise become public information through no fault of CONTRACTOR, or its employees or agents.

- 18.4 CONTRACTOR shall not use SBCTA's name or photographs in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SBCTA.
- 18.5 All press releases, or press inquiries relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SBCTA unless otherwise agreed to in writing by both Parties.

ARTICLE 19. TERMINATION

- 19.1 Termination for Convenience - SBCTA shall have the right at any time, with or without cause, to terminate further performance of Work by giving thirty (30) calendar days written notice to CONTRACTOR specifying the date of termination. On the date of such termination stated in said notice, CONTRACTOR shall promptly discontinue performance of Work.
 - 19.1.1 If CONTRACTOR has fully and completely performed all obligations under this Contract up to the date of termination, CONTRACTOR shall be entitled to receive from SBCTA as complete and full settlement for such termination a pro rata share of the Contract cost based upon the percentage of all contracted Work satisfactorily executed to the date of termination.
 - 19.1.2 CONTRACTOR shall be entitled to receive the actual costs incurred by CONTRACTOR to return CONTRACTOR's tools and equipment, if any, to it or its suppliers' premises in accordance with SBCTA's instructions plus the actual cost necessarily incurred in effecting the termination.
- 19.2 Termination for Cause - In the event CONTRACTOR shall file a petition in bankruptcy court, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy court shall be filed against CONTRACTOR or a receiver shall be appointed on account of its insolvency, or if CONTRACTOR shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice, SBCTA may, without prejudice to any other rights or remedies SBCTA may have, and in compliance with applicable Bankruptcy Laws: (a) hold in abeyance further payments to CONTRACTOR; (b) stop any Work of CONTRACTOR related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONTRACTOR specifying the date of termination. In the event of such termination by SBCTA, SBCTA may take possession of SBCTA owned tools and equipment by whatever method SBCTA may deem expedient. A waiver by SBCTA of one default of CONTRACTOR shall not be considered to be a waiver of any subsequent default of

CONTRACTOR, of the same or any other provision, nor be deemed to waive, amend, or modify any term of this Contract.

19.2.1 CONTRACTOR shall deliver to SBCTA all SBCTA owned tools and equipment under this Contract prepared by CONTRACTOR or furnished to CONTRACTOR by SBCTA within ten (10) working days of said notice.

19.3 All claims for compensation of costs under any of the foregoing provisions shall be supported by documentation submitted to SBCTA, satisfactory in form and content to SBCTA and verified by SBCTA. In no event shall CONTRACTOR be entitled to any payment for prospective profits or any damages because of such termination.

ARTICLE 20. STOP WORK ORDER

Upon failure of CONTRACTOR to comply with any of the requirements of this Contract, SBCTA shall have the right to stop any or all Work affected by such failure until such failure is remedied or to terminate this Contract in accordance with section "Termination For Cause" above.

ARTICLE 21. CLAIMS

SBCTA shall not be bound to any adjustments in the Contract amount or schedule unless expressly agreed to by SBCTA in writing. SBCTA shall not be liable to CONTRACTOR for any claim asserted by CONTRACTOR after final payment has been made under this Contract.

ARTICLE 22. INSURANCE

22.1 Prior to commencing the Work, at all times during the performance of the Work and for such additional periods as required herein, CONTRACTOR shall, at CONTRACTOR's sole expense, procure and maintain road form insurance coverage at least as broad as the following minimum requirements specified below:

22.1.1 Worker's Compensation/Employer's Liability Insurance – The policies must include the following:

- Coverage A. Statutory Benefits
- Coverage B. Employer's Liability
- Bodily Injury by accident - \$1,000,000 per accident
- Bodily Injury by disease - \$1,000,000 policy limit/\$1,000,000 each employee

Such policies shall contain a waiver of subrogation in favor of the parties named as Indemnitees below. Such insurance shall be in strict accordance with the applicable workers' compensation laws in effect during performance of the Work by CONTRACTOR or any subcontractor of any tier. All subconsultants of any tier performing any portion of the Work for CONTRACTOR shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with a waiver of subrogation in favor of CONTRACTOR and all parties named as Indemnitees below. Where coverage is provided through the California State Compensation Insurance Fund, the requirement for a minimum A.M. Best rating does not apply..

22.1.2 Garage Liability/Commercial General Liability. The policy must include the following:

- CONTRACTOR shall maintain commercial general liability (CGL) insurance (Insurance Services Office (ISO) Form CG 00 01), and if necessary excess/umbrella commercial liability insurance, with a combined limit of liability of not less than **\$5,000,000 each occurrence**.
- The policy shall be appropriate for the CONTRACTORS business and at a minimum shall include, coverage for any and all of the following: bodily injury, property damage, personal injury, broad form contractual liability (including coverage to the maximum extent possible for the indemnifications in the CONTRACT), premises-operations (including explosion, collapse and underground coverage), duty to defend in addition to (without reducing) the limits of the policy (ies), and products and completed operations.
 - \$5,000,000 per occurrence for property damage or bodily injury
 - \$1,000,000 per occurrence limit for personal injury and advertising injury
 - \$2,000,000 per occurrence limits for products/completed operations coverage (ISO Form 20 37 10 01) if SBCTA's Risk Manager determines it is in SBCTA's best interests to require such coverage,
 - If a general aggregate applies, it shall apply separately to this project/location. The project name must be indicated under "Description of Operations/Locations" (ISO Form CG 25 03 or CG 25 04).
- Coverage is to be on an "occurrence" form. "Claims made" and "modified occurrence" forms are not acceptable.
- A copy of the declaration page or endorsement page listing all policy endorsements for the CGL policy must be included.

All sub-contractors of any tier performing any portion of the WORK for CONTRACTOR shall also obtain and maintain the CGL insurance coverage with limits equal to or above the limits required of the CONTRACTOR.

22.1.3 Umbrella/Excess CGL Insurance:

- If the CONTRACTOR elects to include an umbrella policy to cover any of the excess limits required beyond the commercial general liability policy and/or the commercial tow truck automobile liability policy, then the policy must include the following:
 - The umbrella or excess policy shall follow form over the CONTRACTOR's primary general liability coverage and shall provide a separate aggregate limit for products and completed operations coverage.
 - The umbrella or excess policy shall not contain any restrictions or exclusions beyond what is contained in the primary policy.
 - The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.
 - There shall be no statement limiting the coverage provided to the parties listed as additionally insured or as indemnitees below.

22.1.4 Commercial Tow Truck Auto Insurance - The policy must include the following and may be combined with the excess liability policy to provide limits of coverage not less than:

- Auto Liability limits of not less than \$5,000,000 per each accident.
- Combined Bodily Injury and Property Damage Liability insurance
- Coverage must include scheduled autos, hired or non-owned autos
- Garage Keepers liability shall be provided under this policy or the liability policy as a result of an endorsement or in a stand-alone Garage Keepers Coverage policy. Garage Keepers liability limits shall be equal to the estimated value of all vehicles that could be located at a single location or \$300,000 whichever is greater.
- On-Hook/Tow & Hitch Coverage -The policy must include the following:
 - No less than \$100,000 Limit
 - Coverages for physical damages from accidents or damages to property occurring while a vehicle is in tow with limits of no less than the replacement cost coverage with no coinsurance penalty provisions, or depreciation costs.
 - Cargo coverage shall be provided under this policy as a result of an endorsement or in a stand-alone Cargo Coverage policy.

The commercial tow truck automobile liability insurance shall be written on the most recent edition of ISO form or equivalent acceptable to SBCTA and shall include, without limitation, contractual liability coverage and additional insured status for the Additional Insureds named below. CONTRACTOR waives all rights of subrogation against the Additional Insureds named below, for recovery of loss, injury and/or damages to the extent such loss, injury and/or damages are covered by the commercial tow truck automobile liability insurance required herein.

22.1.5 Pollution Liability -- The policy must include the:

- \$1,000,000 per claim or occurrence limits/\$2,000,000 in the aggregate.
- Coverage shall be written on an ISO form appropriate for the CONTRACTOR's business and work under this contract.

22.2 General Provisions

22.2.1 Qualifications of Insurance Carriers. If policies are written by insurance carriers authorized and admitted to do business in the state of California, then the insurance carriers must have a current A.M. Best rating of A-VII or better and if policies are written by insurance carriers that are non-admitted but authorized to conduct business in the state of California, then they must meet the current A.M. Best rating of A-: X or better, unless otherwise approved in writing by SBCTA's Risk Manager.

22.2.2 Additional Insured Coverage. All policies, except those for Workers' Compensation insurance, shall be endorsed by ISO Form CG 20 12 11 85, or if not available, then ISO Form CG 20 26, to name San Bernardino County Transportation Authority and its officers, directors, members, employees, agents and volunteers, as additional insureds ("Additional Insureds"). California Highway Patrol (CHP) and California Department

of Transportation (Caltrans) shall also be named additional insureds. With respect to general liability arising out of or connected with work or operations performed by or on behalf of the CONTRACTOR permitted under this CONTRACT, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for SBCTA to vicarious liability but shall allow coverage for SBCTA to the full extent provided by the policy.

- 22.2.3 Proof of Coverage. Evidence of insurance in a form acceptable to SBCTA's Risk Manager, including certificates of insurance and the required endorsements, shall be provided to SBCTA's Procurement Analyst prior to issuance of the NTP or prior to commencing any Work, as SBCTA specifies. Certificate(s) of insurance, as evidence of the required insurance shall: be executed by a duly authorized representative of each insurer; show compliance with the insurance requirements set forth in this Article; set forth deductible amounts applicable to each policy; list all exclusions which are added by endorsement to each policy; and also include the Contract Number and the SBCTA Project Manager's name on the face of the certificate. If requested in writing by SBCTA, CONTRACTOR shall submit complete copies of all required insurance policies within ten (10) business days of a written request by SBCTA.
- 22.2.4 Deductibles Self-Insured Retention. Regardless of the allowance of exclusions or deductibles by SBCTA, CONTRACTOR shall be responsible for any deductible or self- insured retention (SIR) amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Article. CONTRACTOR will pay, and shall require its sub-CONTRACTORS to pay, all deductibles, co-pay obligations, premiums and any other sums due under the insurance required in this Article. Any deductibles or self-insured retentions must be declared to and approved in writing by SBCTA's Risk Manager. Without SBCTA's Risk Manager's expressed written approval no deductibles or SIR will be allowed. At the option of SBCTA, if the deductible or SIR is greater than \$10,000 or one (1) percent of the amount of coverage required under this Contract, whichever is less, the CONTRACTOR shall guarantee that either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to SBCTA, its directors, officials, officers, employees and agents; or, (2) the CONTRACTOR shall procure a bond guaranteeing the amount of the deductible or self-insured retention. SBCTA shall have the right to review any and all financial records that SBCTA, at its sole discretion deems necessary to approve any deductible or SIR. SBCTA will have the right, but not the obligation, to pay any deductible or SIR due under any insurance policy. If SBCTA pays any sums due under any insurance required above, SBCTA may withhold said sums from any amounts due to CONTRACTOR. The Contractor's policies will neither obligate nor prohibit SBCTA or any other Additional Insured, from paying any portion of any Contractor's deductible or SIR..
- 22.2.5 CONTRACTOR's and Sub-contractor' Insurance will be Primary. All policies required to be maintained by the CONTRACTOR or any subconsultant with the exception of Professional Liability and Worker's Compensation shall be endorsed, with a form at least as broad as ISO Form CG 20 01 04 13), to be primary coverage, and any coverage

- carried by any of the Additional Insureds shall be excess and non-contributory. Further, none of CONTRACTOR's or subconsultants' pollution, automobile, general liability or other liability policies (primary or excess) will contain any cross-liability exclusion barring coverage for claims by an additional insured against a named insured.
- 22.2.6 Waiver of Subrogation Rights. To the fullest extent permitted by law, CONTRACTOR hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other consultant, subconsultant or sub-subconsultant performing work or rendering services on behalf of SBCTA, in connection with the planning, development and construction of the Project. To the fullest extent permitted by law, CONTRACTOR shall require similar written express waivers and insurance clauses from each of its subconsultants of every tier. CONTRACTOR shall require all of the policies and coverages required in Exhibit B to waive all rights of subrogation against the Additional Insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided shall not prohibit CONTRACTOR from waiving the right of subrogation prior to a loss or claim.
- 22.2.7 Cancellation. If any insurance company elects to cancel or non-renew coverage for any reason, CONTRACTOR will provide SBCTA thirty (30) days prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONTRACTOR will provide SBCTA ten (10) days prior written notice. In any event, CONTRACTOR will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance coverage required herein which CONTRACTOR receives within one business day after CONTRACTOR receives it by submitting it to SBCTA at procurement@SBCTA.ca.gov to the attention of SBCTA's Procurement Analyst, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of this Contract.
- 22.2.8 Enforcement. SBCTA may take any steps as are necessary to assure CONTRACTOR's compliance with its insurance obligations as identified within this Article. Failure to continuously maintain insurance coverage as provided herein is a material breach of contract. In the event the CONTRACTOR fails to obtain or maintain any insurance coverage required, SBCTA may, but is not required to, maintain this coverage and charge the expense to the CONTRACTOR or withhold such expense from amounts owed CONTRACTOR, or terminate this Contract. The insurance required or provided shall in no way limit or relieve CONTRACTOR of its duties and responsibility under the Contract, including but not limited to obligation to indemnify, defend and hold harmless the Indemnitees named below. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve CONTRACTOR for liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions as available to it under any other provision of the Contract or law. Nothing contained herein shall relieve CONTRACTOR, of their obligations to exercise due care in the performance of their duties in connection with the Work, and to complete the Work in strict compliance with the Contract.
- 22.2.9 No Waiver. Failure of SBCTA to enforce in a timely manner any of the provisions of this Article shall not act as a waiver to enforcement of any of these provisions at a later date.

22.2.10 Higher limits. If CONTRACTOR maintains higher limits than the minimums shown above, SBCTA shall be entitled to coverage for the higher limits maintained by CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SBCTA.

22.2.11 Special Risks or Circumstances. SBCTA, acting through its Executive Director, reserves the right to modify any or all of the above insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances, as determined by the Executive Director to be in the best interests of SBCTA.

ARTICLE 23. INDEMNITY

23.1 INTENTIONALLY OMITTED.

23.2 For all Work and obligations under this Contract, CONSULTANT agrees to indemnify, defend (with legal counsel reasonably approved by SBCTA) and hold harmless SBCTA, California Department of Transportation (Caltrans) , SBCTA's Entities and their authorized officers, employees, agents and volunteers ("Indemnitees"), from any and all claims, actions, losses, damages and/or liability (Claims) arising out of this Contract from any cause whatsoever, including acts, errors, or omissions of any person and for any costs or expenses incurred by SBCTA on account of any claim, except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. CONSULTANT's indemnification obligation applies to SBCTA's "active" as well as "passive" negligence, but does not apply to SBCTA's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

ARTICLE 24. ERRORS AND OMISSIONS

CONTRACTOR shall be responsible for the professional quality, technical accuracy, and coordination of all Work required under this Contract. CONTRACTOR shall be liable for SBCTA costs resulting from errors or deficiencies, in Work furnished under this Contract, including, but not limited to any fines, penalties, damages, and costs required because of an error or deficiency in the Work provided by CONTRACTOR under this Contract.

ARTICLE 25. OWNERSHIP OF DOCUMENTS

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by CONTRACTOR under this Contract shall become the sole property of SBCTA when prepared, whether delivered to SBCTA or not.

ARTICLE 26. SUBCONTRACTS

CONTRACTOR shall not subcontract performance of all or any portion of work/employees under this contract.

ARTICLE 27. RECORD INSPECTION AND AUDITING

SBCTA, or any of its designees, representatives or agents shall at all times have access during normal business hours to CONTRACTOR's operations and products wherever they are in preparation or progress, and CONTRACTOR shall provide sufficient, safe, and proper facilities for such access and inspection thereof. Inspection or lack of inspection by SBCTA shall not be deemed to be a waiver of any of their rights to require CONTRACTOR to comply with the Contract or to subsequently reject unsatisfactory Work or products.

ARTICLE 28. INDEPENDENT CONTRACTOR

CONTRACTOR is and shall be at all times an independent contractor. Accordingly, all Work provided by CONTRACTOR shall be done and performed by CONTRACTOR under the sole supervision, direction and control of CONTRACTOR. SBCTA shall rely on CONTRACTOR for results only, and shall have no right at any time to direct or supervise CONTRACTOR or CONTRACTOR's employees in the performance of Work or as to the manner, means and methods by which Work is performed. All personnel furnished by CONTRACTOR pursuant to this Contract, and all representatives of CONTRACTOR, shall be and remain the employees or agents of CONTRACTOR at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of SBCTA.

ARTICLE 29. ATTORNEY'S FEES

If any legal action is instituted to enforce or declare any Party's rights under the Contract, each Party, including the prevailing Party, must bear its own costs and attorneys' fees. This Article shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a Party hereto and payable under the "Indemnity" provision of the Contract.

ARTICLE 30. GOVERNING LAW AND VENUE

This Contract shall be subject to the law and jurisdiction of the State of California. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any Party to this Contract will be the Superior Court of California, San Bernardino County. Each Party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County.

ARTICLE 31. FEDERAL, STATE AND LOCAL LAWS

CONTRACTOR warrants that in the performance of this Contract, it shall comply with all applicable federal, State and local laws, ordinances, rules and regulations.

ARTICLE 32. PRECEDENCE

31.1 The Contract consists of this Contract's Articles, Exhibit A "Scope of Work", and Exhibit B "Price Form", Exhibit "C" Summary of FSP Violations and Penalties, the Standard Operating Procedures Manual, issued by the California Highway Patrol, SBCTA's Request

for Proposal and CONTRACTOR's proposal, all of which are incorporated into this Contract by this reference.

- 31.2 The following order of precedence shall apply: first, the Contract Articles; second the Standard Operating Procedures (SOP) manual; third, Exhibits A and B and C (equal precedence); fourth, SBCTA's Request for Proposal; and last, CONTRACTOR's proposal. In the event of a conflict between the Contract Articles and the Scope of Work, the Contract Articles will prevail.
- 31.3 In the event of an express conflict between the documents listed in this Article, or between any other documents, which are a part of the Contract, CONTRACTOR shall notify SBCTA in writing within three (3) business days of its discovery of the conflict and shall comply with SBCTA's resolution of the conflict.

ARTICLE 33. COMMUNICATIONS AND NOTICES

Notices sent by mail shall be by United States Mail, postage paid, certified mail (return receipt requested). Any and all notices permitted or required to be given hereunder shall be deemed duly given and received: (a) upon actual delivery, if delivery is personally made or if made by fax or email during regular business hours; (b) the first business day following delivery by fax when not made during regular business hours; or (c) on the fourth business day after deposit of such notice into the United States Mail. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective Parties may designate from time to time by a notice given in accordance with this Article. CONTRACTOR shall notify SBCTA of any contact information changes within ten (10) business days of the change.

To CONTRACTOR	To SBCTA
1487 Ramona Blvd	1170 W. 3rd Street, 2nd Floor
Baldwin Park, CA 91706	San Bernardino, CA 92410-1715
Attn: William Salazar	Attn: Cheryl Wilson
	cc: Procurement Manager
Phone: (626) 960-1824	Phone: (909) 884-8276
Email: bill@royalcoaches.com	Email: cwilson@gosbcta.com

ARTICLE 34. DISPUTES

- 33.1 In the event any dispute, other than an audit, arises between the Parties in connection with this Contract (including but not limited to disputes over payments, costs, expenses, Work to be performed, Scope of Work and/or time of performance), the dispute shall be decided by SBCTA's Procurement Manager within thirty (30) calendar days after notice thereof in writing which shall include a particular statement of the grounds of the dispute. If CONTRACTOR does not agree with the decision, then CONTRACTOR shall have ten (10) calendar days after receipt of the decision in which to file a written appeal thereto with SBCTA's Executive Director. If the Executive Director fails to resolve the dispute in a manner acceptable to CONTRACTOR, then such dispute is reviewable by a court of competent jurisdiction.

33.2 During resolution of the dispute, CONTRACTOR shall proceed with performance of this Contract with due diligence.

ARTICLE 35. GRATUITIES

CONTRACTOR, its employees, agents, or representatives shall not offer or give to any officer, official, agent or employee of SBCTA, any gift, entertainment, payment, loan, or other gratuity.

ARTICLE 36. REVIEW AND ACCEPTANCE

All Work performed by CONTRACTOR shall be subject to periodic review and approval by SBCTA at any and all places where such performance may be carried on. Failure of SBCTA to make such review, or to discover defective work, shall not prejudice the rights of SBCTA at the time of final acceptance. All Work performed by CONTRACTOR shall be subject to periodic and final review.

ARTICLE 37. CONFIDENTIALITY

Any SBCTA communications or materials to which CONTRACTOR or agents have access, or materials prepared by CONTRACTOR under the terms of this Contract, shall be held in confidence by CONTRACTOR, who shall exercise reasonable precautions to prevent the disclosure of confidential information to anyone except as expressly authorized by SBCTA. Any communications with or work product of SBCTA's legal counsel to which CONTRACTOR or agents have access in performing work under this Contract shall be subject to the attorney-client privilege and attorney work product doctrine, and shall be confidential. CONTRACTOR shall not release any reports, information or promotional material or allow for the use of any photos related to this Contract for any purpose without prior written approval of SBCTA.

ARTICLE 38. EVALUATION OF CONTRACTOR

CONTRACTOR's performance may be evaluated by SBCTA periodically throughout the Contract performance period. A copy of the evaluation will be given to CONTRACTOR for its information. The evaluation information shall be retained as part of the Contract file and may be used to evaluate CONTRACTOR if it submits a proposal on a future RFP issued by SBCTA.

ARTICLE 39. DRIVING RECORD AND CRIMINAL HISTORY CHECK

Pursuant to California Vehicle Code Sections 2430 *et seq.*, CONTRACTOR and its employees performing Work under this Contract are required to have a current, valid California driver's license and must undergo a Criminal History Check and driver's license check. Only after a completed CHP 234F and CHP 234 supplemental is received and accepted by CHP will a check of driver's license and criminal history be performed. Criminal history checks will be completed by CHP upon the acceptance of a CHP 234F. Any employee of the CONTRACTOR not meeting the requirements identified herein will be automatically excluded from performing Work under this Contract. In addition, SBCTA and/or CHP may, in their sole discretion, require CONTRACTOR to replace any employee or potential employee who is determined to be unsuitable to represent the FSP Program based on the Criminal History Check.

ARTICLE 40. SAFETY

CONTRACTOR shall strictly comply with OSHA regulations and local, municipal, state, and federal safety and health laws, orders and regulations applicable to CONTRACTOR's operations in the performance of Work under this Contract. CONTRACTOR shall comply with all safety instructions issued by SBCTA or their representatives.

ARTICLE 41. DRUG FREE WORKPLACE

CONTRACTOR agrees to comply with the Drug Free Workplace Act of 1990 per Government Code section 8350 et seq.

ARTICLE 42. ASSIGNMENT

CONTRACTOR shall not assign this Contract in whole or in part, voluntarily, by operation of law, or otherwise, without first obtaining the written consent of SBCTA. SBCTA's exercise of consent shall be within its sole discretion. Any purported assignment without SBCTA's prior written consent shall be void and of no effect, and shall constitute a material breach of this Contract. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the Parties.

ARTICLE 43. AMENDMENTS

The Contract may only be changed by a written amendment duly executed by the Parties. Work authorized under an amendment shall not commence until the amendment has been duly executed.

ARTICLE 44. PREVAILING WAGES

INTENTIONALLY OMITTED

ARTICLE 45. CONTINGENT FEE

CONTRACTOR warrants, by execution of this Contract, that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONTRACTOR for the purpose of securing business. For breach or violation of this warranty, SBCTA has the right to terminate this Contract without liability, pay only for the value of the Work actually performed, or in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 46. FORCE MAJEURE

CONTRACTOR shall not be in default under this Contract in the event that the Work performed by CONTRACTOR is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, and natural disasters such as floods, earthquakes, landslides, and fires, or other catastrophic events which are beyond the reasonable control of CONTRACTOR and which CONTRACTOR could not reasonably be expected to have prevented or controlled. "Other catastrophic events" does not include the

financial inability of CONTRACTOR to perform or failure of CONTRACTOR to obtain either any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of CONTRACTOR.

ARTICLE 47. WARRANTY

CONTRACTOR warrants that all Work performed shall be in accordance with the Contract and all applicable professional standards. In the event of a breach of this provision, CONTRACTOR shall take the necessary actions to correct the breach at CONTRACTOR's sole expense. If CONTRACTOR does not take the necessary action to correct the breach, SBCTA, without waiving any other rights or remedies it may have, may take the necessary steps to correct the breach, and the CONTRACTOR shall promptly reimburse SBCTA for all expenses and costs incurred.

ARTICLE 48. ENTIRE DOCUMENT

- 48.1 This Contract constitutes the sole and only agreement governing the Work and supersedes any prior understandings, written or oral, between the Parties respecting the Project. All previous proposals, offers, and other communications, written or oral, relative to this Contract, are superseded except to the extent that they have been expressly incorporated into this Contract.
- 48.2 No agent, official, employee or representative of SBCTA has any authority to bind SBCTA to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Contract, and CONTRACTOR hereby stipulates that it has not relied, and will not rely, on same.
- 48.3 Both Parties have been represented or had the full opportunity to be represented by legal counsel of their own choosing in the negotiation and preparation of this Contract. Therefore, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning, and not for or against either Party.

ARTICLE 49. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

CONTRACTOR shall comply with all applicable provisions of the Americans with Disabilities Act in performing Work under this Contract.

ARTICLE 50. MOST FAVORED NATIONS CLAUSE

CONTRACTOR agrees that, throughout the term of this Contract, it shall not enter into any FSP services agreement with any other government agency pursuant to which CONTRACTOR agrees to charge FSP service fees less than those provided for by this Contract for substantially the same level of FSP service. Should SBCTA establish that CONTRACTOR has agreed to provide substantially similar FSP services to one or more other government agencies at lower fees, CONTRACTOR agrees to reduce the fees charged to SBCTA to the lower amount charged to the other government agency.

ARTICLE 51. EFFECTIVE DATE

The date that this Contract is executed by SBCTA shall be the Effective Date of the Contract.

-----SIGNATURES ARE ON THE FOLLOWING PAGE-----

DRAFT

IN WITNESS WHEREOF, the Parties hereto have executed this Contract below.

**ROYAL COACHES AUTO BODY &
TOWING, a California Corporation**

**SAN BERNARDINO COUNTY
TRANSPORTATION
AUTHORITY**

By: _____
William Salazar
President

By: _____
Curt Hagman
President, Board of Directors

Date: _____

Date: _____

By: _____
William Salazar
Secretary

APPROVED AS TO FORM

Date: _____

By: _____
Juanda Lowder Daniel
Assistant General Counsel

CONCURRENCE

By: _____
Shaneka Morris
Procurement Manager

Attachment: 22-1002737-PDF (8546 : Award Freeway Service Patrol Contracts - RFP No. 22-1002736 for Beats 9,14, and 31)

EXHIBIT A – “SCOPE OF WORK”

EXHIBIT A
SCOPE OF WORK
CONTRACT NO. 22-1002737
FREEWAY SERVICE PATROL

**BEAT 31- STATE ROUTE 210 (SR-210) LOS ANGELES COUNTY LINE TO CITRUS
 AVENUE**

1.0 Summary of Scope of Work.

Mobilization (NTP I) July 6, 2022- December 31, 2022:

The deliverables associated with Mobilization of this CONTRACT include the project ramp-up/preparation, the purchase of two FSP Tow Trucks, and equipment installations in accordance with section 4.0 "Equipment Requirements". Moreover driver trainings, and inspections in accordance with section 5.0 "Drivers."

FSP Tow Operations (NTP II) (January 1, 2023- December 31, 2027):

CONTRACTOR shall provide the rapid removal of disabled vehicles and those involved in minor accidents from the freeway. Each Beat shall require the appropriate number of Freeway Service Patrol (FSP) Certified Trucks:

Two (2) primary certified FSP tow trucks and one (1) certified back-up FSP tow truck for Beat 31.

The CONTRACTOR's FSP trucks shall be exclusively dedicated to providing FSP services during the designated hours of operation. All FSP tow truck maintenance activities for the primary and back-up tow trucks shall be conducted during non-designated service hours.

CONTRACTOR's FSP Certified Tow Truck Drivers ("Driver or Drivers") shall assist motorists involved in minor accidents and those with disabled vehicles. When and where conditions warrant, service may take place on the freeway shoulders. Where conditions do not warrant, Drivers will move the vehicles from the freeway to provide services pursuant to the Standard Operating Procedures (SOP) Manual. The Drivers shall continuously patrol their assigned Beat, respond to California Highway Patrol (CHP) dispatched calls for service, and use the designated turnaround locations and designated drop locations assigned by CHP.

The Drivers may be required to change flat tires, provide "jump" starts, provide one gallon of gasoline or diesel fuel, temporarily tape cooling system hoses, and refill radiators. These services are not all-inclusive. Where conditions permit, safe removal of small debris may also be required. The Drivers are to spend a maximum of ten (10) minutes per disablement in attempting to mobilize a vehicle.

If a disabled vehicle cannot be mobilized within the ten-minute (10) time limit, it shall be offered to be towed to a designated drop location identified by the CHP. The motorist can request the FSP Driver to contact the CHP Communications Center to request a CHP Rotation Tow or other services. A Driver shall not be allowed to tow as an independent CONTRACTOR from an incident that occurred during the FSP shift. This is only allowed after the shift is over and the CONTRACTOR is called as a Rotation Tow by CHP. If called as a Rotation Tow Operator after an FSP shift, the Driver must remove all FSP markings such as vests, uniforms and any sort of FSP signage.

All FSP services shall be provided at no cost to the motorist. The Drivers shall not accept any gratuities, gifts or money to perform any other services, recommend secondary tows, or recommend repair/body shop businesses. The CONTRACTOR shall follow the SOP Manual. The CHP is responsible for the day-to-day field supervision of the FSP Program; therefore, policies and procedures are outlined in the SOP Manual. To promote a safe work environment and to maintain a high level of professionalism, the CONTRACTOR and their Drivers must follow the SOP Manual as this document and all updates will be incorporated into the CONTRACTOR's agreement. Please note that the SOP Manual is updated as needed, and that the CONTRACTOR is responsible to operate and adhere to the most recent version of the SOP Manual at all times.

There may be some instances where the Driver may be requested to provide assistance to CHP Officers in the field. When a CHP Officer in the field directs a Driver to complete a task, the Driver shall follow those directions provided, given the task does not endanger the Driver or the public and is within the Driver's skills and training. The Driver shall only advise the officer of the possible dangers. If the task is not within the FSP policy, an FSP CHP Officer should be notified of the incident. Drivers should not tell the CHP Officer they will not perform the task requested UNLESS they believe they are unable to perform the task safely. Afterwards, CHP will take the necessary steps to avoid future misunderstandings between the Officer and FSP.

At times, SBCTA, a city, and/or the California Department of Transportation (Caltrans) will have construction projects on the highways that may require Construction FSP. Typically this will take place along a highway segment that is a construction zone with no inside or outside shoulder areas, or the shoulders available are not wide enough to accommodate vehicles. This work is paid for with funds from specific projects and not the FSP State Highway Account/FSP SB1 funds. This is considered to be Extra Work as described in Section 4.9 of the contract, and will all require the authorization of SBCTA's Program Manager in writing as well as a written contingency amendment or contract amendment as appropriate. There are three types of CFSP services that can occur:

1. Caltrans requested CFSP: Caltrans led projects that are part of the Caltrans/SBCTA CFSP Cooperative agreement No. 20-1002437. These projects will also require the issuance of a Caltrans task order.
2. SBCTA requested CFSP: SBCTA led projects that will be funded by SBCTA.
3. City requested CFSP: City led projects that will be funded by the City.

CONTRACTOR or its designated management-level representative shall attend the required FSP Technical Advisory Committee (TAC) meeting every other month. The FSP TAC will encompass focused and informal/formal discussions concerning but not limited to: scope, services, schedule,

and current progress of services, relevant cost issues, and future project objectives. CONTRACTOR shall be responsible for having a representative attend all meetings (FSP TAC meetings) who has the ability to make management-level decisions on the behalf of the CONTRACTOR while at the meeting. If the CONTRACTOR cannot have a management-level representative at a meeting, CONTRACTOR shall notify SBCTA and CHP at least two (2) business days prior to the meeting. Management-level attendance at these meetings shall be considered part of the CONTRACTOR's contractual responsibility. Meetings are scheduled for the entire calendar year; CHP provides the schedule via email.

Please refer to Contract Exhibit "C" for further details on violations and penalties.

2.0 Contract Representatives.

SBCTA, Caltrans, and the CHP will jointly oversee the FSP services (referred to, singularly or jointly, as "FSP Management"). CHP is responsible for dispatch services to incident locations within the tow truck's patrol limits, otherwise referred to as "Beats". The dispatching will be done in accordance with the contract for the service. An SOP Manual will be provided to the successful CONTRACTOR explaining the types of incidents to which a Driver may be dispatched. Please note that this SOP Manual is updated as needed and that the CONTRACTOR is responsible to adhere to the most current version of the SOP Manual at all times. Also note that SBCTA's contract with the successful Proposer(s) will incorporate the SOP Manual and any updates; thus, adhering to the SOP Manual is a contractual requirement.

3.0 Service Location.

The FSP operates on selected freeway segments referred to as "Beats". Each Beat has specific turnaround locations and designated drop locations identified by the CHP. The limits are identified in the Scope of Work (SOW).

SBCTA reserves the right, at any time during the contract's term, to adjust Beat specifications (length of the Beat for example) and Beat hours to better accommodate demand for the service. These changes can occur during the course of the contract through written permission (e.g., email). The CONTRACTOR may be requested by CHP to go beyond the limits of its assigned Beat area to assist a motorist in an adjacent Beat area. Drivers may be permitted to do this only upon CHP request. SBCTA reserves the right to add or delete holidays to the work schedule. Travel time to and from the Beat will be at the expense of the CONTRACTOR.

4.0 Equipment Requirements.

A. Tow Truck Requirements.

Primary FSP Tow Trucks will be exclusively dedicated to FSP services during the hours of FSP operations. They are not required to be exclusive during non-FSP hours.

The FSP Program will utilize, at a minimum, Class A tow trucks with a minimum gross vehicle weight rating of 14,000 pounds, dual wheel chassis, and four (4) ton recovery equipment rating.

All trucks proposed for use in the FSP Program must be less than one (1) year old with a maximum of 50,000 miles and a clear, non-salvage title on the chassis and working parts of the truck. The truck must be free of any mechanical defects or physical damage at the onset of the contract. Lastly, the truck shall have seating capabilities for five (5) adults.

The CHP, in conjunction with SBCTA, will verify the original purchase dates to ensure compliance.

All FSP Tow Trucks must be Department of Transportation (DOT) compliant, as well as California Air Resources Board (CARB) compliant. This includes an engine that has been certified by CARB, as required by law in the State of California. Any tow truck that is utilized for the FSP Program must comply with emission standards set forth by DOT and CARB, as well as all Local, State and Federal laws applicable to that truck, and as outlined in the RFP.

Prior to commencement of service, the CHP will inspect each tow truck designated for the FSP Program in San Bernardino County to ensure that it meets the tow truck specifications and to ensure that it meets or exceeds safety requirements. These inspections will occur prior to the start of service. Succeeding inspections will occur periodically as determined by the FSP CHP officers. Documentation of the vehicle identification number and successful completion of the inspection will be kept on file at the CHP office and CONTRACTOR's local office. Any unsafe, poorly maintained FSP Certified Tow Truck(s) or improperly equipped FSP Certified Tow Truck(s) shall not be allowed into service, and if discovered during the shift, shall be removed from service or repaired as directed by the CHP. The CONTRACTOR shall be fined three (3) times the hourly contract rate in one (1) minute increments for ALL service time lost. The CONTRACTOR will be required to have a FSP Certified Back-Up Tow Truck available for service during their FSP Beat(s) shift(s).

Please note that FSP Certified Back-Up Tow Trucks for existing FSP tow operator contracts with other FSP agencies (i.e., not with SBCTA) do not qualify as meeting the certified SBCTA FSP back-up truck requirement(s).

FSP tow trucks bearing the service patrol title, the FSP logo, and the vehicle identification number shall be painted all white (includes the hood, fenders, doors, boom and bed area). No trim will be allowed. Lettering shall be in block lettering and shall be no less than two inches by two inches and no greater than four inches in height. Lettering can **ONLY** be black in color and will be bold style parallel to the ground. Letters shall be placed on the lower body of the truck toward the cab. Names, phone numbers, advertising of any kind or any other lettering on the boom shall be prohibited during FSP operational hours. The overall look of the truck must be approved by CHP prior to service implementation; therefore, any questions regarding this policy is highly recommended to be discussed with the FSP CHP officers prior to implementing, as truck compliance with current State FSP standards is required. No other accessory equipment or signage (bumper stickers, employment advertisement, and so forth) shall be mounted or installed without prior FSP CHP officer approval. This includes but is not limited to brass, chrome wheel covers, window tint, etc.

Please refer to Contract Exhibit "C" for further details on violations and penalties.

SBCTA follows and relies on the policies and procedures set forth in the SOP Manual developed by the County of San Bernardino FSP CHP Program. Please note that the SBCTA FSP equipment list is subject to change at any time, and may be different from FSP Program equipment lists found in other counties. For the most updated SBCTA FSP equipment list, please refer to the latest SOP Manual.

Each FSP tow truck shall be equipped in accordance with the SOP Manual and shall include the following, please note that if a company decides to add on any of the **OPTIONAL** equipment, and is something CHP would test for proficiency, they will do so for every driver that is tested from that company:

1. Wheel lift towing equipment, with a minimum lift rating of 4,000 pounds, with wheel lift extended. All tow equipment shall include proper safety straps.
2. Boom with a minimum static rating of 8,000 pounds.
3. Winch Cable - 8,000 pound rating on the first layer of cable.
4. Wire rope- 100 ft., 5/16-inch diameter, with a working limit of 3,500 pounds.
5. Towing slings rated at 3,000 pounds minimum **OPTIONAL**
6. Two (2) Tow chains 3/8" alloy or OEM specs. J/T hooks assembly.
7. Rubber faced push bumper.
8. Mounted spotlight capable of directing a beam both front and rear.
9. Amber warning lights with front and rear directional flashing capability, with on/off switch in cab.
10. Public address system.
11. Power outlets ("hot boxes"), front and rear mounted, with outlets compatible to 12-volt booster cables.
12. Heavy duty, 60+ amp battery.
13. Radios with the ability to communicate with the CONTRACTOR's base office (Verizon).
14. Programmable scanners capable of scanning between the 39 and 48 MHz used by the CHP. Scanners need to be capable of scanning CHP Police frequencies, and must be mounted for safety concerns.
15. Suitable cab lighting.
16. Trailer hitch capable of handling a 1 7/8-inch ball and 2-inch ball.
17. One (1) 1 7/8-inch ball and one (1) - inch ball.
18. Rear work lights (4)
19. Safety chain D-ring or eyelet mounted on rear of truck.
20. Motorcycle Straps (2)
21. Diesel fuel in plastic jerry cans (5 gallons)
22. Unleaded gasoline in plastic jerry cans (5 gallons)
23. Safety chains min. 5 ft. min. 5/16" Alloy or OEM Spec. (2)
24. First aid kit (small 5" x 9") (1)
25. Fire extinguisher aggregate rating of at least
4 B-C units (1)
26. Pry bar - 36" or longer (1)
27. Radiator water in plastic container (5 gallons)
28. Sling crossbar spacer blocks **OPTIONAL** (2)

- 29. 4" x 4" x 48" wooden cross beam (1)
- 30. 4" x 4" x 60" wooden cross beam (1)
- 31. 24" wide street broom (1)
- 32. Square point shovel (1)
- 33. Highway flares 360 minutes min.
- 34. Cones 18" height, reflectorized with tape
- 35. Hydraulic Floor Jack: 2-ton AND
2-ton jack stand (1)
- 36. Wheel chock (1)
- 37. Four-way lug wrench (1 std.) (1)
- 38. Four way lug wrench (1 metric)
- 39. Rechargeable compressor or refillable air bottle,
hoses and fittings to fit tire valve stems, 100
psi capacity (1)
- 40. Flashlight and spare batteries or charger (1)
- 41. Tail lamps/stop lamps, portable remote
with extension cord (1 set)
- 42. Booster cables, 25 ft. long minimum,
3-gauge copper wire with heavy-duty clamps
and one end adapted to truck's power outlets (1 set)
- 43. Funnel, multi-purpose, flexible spout (1)
- 44. Pop-Up Dolly (with tow straps), minimum weight capacity of 3,900 pounds
portable for removing otherwise un-towable vehicles (1)
- 45. Dolly Steel Pry bar (1)
- 46. Five (5)-gallon can with lid filled with clean absorb-all (1)
- 47. Empty trash can with lid (five gallon) (1)
- 48. Lock out set (1)
- 49. Safety glasses

Each FSP Certified Tow Truck will be required to have a toolbox with the following minimum number of tools/supplies. A tool kit for small equipment items is required. The list may be supplemented at the CONTRACTOR's option and expense.

- 50. Screwdrivers-
 - i. Standard-1/8", 3/16", 1/4", 5/16" (1 each, min.)
 - ii. Phillips head - #1 and #2 (1 each, min.)
- 51. Needle nose pliers (1)
- 52. Adjustable rib joint pliers, 2" min. capacity (1)
- 53. Crescent wrench - 8" (1)
- 54. Crescent wrench - 12" (1)
- 55. Four (4) lb. hammer (1)
- 56. Rubber mallet (1)
- 57. Electrical tape, roll (1)
- 58. Duct tape, 20 yard roll (1)
- 59. Tire pressure gauge (1)
- 60. Mechanic's wire (roll) (1)

61. Bolt cutters

(1)

The Driver shall be required to complete a pre-operation shift inspection log of the vehicle as well as inventory of the required equipment prior to the start of each shift. An Inspection form, which is in the tablet FSP data collection software, shall be completed by the Driver prior to the start of each shift and be available for inspection by the CHP and/or SBCTA. Any equipment that is malfunctioning or missing must be replaced prior to the start of the shift. All equipment on the truck shall be secured.

Installation of FSP related equipment:

Upon execution of the contract, SBCTA will designate and cover the cost of the selected installer for the SBCTA FSP digital radio equipment and SBCTA's Automatic Vehicle Locator (AVL) equipment. SBCTA covers the initial cost of the FSP digital radio and the AVL equipment as well. Please note that SBCTA, along with the installer, must be able to access the required primary and back up FSP Tow Trucks no later than ten (10) business days prior to the start date of the Beat(s). No exceptions. If SBCTA is not able to access the required primary and back up FSP tow trucks by the tenth (10th) business day deadline, the CONTRACTOR shall be assessed a fine as detailed in Exhibit "C" of the contract.

At times, equipment such as an "outside speaker", or a handheld "mic," and/or "FSP Tablet" for example, may need to be replaced due to normal wear and tear. If SBCTA-provided equipment needs to be replaced due to normal wear and tear, SBCTA will provide the CONTRACTOR with replacement equipment at no charge. However, please note that if FSP-related equipment needs to be replaced due to negligence by the CONTRACTOR or any of its staff, including Drivers, the cost of the equipment and the installation expense will be deducted from the CONTRACTOR'S invoice/payment that same month or the following month (depending on when the incident occurred). CONTRACTORS, Supervisors and Drivers are required to contact SBCTA and one of the FSP CHP officers immediately when any SBCTA FSP equipment is damaged, failing or has failed, and the CONTRACTOR will be provided with a replacement part by SBCTA or by one of the FSP CHP officers. If a replacement part is not immediately available, then the CONTRACTOR will be asked to have their "FSP Certified Back-Up Tow Truck" on the Beat to cover the shift.

With the written permission of SBCTA (email is allowed), the CONTRACTOR may install some replacement equipment (e.g., an "outside speaker" or a "mic") as long as the CONTRACTOR installs the equipment per SBCTA and SBCTA FSP standards. If a CONTRACTOR is given the authorization to install FSP-related equipment, and has any questions regarding "installation standards", the CONTRACTOR is to contact SBCTA or one of the FSP CHP officers for further instructions/information. If provided the authorization by SBCTA or FSP CHP, the CONTRACTOR must install equipment in the safest possible manner, and the installation of the equipment must comply with all FSP equipment guidelines and San Bernardino FSP installation standards for safety reasons.

Please note that equipment requirements are subject to change at any time. For the most updated equipment list, please refer to the latest SOP Manual.

B. FSP Certified Back-Up Tow Truck.

The CONTRACTOR shall be required to have one FSP Certified Back-Up Tow Truck available for each Beat during FSP service hours that is in full compliance with this Contract, unless otherwise authorized by SBCTA in writing. The FSP Certified Back-Up Tow Truck should be used when a primary FSP Certified Tow Truck is unavailable. The FSP Certified Back-Up Tow Truck shall meet the same requirements for equipment, set-up and color as a primary Certified FSP Tow Truck. It shall meet all the vehicle equipment specifications. Please refer to Exhibit “C” of the contract for further details on violations and penalties. FSP Certified Tow Trucks are subject to inspections during FSP services hours and non-FSP service hours by CHP.

As noted above, Primary FSP Tow Trucks will be exclusively dedicated to SBCTA FSP services during the hours of FSP operations. However, FSP Certified Back-Up Tow Trucks are not required to be exclusive to the SBCTA FSP Program during FSP service hours and non-FSP service hours. If a FSP Certified Back-Up Tow Truck is needed to replace one of the primary FSP Certified Tow Trucks on Beat, the CONTRACTOR shall meet all Contract obligations as outlined, which includes the vehicle’s availability to work the Beat area within the 45 (forty-five) minute time period (after which point penalties begin to accrue).

C. Vehicle Breakdown and Other Missed Service.

A FSP Certified Back-Up Tow Truck must be in service on the Beat within 45 (forty-five) minutes of the time when a primary FSP Tow Truck is taken out of service for any reason. The CONTRACTOR shall not be paid for the time period that the contractually required trucks are not in service. If a vehicle is not made available within the 45 (forty-five) minute time period, the CONTRACTOR shall be fined three (3) times the hourly contract rate in one (1) minute increments until a FSP Certified Back-Up Tow Truck is provided. This 45 (forty-five) minute period prior to the imposition of fines shall not apply to trucks removed from service for failure to meet specifications or safety requirements as set forth in accordance with section 4.0 “Equipment Requirements” paragraph A “Tow Truck Requirements”, in which case fines shall begin immediately. If a FSP Certified Tow Truck is not ready due to a breakdown at the start of a shift, the fine time will be calculated from the start of the shift. If the entire shift is missed, the CONTRACTOR shall be fined for the entire shift at three (3) times the hourly rate. FSP Tow Truck maintenance shall be performed during non-FSP service hours.

In the event that a FSP Certified Back-Up Tow Truck is required to continue the shift, the Driver must complete a new inspection worksheet and mileage log prior to the commencement of driving the tow truck and notify one of the FSP CHP Officers/Supervisors immediately. In addition, the Driver must indicate in the “notes” section of the FSP Tablet (per section 4.0 “Equipment Requirements” paragraph E “Communications Equipment”) that the CONTRACTOR has switched to an FSP Certified Back-Up Tow Truck.

In addition, failure to have a FSP Certified Back-Up Tow Truck Driver available is not an allowable excuse for failing to have a FSP Certified Back-Up Tow Truck on the Beat within the 45 (forty-five) minute time period.

Please refer to Contract Exhibit “C” for further details on violations and penalties.

Please note: Existing FSP tow operator contracts with the Riverside County Transportation Commission (RCTC) or any other FSP service do not qualify as meeting the back-up tow truck requirement noted above.

D. Vehicle Identification.

It shall be the Driver's sole responsibility to place detachable FSP markings on each vehicle during the service hours and to remove or cover the FSP markings immediately upon completion of each shift. SBCTA will supply each CONTRACTOR with the appropriate number of detachable markings for each Beat(s). If a marking is lost or damaged, the CONTRACTOR shall be responsible for the cost of the replacement markings. All FSP markings shall be returned immediately at the termination of the contract. The cost of any item or equipment supplied by SBCTA, Caltrans or CHP that is not returned shall be deducted from the CONTRACTOR's final payment.

FSP markings as well as vehicle numbers shall be required on both sides of all FSP tow trucks. The detachable markings (magnetic or other forms of FSP signage) provided by SBCTA must be placed on the center of both doors (front driver and passenger doors) of the vehicle. The Driver shall be required to keep the title and logos clean, straight and in readable condition throughout the service patrol's operation. The CONTRACTOR is also required to keep all FSP-related signage completely flat, clean, out of direct sunlight and out of public view when being stored.

E. Communications Equipment.

Each FSP vehicle shall be equipped with various communication devices that will enable the Driver to communicate with the CHP Communications Center and FSP CHP Officers. All vehicles shall be equipped with an AVL system, radios, and handheld Tablet Computers for data collection. The AVL system, radio system, and handheld Tablet Computers shall be purchased, owned, supplied, and installed by SBCTA only. SBCTA shall select the equipment installation vendor.

The CONTRACTOR shall be responsible for maintaining the security of the SBCTA-owned vehicle communication equipment. The CONTRACTOR shall be liable for any damage other than normal wear and tear to the communication equipment. The CONTRACTOR shall also be liable for the full replacement value of the communication equipment installed in the trucks while in the care, custody and control of the equipment. SBCTA shall pay for repair of normal wear and tear to equipment. However, SBCTA will deduct from CONTRACTOR's monthly invoice, any repair fees and/or the full replacement cost of any SBCTA equipment damaged or altered due to CONTRACTOR's improper use or negligence. SBCTA-supplied vehicle equipment shall be returned immediately (within one to three business days – pursuant to direction by SBCTA FSP staff) upon contract termination. The cost of any equipment not returned shall be deducted from the CONTRACTOR's final payment.

Programmable scanners capable of scanning between the 39 and 48 MHz used by CHP shall be supplied by the CONTRACTOR and shall be installed and securely mounted in all FSP Certified Tow Trucks by the CONTRACTOR.

The CONTRACTOR is also required to use Push to Talk Plus for Verizon Wireless (or equivalent direct connect device that will pair with Verizon Push to Talk Plus CHP devices). ***Special Note: If you are considering purchasing something else other than a Verizon Push to Talk Plus device, please confirm with SBCTA and/or CHP as to whether or not the device will be compatible with existing CHP equipment. Equipment purchased for the FSP Program must be compatible with FSP CHP officer devices which are currently Verizon Push to Talk Plus devices*** in order to facilitate proper communication with the CHP Communications Center and FSP CHP field supervisors. Verizon phones shall be purchased, owned, maintained, and paid for by the CONTRACTOR. The CONTRACTOR will also be responsible for all operating costs of the Verizon cell phones. In addition, Drivers are not permitted to take pictures or video, or to capture any other images while performing FSP duties during FSP operational hours, or capture any FSP-related images during non-FSP service hours. These actions will not be tolerated and a Driver that is found doing this will not be permitted to work in the FSP Program. Drivers are not permitted to download or share any data or images related to the FSP Program. If any FSP-related data or images are found on any social media outlet or networks not authorized by SBCTA, the driver or drivers associated with the incident will be removed from the program.

Data input to the Tablet Computer shall not be allowed while the vehicle is being operated/driven. Use of other devices, such as cellphones, while driving/operating a vehicle is subject to California State Law.

The FSP vehicles shall be equipped with a public address system. The public address system shall have the capability to audibly transmit instructions from the cab of the FSP vehicle to the motorist of the disabled vehicle when the FSP vehicle is directly to the rear of the disabled vehicle.

The CONTRACTOR shall purchase and maintain a computer workstation (not a laptop) with high speed internet access and email to communicate with SBCTA, staff, and FSP CHP officers. Please note email is the primary means by which FSP Management (SBCTA, CHP, and Caltrans) communicate various operations messages. It is essential that a representative of the CONTRACTOR check the email daily.

It is the CONTRACTOR's responsibility to ensure that all Tablet Computers are operational at all times. The exterior protective case of the Tablet Computer shall be cleaned regularly, and the screen protector shall be inspected for functionality and serviceability. **Damaged/Worn items shall be reported to SBCTA within three (3) hours of identification of a problem.** All Tablet Computers must be kept in a secure location. Tablet Computers shall not be left in any tow or during non-FSP operational hours. During FSP operational hours, Tablet Computers must be with the Driver in their FSP Tow Truck; at all other times, Tablet Computers must be connected to a battery charger in the designated secure workstation of the CONTRACTOR'S facility. Any other location is not permitted.

CONTRACTOR shall immediately report any issues with the Tablet Computers to SBCTA or the FSP CHP Officers. CONTRACTOR is responsible for ensuring its Tablet Computers are operating at all times.

The CONTRACTOR shall provide SBCTA, FSP CHP Officers, and their designees, access to the Tablet Computers at any time during the course of the contract. If upon inspection SBCTA determines that the Tablet Computers are not being properly charged/stored, the CONTRACTOR will be subject to fines as outlined in Exhibit "C" of the Contract.

The CONTRACTOR shall provide a quarterly inspection report to SBCTA indicating the status of all equipment. SBCTA will provide the quarterly report submittal form to the CONTRACTOR. Accurate completion and timely return of this form is a contract requirement.

F. Equipment Modifications.

Modifying FSP communication/tracking equipment so that it does not function properly to SBCTA's specifications, is disconnected, or is moved (without FSP Management authorization) from its original installed location is strictly prohibited. This includes, but is not limited to: breaking evidence tape/connection sealer on equipment connections, cutting wires or cable, moving mounted equipment (speakers, microphones, antennas, etc.), rerouting any wiring, not putting radio equipment back in its original installed location, disconnecting any connectors, etc. Interfering with the operations of the equipment is strictly prohibited.

If modification and/or interference is suspected, SBCTA shall conduct an inspection of the equipment on/near the Beat area or the vehicle may be sent to a designated location determined by SBCTA. CONTRACTOR shall not access the AVL equipment in any way until SBCTA has arranged an inspection.

- 1) If any alterations are found with AVL-related equipment owned by SBCTA, the CONTRACTOR shall be fined, at a minimum, two complete FSP shifts (7 - 9 hours) at three (3) times the hourly penalty rate. The final penalty shall be determined and assessed by FSP Management.
- 2) SBCTA shall designate the AVL installer and technician that will review and repair the AVL systems.
- 3) In the event of alterations, CONTRACTOR is responsible for any expenses, including but not limited to transportation, labor, repair, and replacement, incurred to repair the AVL equipment/system for the SBCTA FSP tow operations. Costs incurred to repair and document the equipment will be deducted from payment of the CONTRACTORS monthly invoice.

Please refer to Contract Exhibit "C" for further details on violations and penalties.

5.0 Drivers.

All Drivers shall be required to have a safe driving record and valid California Class C driver's license. All Drivers shall be at least 18 years of age at the time of background check. All Drivers shall be subject to driving record and criminal background checks through the CHP.

FSP Driver Certification Requirements

The following are required to be completed before the issuing of a California Tow Truck FSP driver Certificate DL64:

1. CHP 234F Form (Tow FSP Driver/FSP Driver Information) submitted to CHP.
2. Successfully pass a driving record and criminal history check.
3. Pay all processing fees.
4. Submit to fingerprinting.
5. Successfully pass a CHP-administered Proficiency Test.
6. Complete a SHRP 2 /TIMS training course and provide a certificate of completion.
7. Attend and pass a FSP driver certification class.
8. Obtain a Medical Examiner's Certificate (MEC) MCSA-5875.
9. Issued a FSP Driver Identification Card.
10. Successfully complete ten (10) shifts of ride-a-longs with an approved FSP driver trainer.

Drivers shall be sufficiently experienced in the tasks of tow truck operations and proficient with all required FSP equipment to provide safe and proper service. Drivers from other FSP service areas will be evaluated by the CHP on a case-by-case basis. All Drivers must be capable of demonstrating their tow operating abilities prior to formal CHP training. Additionally, the Drivers will be required to exercise good, sound judgment in carrying out their duties.

The CONTRACTOR's Drivers shall be required to inform the CHP Communications Center at any time they leave the assigned Beat, whether to replenish expendable items such as gasoline or fire extinguisher, to take breaks, etc. The Driver shall be required to immediately notify the CHP Communications Center upon a tow truck breakdown.

Each Driver shall be responsible for accurately entering the following into their Tablet Computer:

- Inspection worksheet prior to the commencement of driving the tow truck. This must be completed at the tow yard, prior to leaving the yard and driving to the Beat.
- Log of mileage prior to commencement of driving the tow truck on the Beat. This must be completed in a safe location at or near the Beat location, prior to beginning the shift.

The Driver shall also be required to complete an assist record, on the Tablet Computer, for each incident.

Driver will be required to utilize a Tablet Computer to input the mileage log, inspection worksheet, and each assist, which will include location, vehicle make, model, license number,

type of assistance provided, etc. Driver will be trained to use the Tablet Computers to enter accurate data using SBCTA data collection software.

Other important forms Driver must complete and turn in when assisting motorists are the Liability Release Forms and the Damage Release Forms. It is critical these forms are completed in a clear and accurate manner and returned to SBCTA as quickly as possible and no longer than a maximum of thirty (30) business days from the date of the assist. Any CONTRACTOR who fails to complete and turn in these required forms may be subject to penalties as outlined in Exhibit "C" of the contract.

The CONTRACTOR is required to participate in the California Department of Motor Vehicles (DMV) Pull Notice Program.

If a Driver is convicted of a crime listed in California Public Resources Code Section 5164 or California Vehicle Code 13377, the CONTRACTOR may be required to remove that Driver from the FSP program. If a Driver is charged with any such crimes, the CONTRACTOR may be required to suspend that Driver from duties under this Contract pending the outcome of the criminal case. If the Driver is not convicted, or is ultimately convicted of a lesser crime not described above, CHP may direct SBCTA to have the CONTRACTOR remove that Driver from the duties under the FSP program.

Mandatory CHP refresher training classes/meetings shall be scheduled during non-FSP hours. A minimum of four (4) hours refresher training per year is required. The SBCTA FSP Program conducts a one hour refresher training class/meeting each quarter, for a total of four hours of on-going training each year. CONTRACTOR shall pay all Drivers and Back-Up Drivers for attendance at the required training.

As required by California Vehicle Code Sections 2430.5 and 2431, all applicants and owners are required to have a driver's license and criminal history check. After CHP receives and accepts a completed CHP 234F, CHP will perform a driver's license and criminal history check. CHP will perform background checks ONLY upon acceptance of a CHP 234F.

The driver's license check will consist of confirming that the applicant has a valid driver's license and the applicant's point count is within standards set forth in the SOP.

The criminal history check will consist of a livescan background check to determine whether the applicant meets the criteria for a Driver Certificate, as outlined in California Vehicle Code Section 13377 and the FSP contract. **The cost of the livescan will be at the CONTRACTOR's expense.**

If the applicant passes the preliminary check, then the applicant shall submit to fingerprinting to complete the background check at the CONTRACTOR's expense.

In addition, SBCTA and/or CHP may, in their sole discretion, require a CONTRACTOR to replace any Driver or potential Driver who is determined not to be a suitable representative of the FSP Program to the public based on the background check or any other reason.

Driver Equipment.

CONTRACTOR is responsible for providing Drivers with specified uniforms, black protective toe boots, nameplates, and other equipment. The equipment includes navy blue jump suits or shirts and pants. If coveralls are worn, they shall have a collar with a zipper. Optionally, drivers may wear a standard navy blue (long-sleeve only) uniform shirt, with a fluorescent orange (must be only 2.5" wide) trim, with a ½" silver reflective tape down the middle. This allowed reflective tape must be on both sleeves as indicated in the updated contractor exhibit. The only approved trim color is fluorescent orange with a ½" silver reflective tape in the middle. The fluorescent tape cannot be wider than the allowed 2.5" wide. All uniforms shall be clean, properly maintained, and replaced whenever excessively worn.

A detachable brass or gold nameplate shall be worn with the first initial of the first name and full last name of the Driver. Letters shall not exceed ½" tall; nameplate must be approved by an FSP CHP officer. The nameplate shall be worn above the right chest pocket on the vest.

A safety vest with reflective stripes shall be worn; SBCTA will supply vests. A small FSP logo shall be sewn/silkscreened on the front of the safety vest over the left front pocket of the uniform, and a small FSP logo shall be sewn/silkscreened on the left sleeve of the vest. A large FSP logo shall be sewn/silkscreened across the middle portion of the back of each safety vest. SBCTA will supply vests to the CONTRACTOR with the FSP logos already sewn/silkscreened on per CHP's required FSP logo placement locations. The brass or gold nameplate with the Driver's first initial of first name and full last name shall be displayed on the front of the safety vest over the right front pocket. **The CONTRACTOR is responsible for obtaining FSP CHP officer approval of the Driver nameplates, and the CONTRACTOR is responsible for the purchase and placement of the Driver nameplate.** An FSP logo is not required to be sewn/applied on the navy blue Driver uniform.

All Drivers shall wear black work boots with protective (steel or composite) toe.

During cold weather, a navy blue jacket may also be worn at the Driver's option, if it meets all the uniform specifications. The CONTRACTOR and/or the Driver may contact CHP for any uniform questions or clarifications.

Rain gear shall be waterproofed material, navy blue or yellow in color.

Hats, if worn, shall be baseball type cap, navy blue in color. An "FSP" logo may be sewn/silkscreened on the hat above the brim. No other logos/names shall be accepted. A beanie may also be worn which must be navy blue in color and worn only with a jacket or long sleeve shirt under the vest. A picture of the uniform is provided toward the end of this scope of work.

CONTRACTOR should refer to the most current SOP Manual in making sure it is following the most recent Driver equipment requirements.

6.0 Local Office.

The CONTRACTOR shall provide a local office for contract administration purposes. This office shall be staffed by either the CONTRACTOR or its representative, who is authorized to conduct business and make decisions on behalf of the CONTRACTOR. The office shall have business hours coinciding with CONTRACTOR's Beat(s) hours of operation. Through the Proposal document shown in section 7.0 of the Scope of Work, Contractor Representative Form, the CONTRACTOR shall designate representatives who will be available at the office during hours of operation to make decisions on behalf of the CONTRACTOR. The office shall be established within close proximity to the CONTRACTOR's Beat(s) and shall be located in Riverside, San Bernardino, Los Angeles or Orange counties. A FSP Certified Back-Up Tow Truck and a FSP Certified Back-Up Tow Truck Driver must be available within a 45 minute request regardless of the CONTRACTOR's office location.

The CONTRACTOR shall also provide telephone, scanner and email through which they, or a responsible representative authorized to conduct business and make decisions on behalf of the CONTRACTOR, can be reached during the non-service hours of operation for the length of the contract. During non-business hours, an answering machine, provided at the CONTRACTOR'S expense, shall be available to log calls, take complaints, etc. An email address that is monitored daily shall be provided for "noticing" purposes during operational and non-service hours. The CONTRACTOR will be responsible for having a company representative monitor and review messages/notices on a daily basis and respond in a timely manner. Please see Exhibit "C" of this contract for penalties associated with failure to respond to communications from CHP and/or SBCTA.

7.0 Beat Descriptions.

SAN BERNARDINO COUNTY FREEWAY SERVICE PATROL

BEAT DESCRIPTIONS

Beat #	Beat Description	One-Way Length in Miles	# Primary FSP Trucks in both AM and PM	# FSP certified Back-Up Tow Trucks
31	SR-210 LOS ANGELES COUNTY LINE TO CITRUS AVENUE	14.1	2	1

Beat 31 is currently scheduled to operate from **5:30 a.m. to 8:30 a.m.** and from 2:00 p.m. to 7:00 pm (Monday through Thursdays). On Fridays, the PM shift begins at 12:00 p.m. to 7:00 p.m.

Beat 31 requires two (2) Primary FSP Certified Tow Trucks and one (1) Primary FSP Certified Back up Tow Truck available during all FSP operational service hours.

Beat 31 may be asked to participate in possible SBCTA's "FSP Extra Work weekend contingency services", on an as needed basis. Possible hours of operation may include Saturdays and Sundays from 10:00 a.m. to 6:00 p.m. Extra work is not guaranteed. The actual amount of weekend hours

or number of weekend trucks are not guaranteed. Written notice from SBCTA shall be required for commencement and termination of “FSP Extra Work weekend contingency services”.

SBCTA reserves the right to change Beat operating times and operational requirements (i.e., length of Beat and hours of operation) during the course of the Contract.

Please refer to Attached Map of Beat areas

“Extra Work” for emergency coverage may be assigned for any of the nine (9) SBCTA FSP service areas:

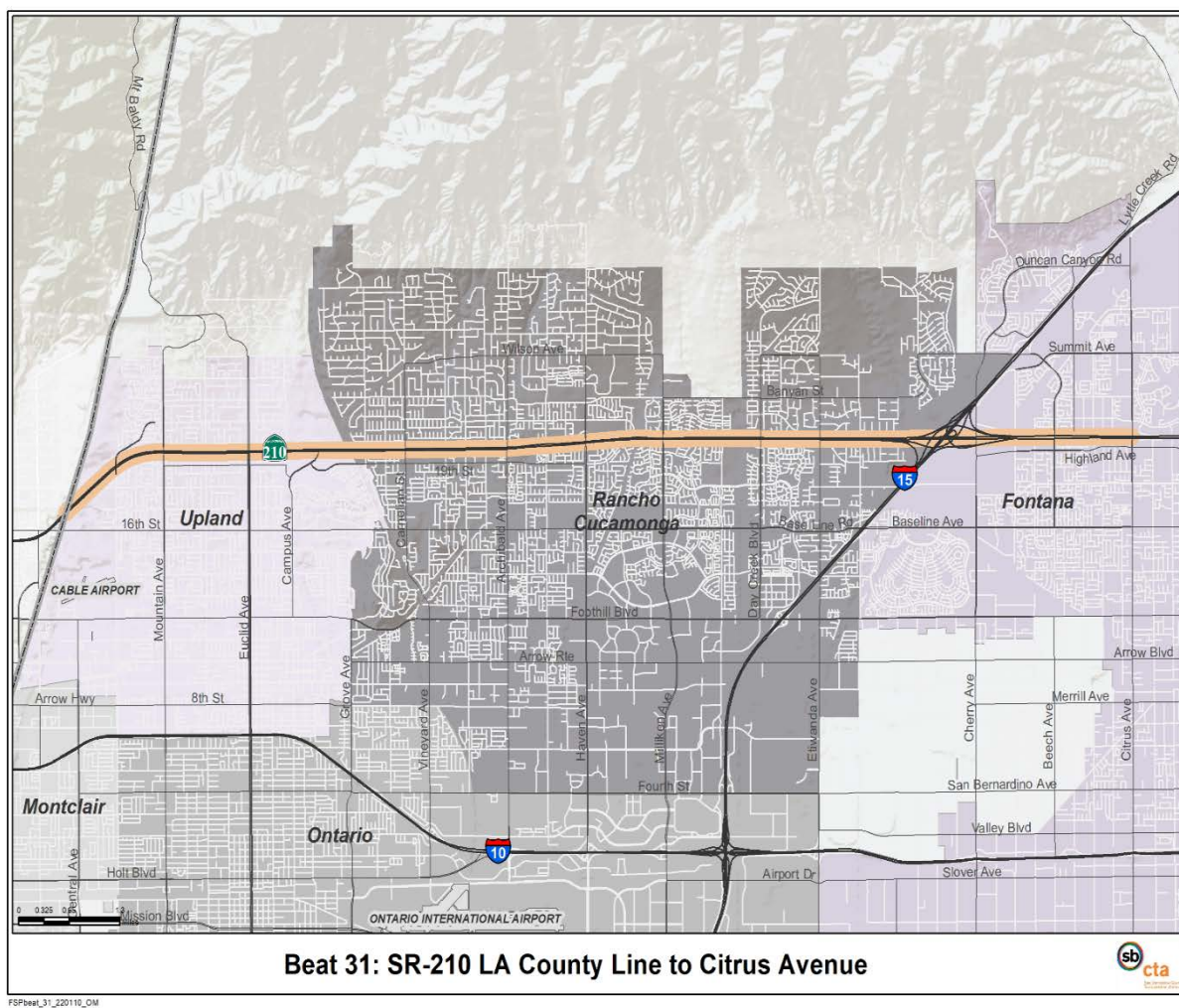
1. Beat 5: State Route 60 (SR-60) Reservoir Street (Los Angeles County line) to Milliken Avenue
2. Beat 9: Interstate 10 (I-10) Indian Hill (Los Angeles County line) to Haven Avenue
3. Beat 10: Interstate 10 (I-10) Haven Avenue to Sierra Avenue
4. Beat 11: Interstate 10 (I-10) Sierra Avenue to Waterman Avenue
5. Beat 14: Interstate 215 (I-215) Center Street (Riverside County line) to Devore Road
6. Beat 23: Interstate 15 (I-15) Jurupa Street (Riverside County line) to Sierra Avenue
7. Beat 27: Interstate 15 (I-15) Sierra Avenue to Oak Hill Road
8. Beat 29: Interstate 10 (I-10) Waterman Avenue to Yucaipa Boulevard
9. Beat 31: State Route 210 (SR-210) Los Angeles County line to Citrus Avenue

Beats 31 is the priority Beats for this CONTRACT, which means that should a primary truck go down; the “Extra Work” Beat truck shall be deployed back to the primary Beat. SBCTA shall evaluate all travel times made from the “Extra Work” Beat to the primary Beat in a penalty time situation on a monthly basis. Final penalty determination shall be made by CHP and SBCTA.

The contractor shall hold to all required standards addressing truck image and maintenance for the FSP Certified Back-Up Tow Truck being used during “Extra Work”, as CHP shall retain all rights to inspect and put the trucks out of service for non-compliance. Penalties shall still apply. In the event that the “Extra Work” Beat truck must be sent to cover the primary Beat, no penalty time shall be assessed for not having that back-up truck on the “Extra Work” Beat.

SBCTA reserves the right to change Beat hours and operational requirements during the course of the Contract. Written notice from SBCTA shall be required for commencement and termination of “Extra Work”.

Map of Beat Area



FSPBeat_31_220110_OM

8.0 FSP Holidays.

PRELIMINARY LIST OF FREEWAY SERVICE PATROL HOLIDAYS

Services are to be provided Monday through Friday at the hours designated in the Contract with the exception of the following holidays:

1. Martin Luther King, Jr. Day (Monday)
2. Presidents' Day (Monday)
3. Memorial Day (Monday)
4. Independence Day (July 4 - varies)
5. Labor Day (Monday)
6. Veterans Day (varies)
7. Thanksgiving Day (Thursday)
8. Day after Thanksgiving (Friday)
9. Christmas Day (December 25 - varies)
10. New Year's Day (January 1 – varies)

Approximate total service hours per primary vehicle per year is estimated to be 2,030 hours, for years one (1) through three (3) of the CONTRACT, and estimated to be 1,910 hours for years four (4) through five (5) of the CONTRACT Monday through Friday for Beat: 31.

An estimated possible 750 “**Extra Work**” contingency hours may be needed for FSP weekend service Saturday through Sunday for Beat 31.

Please note “Extra Work” contingency hours are not guaranteed.

All Beats may be asked to participate in possible SBCTA’s “FSP Extra Work weekend contingency services”, on an as needed basis. Possible hours of operation may include Saturdays and Sundays from 10:00 a.m. to 6:00 p.m. Extra work is not guaranteed. The actual amount of weekend hours or number of weekend trucks are not guaranteed. Written notice from SBCTA shall be required for commencement and termination of “FSP Extra Work weekend contingency services”.

Each SBCTA tow operator agreement contains a clause regarding the Construction Freeway Service Patrol (CFSP). The goal of CFSP is to assist in construction zones outside of regular FSP hours or locations. The work is provided as “Extra Work” due to the uncertainty of the hours or changes in construction.

In addition to the above service hours, at the discretion of SBCTA and the CHP, additional service may be requested on certain “high traffic days” prior to or following certain holidays (e.g., July 4th, Labor Day, Sunday following Thanksgiving Day, Memorial Day). CONTRACTORS will be notified at least one week prior when FSP service hours are altered due to when certain holidays fall on the calendar. Each year could be different. Please note that FSP service hours can be altered for other unforeseen purposes as well.

9.0 FSP UNIFORM REQUIREMENTS



STRIPE EXAMPLES:

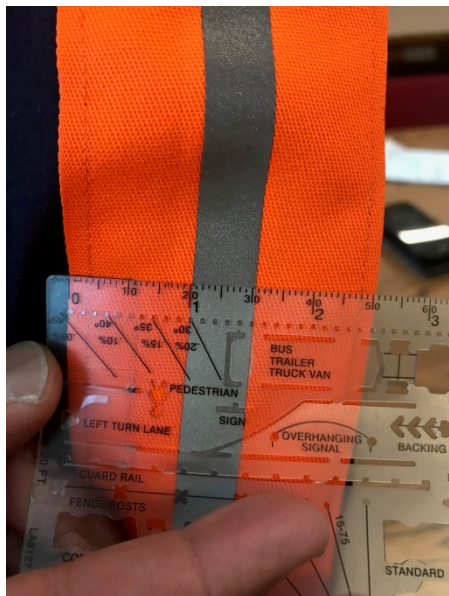


EXHIBIT B - "PRICE FORM"

Contract: 22-1002737

Compensation and Payment

Overview Contract No. 22-1002737 with Royal Coaches Auto Body & Towing for Beat 31

Beat 31 Term

NTP I: July 6, 2022-December 31, 2022

NTP II: January 1, 2023-December 31, 2027

Two Primary FSP Tow Trucks plus one certified FSP Back Up Tow Truck is required

NTP I JULY 6, 2022- DECEMBER 31, 2022						
PERIOD OF PERFORMANCE/ NTP I DELIVERABLES FSP Tow Truck Purchase, Mobilization, AVL and Radio installation, FSP Driver Training, Project ramp-up, and Tow Vehicle inspections	ESTIMATED BASELINE HOURS	ESTIMATED WEEKEND HOURS SUBJECT TO SBTA APPROVAL	7% MORE HOURS	ESTIMATED TOTAL HOURS	HOURLY RATE	NOT-TO EXCEED AMOUNT
JULY 6, 2022- DECEMBER 31, 2022	N/A	N/A	N/A	N/A	\$0.00	\$0

BEAT 31- FSP SUPPORT NTP II JANUARY 1, 2023- DECEMBER 31, 2027 Two Primary FSP Tow Trucks plus one certified FSP Back Up Tow Truck is required						
PERIOD OF PERFORMANCE/ NTP II DELIVERABLES FSP SUPPORT SERVICES	ESTIMATED BASELINE HOURS	ESTIMATED WEEKEND HOURS *Subject to SBCTA Approval*	7% MORE HOURS	ESTIMATED TOTAL HOURS	HOURLY RATE	NOT-TO-EXCEED AMOUNT (TOTAL HOURS X HOURLY RATE) X 2 TRUCKS
YEAR 1: FY 22/23-FY 23/24 (1/1/23-12/31/23)	2,030	750	195	2,975	\$91.11	\$542,105
YEAR 2: FY 23/24-FY 24/25 (1/1/24-12/31/24)	2,030	750	195	2,975	\$91.11	\$542,105
YEAR 3: FY 24/25-FY 25/26 (1/1/25-12/31/25)	2,030	750	195	2,975	\$91.11	\$542,105
YEAR 4: FY 25/26-FY 26/27 (1/1/26-12/31/26)	1,910	750	186	2,846	\$97.98	\$557,702
YEAR 5: FY 26/27-FY 27/28 (1/1/27-12/31/27)	1,910	750	186	2,846	\$97.98	\$557,702
CONTRACT TOTAL	9,910	3,750	956	14,616		\$2,741,718

NTP II YEAR 1-3**EXTRA TIME, NON PENALIZED DOWN TIME AND
PENALIZED DOWN TIME PER MINUTE RATES**

Extra Time: \$1.52 per minute

Non-Penalized Down Time: \$1.52 per minute

Penalized Down Time: \$4.56 Per Minute

NTP II YEAR 4-5**EXTRA TIME, NON PENALIZED DOWN TIME AND
PENALIZED DOWN TIME PER MINUTE RATES**

Extra Time: \$1.63 per minute

Non-Penalized Down Time: \$1.63 per minute

Penalized Down Time: \$4.90 Per Minute

**WEEKEND HOURS, EXTRA WORK HOURS, CFSP
CALTRANS LED, AND SBCTA LED SUPPORT PROJECTS
ARE NOT GUARANTEED AND SUBJECT TO SBCTA
APPROVAL**

EXHIBIT C – “PENALTIES”

EXHIBIT C

SUMMARY OF FSP VIOLATIONS AND PENALTIES

Below is a list of penalties that can be assessed to a Contractor if not in compliance with the policies and procedures of the Freeway Service Patrol Program. All final penalties shall be assessed by the determination of SBCTA.

Relevant section	Description of violation	Penalty
12.0	Contractor does not have two (2) primary and one (1) back-up (wheel lift) tow trucks "FSP" ready for SBCTA to install equipment and for CHP to inspect seven (7) business days prior to the start of a Beat.	Flat \$1,000 fine. In addition, should the trucks not be ready by the start of shift, the Contractor shall be fined three times the hourly rate in one minute increments for every minute compliance is not met.
5.0	Not meeting tow truck requirements outlined in the contract.	Three (3) times the hourly contract rate in one (1) minute increments until requirement is met. If entire shift is missed, Contractor shall be fined for the entire shift at three (3) times the hourly rate.
5.0 B	Not having a certified FSP "back-up" tow truck and/or Driver	Three (3) times the hourly contract rate in one (1) minute increments until requirement is met. If entire shift is missed, Contractor shall be fined for the entire shift at three (3) times the hourly rate.
5.0 C	Wheel lift Tow truck not made available <u>within 45 minutes</u> due to equipment/truck breakdown.	The CONTRACTOR has 45 minutes to correct the problem if the breakdown occurs during the shift, the penalty for the forty five (45) minute period will be calculated in one (1) minute increments on a straight hourly rate. Time beyond 45 minutes will be calculated as penalized time (Three (3) times the hourly contract rate in one (1) minute increments). Exact penalized down time rate is detailed in the Contract. If a truck is not ready due to a breakdown at the beginning of a shift, penalty will begin at the beginning of the shift at the penalized rate. If entire shift is missed, Contractor shall be fined for the entire shift at three (3) times the hourly rate
12.0	Contractor fines 9.B.4 Contractor fines are assessed for violations of the FSP contract or the SOP that are not directly related to FSP truck operations. This includes but not limited to: Failing to turn required paperwork in on time (Surveys, inspection sheets, etc.), damage to FSP Program equipment, or not supplying Driver the proper equipment as required in the FSP Contract.	The fine amount shall not exceed \$50.00 for each individual occurrence or violation, with the exception of replacement costs.
5.0 E	Tablet Computers not being charged in designated location during non-FSP operational hours.	\$50.00 per tablet
5.0 E	Email correspondence from CHP/SBCTA not being acknowledged. It is critical that the email address that the CONTRACTOR provides is working at all times. CONTRACTOR is required to report problems with email system immediately to SBCTA.	\$100.00 per day of no response
5.0 E	Lost/damaged equipment	Full cost if lost or damaged beyond normal wear and tear. If equipment is repairable, the cost of the repair shall be deducted from contractors invoice.

SOP	Contractor did not follow proper tip procedure per the SOP on Page 40, Section 6.B.	\$50.00 per occurrence
5.0 F	Tampering with FSP AVL equipment	2 FSP shifts (7 hours) at the CONTRACTOR'S penalty rate (3 times the normal hourly rate) plus AVL Technician's transportation, labor, repair and/or replacement costs.
5.0 G	Damage Release/Release of liability forms not completed, not filled out properly, or not submitted within thirty (30) calendar days from the date on the form.	\$5.00-50.00 per incident at the discretion of Commission.
5.0 G	Duplicate customer six digit survey number >10%	\$50 and up. Case by case basis as determined by FSP Management.

Minute Action

AGENDA ITEM: 8

Date: June 8, 2022

Subject:

Update on the Commuter and Motorist Assistance Call Box Program

Recommendation:

Receive information on the status of the San Bernardino County Transportation Authority Call Box Program.

Background:

In 1987, the San Bernardino County Transportation Authority (SBCTA) established itself as the San Bernardino County Service Authority for Freeway Emergencies (SB SAFE) after the enactment of Senate Bill (SB) 1199 in 1985.

SBCTA operates a call box program that offers motorists travelling on most major highways in San Bernardino County access to a motorist aide call box, that when activated calls SBCTA's call box answering center. Once the call reaches the answering center, it is determined whether the call needs to be forwarded to the California Highway Patrol (CHP), or if the trained SBCTA answering center operator is able to assist the motorist with requesting Freeway Service Patrol (FSP), or by calling the motorists' roadside assistance provider American Automobile Association (AAA) or another provider or contacting a friend or family member that may be able to offer assistance. Motorist calls which are deemed an emergency (medical emergency, fire, debris on freeway, pedestrians on freeway, accidents, and officer in need of assistance, etc.) are forwarded directly to the CHP for assistance.

SBCTA's call box network consists of approximately 750 cellular call boxes and 27 satellite call boxes, for a total of 777 call boxes. Each cellular and satellite call box is a battery-powered, solar charged roadside terminal, with a microprocessor and a built-in digital cellular or satellite modem that allows for communications to the SBCTA call answering center. All of the call boxes are equipped with a Tele Type (TTY) device. Since inception in 1987, SBCTA's call box network has assisted more than 1.5 million callers. Over the last 12 months, approximately 3,300 calls have been made by motorists. Many of these requests for aide were on highways where cellular reception does not exist or the cellular signal is poor and inconsistent. As mentioned earlier, the SBCTA Call Box Program has 777 call boxes with approximately 31 call boxes being located in the "urban" areas of the county and an estimated 746 call boxes being located in the "rural" areas of the county. Call boxes in the "urban" region are predominately located along freeway transitions. A large number of the "rural" call boxes are in areas that may either have no standard mobile phone cellular coverage, or the coverage is poor and inconsistent. Generally, these highway segments have poor and/or inconsistent cellular coverage: Interstate 40 (I-40), State Route (SR) 18, SR 38, SR 62, SR 127, SR 330, United States (US) Route 95, US 395, and Fort Irwin Road. In these areas, a standard mobile cell phone may not be able to successfully connect to the cellular network. As a result, the call boxes are equipped with a high powered external antenna (and some operate on the satellite communication network), the call boxes can provide a connection to the cellular network to complete a call to the call answering center, whereas often a standard cell phone is not able to connect to the cellular network.

Entity: San Bernardino County Transportation Authority

Exhibits A through H are presented within this report and incorporated as attachments:

- **Exhibit A: Call Box locations from June 2022 in San Bernardino County.**
 - Exhibit A displays the location of all call boxes within the county of San Bernardino. There are additional tables and maps that display the locations by various regions within the county.
- **Exhibit B through G are Call Box locations in six different areas within San Bernardino County.**
 - The data within Exhibit B through G includes the information about the spacing/segment length, the number of call boxes, the number of aide calls, emergency calls, and maintenance calls made between April 1, 2021 through March 31, 2022.
 - The regions have been defined as follows:
 - *Exhibit B: Call Box locations in the Mountain Area.*
 - *Exhibit C: Call Box locations in the Victorville and the Cajon Pass Area.*
 - *Exhibit D: Call Box locations in the Barstow and Nevada Border.*
 - *Exhibit E: Call Box locations at the Interstate 40 (I-40) Corridor.*
 - *Exhibit F: Call Box locations at the Morongo Basin to the Arizona Border Area.*
 - *Exhibit G: Call Box locations at the Valley Area.*
- **Exhibit H: Box case studies for calls made between April 1, 2021 through March 31, 2022.**

Financial Impact:

This item is consistent with the Proposed Fiscal Year 2022/2023 Budget in Task 702.

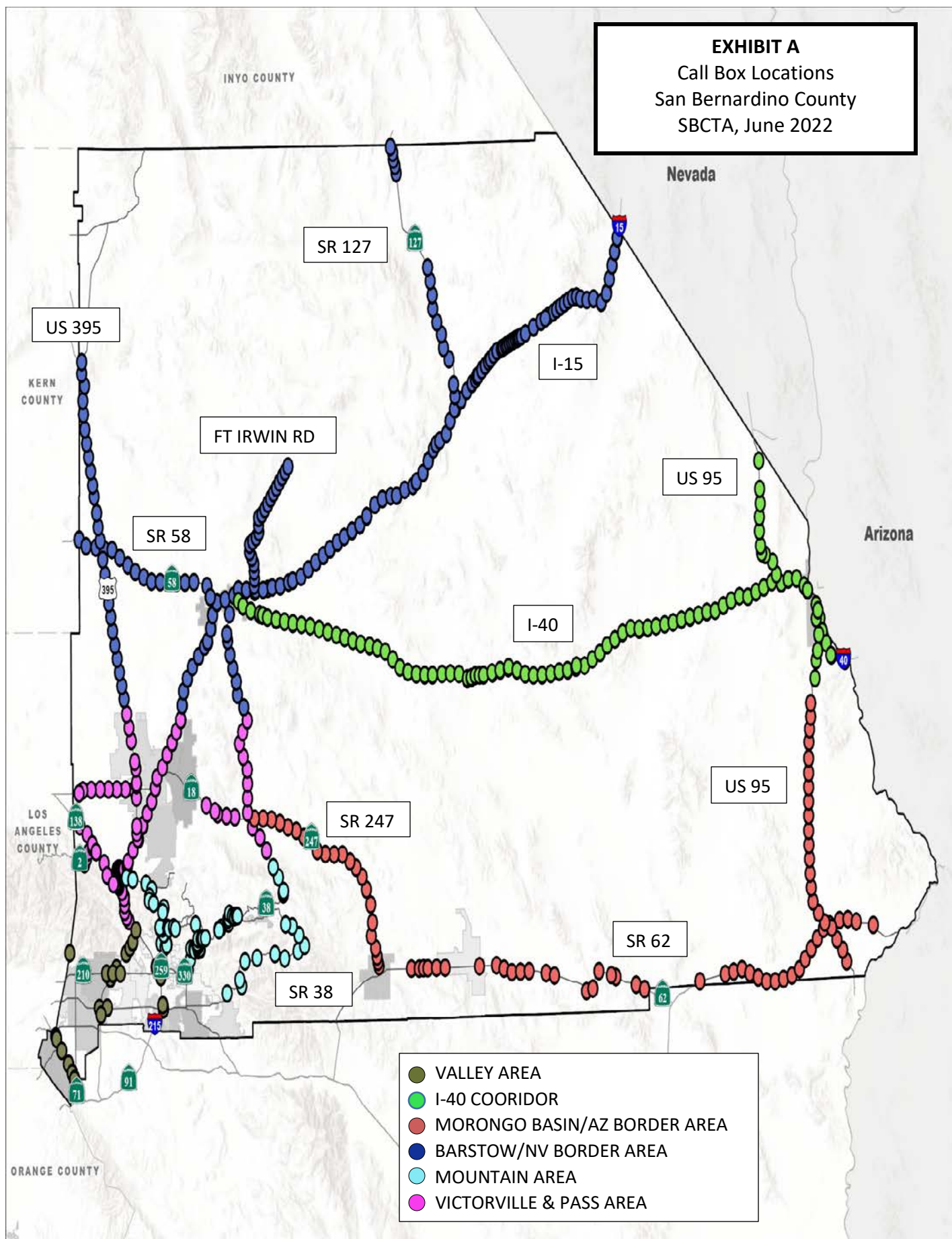
Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee.

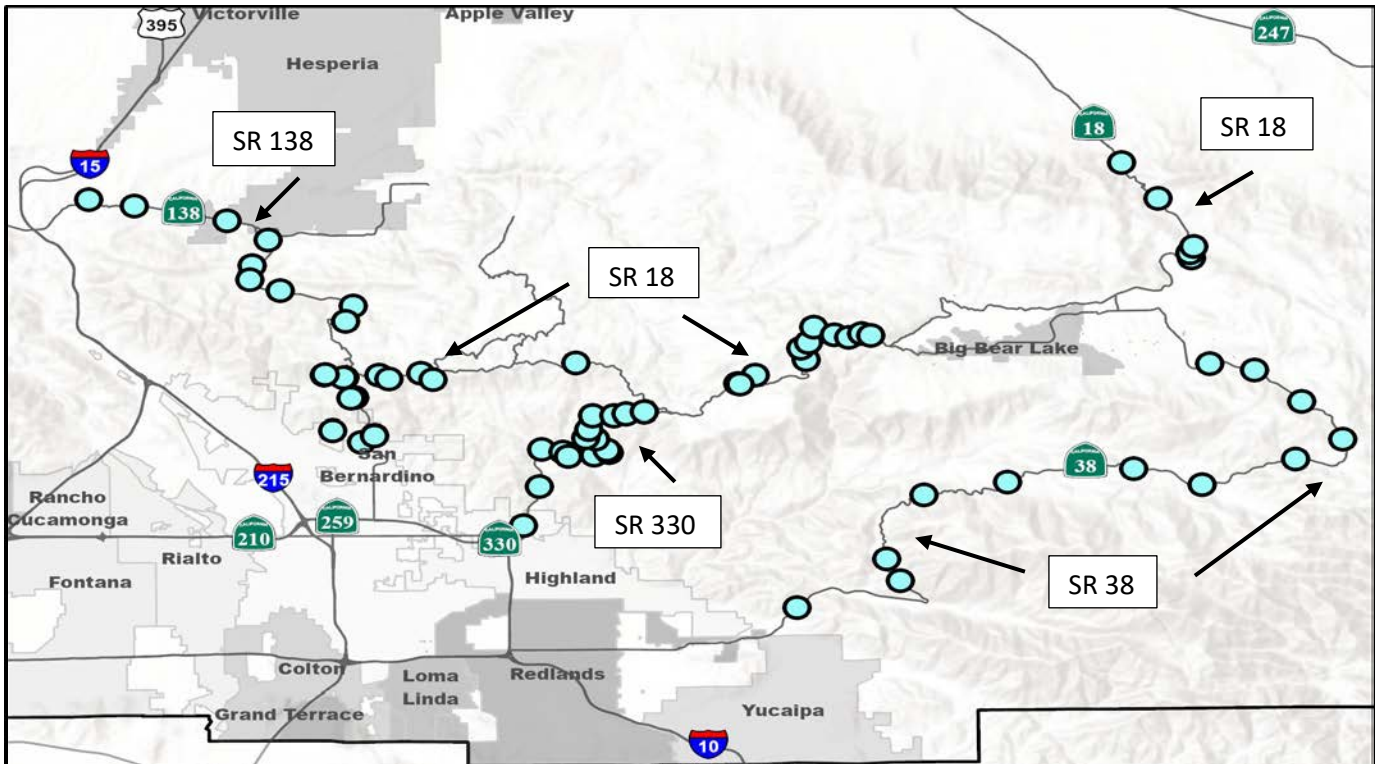
Responsible Staff:







Cheryl Wilson, Management Analyst II

Approved
General Policy Committee
Date: June 8, 2022
Witnessed By:



**EXHIBIT B: SBCTA LOCATION OF CALL BOXES MOUNTAIN AREA AND
NO. OF CALLS MADE BETWEEN APRIL 1, 2021 THROUGH MARCH 31, 2022**

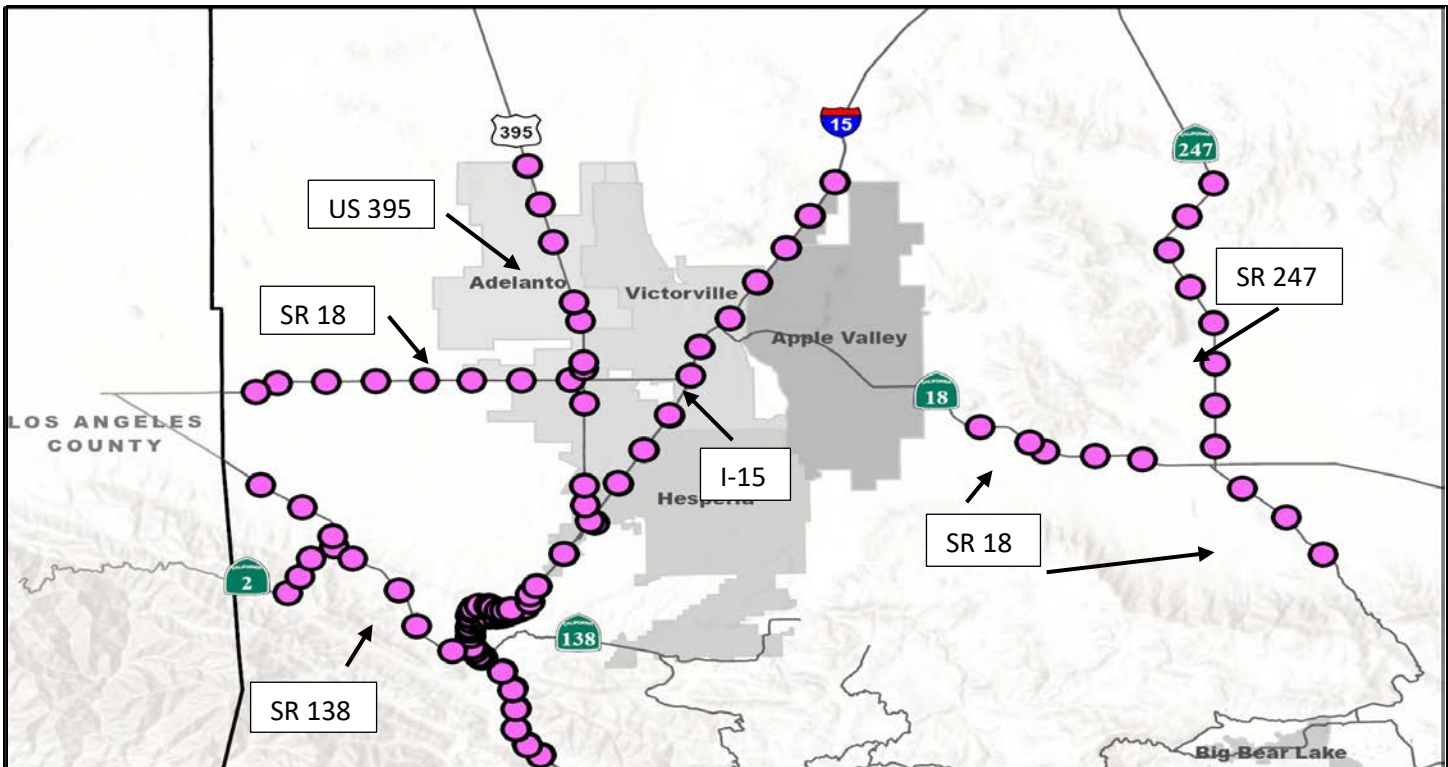








FREEWAY/STATE ROUTE		SPACING/SEGMENT LENGTH	NO. OF CALL BOXES	NO. OF AIDE CALLS	NO. OF EMERGENCY CALLS	NO. OF MAINT. CALLS
	Waterman Canyon to Baylis Park	2 mile spacing (~11 miles)	14	85	20	8
	Heaps Arboretum to Big Bear Dam	2 miles spacing (~16 miles)	12	122	7	7
	Cushenberry Grade to South of Camp Rock Road	2 miles spacing (~5 miles)	5	40	6	4
	South of Big Bear to North of Bryant Street	~2 miles spacing (~34 miles)	17	249	30	4
	North of Crestline to East of Interstate 15 (I-15) Avenue	2 mile spacing (14 miles)	9	46	4	6
	Highland Avenue to Running Springs	1 mile spacing (~13 miles)	16	132	20	8

Attachment: Exhibit B- Call Box Locations Mountain Area (8558 : Update on the Commuter and Motorist Assistance Call Box Program)

**EXHIBIT C: SBCTA - LOCATION OF CALL BOXES VICTORVILLE/PASS AREA AND
NO. OF CALLS MADE BETWEEN APRIL 1, 2021 THROUGH MARCH 31, 2022**

8.c



FREEWAY/STATE ROUTE	SPACING/SEGMENT LENGTH	NO. OF CALL BOXES	NO. OF AIDE CALLS	NO. OF EMERGENCY CALLS	NO. OF MAINT CALLS
 Leading to Wrightwood	1-2 miles spacing (~4 miles)	4	5	1	2
 North of Interstate 15/215 (I-15/I-215) Split to North of Victorville City Limits	1/4, 1/2, 1, or 2 miles, depending on grade (~36 miles)	73	223	44	42
 Southbound/Los Angeles County Line to State Route 395 and Laguna Seca Drive to State Route (SR) 247	2 miles spacing (~30 miles)	16	56	19	15
 San Bernardino/Los Angeles (SB/LA) County Line to Interstate 15 (I-15)	2 miles spacing (~10 miles)	7	3	1	1
 Rabbit Springs to 15 miles North of Rabbit Springs	2 miles spacing (~15 miles)	8	17	5	1
 Interstate 15 (I-15) to just North of Purple Sage Street	2 mile spacing (~17 miles)	10	16	6	2

Attachment: Exhibit C- Call Box Locations Victorville & Pass Area (8558 : Update on the Commuter and Motorist Assistance Call Box Program)

**EXHIBIT D: SBCTA LOCATION OF CALL BOXES BARSTOW/NEVADA BORDER AND
NO. OF CALLS MADE BETWEEN APRIL 1, 2021 THROUGH MARCH 31, 2022**

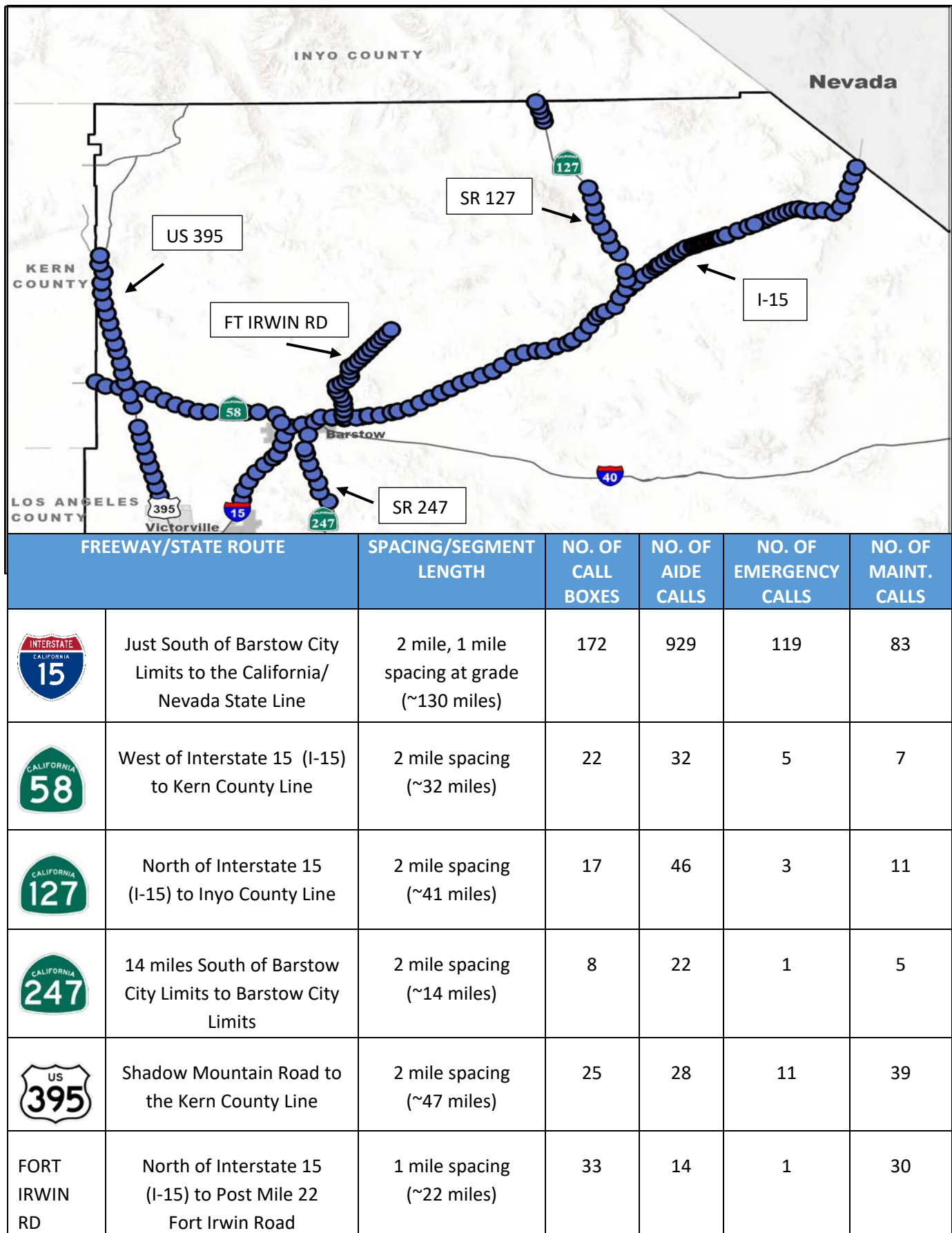
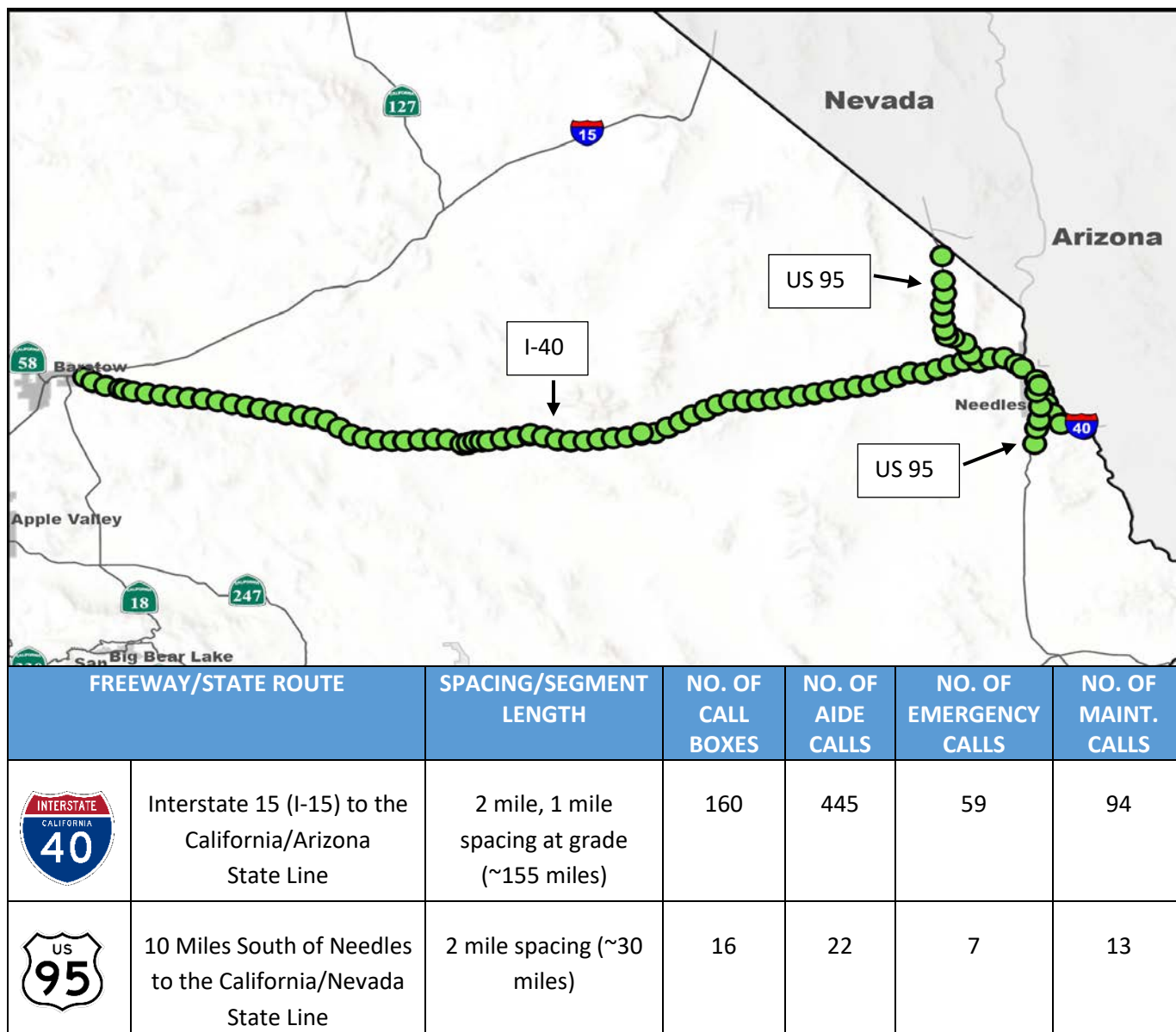
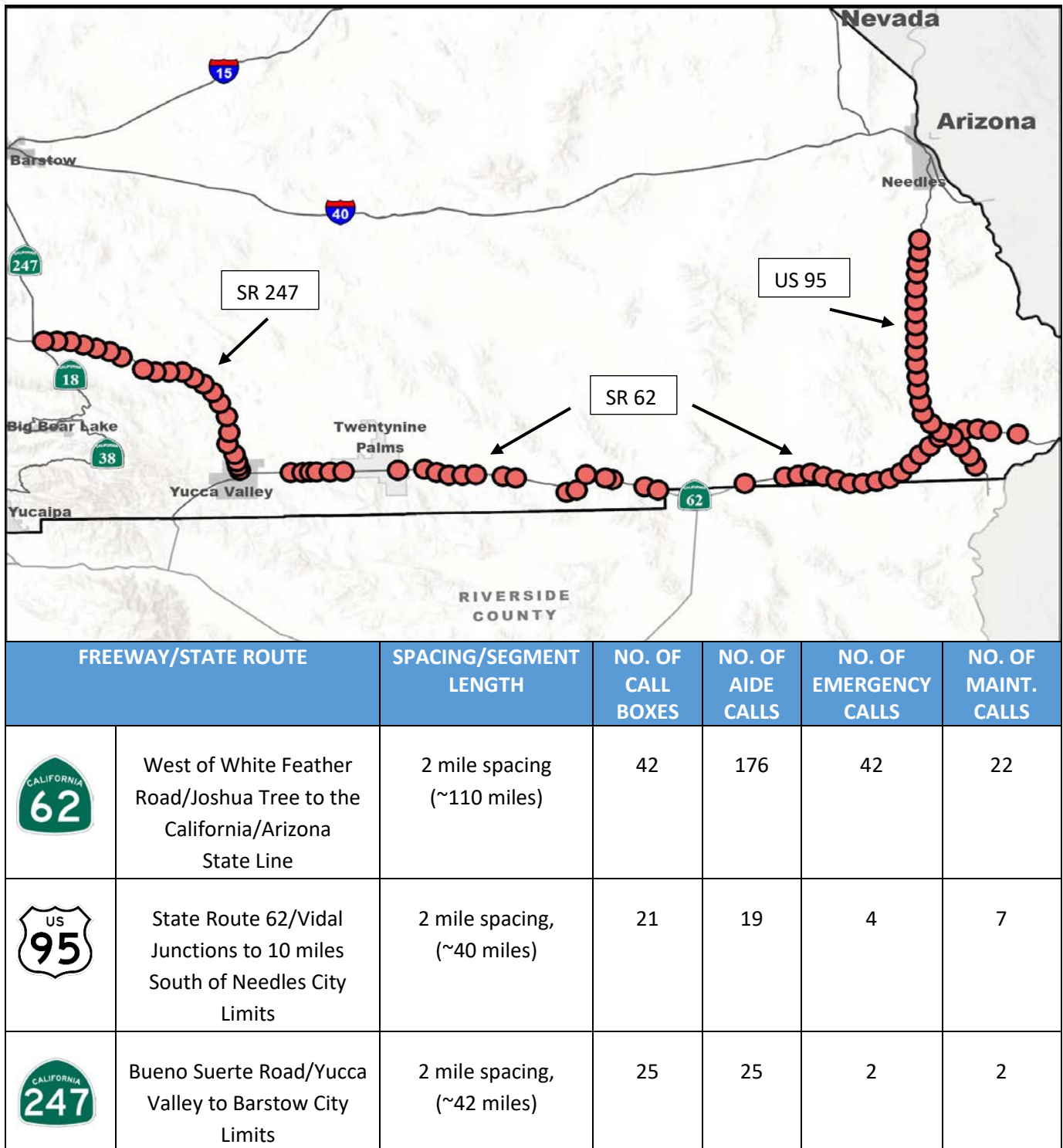


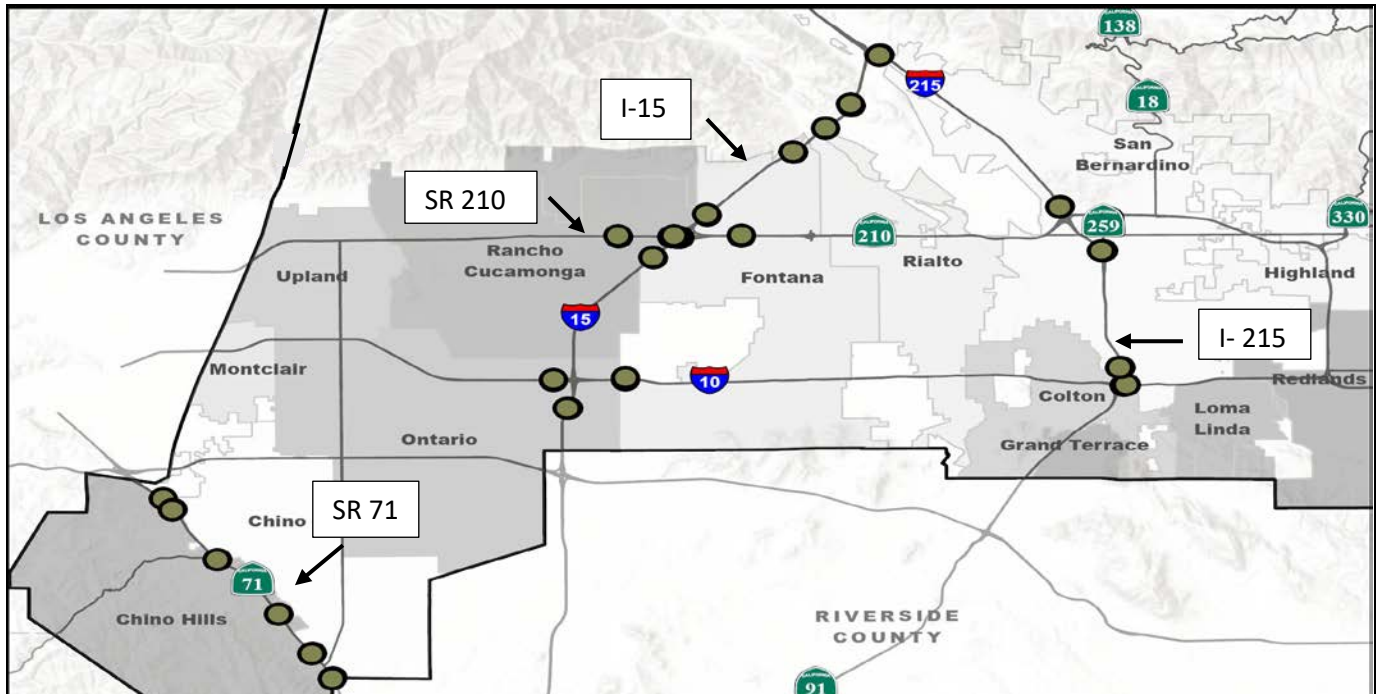
EXHIBIT E: SBCTA LOCATION OF CALL BOXES INTERSTATE 40 (I-40) CORRIDOR
AND
NO. OF CALLS MADE BETWEEN APRIL 1, 2021 THROUGH MARCH 31, 2022



**EXHIBIT F: SBCTA LOCATION OF CALL BOXES MORONGO BASIN TO THE
ARIZONA BORDER AREA AND
NO. OF CALLS MADE BETWEEN APRIL 1, 2021 THROUGH MARCH 31, 2022**



**EXHIBIT G: SBCTA LOCATION OF CALL BOXES VALLEY AREA AND
NO. OF CALLS MADE BETWEEN APRIL 1, 2021 THROUGH MARCH 31, 2022**









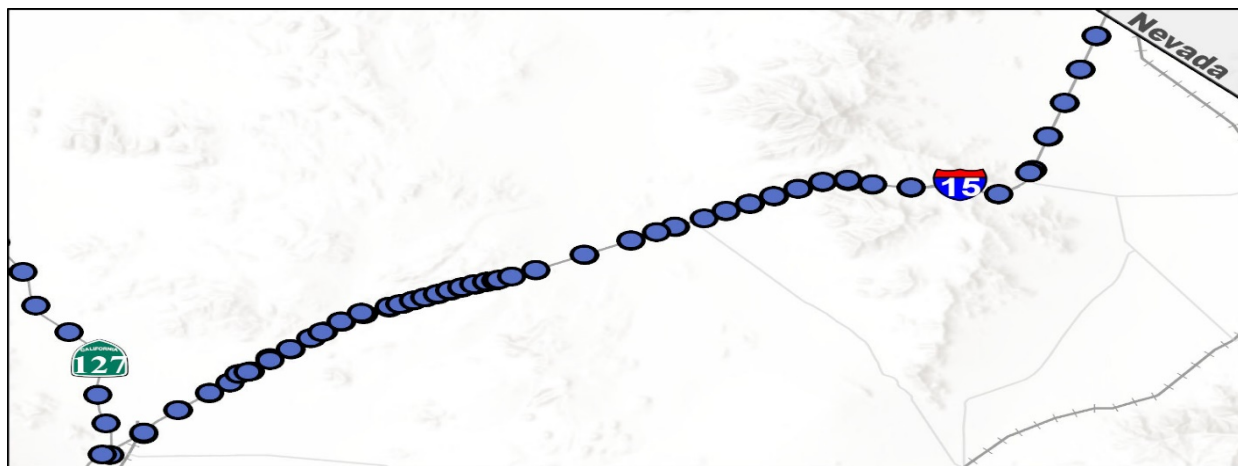
FREEWAY/STATE ROUTE		SPACING/SEGMENT LENGTH	NO. OF CALL BOXES	NO. OF AIDE CALLS	NO. OF EMERGENCY CALLS	NO. OF MAINT CALLS
	Interstate 15 (I-15) and Interstate-215 (I-215) Freeway Transitions	Freeway Transitions	6	15	2	3
	Interstate 10 (I-10) Freeway Transitions	Freeway Transitions	14	12	4	1
	San Bernardino/Riverside County Line to San Bernardino/Los Angeles County Line	2 mile spacing, (~8 miles)	11	21	2	8
	Interstate 15 (I-15) Freeway Transitions	Freeway Transitions	6	35	4	3
	Orange Show Road to Interstate 15/ Interstate 215 (I-15/I-215) Interchange	Freeway Transitions	8	NA	NA	NA
	Interstate 215 (I-215) to State Route 210 (SR 210)	Freeway Transitions	2	9	4	0

EXHIBIT H: SBCTA CALL BOX CASE STUDIES

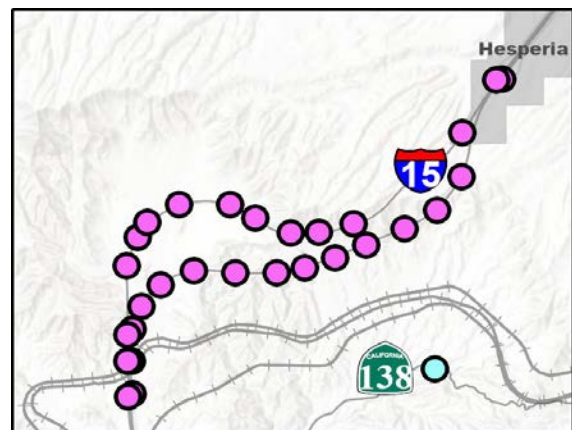
Case Study No. 1: Highway use at grade -Interstate 15 (I-15) Halloran Springs Rd (12 miles North of Baker) to the California/Nevada State line

There are 60 call boxes, installed in pairs, located on this 35 mile segment of freeway. The use for these call boxes is largely requests for motorist aide, but there also a small percentage of the calls for emergency related requests. Between April 1, 2021, and March 31, 2022, there were a total of 434 calls. Most of these calls were requests for motorist aide services due to engine issues, overheated vehicles, and other mechanical problems with vehicles. The call boxes in this area are generally spaced every two (2) miles, and those located on a grade are spaced at closer intervals (one (1) mile or one-half (1/2) mile intervals). .

For example, there is a four (4) to five (5) mile segment north of Halloran Springs Road and at this location the grade differential is 1000 feet. The sixteen (16) call boxes located on this stretch of highway are installed at one half (½) mile spacing to minimize the amount of walking a motorist would need to do to access a call box for assistance. These sixteen (16) call boxes were used to make 141 calls during the twelve (12) month reporting period.



On Interstate 15 (I-15) at the Cajon Pass, the grade is quite steep - six percent (6%). Within this one and a half mile section (see graphic), the call boxes have been used 92 times for roadside assistance or emergency calls during the twelve (12) month reporting period. There are fifteen (15) call boxes on this one and half mile segment, 74 of the call box calls were for aide and 18 calls for emergencies.

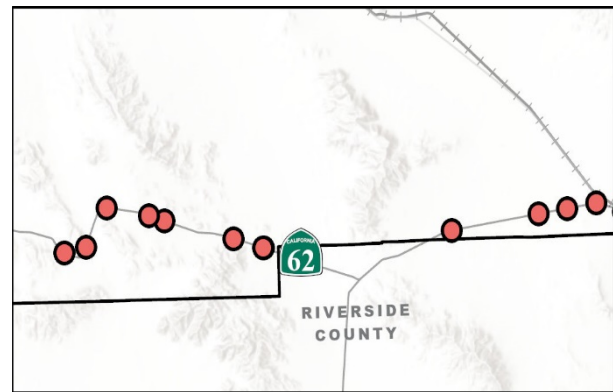


Case Study No. 2: No cell coverage or weak cell phone coverage - State Route 62 (SR 62) - East of Twentynine Palms to Vidal Junction and State Route 38 (SR 38) South of Big Bear City to North of Bryant Street

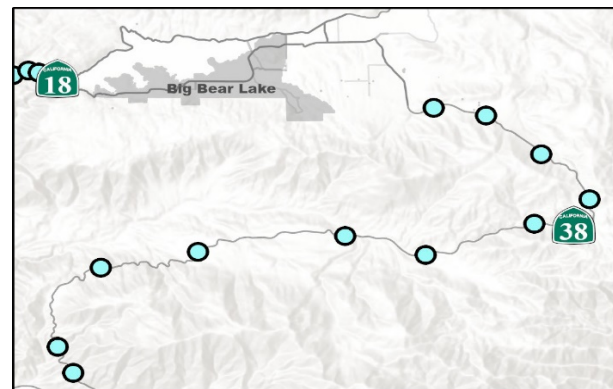
8.h

There are various locations within the County that have no cell phone coverage, or the cell phone coverage is too weak for a standard cell phone to connect to the cellular network. In many of these locations, the standard configuration of the call box can connect to the cellular network, where regular cell phones cannot. The SAFE has also equipped call boxes with high gain external antennas to enhance the cellular signal so that a call box can successfully connect to the cellular network. In addition, there are some locations where SBCTA SAFE has installed satellite call boxes that operate in the satellite communication network. Locations that have been identified to have weak/inconsistent (or no) cell phone coverage are in various areas along these highways/freeways: Interstate 40, State Route (SR) 18, SR 38, SR 62, SR 127, SR 330, United States Route 95 (US 95) and US 395, and Fort Irwin Road.

On SR 62, the cell phone service in this area is known to be weak or nonexistent according to the call box maintenance contractor. Within this corridor, two (2) call boxes are satellite and ten (10) call boxes are cellular call boxes. These twelve (12) call boxes were used 149 times in the last twelve (12) months for calls requesting aide or seeking help for an emergency. Most of these calls were for roadside assistance.



On SR 38, another known area with weak and inconsistent coverage for standard cell phone, there are seventeen (17) call boxes installed with two (2) mile spacing. Nine (9) of the seventeen (17) call boxes are satellite call boxes. From April 1, 2021 through March 31, 2022 these call boxes were used 279 times. A majority of the calls were request for roadside assistance.



SBCTA

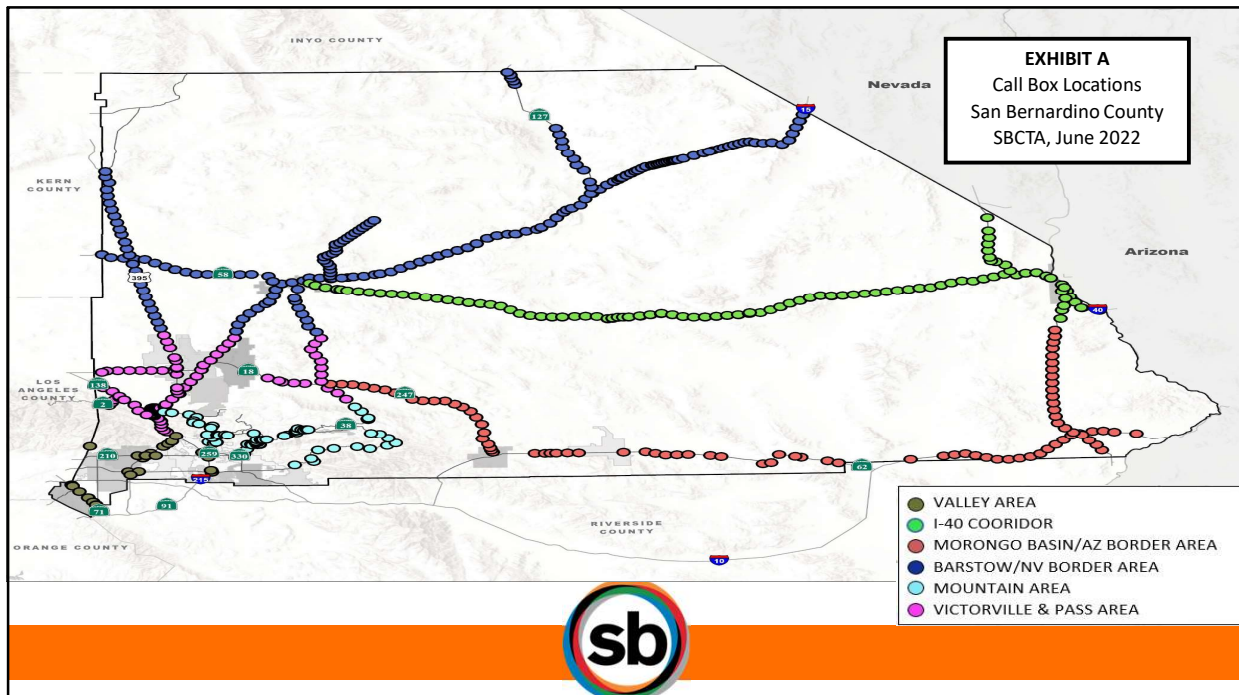
Air Quality and Mobility Programs

Update on the Commuter and Motorist Assistance Call Box Program

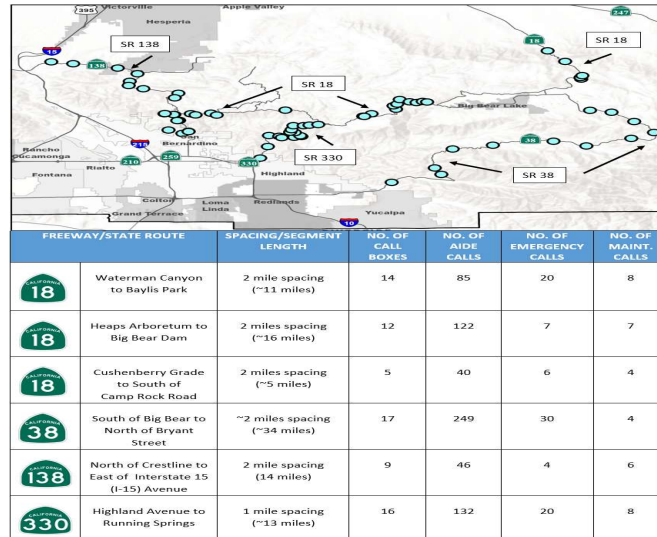


cta

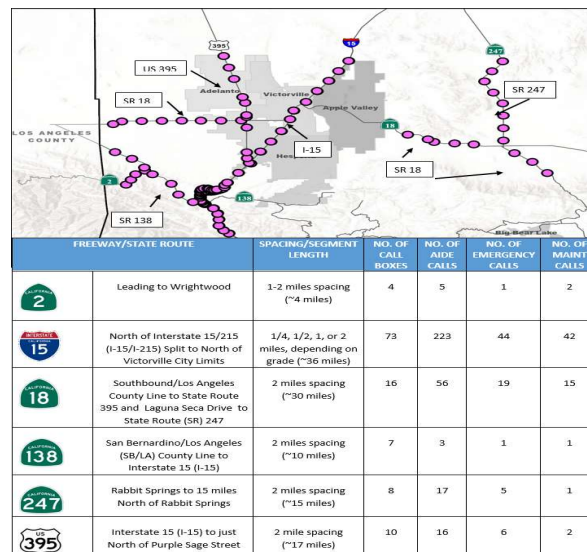
San Bernardino County
Transportation Authority



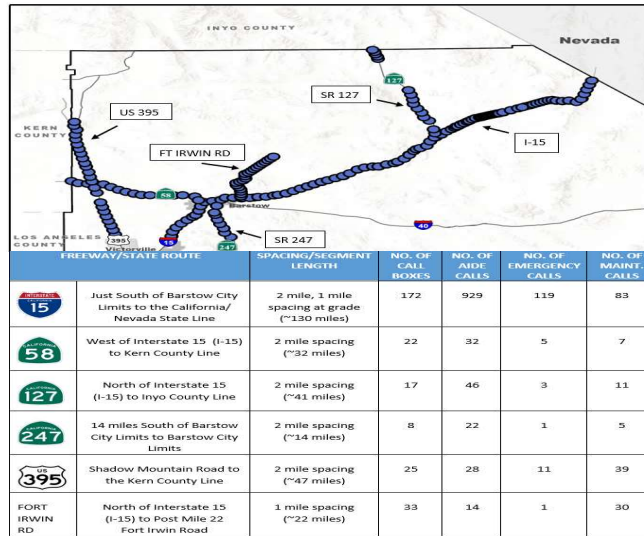
**EXHIBIT B: SBCTA LOCATION OF CALL BOXES MOUNTAIN AREA AND
NO OF CALLS MADE BETWEEN APRIL 1, 2021 THROUGH MARCH 31, 2022**



**EXHIBIT C: SBCTA LOCATION OF CALL BOXES VICTORVILLE/PASS AREA AND
NO OF CALLS MADE BETWEEN APRIL 1, 2021 THROUGH MARCH 31, 2022**




**EXHIBIT D: SBCTA LOCATION OF CALL BOXES BARSTOW/NEVADA BORDER AND
NO OF CALLS MADE BETWEEN APRIL 1, 2021 THROUGH MARCH 31, 2022**






**EXHIBIT E: SBCTA LOCATION OF CALL BOXES INTERSTATE 40 (I-40) CORRIDOR AND
NO OF CALLS MADE BETWEEN APRIL 1, 2021 THROUGH MARCH 31, 2022**



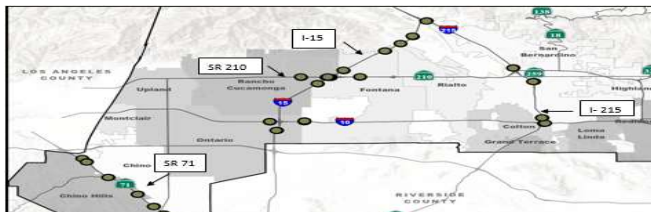
**EXHIBIT F: SBCTA LOCATION OF CALL BOXES MORONGO BASIN TO THE ARIZONA BORDER AREA
AND
NO OF CALLS MADE BETWEEN APRIL 1, 2021 THROUGH MARCH 31, 2022**









FREEWAY/STATE ROUTE	SPACING/SEGMENT LENGTH	NO. OF CALL BOXES	NO. OF AIDE CALLS	NO. OF EMERGENCY CALLS	NO. OF MAINT. CALLS
 62 West of White Feather Road/Joshua Tree to the California/Arizona State Line	2 mile spacing (~110 miles)	42	176	42	22
 95 State Route 62/Vidal Junctions to 10 miles South of Needles City Limits	2 mile spacing, (~40 miles)	21	19	4	7
 247 Buena Suerte Road/Yucca Valley to Barstow City Limits	2 mile spacing, (~42 miles)	25	25	2	2



**EXHIBIT G: SBCTA LOCATION OF CALL BOXES VALLEY AREA AND
NO OF CALLS MADE BETWEEN APRIL 1, 2021 THROUGH MARCH 31, 2022**



FREEWAY/STATE ROUTE	SPACING/SEGMENT LENGTH	NO. OF CALL BOXES	NO. OF AIDE CALLS	NO. OF EMERGENCY CALLS	NO. OF MAINT. CALLS
 15 Interstate 15 (I-15) and Interstate-215 (I-215) Freeway Transitions	Freeway Transitions	6	15	2	3
 10 Interstate 10 (I-10) Freeway Transitions	Freeway Transitions	14	12	4	1
 71 San Bernardino/Riverside County Line to San Bernardino/Los Angeles County Line	2 mile spacing, (~8 miles)	11	21	2	8
 210 Interstate 15 (I-15) Freeway Transitions	Freeway Transitions	6	35	4	3
 215 Orange Show Road to Interstate 15/ Interstate 215 (I-15/I-215) Interchange	Freeway Transitions	8	NA	NA	NA
 259 Interstate 215 (I-215) to State Route 210 (SR 210)	Freeway Transitions	2	9	4	0



Minute Action

AGENDA ITEM: 9

Date: June 8, 2022

Subject:

Transportation Development Act Article 3 Allocation for Metrolink Station Accessibility Improvement Project - Phase II

Recommendation:

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

Allocate \$384,945 from the Transportation Development Act Article 3 Contingency Funds for Bicycle and Pedestrian Facilities to the Metrolink Station Accessibility Improvement Project - Phase II to fund anticipated cost increases.

Background:

San Bernardino County Transportation Authority (SBCTA) oversees the disbursement of 2% of the Local Transportation Funds (LTF) made available to counties and cities for facilities geared toward the exclusive use of pedestrians and bicyclists, known as the Transportation Development Act (TDA) Article 3 Program. In August 1999, the SBCTA Board of Directors (Board) approved a policy stipulating that 80% would be available for pedestrian and bicycle projects. The remaining 20% of the Article 3 Program funds would be made available for projects that improve access to transit stops for pedestrians and persons with disabilities. In 2015, the Board approved the use of up to 10% of the funds available for pedestrian and bicycle projects for maintenance of existing bicycle and pedestrian facilities. In 2017, the Board further approved a policy to set-aside a minimum of 50% of the remaining bicycle and pedestrian facilities project funding for smaller projects under \$250,000.

In June 2021 the Board approved the release of a call-for-projects with \$3,119,595 available for Bicycle and Pedestrian Facilities and \$779,899 for Transit Stop Access Improvements awards. Additionally, the Board approved Contingency Funds of \$672,817 for Bicycle and Pedestrian Facilities and \$129,410 for Transit Stop Access Improvements available for unforeseen TDA Article 3 related needs should they arise. The Board has allocated \$100,000 of Contingency Funds for Bicycle and Pedestrian Facilities to the City of Montclair for assistance with replacement of the Pacific Electric Trail Bridge that was lost due to a fire incident, leaving \$572,817 available for Bicycle and Pedestrian Facilities.

The Metrolink Station Accessibility Improvement Project - Phase II (Project), which is being implemented by SBCTA, is funded by Active Transportation Program (ATP) grant funds and local City funds. The ATP grant consist of \$6,131,664, which will be applied to construction and construction engineering. The City funds will cover design and Project Management. The Project will provide safe pedestrian/bicycle access, way-finding signage, high-visibility crosswalks, bicycle parking and improvements to key corridors of the regional bicycle network designed to directly connect to Metrolink stations in five cities within San Bernardino County. Based on the 95% engineer's estimate, it is apparent there will be a construction cost increase. Staff recommends an allocation of \$384,945 from the Contingency Funds for Bicycle and Pedestrian Facilities as there are no other sources of funds available to SBCTA for this type of project.

Entity: San Bernardino County Transportation Authority

General Policy Committee Agenda Item

June 8, 2022

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Financial Impact:

This item has no financial impact on the Fiscal Year 2022/2023 Budget.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee.

Responsible Staff:

Ginger Koblasz, Senior Planner

Approved
General Policy Committee
Date: June 8, 2022

Witnessed By:

San Bernardino County Transportation Authority

Minute Action

AGENDA ITEM: 10

Date: June 8, 2022

Subject:

Long Range Multimodal Transportation Plan California Department of Transportation Grant Award

Recommendation:

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

Approve Resolution No. 23-001, authorizing the Executive Director, or his designee, to execute Contract No. 23-1002824 and any amendments, subject to approval as to form by General Counsel, a Restricted Grant Agreement between San Bernardino County Transportation Authority (SBCTA) and the California Department of Transportation for SBCTA to receive an amount not-to-exceed \$594,479 for the development of the San Bernardino County Long Range Multimodal Transportation Plan.

Background:

While the San Bernardino County Transportation Authority (SBCTA) has had a Countywide Transportation Plan (CTP) with multimodal and sustainability elements since 2015, these elements have not been fully integrated, nor has it kept up with major changes in state directives on sustainability. In particular, it has not been resilient in a way that responds to disruptions seen over the last few years, such as: COVID-19 pandemic, climate change, and changes in technology and travel patterns that have ensued. Thus, SBCTA needs to build a new foundation that will produce a Long Range Multimodal Transportation Plan (LRMTP) that will adapt and respond to these challenges.

The transportation system envisioned in the LRMTP will enable SBCTA and the jurisdictions in San Bernardino County to thrive across the diverse spectrum of our 1) population, 2) geography, 3) economic conditions, and 4) the natural and built environments. It will do so while also responding to new policy initiatives from the California Transportation Plan 2050 (CTP 2050) and the Climate Action Plan for Transportation Infrastructure (CAPTI). The vision and strategies within the LRMTP will address at least nine (9) cross-cutting functional areas (e.g., (Vehicle Miles Traveled (VMT) reduction, equity, health, etc.). Active partners in the planning process will include 25 local jurisdictions, five (5) transit operators, California Department of Transportation (Caltrans), Metrolink, Southern California Association of Governments (SCAG), and representatives of other diverse interests (health, active transportation, air quality, etc.).

In October 2021, SBCTA staff, with Executive Director approval, submitted an application through Caltrans' Sustainable Transportation Planning/Sustainable Communities Grant program to develop a LRMTP. The application proposed to hire an experienced consultant to deliver the following:

- 1) Existing conditions and policy context tech memos;
- 2) Future scenarios that may impact travel, revenue, development, and resiliency;
- 3) Visioning document;
- 4) Performance measures and analysis methodology, including transit ridership, mode shares (including work-at-home) and VMT/Greenhouse Gas analysis;

Entity: San Bernardino County Transportation Authority

General Policy Committee Agenda Item

June 8, 2022

Page 2

- 5) Financial scenarios, including constrained and unconstrained;
- 6) Subarea LRMTTP fact sheets; and
- 7) Draft and Final LRMTTP.

In April 2022, SBCTA received award notification from Caltrans for the San Bernardino County LRMTTP project. The recommendations in this agenda item represent requirements from Caltrans for a grant agreement.

Financial Impact:

This item is not consistent with the Fiscal Year 2022/2023 Budget. An administrative budget amendment will be submitted to identify the revenue and payable codes.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee. SBCTA General Counsel has reviewed this item and the draft resolution.

Responsible Staff:

Ginger Koblasz, Senior Planner

Approved
General Policy Committee
Date: June 8, 2022

Witnessed By:

San Bernardino County Transportation Authority

RESOLUTION NO. 23-001

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY (SBCTA) AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AGREEMENTS WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR THE SBCTA LONG RANGE MULTIMODAL TRANSPORTATION PLAN (LRMTP)

WHEREAS, SBCTA is eligible to receive Federal and/or State funding for certain transportation planning related plans, through the California Department of Transportation;

WHEREAS, SBCTA has been successful in being awarded a State transportation planning grant in the amount of \$594,479;

WHEREAS, SBCTA needs to execute a Restricted Grant Agreement with the California Department of Transportation before such funds can be claimed through the Transportation Planning Grant Programs;

WHEREAS, SBCTA wishes to delegate authority to the SBCTA Executive Director to execute this agreement and any amendments.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of San Bernardino County Transportation Authority, as follows:

Section 1. The Executive Director, or designee, is authorized to execute a Restricted Grant Agreement and any amendments between SBCTA and the California Department of Transportation, necessary for the award of the State transportation planning grant to SBCTA in the amount of \$594,479.

Section 2. This Resolution is effective upon the date of its adoption.

APPROVED AND ADOPTED by the San Bernardino County Transportation Authority at its meeting on July 6, 2022.

Curt Hagman, President
San Bernardino County Transportation Authority

ATTEST:

Marleana Roman, Clerk of the Board
San Bernardino County Transportation Authority

California Department of Transportation

DIVISION OF TRANSPORTATION PLANNING
P.O. BOX 942873, MS-32 SACRAMENTO, CA 94273-0001
(916) 261-3326 | TTY 711
www.dot.ca.gov



SENT VIA E-MAIL

On behalf of the California Department of Transportation (Caltrans), Division of Transportation Planning, we are pleased to congratulate you on your Sustainable Transportation Planning Grant award.

Sustainable Transportation Planning Grant Program						
Grant Award Fiscal Year	2022-23	Grant Category	Sustainable Communities Competitive		Grant Fund Source	RMRA
Project Title	San Bernardino County Long Range Multimodal Transportation Plan					
Grantee/Agency	San Bernardino County Transportation Authority					
Executive Director	Raymond Wolfe, Executive Director					
Grantee/Agency Contact	Josh Lee, Chief of Planning					
Sub-Recipient(s)	NA					
Caltrans District Contact(s)	Ricky Rivers					
Caltrans District Contact(s) E-mail	ricky.rivers@dot.ca.gov					
Grant Award	Local Match (Cash)	Local Match (In-Kind)	Total Local Match	% Local Match	Total Project Cost	
\$594,479	\$96,021	\$0	\$96,021	13.91%	\$690,500	
Conditions of Award Due to Caltrans		Grant Expiration Date		Final Invoice Due		
06/03/22		02/28/25		04/29/25		
* The final contractually agreed upon Local Match and Fund Source are located on the Grant Application Cover Sheet and Project Cost and Schedule. Any change in Local Match that increases/decreases the Total Project Cost must be approved by Caltrans and may require a Formal Amendment. Each invoice must include the contractual/agreed upon local match % - any deviation to this amount requires an approved Tapered Local Match Amendment prior to invoice submittal. Any change to the Local Match Fund Source requires prior Caltrans approval and an Administrative Amendment.						

Attachment: LRMTTP - Caltrans Award Letter (8622 : Long Range Multimodal Transportation Plan Caltrans Grant Award)

Caltrans Sustainable Transportation Planning Grant Program
Grant Award
Page 2

Next Steps

1. The Caltrans District Grant Manager will schedule a Conditional Award Teleconference, with your agency soon.
 - A list of conditions and project revisions necessary to accept grant funding will be provided at this meeting as well as a follow-up email outlining the discussion.
2. The required conditions must be submitted to the Caltrans District Grant Manager no later than the date listed in the table above.
 - Failure to satisfy these conditions will result in the forfeiture of grant funds.
3. The Caltrans District Grant Manager will review and approve all items required to fulfill the Conditions of Grant Acceptance outlined in the teleconference and follow-up email.
4. Once the required conditions are met and agreements in place, the Caltrans District Grant Manager will:
 - Send a Notice to Proceed letter (for MPO/RTPAs, this will happen after the OWP/OWPA formal amendment is processed). *Grant work cannot begin until the Notice to Proceed letter is received by your agency.*
 - Coordinate and schedule a grant kick-off meeting with your agency.

If you have questions concerning your Conditional Grant Award, please reach out to your Caltrans District contact listed in the table above.

Sincerely,



ERIN THOMPSON
Chief, Office of Regional and Community Planning

SCOPE OF WORK

Project Information	
Grant Category	Sustainable Communities Competitive
Grant Fiscal Year	FY 2022-2023
Project Title	San Bernardino County Long Range Multimodal Transportation Plan (SBC LRMTMP)
Organization (legal name)	San Bernardino County Transportation Authority (SBCTA)

Introduction

Need for the Project and Relationship to State Initiatives and Prior Efforts

The San Bernardino County Transportation Authority (SBCTA) proposes to hire an experienced consultant to develop the San Bernardino County Long Range Multimodal Transportation Plan (SBC LRMTMP) to provide a comprehensive, multimodal transportation vision for the County through 2045. Active participants will include 25 local jurisdictions, five transit operators, Caltrans, Metrolink, Southern California Association of Governments (SCAG), and representatives of other diverse interests (health, active transportation, air quality, etc.). SBCTA has a Countywide Transportation Plan (CTP), developed originally in 2015 and updated in 2021 (termed an "Interim Update"). But a major update is needed to account for many changes that have occurred in the transportation landscape over that period.

Of these changes or new initiatives, chief among them are the California Transportation Plan 2050 (CTP 2050) and the Climate Action Plan for Transportation Infrastructure (CAPTI), both of which were adopted in 2021. There are other legislative and policy initiatives in addition to these documents, but they encapsulate the overall direction being provided for multimodal transportation statewide going forward. The purpose of each document and the relationship of the LRMTMP to those documents can be summarized as:

- The CTP 2050 is described on the Caltrans website as "a policy framework that provides a common vision for the future of our transportation system. The CTP 2050 is a roadmap for making effective, equitable, transparent, and transformational transportation decisions in California. The CTP 2050 ... is the result of an extensive, multi-faceted public engagement process that responds to federal and state laws and regulations regarding public engagement." **LRMTMP relationship: The LRMTMP will take the planning principles in the CTP 2050 and apply them in the context of a county-level, multimodal plan. Certain specific strategies in the CTP 2050 will also be germane to strategies applicable to San Bernardino County.**

- The California State Transportation Agency (CalSTA) describes CAPTI as a “plan that details how the state recommends investing billions of discretionary transportation dollars annually to aggressively combat and adapt to climate change while supporting public health, safety and equity. CAPTI builds on executive orders signed by Governor Gavin Newsom in [2019](#) and [2020](#) targeted at reducing greenhouse gas (GHG) emissions in transportation, which account for more than 40 percent of all emissions, to reach the state's ambitious climate goals.” A particular focus of CAPTI is to reduce vehicle miles traveled (VMT) as part of the overall strategy to reduce GHGs. CalSTA adopted CAPTI in July, 2021. **LRMTP relationship: SBCTA has prepared two county-level GHG reduction plans 2014 (in response to AB 32 - with 2020 goals) and 2021 (in response to SB 32 - with 2030 goals), from which local jurisdictions have prepared Climate Action Plans (CAPs). This now sets the stage for climate-based transportation planning, and the LRMTP will do for transportation what the CAPs have done for land use and city-level facilities. At the same time, CAPTI emphasizes that “no one-size-fits- all.” And, for a county as large and diverse as San Bernardino, with valleys, mountains, and deserts, each subarea will need to be addressed based on its geographic, demographic, and infrastructure characteristics. Yet the 10 CAPTI “guiding principles” can be applied across these diverse environments, likely with solutions that vary by subarea. The same is true in the relationship to the CTP 2050.**

While the 2015 CTP and the 2021 CTP Interim Update incorporated many of the emerging planning practices and responded to legislation on greenhouse gases (GHGs) and sustainability that existed at that point, significant changes have occurred since that time. In addition, SCAG has now produced its 2020 Regional Transportation Plan/Sustainable Communities Strategy (branded *Connect SoCal*), and a range of state, regional and local agencies have roles in implementing that plan. The San Bernardino LRMTP will constitute a part of that ongoing implementation process and can be analyzed at a greater level of detail for San Bernardino County than is possible with the much larger SCAG RTP/SCS. While local jurisdictions are responsible for land use decisions, the LRMTP will include a set of principles for encouraging land use strategies that work hand-in-hand with the regional multimodal transportation system.

SBCTA has undertaken other planning efforts that provide an additional foundation for the LRMTP, but had distinctly different purposes. Table 1 cites several of the studies and how the LRMTP is focused differently.

**Table 1. Foundational Planning Efforts in San Bernardino County
and their Relationship to the LRMTF**

Name of Planning Effort(s)	Description	How Related to or Different from the LRMTF
Inland Empire Comprehensive Multimodal Corridor Plan (IE CMCP)	This was a partnership project completed in 2020 by Caltrans, RCTC, and SBCTA to define transportation problems and corresponding strategies for 5 east-west and 5 north-south corridors in the IE, required to be eligible for the SB 1 SCCP program.	CMCP is more focused at integrating planning elements at the corridor level and shorter term strategies/projects. LRMTF is more focused at countywide network level and longer term, with particular emphasis on the transit/land use strategy for SB County only. It will have a long-term financial plan that does not exist in the CMCP.
San Bernardino Countywide Transportation Plan (CTP)	The CTP is similar to countywide transportation plans prepared for LA, Orange, and similar counties. The original CTP was prepared in 2015, with an "Interim Update" prepared in 2021, just to bring the CTP current with state policy and current project descriptions.	The LRMTF will further develop the countywide vision for transit, land use, and other alternate modes. For example, it will clarify the vision for Bus Rapid Transit, and have a more rigorous analysis of a feasible transportation investment strategy. The CTP has not directly addressed the initiatives contained in the CTP 2050 or CAPTI.
Customer-Based Ridesharing and Transit Interconnectivity Study	The Customer-Based Study was an effort to develop implementable projects to enhance transit, TDM, transportation technology initiatives and transit amenities at the local level. It created 17 specific actions/projects that could be undertaken, several of which are now being advanced.	The Customer-Based Study focused on such things as first/last mile projects, tripper service, fare integration, and transit information. The LRMTF will incorporate some of these initiatives into the long-term strategic approach of the LRMTF but will not get into as much detail on project development.
The Public Transit – Human Services Transportation Coordination Plan for San Bernardino County, 2021-2025 (referred to as the "2021 Coordinated Plan").	The 2021 Coordinated Plan serves to document mobility needs and gaps of seniors, persons with disabilities, persons of low income, veterans and tribal members living and traveling within San Bernardino County.	The Coordinated Plan is an important input to the LRMTF and will be referenced for connections to disadvantaged populations. Substantial public input was received and will be referenced in summary fashion in the LRMTF.
Short Range Transit Plans (SRTPs)	There is one SRTP for each of our five transit operators, plus Metrolink, and the plans are currently being updated in response to conditions brought about by the pandemic.	The transit component of the LRMTF will be founded on the transit agency SRTPs. These serve as a basis for establishing existing operations and near-term financial requirements going forward.

SBCTA 10-Year Delivery Plan	The 10-Year Plan represents the near-term plan of investment for projects to which a commitment was made in the Measure I Expenditure Plan. A new Plan is anticipated for approval in December 2021.	The 10-Year Plan covers all modes and represents the near-term investments for Measure I projects. The LRMTTP will build on the 10-Year Plan but will also influence how investments are made in future 10-Year Plans. The 10-Year Plan has specific funding sources assigned to projects. The LRMTTP balances overall funding with overall expenditures, not project by project.
San Bernardino Countywide Zero-Emission Bus Study (Master Plan - 2020)	SBCTA developed the Master Plan to guide the five transit operators within SB County in their transition to a zero-emission (ZE) fleet, in accordance with the CARB Innovative Clean Transit (ICT) regulation, representing a mandate for the full conversion of bus fleets to ZE by 2040.	The LRMTTP must include this transition to a ZE fleet in its long-term financial planning. It will help to quantify the level of financial assistance likely to be needed for this transition to occur.
San Bernardino County Active Transportation Plan (aka Non- Motorized Transportation Plan)	The ATP identifies a comprehensive plan for bicycle and pedestrian networks as well as a set of such projects for near-term consideration for competitive funding.	The ATP will likely be incorporated into the LRMTTP by reference, with a summary provided in the body of the LRMTTP. The ATP is a living document, with periodic updates to ATP projects to stay current.
SB 743 VMT Implementation Study, Phases 1 and 2.	The two-phased SB 743 study has assisted local jurisdictions with implementing their local approach to vehicle miles travelled (VMT) analysis under CEQA (Phase 1) as well as dealing with broader issues of VMT mitigation countywide	The approach to VMT analysis and mitigation serves as an “overlay” to other analyses that will be conducted for the LRMTTP. The CAPTI principles have a strong emphasis on VMT reduction and sustainability, which will be a theme of the LRMTTP.

As will be seen later, SBCTA is well on the way toward implementing many of the state and regional sustainability initiatives. But these plans and implementation strategies are not as yet fully integrated. In particular, the LRMTTP needs to pull together the long-term implementation strategy for transit, transportation demand management, and land use. The Short Range Transit Plans (SRTPs) provide the near-term look for our five transit operators (Omnitrans), Victor Valley Transit Authority (VVTA), Mountain Area Regional Transit Authority (MARTA), Morongo Basin Transit Authority (MBTA), and City of Needles Transit Services. But a long range transit vision needs to be provided as context for the short range in our ongoing work with the Federal Transit Administration. The people- moving system needs to be seen as an integrated, customer-focused network of rail, bus, bike/pedestrian, Transportation Demand Management (TDM), and first/last-mile systems. The needs of freight movement must also be incorporated into the effort to bring a complete picture together of the movement of both people and goods. In addition, the financial requirements for realizing

the long term vision have not been assessed. This will be examined in terms of both traditionally available resources as well as the case of "what if" additional resources were to become available.

The California Transportation Plan 2050 and CAPTI have now been adopted, and Caltrans will be moving into the implementation stage. The State's CAPTI initiative is part of that implementation and establishes an important investment framework that: 1) builds toward an integrated, statewide rail and transit network; 2) invests in networks of safe and accessible bicycle and pedestrian infrastructure; and 3) includes investments in light, medium, and heavy-duty zero-emission-vehicle (ZEV) infrastructure or supportive infrastructure as part of larger transportation projects. Other State plans are also critical to where we are headed, such as the Caltrans Interregional Transportation Strategic Plan, and the next iteration of the CARB AB 32 Climate Change Scoping Plan.

Resiliency – A Theme of the LRMTF

If there is one thing that COVID-19 has taught us, it is that "the future is uncertain." Therefore, the LRMTF will be framed around "alternative futures," using scenario analysis and building a strong relationship to state plans and regional planning efforts such as SCAG's 2020 *Connect SoCal*, positioning this LRMTF to feed input to the SCAG 2024 RTP/SCS.

According to a recent report by Deloitte (a global firm focusing on strategy and analytics across business sectors), "Understanding COVID-19's Impact on the Transportation Sector," transportation organizations will need to ensure that transportation networks can continue to operate through (and recover from) future catastrophic events and lockdown measures; longer-term investment programs may need to be re-planned and re-prioritized in light of decreased revenue; and commuting and future travel patterns may not look the same as in their pre-COVID-19 state. The challenge we face is that we do not know what the "new normal" is, and it is possible that there may never be a "new normal," hence the need for resiliency, adaptability, and scenario analysis in our planning going forward. This is a major theme running through SBCTA's approach to the LRMTF, and we believe it will have applicability statewide.

Scenarios will need to be developed during our planning process to better prepare and position SBCTA and its transportation partners (transit agencies, local governments, Metrolink, Caltrans, etc.) as we collectively address the goals of vehicle trip reduction (per SB 743), GHG reduction, equity, air quality, health outcomes, accessibility, mobility, modal integration, and system resiliency. Scenarios will be needed to address responses to federal and State policy direction, uncertainty in revenue streams, future pandemics, and other emergencies. The intent is that our multimodal vision will set a course that is strategic, yet practical in its implementation, and agile enough to respond to the uncertainties of the kind we experienced in 2020/2021.

The LRMTF will take what we have called the "next step" in transportation planning for San Bernardino County, as has been described above. This means better integrating our existing transportation and sustainability plans, and making them more resilient, more adaptable to changing conditions. It will include some of the traditional goals for both

people and freight to ensure the safe and efficient management, cost-effective operation and development of a regional multimodal transportation system, linked with appropriate land use planning, to efficiently serve the mobility needs of San Bernardino County residents and our economy.

But it will also go beyond that to address some of the harder, more complex issues of resiliency and adaptability in the context of State and regional policy direction. The LRMTTP will be integrated with regional jurisdiction land use planning to achieve local, regional and federal goals, especially as they relate to affordable single- and multi-family housing initiatives. For example, SBCTA will engage decision makers from municipalities, the County, transit agencies, and nonprofit and private affordable housing developers to identify affordable housing locations and complementary transportation options that will meet the needs of low-income commuters. Developing routes and schedules that work best for these residents, working with transit providers to make transit use easy for all riders, and working with other agencies to create connected communities will be a key goal.

A recent study by the U.S. Department of Housing and Urban Development¹ identified 'connected communities' as places with affordable housing options, pedestrian-friendly street designs, public spaces, and transportation options to access major employment centers, key goods and services, and amenities. Findings included 1) Coordination among different departments that play a role in housing and transportation can aid in the creation of connected communities; 2) The types of transportation options that residents need can vary depending on the city's location within the region; 3) Land use plays an important role in determining the ease with which residents can make use of alternate transportation options; and 4) Considering location and transportation accessibility in selecting sites for new affordable housing can help create connected communities. These guiding lessons will be incorporated into our discussions during outreach with our housing stakeholders.

Other priorities to be evaluated include: accessibility, GHG emission reduction, transportation electrification, climate resilience, economic resilience, improving transportation mobility, equity, air quality, health, and ensuring that the regional transportation system addresses tribal, local, and regional mobility and economic needs. But these need to be further developed and integrated. Long-range transportation planning will also provide the opportunity for SBCTA to compare alternative improvement strategies, track performance over time, and identify funding priorities.

Background

The County of San Bernardino is the largest county in the United States by area at over 20,000 square miles, with a 2.2 million population, almost 800,000 employment and a diverse mix of geography that includes urban development, farmland, the San Bernardino Mountains, and large swaths of desert. The County is also an economic engine for the state and one of the largest logistics centers in the U.S., with some 250 million square feet of distribution/manufacturing/warehouse facilities. It was, until the pandemic, home to the

¹ [Connected Communities: Linking Affordable Housing and Transportation | HUD USER](#).

fastest growing commercial airport in the U.S., Ontario International Airport, with 5.6 million passengers per year and serving as a freight hub second only to LAX in the region. While there is substantial out-of-county travel for work, the San Bernardino Valley is also a major work destination, and a majority of employed residents work inside the County. And the Valley has been steadily densifying. Given that it is home to the highest-ridership Metrolink line on the 500-mile commuter rail system, there is an opportunity to build on these investments, setting the stage for higher density land development around our growing number of transit stations. An extensive network of bus routes also exists in both the Valley and Victor Valley (with an operational Bus Rapid Transit line serving San Bernardino and Loma Linda, and another on the way in Ontario and Rancho Cucamonga). The section below provides some highlights concerning our near-term multimodal transportation investments that will keep San Bernardino County moving and represent part of our transportation vision.

Overview of SBCTA Multimodal Transportation Investments

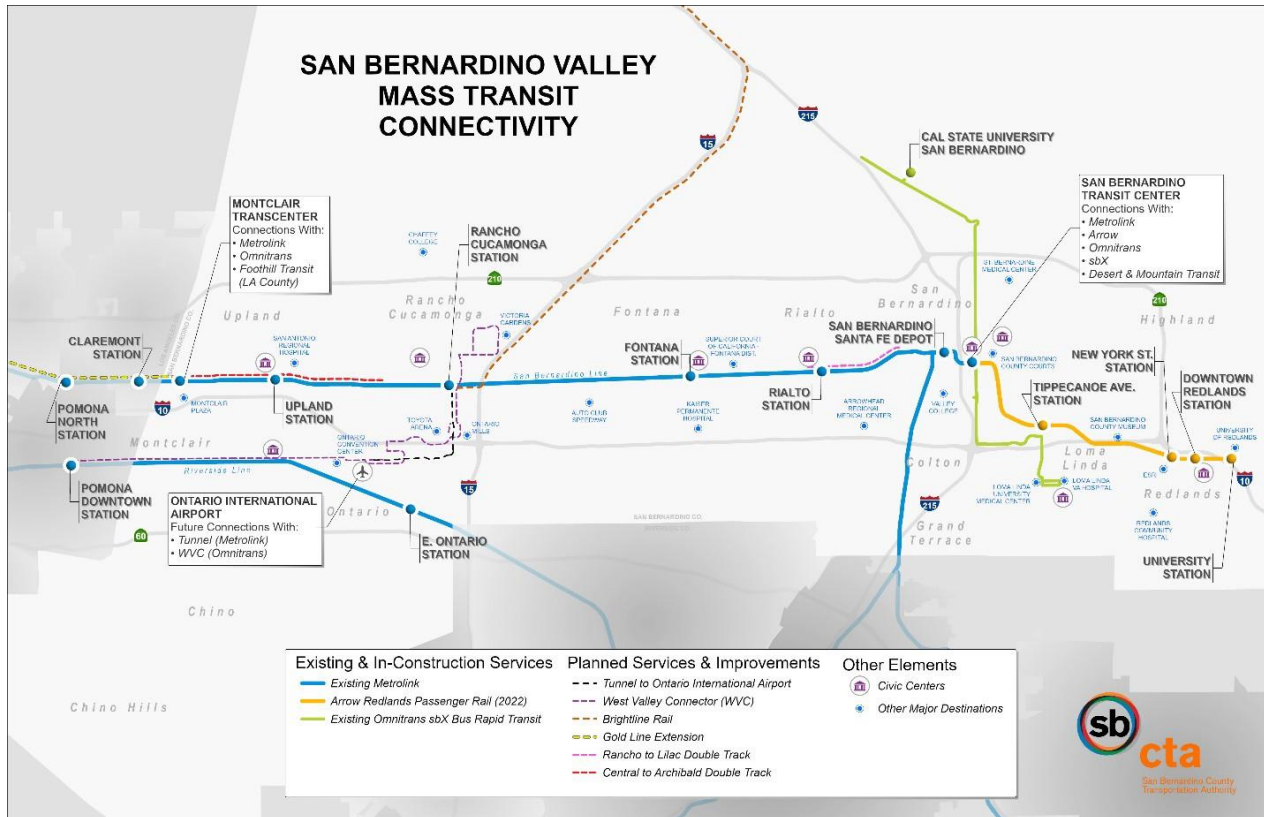
Multimodal transportation initiatives are coming together in San Bernardino County, particularly in the Valley subregion, in an unprecedented way. SBCTA has been collaborating with our state and local partners on various aspects of this multimodal vision for several years. But progress has recently accelerated, even during the COVID- 19 pandemic. SBCTA envisions all of these initiatives being operational within the next two to five years, ready to serve industry and the traveling public as we emerge from the pandemic.

The proposed LRMTTP represents the beginning of a multimodal vision that incorporates strategies for increasing transit, zero-emission transit, shared-rides, and active transportation, in addition to supporting the efficient movement of goods. These advances are accompanied by progress in building a system of multimodal express lanes and auxiliary lanes on Interstates 10 and 15 as part of a planned region-wide express lane network, launched in 2012 with the adoption of the RTP/SCS by SCAG. The LRMTTP will enable us to carefully evaluate and plan for express lane expansion based on the location/local community, prioritization of ZEV trucks, buses, and HOVs, and material use (i.e., increased impervious surfaces, and making sure these efforts are accessible and beneficial to low-income, historically burdened and under-served communities). Project highlights include the following, the locations of which can be identified in the map on the subsequent page:

- **New “Arrow” Hybrid Rail Passenger Service between Redlands and San Bernardino** - The Redlands Passenger Rail Project (RPRP) is expanding the Metrolink system through an innovative nine-mile, five-station, regional rail project that provides additional transportation choices through the introduction of a new rail service, known as Arrow. The service, scheduled to begin in early 2022, uses self-powered, low-emission trainsets, or “multiple units.” Then by 2024, a first-in-the-nation hybrid battery hydrogen-powered vehicle will come on-line, known as the zero-emission multiple unit (ZEMU).
- The nineteen-mile **Zero-Emission West Valley Connector Bus Rapid Transit (BRT) project** will be operational by 2024. It connects four cities (Pomona, Montclair, Ontario, and Rancho Cucamonga), Ontario International Airport (ONT), and two different Metrolink passenger rail lines (Riverside and San Bernardino lines), with dedicated lanes for BRT on Holt Boulevard in Ontario.

- **The Countywide Zero-Emission Bus Initiative** is a coordinated effort to identify the steps and funding needed to transform the diverse fleet of the five transit operators in San Bernardino County whose combined service area stretches from the flatlands of the Valley, through mountainous peaks, and low and high deserts.

Overview Map of the Emerging Transit Connectivity “Vision” in the San Bernardino Valley



- **Upgrades in Metrolink Service on the San Bernardino Line** - Metrolink is evaluating scenarios to add significant train service on the Metrolink San Bernardino Line (SBL) by 2025, as part of the Southern California Optimized Rail Expansion Program (SCORE), a regional expansion plan. Not only would this facilitate improved access to ONT, but it will allow cities along the line in the San Bernardino and San Gabriel Valleys to better encourage transit-oriented development. This is an investment in the future of all these cities. The increase in Metrolink service will then match the frequencies of Arrow service between San Bernardino and Redlands. All new Metrolink locomotives are also upgrading to a low-emission Tier 4 standard.
- **ONT Loop (Tunnel for Autonomous Vehicles Connecting Metrolink to ONT)** - A tunnel connection for zero-emission self-driving vehicles is in the project development stage, linking the Rancho Cucamonga Metrolink Station and Ontario International Airport. This will open up new transit accessibility to ONT from LA and San Bernardino County by 2025. This innovative tunnel approach, similar to one initiating operation in Las Vegas, will allow the ONT connection to occur years in advance of and at a dramatically lower cost than would have been possible with conventional surface rail technology. A phase-in period using human drivers will likely be considered and the system will be built in a way that allows for capacity expansion as well as geographic expansion.

- **Brightline West between Rancho Cucamonga and Las Vegas** – A 100% privately- funded zero-emission high speed train service to and from Las Vegas is an on- going work-in-progress proceeding toward implementation. Brightline West (which currently runs passenger rail service between Fort Lauderdale and Miami) is planning to invest approximately \$4.2 billion to initiate service between the Victor Valley and Las Vegas, and is negotiating with Caltrans and SBCTA to extend the line down the Cajon Pass to the Metrolink station in Rancho Cucamonga. This will reduce congestion on I-15 and open up a new opportunity for zero-emission transit travel between the Los Angeles Basin and Las Vegas not only benefiting the Brightline riders but automobile commuters and freight trucks traversing the heavily congested Cajon Pass.
- **San Bernardino County Components of the SCAG Regional Express Lane System and Targeted Improvements to Freight Bottlenecks**
 - The first segment of **the I-10 Multimodal Corridor** is under construction between the LA County Line and I-15. It includes new toll express lanes that will also give priority to transit, vanpools, 3+ carpools, and clean air vehicles. New auxiliary lanes will improve truck and auto flows and enhance safety for merging and weaving movements. It is part of the emerging regional managed lane system that, enabled by advanced technology, also includes express lanes in Los Angeles, Orange, and Riverside Counties.
 - **I-15 Freight Improvement Project (Auxiliary Lanes and Express Lanes) from SR-60 to Foothill Boulevard** – This project is now fully funded and will be operational by 2026. It adds auxiliary lanes in three strategic locations and extends the I-15 express lanes now being completed in Riverside County. Like I-10, this will improve flows for both trucks and cars, and give priority to vanpools and 3+ carpools in this highly congested segment. It will greatly improve merging to and from the I-10/I-15 interchange, designated as the twelfth most critical truck bottleneck in the U.S. by the American Transportation Research Institute.
- **Transportation Demand Management (TDM), Active Transportation, and First/Last Mile Initiatives** – An important part of the multimodal system we are building involves shared-ride options promoting carpool formation and vanpooling, in addition to providing technology tools and incentives to enable multimodal commuter choices that include use of transit and active transportation. Some fourteen percent of San Bernardino County residents take shared rides to work. Transit cannot be provided for every combination of origin and destination, so it becomes important to provide easy access to transit lines through first/last mile solutions as a way to extend transit's reach as well as to provide safer routes to neighborhood schools. SBCTA and our local partners are investing over \$60 million over a five-year period to upgrade bicycle and pedestrian linkages to Metrolink stations, bus stops, schools, work centers, and other points of interest in the San Bernardino Valley and Victor Valley.

Sustainability Initiatives

These are unprecedented investments in multimodal transportation for our area. Beyond that, SBCTA and the San Bernardino Council of Governments (the SBCTA Board of Directors also represents SBCOG) have been actively pursuing a variety of sustainability initiatives and actions, samples of which include:

- Countywide Greenhouse Gas (GHG) Reduction Plan—The Countywide GHG Plan and Environmental Impact Report (EIR) were prepared in 2014 to address the State's 2020 GHG reduction goals. Individual jurisdictions have prepared their own Climate Action Plans (CAPs) based on the countywide plan and EIR. The Countywide GHG Reduction Plan is now being updated to address 2030 goals and will be completed in Spring, 2021.
- Countywide SB 743 VMT Implementation Study (2020)—Lead agencies throughout California have been transitioning from use of level of service (LOS) analysis for California Environmental Quality Act (CEQA) documents to the use of vehicle miles traveled (VMT). This countywide effort provided guidance to local jurisdictions for adoption and implementation of their local processes governing VMT analysis by July 2020. Phase 2 is now underway, in which SBCTA and its partners are looking at options for mitigation of VMT impacts for both development and transportation projects.
- Zero-Emission Vehicle Readiness and Implementation Plan (2019)—This was a countywide effort to identify, prioritize, and implement electric vehicle charging stations to facilitate the attainment of the State's vehicle electrification goals in San Bernardino County.
- Healthy Communities Best Practices Toolkit—The San Bernardino County Department of Public Health created a strategic plan for the implementation of Healthy Communities policies. The toolkit, a collaboration between SBCOG and the County, will contain sample policies, resolutions, processes, organizational structure, and lessons learned from agencies that have implemented health-related policies.
- Habitat Conservation—San Bernardino County and SBCOG are collaborating on an effort to create a Regional Conservation Investment Strategy (RCIS) through the process established by the California Department of Fish and Wildlife under AB 2087. A first draft plan was submitted to CDFW in late 2018 and will be developed further in conjunction with resource agencies and a range of stakeholder groups. Habitat connectivity is an important consideration.
- Customer-Based Ridesharing and Transit Connectivity Study – This effort, completed in 2019, identified 17 specific initiatives to better address transit and shared-ride service needs from the perspective of the customer. These are “pieces of the mobility puzzle,” so to speak, but have not yet been incorporated into a long term vision.
- San Bernardino Countywide Vision—The Countywide Vision Statement, approved in 2011 by SBCTA/SBCOG, its member cities, and the County of San Bernardino, was a bold step toward a sustainable future, setting the County on a sustainable course for nine distinct sectors or elements. The Vision states that: “We envision a sustainable system of high-quality education, community health, public safety, housing, retail, recreation, arts and culture, and infrastructure, in which development complements our natural resources and environment.” An additional element, “equity,” has recently been added to the vision's framework.
- Inclusion of transportation-efficient land use policies and other sustainability policies in local general plans and specific plans county-wide. See SCAG Local Profiles at <https://www.scag.ca.gov/DataAndTools/Pages/LocalProfiles.aspx> for additional information on characteristics of each San Bernardino County jurisdiction.

- Inland Empire Climate Adaptation Plan – SBCOG joined with Western Riverside Council of Governments to develop strategies for preparing San Bernardino and Western Riverside County for the potential impacts of climate change across transportation and land use sectors. The plan was coordinated with Caltrans and completed in 2020.
- Paths to Clean Vehicle Technology and Alternative Fuels Implementation in San Bernardino County – This effort was completed by SCAG and SBCTA in 2020 and explored four major scenarios or approaches to accelerating the turnover of light and heavy-duty fleets to foster achievement of criteria pollutant standards and goals for GHG reduction in San Bernardino County.
- Inland Empire Comprehensive Multimodal Corridor Plan (IECMCP) – This joint effort between SBCTA and the Riverside County Transportation Commission (RCTC) was prepared in response to Senate Bill 1 legislation that required a more corridor- focused look at transportation and sustainability options at a corridor level. Ten geographic corridors were identified representing major flows of people and goods. The analysis of each corridor documented existing conditions, identified current mobility and environmental problems, and outlined specific strategies in each. This will be a significant reference document for the LRMTF.

The LRMTF represents an important step to addressing the combined needs for the movement of both people and goods, including better mitigation of truck and train impacts. All of the plans described earlier provide a wealth of history, knowledge, and future visioning within their subject matter, but each exists largely within its own domain. **SBCTA desires to better integrate these efforts into one comprehensive multimodal vision plan that provides an overall context and direction for the SBCTA Board, Caltrans, and other agency partners to consider in their policy-setting and strategic investment responsibilities for transportation.**

Disadvantaged Communities

A significant proportion of the 2.2 million San Bernardino County residents live in community areas considered disadvantaged. Over half of all residents (1.29 million) live in locales ranked by the CalEnviroScreen 3.0 as among the top 25% most disadvantaged communities (DACs) statewide, and over one quarter (650,000 residents) live in the top 10% (see attached maps). The County's Community Vital Signs (CVS) Initiative measured the proportion of County residents less than 18 years of age living in poverty as 26.1%, higher than the California statewide average of 22.8%. Additionally, County health indicators from CVS report that 64% of adult residents, and 39% of middle school-age children, are either obese or overweight.

SBCTA has already conducted multiple stakeholder outreach meetings through many individual planning and project development efforts, with inclusion of disadvantaged communities being central. Examples include: 1) our AB 617 activities in Muscoy (an unincorporated area of San Bernardino County), partnering with CARB and SCAQMD, which provides a new community-focused action framework to improve air quality in communities most impacted by air pollution; and 2) the Ontario Together plan, part of the State's Transformative Climate Communities effort. Thus, SBCTA is well-connected to these

and other communities already, and will fully incorporate disadvantaged communities' concerns, building on the previous outreach.

Project Deliverables and Schedule

Deliverables include the following:

- 1) Existing Conditions and policy context tech memos;
- 2) Future scenarios that may impact travel, revenue, development, and resiliency;
- 3) Visioning document;
- 4) Performance measures and analysis methodology, including transit ridership, mode shares (including work-at-home) and VMT/GHG analysis;
- 5) Financial scenarios, including constrained and unconstrained;
- 6) Subarea LRMTF fact sheets; and
- 7) Draft and Final LRMTF.

SBCTA anticipates completion of the LRMTF within 24 months of award. It should be noted that a substantial amount of material will be gathered and incorporated into an "Existing Conditions Report" prior to the initiation of work for the LRMTF under the grant funds. This will allow the consultant to get a "jump start" on the project and provide for more efficient use of grant funds for the bulk of work on the future scenarios, visioning, performance assessment, public engagement, and project definitions. More specifically, the following can be expected:

- Assembling and summarizing of all the transit agency Short Range Transit Plans that will serve as a foundation for the LRMTF. This will include the five in-county transit operators, plus Metrolink,
- Documenting existing conditions (transit/TDM ridership, etc.),
- Documenting existing goals/objectives,
- Financial projections for both capital and operating funding sources, and
- Documentation of initial stakeholder outreach. The particular focus for outreach will be primarily the transit operators and local jurisdictions, with public outreach to primarily occur in the phase using grant funds.

Project Stakeholders

Multiple stakeholders will be involved in the LRMTF planning effort, providing input through six quarterly Technical Advisory Committee (TAC) meetings during the 24- month planning process. Stakeholders will include Caltrans, SCAG, County of San Bernardino (Transportation, Planning and Health Departments); representation from cities; and our transit operators: Metrolink, Omnitrans, VVTA, MARTA, City of Needles and MBTA, to name a few. Transit agency participation in the development of the LRMTF will be essential, as they are responsible for the day-to-day planning, implementation and operation of the transportation system and the planning of the land uses and activities they connect.

Additionally, other stakeholder groups such as the Inland Empire Economic Partnership (IEEP), Inland Empire Biking Alliance (IEBA), and the Inland Southern California Climate Collaborative (ISC3) will be invited to participate in the quarterly TAC meetings to provide important input into the planning process.

Stakeholders have agreed to participate in regular meetings, review drafts, and provide input as needed. Please see attached letters of support for more detail.

As mentioned previously, an experienced Consultant will be hired to guide the comprehensive planning process. The following activities will be conducted by the Consultant:

- Task 1 – Technical Advisory Committee/Stakeholder & Public Outreach
 - Confirm advisory groups at two levels: 1) core technical working group and 2) larger stakeholder group
 - Schedule and host advisory group meetings
 - Host webinars with SBC cities, stakeholders, and public
 - Project development updates and adoption by SBCTA Board of Directors
 - Post project updates on SBCTA GIS website and social media through the development of StoryMaps
- Task 2 – Existing Conditions
 - Review and document existing SB County multimodal operations, trends, plans, policies, and projects (tech memo on existing SBC conditions)
 - Develop structure for multimodal LRMTTP based on review of regional plans (e.g. SCAG, LA Metro, OTA, and others as appropriate) and Board direction
 - Review physical conditions of and travel patterns on the transportation system based on recent COVID-19 pandemic and identify possible future scenarios
- Task 3 - Analysis and Draft Plan Development
 - Develop overall draft LRMTTP Vision, challenges, and goals, including COVID-19 impacts
 - Develop performance measures/metrics tailored toward existing and future priorities.
 - Develop agency priority areas and identify future strategies/policies/actions for each priority area (Transit, Highways, Active Transportation, Sustainability, Equity, Health, Climate Change, Land Use, and Environment)
 - Develop and analyze modeling scenarios including financial analysis (e.g., Existing, RTP/SCS, Financially Constrained, Financially Unconstrained, Alternatives, Statewide Objective, etc.)
 - Develop geographic Subarea analysis of issues/priorities/strategies unique to each subareas
 - Develop draft plan with recommendations
- Task 4 –Final Plan Review and Adoption
 - Present draft plan to the two advisory groups and other stakeholders
 - Incorporate edits and present second version to the two advisory groups and

- stakeholders
- Post LRMTTP to website for feedback
- Incorporate final edits into Plan

Overall Project Objectives

The overall objective of the SBC LRMTTP is to ensure the safe and efficient management, operation, and development of a regional multimodal transportation system that, when linked with appropriate land use planning, will efficiently serve the mobility needs of San Bernardino County residents, businesses, and visitors, with robust connectivity to the regional system. The LRMTTP will be integrated with regional jurisdiction land use planning to address local and regional goals as well as State and federal goals.

Because transportation infrastructure investments have effects on travel patterns, smart investments play a key role in reducing greenhouse gas emissions and VMT. As a result of State legislation, as well as executive orders, key priorities in SBCTA's planning process include GHG emission reduction, VMT reduction, transportation system electrification, climate resilience, improving transportation mobility, health, equity, addressing federal air quality criteria pollutant standards, and ensuring that the regional transportation system addresses tribal, local, and regional mobility and economic needs. Long-range transportation planning will also provide the opportunity for SBCTA to compare alternative improvement strategies, track performance over time, and identify funding priorities.

Just as important, the LRMTTP will assist regional and local agencies in all forms of transportation planning, decision-making, and construction of priority transportation projects. This comprehensive plan will help significantly in reducing current duplicative and inefficient efforts by multiple planners at the regional and city level when the 24 cities within San Bernardino County update their circulation elements, land-use elements, and make data-driven decisions regarding their local project priorities.

The LRMTTP will provide input to and stay in sync with the SCAG RTP/SCS updates as well as the programming of projects through the Federal Transportation Improvement Program (FTIP) maintained by SCAG. This will facilitate decision-making on projects at local, regional (through SCAG) and State level, paving the way for environmental and construction phases. As indicated earlier, the principles embedded in CAPTI will be kept in mind as recommendations are made and projects are included in the LRMTTP. It should be noted that lead agencies will also be defined for next steps, for projects in the near term. In some cases, the lead will be SBCTA. Transit agencies will be responsible for others, and local jurisdictions still others. Some of the progress will be dependent on competitive funding from the State, and potential funding sources will be identified. This will also give Caltrans, the California Transportation Commission, CalSTA and others an idea of "what's coming down the pipeline," in more definitive terms than just inclusion in the FTIP.

Summary of Project Tasks

Task 01: Project Administration

Upon project award, SBCTA will coordinate a project kick-off meeting with Caltrans to discuss grant procedures and project expectations including invoicing, quarterly reporting and all other relevant project information including scope, Consultant type, and stakeholders. SBCTA will highlight and determine scope refinements.

As the project progresses, SBCTA will prepare and submit invoice packages, quarterly reports, and a final close-out report in accordance with Caltrans' requirements. Invoice packages and reports will be based upon completion of project phases as identified in the grant contract and include project expenditures to-date.

Task Deliverables
<ul style="list-style-type: none"> Project kick-off meeting at the start of the program with Caltrans and SBCTA; Invoicing and quarterly reporting to Caltrans

Task 02: Consultant Procurement

SBCTA will procure an experienced Consultant, consistent with state and federal requirements, Local Assistance Procedures Manual for procuring non-Architectural and Engineering Consultants, the Grant Application Guide, Regional Planning Handbook, and the executed grant contract between Caltrans and SBCTA.

SBCTA will develop a preliminary scope of work and initial Request for Proposal (RFP) for Caltrans' Review. SBCTA will then refine RFP and gain approval from SBCTA Board of Directors and Caltrans.

SBCTA and Caltrans will review and determine most qualified Consultant, with SBCTA awarding contract to selected consultant.

A project kick-off meeting will be scheduled with Consultant and stakeholders to discuss proposed plan, and establish tasks and timeline in accordance with Caltrans grant requirements. Consultant will finalize outline of action plan for SBCTA staff approval.

Task Deliverables
<ul style="list-style-type: none"> Meeting agenda, participant list, meeting notes, list of action items; Draft Scope of Work and Request for Proposal (RFP); Final RFP; Review and ranking of qualifications by SBCTA staff/Caltrans; Executed Consultant contract; Meeting agenda, participant list, meeting notes, list of action items and action plan.

Task 1: Technical Advisory Committee/Stakeholder & Public Outreach

Community engagement will be a core part of LRMTTP preparation. SBCTA and the Consultant will confirm advisory group participation from stakeholders, plus any planning staff and other community-based organizations (CBOs) from vulnerable communities. Two groups will be confirmed: 1) a Core Technical Working Group; and 2) a larger Stakeholder Group that may include targeted under-served cities, the County, and other high-level stakeholders. This Stakeholder Group will be involved in the decision-making process from the start - ensuring that the process used to develop the plan and resulting priorities/projects are created and implemented in such a way that give legitimate decision-making power to the most impacted, under-served communities. SBCTA/Consultant will then schedule and host six quarterly advisory group meetings. Separately, SBCTA/Consultant will advertise and host six interactive (or in-person) workshops with SBC cities, stakeholders and interested public to provide informational updates and solicit input. The workshops will be scheduled based on pandemic restrictions in place at that time. SBCTA/Consultant will also develop a LRMTTP logo, provide regular project updates on the SBCTA website and social media through the development of StoryMaps. SBCTA will also solicit commentary from viewers on various elements of the project.

Engagement of disadvantaged communities will be a key part of the outreach. The Consultant will specifically reach out to key partners/stakeholders (i.e. CBOs, TCC, or AB617 involved communities) to determine if certain under-served communities would benefit from having their voice incorporated in this planning effort. The Consultant can then provide a summary or existing community feedback to the Stakeholder Group to ground-truth and ensure community priorities are fully captured. SBCTA, transit agencies, and local jurisdictions already have substantial connections to these communities, and those connections will be important to obtain input at strategic points in the LRMTTP. As stated in the introduction, approximately 29.5% (or 650,000) of the County's population resides in the CalEnviroScreen 3.0 top 10% of disadvantaged communities (see maps). In fact, the City of San Bernardino (pop: 215,941), the largest of the 24 cities within the County, is the number one ranked impacted area in the State. San Bernardino County currently suffers from poor public health outcomes and high fatality rates, especially for bicyclists and pedestrians. The LRMTTP will identify transportation opportunities that lead to healthier environments by improving transit accessibility, reducing VMT (and the resultant GHG emissions) along with providing more walking and biking options to improve physical activity levels in the most disadvantaged communities. Improved multimodal accessibility will be key for these communities.

SBCTA has already conducted multiple stakeholder outreach meetings through many individual planning and project development efforts, with inclusion of disadvantaged communities being central. Examples include: 1) our AB 617 activities in Muscoy, partnering with CARB and SCAQMD, which provides a new community-focused action framework to improve air quality in communities most impacted by air pollution and 2) the Ontario Together plan, part of the State's Transformative Climate Communities effort. As already stated, SBCTA is well-connected to these communities already, and will fully incorporate disadvantaged communities' concerns, building on the previous outreach.

Moving forward six quarterly meetings will be advertised to all 24 cities within the County as well as to the Technical Advisory Committee (which includes the Health Department) and other interested stakeholders. Virtual breakout rooms will be used to engage stakeholders at a more personal level. Project updates will also be posted on the SBCTA website and social media to encourage additional input. Community engagement advertising materials will be bi-lingual in English and Spanish, which will help to engage hard-to-reach populations. Not everyone has access to these platforms, however, and SBCTA will also use in-person surveys at selected locations like shopping centers to ensure that a better representation of disadvantaged community input is obtained. The engagement strategy will be discussed at the very outset of the project, documented in an Outreach Plan, and integrated with the technical work.

Task Deliverables
<ul style="list-style-type: none"> • Confirmed list of core technical group and larger stakeholder group members; • LRMTTP logo; • Outreach plan; • Meeting agendas, participant lists, comments, summaries; • Webinar meeting schedule, agendas, participant lists (including DAC participation), and follow-up comments from stakeholders and public; • Examples of advertising materials; printouts of website and social media posting and any commentary; meeting recordings; and project StoryMaps.

Task 2: Existing Conditions

As indicated in the introduction, a substantial amount of progress has already been made in planning the San Bernardino County multimodal transportation system and doing it a way that proceeds down a sustainable pathway. The primary task now is to build on these efforts, integrating them and creating the partnerships that will be needed for implementation. Using this information and current data on growth, transportation facilities, land use, finance, and the state/regional/local policy framework, the Consultant will review and document existing San Bernardino County multimodal operations, trends, plans, policies, funding, and projects. Additionally, the Consultant will develop a structure for the Multimodal LRMTTP based on review of regional plans (e.g., SCAG, LA Metro, OCTA and others as appropriate) and Board direction. Finally, the Consultant will review physical and social transportation conditions based on recent COVID-19 pandemic and identify possible scenarios.

Some of the material the Consultant can use as the basis for Existing Conditions documentation has been referenced earlier, particularly on the sustainability side, but the Consultant will need to conduct a thorough review, touching base with SBCTA and project partners. Key starting points should include:

- Caltrans' California Transportation Plan 2050 (currently in draft form), Interregional Transportation Strategic Plan (in process), State Rail Plan, District plans, such as the District System Management Plan, implementing documents for SB 743 (Transportation Analysis Framework and Transportation Analysis under CEQA – TAF and TAC), etc.

- Short Range Transit Plans (SRTPs) from the five local transit operators – These will be a foundation for knowledge of current transit operations. Highlights of the SRTPs should be brought into the Existing Conditions Report, but there is no need to be redundant with material available in these documents. It should also be noted that both SBCTA and VVTA have extensive vanpool programs.
- Other transit agency plans and programs (with Omnitrans and VVTA being the largest)
- Metrolink SRTP, SCORE program, and Strategic Business Plan
- SBCTA Countywide Transportation Plan (undergoing a minor update to make project listings and finance more up to date)
- SBCTA Measure I 10-Year Delivery Plan (10-YDP) – the latest version is 2019 and is being updated for 2021. It also contains an overview of revenue streams.
- SBCTA Measure I 2010-2040 Strategic Plan, detailing the policies undergirding implementation of SB County's half-cent sales tax
- Inland Empire Comprehensive Multimodal Corridor Plan, which contains a wealth of information about transit, traffic, land use, and growth in the San Bernardino County Valley and Victor Valley, organized by north-south and east-west corridors
- 2020 Countywide Active Transportation Plan (includes bicycle and pedestrian portions). Note that key projects in local ATPs “bubble up” to be included in SBCTA's Countywide ATP, which is typically referenced when local jurisdictions apply for each cycle of Caltrans ATP funds. Cycle 5 awards were just announced in February. While local jurisdictions have discretion to use their Measure I Local Streets funding for active transportation projects, the Caltrans ATP cycles remain a major source of funding for such projects, but it is very competitive, and disadvantaged communities receive priority. In the current system, the priorities are ultimately determined through the criteria in the competitive grant programs, including Caltrans ATP and the Transportation Development Act Article 3 program, which is managed by SBCTA. Given that SBCTA has long- established connections with each of its 25 local jurisdictions, new information or changes in local plans can be assimilated into the countywide plan as the project proceeds. And given that the LRMTTP is proposed as an e-Plan, minor updates to more current information are easier. A logging system for such modifications will need to be developed.
- Documentation of the IE Commuter Ridesharing and TDM programs and incentives
- Sustainability plans and programs, as highlighted in the introduction
- Additional SCAG reports and analyses specifically addressing changes in travel behavior and revenue streams related to COVID-19, as well as forecasts of the future that should be considered as future scenarios are constructed. An example would be the SCAG report on TDM that has analyzed the future potential for telework and changes in other trip-making behavior, both for work trips and non-work trips.

New data will be included, where available, particularly documentation of pre- COVID conditions for transit and shared-ride use, and conditions during 2020. The Consultant shall provide a proposed outline of the Existing Conditions report as a basis for input from SBCTA and its partners on how the report is to be structured.

Task Deliverables

- Tech Memo on existing SBC conditions; and
- Tech Memo on how to incorporate "uncertainties" in the project scenario.

Task 3: Analysis and Draft Plan Development

Task 3 represents the strategic "heart" of LRMTTP development and will have the greatest level of funding. In overview, Task 3 is laid out as a series of activities that will lead to two primary LRMTTP alternatives for 2045, plus several scenarios to address future uncertainties:

- A 2045 "baseline alternative," which represents a plan tied to traditional sources of transportation revenue. Such forecasts of revenue for capital projects through 2040 were developed in SBCTA's 2019 Measure I 10-Year Delivery Plan. However, the 10-YDP revenue forecasts need to be updated, and they do not factor in revenue for transit operations. Often, the limit on implementation of transit facilities rests with operating dollars, not capital dollars. SBCTA maintains separate estimates of operating revenue forecasts, and the Consultant will need to work directly with SBCTA staff to quantify those estimates. It is anticipated that 2019 will be the base (current year), as the future is expected to be more like 2019 than 2020 during the middle of the pandemic.
- A 2045 "aggressive alternative," which represents a plan generally consistent with the projects, programs, and revenue in the SCAG RTP/SCS. SCAG generally includes a set of innovative funding sources that are not currently in place but have a reasonable probability of being in place at some future point in time. An example would be the proposed SCAG mileage-based user fee or VMT fee. It is not the intent of the LRMTTP to propose implementation of these additional revenue sources, as that would need to be a statewide effort. Rather the question would be "If these innovative sources of revenue did exist, what would the additional revenue be used to fund?" The LRMTTP will not provide a recommendation for additional future revenue streams to be put in place unless the SBCTA Board directs staff to do so.
- Additional scenarios – within the two primary alternatives, a set of scenarios will be identified representing "what-ifs" in terms of how the available revenue is invested. For example, one scenario would be more transit themed; another could be more focused on addressing congestion hot-spots by whatever means necessary; another could focus on technology-based solutions and envision a world with much more automation and less travel than we have now. The financial scenarios could be melded with travel-based scenarios to test the resiliency of the plan. The exact number of scenarios will be defined in the consultant scope of work but could be in the range of five or six.

Within that context, the Consultant shall carry out the following activities for Task 3:

- 1) Develop an overall multimodal LRMTTP Vision. In laying out the vision, there should be several considerations:
 - a. San Bernardino County is large and very diverse. It is possible that variations of the overall vision may be appropriate by subarea. Typically, for purposes of

transportation planning, the County is organized into six subareas: San Bernardino Valley, Victor Valley, Mountains, North Desert, Morongo Basin, and Colorado River. The level of effort expended on each should be roughly commensurate with population.

- b. Challenges and opportunities should be identified for each subarea, including consideration of COVID-19 impacts.
 - c. The Consultant and project partners will develop an initial overall vision statement based on the identified challenges and opportunities.
- 2) Develop performance measures/metrics tailored toward existing and future projects and alternatives. While the metrics that are quantifiable will depend on the tools available to conduct the evaluation, a full range of metrics should be identified, even if some are more qualitative in nature. A Tech Memo shall be prepared detailing the metrics and analysis methodologies to be used to generate them at a plan level. Metrics are included in the Inland Empire Comprehensive Multimodal Corridor Plan, for reference.
- 3) Develop agency priority areas and identify future strategies/policies/actions on each priority area (Transit, Highways, Active Transportation, Sustainability, Equity, Health, Climate Change, Land Use, and Environment). Provide a Tech Memo laying out the potential strategies/policies/actions, including who would be the logically responsible agencies to take the lead in each area. The importance of "equity" in terms of transportation is receiving increased emphasis, and a new equity element was established as part of the San Bernardino Countywide Vision in 2020. The LRMTTP should be a vehicle for helping agencies determine how to operationalize the overall goal of equity in transportation. The intent of the priority areas is to set a framework to assist SBCTA, transit operators, and local jurisdictions, as appropriate, to position specific projects for funding and implementation. In the case of SBCTA, the 10-Year Delivery Plan is a vehicle for establishing those priorities at the project level in terms of funding and schedule. The vehicle for transit operators is their Short Range Transit Plans.
- 4) Develop and analyze future scenarios including financial analysis. A Tech Memo will be prepared describing the scenarios and how they would be analyzed, including the tool(s) to be used and key inputs/assumptions to be made. The analysis within this activity is expected to involve the SBTAM model employed by SBCTA for travel demand modeling. A separate project is making improvements to SBTAM to better equip it for the type of analysis that will be needed for the LRMTTP. See separate scope of work.
- 5) Develop geographical subarea analysis of issues/priorities/strategies unique to each subarea. This is an opportunity to articulate the challenges, opportunities, and strategies that may be somewhat unique to each subarea. These are expected to be relatively short but important statements of strategic direction that can be shaped at the policy level by elected officials. This approach was successfully used in the Inland Empire Comprehensive Multimodal Corridor Plan by highlighting the key transportation problems and strategies in each of ten "sub-corridors."

- 6) Develop a draft LRMTTP that documents the information, analysis, and scenario-testing developed in earlier tasks. It is to include a statement of the LRMTTP vision, with possible variations by subarea, and recommendations for strategies, actions, and projects by subarea as well. One concept is to develop fact sheets with key information for each subarea, recognizing that some need to have more content than others, because of the size and complexity. Early in this task, the Consultant should develop an outline of the Draft LRMTTP, so that it can serve as a guide for material to be produced in the process of developing the full draft LRMTTP. All the key issues should have been discussed with partner agencies, and stakeholder input received, prior to producing the draft. Additional meetings will be scheduled, and input obtained following production of the draft LRMTTP.

This plan will be drafted in an "ePlan" format. For SBCTA, an ePlan is similar to a standalone website, where the contents of the Plan can be viewed using an array of digital devices and follows design standards so that the Plan content is visually appealing, interactive, and meets web accessibility requirements (WCAG 2.0).

However, it is also expected that the Final Report will also be available in PDF format.

Task Deliverables
<ul style="list-style-type: none"> • Visioning Document and outline of draft LRMTTP; <ul style="list-style-type: none"> ◦ The Visioning Document would be developed early to provide overall direction for the remainder of the project, but folded into the final LRMTTP, along with any modifications made in the course of LRMTTP development • List of performance measures used to analyze projects; • Methodology Tech Memo; • Draft Plan Chapters; • Technical Appendix - including Financial Tech Memo; Subarea analysis factsheets;

Task 4: Final Plan Review and Adoption

The Consultant will present the Draft Plan to the two advisory groups, stakeholders and the public. Upon feedback, the Consultant will incorporate edits and present a second version to the two advisory groups and stakeholders. Once edits are incorporated, SBCTA/Consultant will post the plan to the SBCTA website for 30-60 days for feedback. Upon receipt of all commentary, the Consultant will incorporate final edits into Plan and present to the SBCTA Board for final adoption.

Next Steps

Once the LRMTTP is complete and adopted, SBCTA will notify lead agencies regarding next steps for prioritized projects. In some cases, the lead will be SBCTA. Transit agencies will be responsible for others, and local jurisdictions still others. Some of the progress will be dependent upon competitive funding from the state, and potential funding sources will be identified. This will also give Caltrans, the California Transportation Commission, CalSTA and others an idea of "what's coming down the pipeline," in a little more definitive terms than just inclusion in the FTIP. The goal will be to start implementing transportation policies, plans and projects that improve the quality of life for residents in the County's most disadvantaged neighborhoods as well as for all residents.

Task Deliverables
<ul style="list-style-type: none"> • Draft Plan/e-Plan; • Public Review – list of comments; • Final Plan (published) that includes a summary of next steps towards implementation, credits FHWA, FTA, and/or Caltrans on the cover or title page, submitted to Caltrans in an ADA accessible electronic copy; • Board Agenda, presentation materials, meeting minutes with Board acceptance/approval.

Minute Action

AGENDA ITEM: 11

Date: June 8, 2022

Subject:

Measure I 2022 Population Estimates

Recommendation:

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

Adopt the 2022 Population Estimates in Attachment B for use in the allocation of Measure I Local Street Projects Program and Transportation Development Act funds and in the apportionment of shares of certain State and Federal funds.

Background:

Allocation of revenue authorized by Ordinance No. 04-01 is estimated within the Transportation Expenditure Plan, but funds are allocated by percentage of the actual revenue received. Population estimates for the cities and unincorporated territory within each Measure I Subarea are used in the allocation of Measure I Local Street Projects Program funds, commonly referred to as local pass-through funds. The Valley distribution formula for local pass-through funds is based strictly upon population, while the Mountain/Desert formula contains both population and point of generation components as detailed below:

San Bernardino Valley Subarea Expenditure Plan, Section F “Local Street Projects” states:

“Allocations to local jurisdictions shall be on a per capita basis using the most recent State Department of Finance population estimates for January 1, with the County’s portion based upon unincorporated population in the Valley Subarea. Estimates of unincorporated population within the Valley Subarea shall be determined by the County Planning Department, reconciled with the State Department of Finance population estimate for January 1 of each year.”

Mountain/Desert Expenditure Plan, Section C “Local Street Projects” Paragraph 2 states:

“...funds in the general Local Street Projects category shall be allocated to local jurisdictions based upon population (50 percent) and tax generation (50 percent). Population calculations shall be based upon the most current State Department of Finance estimates for January 1 of each year. Estimates of unincorporated population within each subarea shall be determined by the County Planning Department, reconciled with the State Department of Finance population estimates. Tax generation calculations shall be based upon State Board of Equalization data.”

Additionally, San Bernardino County Transportation Authority (SBCTA) uses population as a factor in the allocation and/or apportionment of Transportation Development Act (TDA) funds (Local Transportation Fund and State Transit Assistance funds) and certain State and Federal funds (Surface Transportation Program, Congestion Mitigation and Air Quality, State Transportation Improvement Program, Local Partnership Program, Federal Transit Administration Section 5311 Rural Grants, Senate Bill 1 State of Good Repair, and Low Carbon Transit Operations Program).

The formulas are updated annually using the State Department of Finance (DOF) population estimates as of January 1 of each year. The DOF estimating process begins with a county estimate that is produced by using customary demographic data inputs (births, deaths, school enrollment, administrative data, etc.) and applying standard demographic methodology. Growth or decline at the local level (city/unincorporated area) is estimated using data collected

Entity: San Bernardino County Transportation Authority

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from local jurisdictions, mainly housing unit change and annexations, and group quarters changes (college dorms, prisons, military barracks) collected from a variety of government agencies and educational segments. That local estimate is then aligned to the county-level figure which is based on changes in annual counts for births, deaths, school enrollment, migration, medical care enrollment data, and group quarters population. Once DOF has the data necessary to produce the annual sub-county report, the DOF timeframe for actually calculating and producing the estimates is very limited due to the timing of the data collection (as it becomes available) and the statutory deadline that they are under. It should be noted that this year, all population estimates were created using 2020 census counts, which differs from last year because the 2020 census block data had not been released for the County unincorporated areas. Additional information from the DOF website is included as Attachment A to this agenda item.

According to DOF, local agencies that have comments or feedback pertaining to a population estimate are encouraged to first contact their planning department, building department or community development department locally to express their concerns. The housing unit changes that drive population estimates locally come directly from a survey completed by local planning, building and community development departments. In the event that a number of housing units were not reported by the local jurisdiction, DOF can revise a previous year to include those units given the proper documentation. This may result in a higher population for a previous year but does not directly impact current year transportation funds to the jurisdiction for the current year.

The San Bernardino County Demographic Research Unit takes the DOF estimates and disaggregates the unincorporated population by Measure I Subarea based on building permit activity. Urban areas are defined by California Department of Transportation (Caltrans) Urban Area Boundaries within the unincorporated areas. Both are controlled to the DOF Unincorporated total.

The January 1, 2022 population estimates are recommended for approval and use in allocation of Measure I Local Street Projects Program funds and the other TDA, State, and Federal funds. Both the 2022 population estimates (Attachment B) and the 2021 population estimates (Attachment C) are attached to this agenda item for comparison purposes. As there are no major changes in the population statistics, there should be no significant shift in Measure I fund allocations related to population. The distribution of Measure I funds will be adjusted retroactively to January 1, 2022, to reflect each jurisdiction's relative proportion of population within the Measure I Subarea.

This item has no direct impact on the San Bernardino County Transportation Authority's budget. The adopted population estimates are incorporated into the allocation formula for distribution to local jurisdictions.

Financial Impact:

This item is consistent with the Fiscal Year 2022/2023 Budget.

Reviewed By:

This item is not scheduled for review by any other policy committee or technical advisory committee.

Responsible Staff:

Michele Fogerson, Chief of Fund Administration

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Approved
General Policy Committee
Date: June 8, 2022
Witnessed By:

Attachment A

Department of Finance Population Estimate Methodology

Source: State of California, Department of Finance, May 2, 2022:

[May 2022 Population Estimates Press Release \(ca.gov\)](https://www.dof.ca.gov/Press/2022/05/02/2022-Population-Estimates-Press-Release)

OVERVIEW

California's population dipped slightly by 117,552 residents last year, bringing the state's total to 39,185,605 people as of January 1, 2022, according to new population estimates and housing data released today by the California Department of Finance. The 0.3-percent decline represents a slowing compared to the 0.59-percent decline over the nine-month period between the April 2020 Census date and the year's end.

The population estimates are produced annually by the Department of Finance for use by local areas to calculate their annual apportionments limit. The State Controller's Office uses Finance's estimates to update their population figures for distribution of state subventions to cities and counties, and to comply with various state codes. Additionally, estimates are used for research and planning purposes by federal, state, and local agencies, the academic community, and the private sector.

These estimates reflect a state and county level revision of the preliminary January 1, 2021 estimates that were released in May 2021 and reflected a state population at 39,466,855 versus this year's revised estimate of 39,303,157; a downward revision of 163,698. The primary causes are the change to a new Census 2020 benchmark, and higher migration estimates during the COVID-19 pandemic.

Changes to the housing stock are used in the preparation of the annual city population estimates. Estimated occupancy of housing units and the number of persons per household further determine population levels. Changes in city housing stock result from new construction, demolitions, housing unit conversions, and annexations. The sub-county population estimates are then adjusted to be consistent with independently produced county estimates.

Comparing Census Bureau's recently released July 1, 2021 estimates with Finance's January 1, 2022 estimates should generally be avoided since they refer to different points in time. In addition, there are numerous differences between the two series including the effects of the wildfires, changes in migration patterns, accelerating slowdown in births, and excess deaths due to the COVID-19 pandemic that make comparisons difficult. All Finance population and housing estimates are benchmarked to a decennial census. The estimates in this report are benchmarked to the 2020 decennial census.

Related population reports are available on the Department's website:

<http://www.dof.ca.gov/Forecasting/Demographics/>

Contents

This report provides revised population estimates as of January 1, 2021, and provisional population estimates as of January 1, 2022, for the state, counties, and cities and includes a calculation of annual percent change. These population estimates incorporate 2020 Census counts.

Methodology

City and Unincorporated Area Estimates. The Housing Unit Method (HUM) is used to estimate total and occupied housing units, household size, household population, and group quarters population. American Community Survey (ACS) data were used to distribute 2020 Census housing units into our standard housing types (single detached units, single attached units, two to four units, five plus or apartment units, and mobile homes). Housing units are estimated by adding new construction and annexations and subtracting demolitions, and adjusting for units lost or gained by conversions. Annual housing unit change data are supplied by local jurisdictions and the U.S. Census Bureau. Occupied housing units are estimated by applying a derived civilian vacancy rate to the estimated civilian housing units. Vacancy rates are based on 2020 Census benchmark data, adjusted to incorporate the directional changes described by the latest available ACS data. Exact data on foreclosures or other housing market indicators are not reliably available to adjust vacancy rates and are not used.

Military occupied housing units are added to civilian occupied housing units to calculate total occupied housing units. Military surveys are used to track military changes including base realignments and closures. Household population estimates are derived by multiplying the number of occupied housing units by the current persons per household. The persons per household estimates are based on 2020 Census benchmark data and are adjusted by raking the current county population series into these estimates. The group quarters population is based on the Census Bureau's 2020 P.L.94-171 File counts on group quarters and annually adjusted using reported changes for group quarters by state, federal, and local agencies. The household and group quarters populations are summed to produce the initial city population estimates. These estimates are aligned to the county estimates described below.

State Estimate. The state population is estimated using the Driver License Address Change (DLAC) Method. This composite method separately estimates the population under age 18, 18 through 64, and 65 years and older. Administrative records such as births, deaths, driver license address changes, tax return data, Medicare and Medi-Cal enrollment, immigration reports, elementary school enrollments, and group quarters population are among the data used in this method. All data used to develop these estimates are in summary tables and do not reveal the identity of any individual.

County Estimates. Most of county populations estimates result from averaging the first three methods below. We use a Vital Statistics Method in nine counties (Alpine, Calaveras, Inyo, Mariposa, Modoc, Sierra, Siskiyou, Trinity, and Tuolumne) with populations 65,000 or less.

DLAC Method. A modified version of the state Driver License Address Change (DLAC) method is used for counties. County proportions of the state total result from changes in county population values for births, deaths, school enrollment, foreign and domestic migration, medical care and medical aid enrollments, and group quarters population.

Ratio-Correlation Method. This method models changes in household population as a function of changes in the distributions of school enrollments, labor force, and housing units. Estimates of county group quarters are added.

Tax Return Method. County proportions are derived by the U.S. Census Bureau using matched federal income tax returns to estimate inter-county migration along with vital statistics, group quarters, and other information for the population aged 65 and over.

Vital Statistics Method. County population estimates result from changes in county population values for births, deaths, and group quarters population.

Data Considerations

Sources. Data used in estimation models come from administrative records of several state and federal government departments and agencies, and from the local jurisdictions for which Finance produces population estimates. Because timeliness and coverage in these series vary, corrections, smoothing, and other adjustments may be applied. Changes to 2020 P.L. 94-171 data in the classification of student housing on or near campus was necessary to remain consistent with the census group quarters definition. In only a few instances, some student housing (residence hall and apartment units) counted as household population in the census was redefined as group quarters student housing population. College dorm group quarters population is defined as student population living in residence halls and apartment units located on or near college campuses.

Suggested Citation

State of California, Department of Finance, *E-1 Population Estimates for Cities, Counties and the State with Annual Percent Change — January 1, 2021 and 2022*. Sacramento, California, May 2022.

Contact Information

For questions on the E-1, contact Doug Kuczynski or John Boyne in the Demographic Research Unit at 916-323-4086 or e-mail at ficalpop@dof.ca.gov.

MEASURE I 2022 POPULATION SUMMARY
PREPARED BY SAN BERNARDINO COUNTY PLANNING

ATTACHMENT B

PLANNING REGION	(1) DOF/CO 2022	(2) ADJUSTMENT	2022 TOTAL	PERCENT OF SUBAREA	PERCENT OF COUNTY TOTAL	POP CHANGE FROM 2021	%SUBAREA CHANGE FROM 2021
WEST VALLEY							
CHINO	91,998		91,998	5.81%	4.205%	3,814	0.21%
CHINO HILLS	77,964		77,964	4.92%	3.564%	(4,697)	-0.32%
FONTANA	212,809		212,809	13.43%	9.728%	(1,135)	-0.13%
MONTCLAIR	37,846		37,846	2.39%	1.730%	(1,752)	-0.12%
ONTARIO	179,516		179,516	11.33%	8.206%	(2,488)	-0.21%
RANCHO CUCAMONGA	174,476		174,476	11.01%	7.975%	(655)	-0.09%
UPLAND	79,139		79,139	4.99%	3.618%	626	0.02%
UNINCORPORATED URBAN	40,340	(6)	40,340	2.55%	1.844%	(3,698)	-0.25%
UNINCORPORATED RURAL	2,175	(7)	2,175	0.14%	0.099%	354	0.02%
TOTAL WEST VALLEY			896,263	56.57%	40.969%	(9,631)	-0.87%
EAST VALLEY							
COLTON	53,617		53,617	3.38%	2.451%	(581)	-0.05%
GRAND TERRACE	13,042		13,042	0.82%	0.596%	643	0.04%
HIGHLAND	56,546		56,546	3.57%	2.585%	1,486	0.08%
LOMA LINDA	25,349		25,349	1.60%	1.159%	454	0.02%
REDLANDS	72,585		72,585	4.58%	3.318%	1,431	0.07%
RIALTO	103,954		103,954	6.56%	4.752%	1,387	0.06%
SAN BERNARDINO	220,840		220,840	13.94%	10.095%	4,549	0.22%
YUCAIPA	54,494		54,494	3.44%	2.491%	(1,140)	-0.09%
UNINCORPORATED URBAN	80,330	(6)	80,330	5.07%	3.672%	2,456	0.13%
UNINCORPORATED RURAL	7,460	(7)	7,460	0.47%	0.341%	6,301	0.40%
TOTAL EAST VALLEY			688,217	43.43%	31.459%	16,986	0.87%
TOTAL VALLEY			1,584,480	100.00%	72.428%	7,355	-0.05%
MOUNTAINS							
BIG BEAR LAKE	5,041		5,041	9.90%	0.230%	(148)	-0.24%
UNINCORPORATED URBAN	36,522	(6) (3)	36,522	71.76%	1.669%	(369)	-0.39%
UNINCORPORATED RURAL	9,334	(7) (3)	9,334	18.34%	0.427%	281	0.63%
TOTAL MOUNTAINS			50,897	100.00%	2.327%	(236)	-0.02%
NORTH DESERT							
BARSTOW	25,202		25,202	45.35%	1.152%	997	3.85%
UNINCORPORATED URBAN	22,204	(6)	22,204	39.96%	1.015%	(1,186)	-0.15%
UNINCORPORATED RURAL	8,165	(7)	8,165	14.69%	0.373%	(2,557)	-3.69%
TOTAL NORTH DESERT			55,571	100.00%	2.540%	(2,746)	-0.14%

Attachment: Attachment B - 2022 Population Estimates [Revision 1] (8275 : Measure I 2022 Population Estimates)

MEASURE I 2022 POPULATION SUMMARY
PREPARED BY SAN BERNARDINO COUNTY PLANNING

PLANNING REGION	(1) DOF/CO 2022	(2) ADJUSTMENT	2022 TOTAL	PERCENT OF SUBAREA	PERCENT OF COUNTY TOTAL	POP CHANGE FROM 2021	%SUBAREA CHANGE FROM 2021
COLORADO RIVER							
NEEDLES (RURAL)	4,876		4,876	70.96%	0.223%	(477)	0.25%
UNINCORPORATED URBAN	0	(6)	0	0.00%	0.000%	0	0.00%
UNINCORPORATED RURAL	1,995	(7)	1,995	29.04%	0.091%	(221)	-0.25%
TOTAL COLORADO RIVER			6,871	100.00%	0.314%	(698)	-0.03%
MORONGO BASIN							
TWENTYNINE PALMS	27,685	(4)	27,685	38.55%	1.266%	(2,282)	-0.15%
YUCCA VALLEY	21,813		21,813	30.37%	0.997%	(517)	1.53%
UNINCORPORATED URBAN	7,235	(6)	7,235	10.07%	0.331%	(706)	-0.18%
UNINCORPORATED RURAL	15,089	(7)	15,089	21.01%	0.690%	(2,104)	-1.20%
TOTAL MORONGO BASIN			71,822	100.00%	3.283%	(5,609)	-0.28%
VICTOR VALLEY							
ADELANTO	36,357	(5)	36,357	8.70%	1.662%	1,210	0.00%
APPLE VALLEY	75,628	(5)	75,628	18.09%	3.457%	1,278	-0.30%
HESPERIA	100,324	(5)	100,324	24.00%	4.586%	4,271	0.24%
VICTORVILLE	136,561	(5)	136,561	32.67%	6.242%	9,391	1.22%
UNINCORPORATED URBAN	39,095	(6) (5) (3)	39,095	9.35%	1.787%	1,260	-0.01%
UNINCORPORATED RURAL	30,059	(7) (5) (3)	30,059	7.19%	1.374%	(3,720)	-1.16%
TOTAL VICTOR VALLEY			418,024	100.00%	19.108%	13,690	0.53%
TOTAL DESERT			552,288			4,637	
TOTAL MOUNTAIN/DESERT			603,185		27.572%	4,401	0.05%
SUMMARY:							
TOTAL INCORPORATED	1,887,662		1,887,662		86.287%	15,665	0.25%
TOTAL UNINCORPORATED	300,003		300,003		13.713%	(3,909)	-0.25%
TOTAL COUNTY	2,187,665		2,187,665		100.000%	11,756	0.00%
(1) - CITY FIGURES FROM DOF JANUARY 1, 2022 ESTIMATES; UNINCORPORATED FIGURES FROM PLANNING DEPARTMENT ESTIMATES CONTROLLED TO DOF UNINCORPORATED TOTAL. (2) - THIS COLUMN CONTAINS ADJUSTMENTS NECESSARY TO MODIFY CITY TOTALS AS SPECIFIED IN MEASURE I. (3) - THE WRIGHTWOOD COMMUNITY AND AREAS NORTH OF LONE PINE CANYON ROAD WERE EXCLUDED FROM THE MOUNTAIN AREA AND INCLUDED IN THE VICTOR VALLEY AS SPECIFIED IN MEASURE I. (4) - THE POPULATED PORTIONS OF THE TWENTYNINE PALMS MARINE BASE HAVE BEEN ANNEXED BY THE CITY OF TWENTYNINE PALMS. (5) - WITH THE CLOSING OF GEORGE AIR FORCE BASE, THERE IS NO LONGER AN ALLOCATION OF POPULATION TO THE CITIES IN THE VICTOR VALLEY. (6) - UNINCORPORATED URBAN FIGURES FROM PLANNING DEPARTMENT ESTIMATES CONTROLLED TO DOF UNINCORPORATED TOTALS AND CALTRANS URBAN AREA BOUNDARIES. (7) - UNINCORPORATED RURAL FIGURES FROM PLANNING DEPARTMENT ESTIMATES CONTROLLED TO DOF UNINCORPORATED TOTALS AND BASED ON AREAS OUTSIDE THE CALTRANS URBAN AREA BOUNDARIES.							

Attachment: Attachment B - 2022 Population Estimates [Revision 1] (8275 : Measure I 2022 Population Estimates)

MEASURE I 2021 POPULATION SUMMARY
PREPARED BY SAN BERNARDINO COUNTY PLANNING

ATTACHMENT C

PLANNING REGION	(1) DOF/CO 2021	(2) ADJUSTMENT	2021 TOTAL	PERCENT OF SUBAREA	PERCENT OF COUNTY TOTAL	POP CHANGE FROM 2020	%SUBAREA CHANGE FROM 2020
WEST VALLEY							
CHINO	88,184		88,184	5.59%	4.053%	(925)	-0.04%
CHINO HILLS	82,661		82,661	5.24%	3.799%	252	0.03%
FONTANA	213,944		213,944	13.57%	9.832%	944	0.09%
MONTCLAIR	39,598		39,598	2.51%	1.820%	108	0.01%
ONTARIO	182,004		182,004	11.54%	8.365%	(867)	-0.03%
RANCHO CUCAMONGA	175,131		175,131	11.10%	8.049%	(391)	0.00%
UPLAND	78,513		78,513	4.98%	3.608%	(301)	-0.01%
UNINCORPORATED URBAN	44,038	(6)	44,038	2.79%	2.024%	1,375	0.09%
UNINCORPORATED RURAL	1,821	(7)	1,821	0.12%	0.084%	(240)	-0.01%
TOTAL WEST VALLEY			905,894	57.44%	41.633%	(45)	0.14%
EAST VALLEY							
COLTON	54,198		54,198	3.44%	2.491%	80	0.01%
GRAND TERRACE	12,399		12,399	0.79%	0.570%	(27)	0.00%
HIGHLAND	55,060		55,060	3.49%	2.530%	(263)	-0.01%
LOMA LINDA	24,895		24,895	1.58%	1.144%	360	0.03%
REDLANDS	71,154		71,154	4.51%	3.270%	202	0.02%
RIALTO	102,567		102,567	6.50%	4.714%	(1,986)	-0.11%
SAN BERNARDINO	216,291		216,291	13.71%	9.940%	(1,655)	-0.07%
YUCAIPA	55,634		55,634	3.53%	2.557%	(78)	0.00%
UNINCORPORATED URBAN	77,874	(6)	77,874	4.94%	3.579%	884	0.07%
UNINCORPORATED RURAL	1,159	(7)	1,159	0.07%	0.053%	(1,473)	-0.09%
TOTAL EAST VALLEY			671,231	42.56%	30.848%	(3,956)	-0.14%
TOTAL VALLEY			1,577,125	100.00%	72.481%	(4,001)	-0.03%
MOUNTAINS							
BIG BEAR LAKE	5,189		5,189	10.15%	0.238%	(17)	0.04%
UNINCORPORATED URBAN	36,891	(6) (3)	36,891	72.15%	1.695%	297	1.08%
UNINCORPORATED RURAL	9,053	(7) (3)	9,053	17.70%	0.416%	(642)	-1.12%
TOTAL MOUNTAINS			51,133	100.00%	2.350%	(362)	-0.01%
NORTH DESERT							
BARSTOW	24,205		24,205	41.51%	1.112%	(63)	0.06%
UNINCORPORATED URBAN	23,390	(6)	23,390	40.11%	1.075%	903	1.70%
UNINCORPORATED RURAL	10,722	(7)	10,722	18.39%	0.493%	(1,073)	-1.76%
TOTAL NORTH DESERT			58,317	100.00%	2.680%	(233)	-0.01%

Attachment: Attachment C - 2021 Population Estimates [Revision 1] (8275 : Measure I 2022 Population Estimates)

MEASURE I 2021 POPULATION SUMMARY
PREPARED BY SAN BERNARDINO COUNTY PLANNING

PLANNING REGION	(1) DOF/CO 2021	(2) ADJUSTMENT	2021 TOTAL	PERCENT OF SUBAREA	PERCENT OF COUNTY TOTAL	POP CHANGE FROM 2020	%SUBAREA CHANGE FROM 2020
COLORADO RIVER							
NEEDLES (RURAL)	5,353		5,353	70.72%	0.246%	105	-0.01%
UNINCORPORATED URBAN	0	(6)	0	0.00%	0.000%	0	0.00%
UNINCORPORATED RURAL	2,216	(7)	2,216	29.28%	0.102%	44	0.01%
TOTAL COLORADO RIVER			7,569	100.00%	0.348%	149	0.01%
MORONGO BASIN							
TWENTYNINE PALMS	29,967	(4)	29,967	38.70%	1.377%	709	0.62%
YUCCA VALLEY	22,330		22,330	28.84%	1.026%	94	-0.10%
UNINCORPORATED URBAN	7,941	(6)	7,941	10.26%	0.365%	1,304	1.62%
UNINCORPORATED RURAL	17,193	(7)	17,193	22.20%	0.790%	(1,502)	-2.13%
TOTAL MORONGO BASIN			77,431	100.00%	3.559%	605	0.04%
VICTOR VALLEY							
ADELANTO	35,147	(5)	35,147	8.69%	1.615%	(516)	-0.11%
APPLE VALLEY	74,350	(5)	74,350	18.39%	3.417%	(44)	0.02%
HESPERIA	96,053	(5)	96,053	23.76%	4.414%	(340)	-0.04%
VICTORVILLE	127,170	(5)	127,170	31.45%	5.844%	738	0.24%
UNINCORPORATED URBAN (3)	37,835	(6) (5)	37,835	9.36%	1.739%	2,994	0.76%
UNINCORPORATED RURAL (3)	33,779	(7) (5)	33,779	8.35%	1.552%	(3,587)	-0.87%
TOTAL VICTOR VALLEY			404,334	100.00%	18.582%	(755)	0.00%
TOTAL DESERT			547,651			(234)	
TOTAL MOUNTAIN/DESERT			598,784		27.519%	(596)	0.03%
SUMMARY:							
TOTAL INCORPORATED	1,871,997		1,871,997		86.033%	(3,881)	0.00%
TOTAL UNINCORPORATED	303,912		303,912		13.967%	(716)	0.00%
TOTAL COUNTY	2,175,909		2,175,909		100.000%	(4,597)	0.00%

- (1) - CITY FIGURES FROM DOF JANUARY 1, 2021 ESTIMATES; UNINCORPORATED FIGURES FROM PLANNING DEPARTMENT ESTIMATES CONTROLLED TO DOF UNINCORPORATED TOTAL.
- (2) - THIS COLUMN CONTAINS ADJUSTMENTS NECESSARY TO MODIFY CITY TOTALS AS SPECIFIED IN MEASURE I.
- (3) - THE WRIGHTWOOD COMMUNITY AND AREAS NORTH OF LONE PINE CANYON ROAD WERE EXCLUDED FROM THE MOUNTAIN AREA AND INCLUDED IN THE VICTOR VALLEY AS SPECIFIED IN MEASURE I.
- (4) - THE POPULATED PORTIONS OF THE TWENTYNINE PALMS MARINE BASE HAVE BEEN ANNEXED BY THE CITY OF TWENTYNINE PALMS.
- (5) - WITH THE CLOSING OF GEORGE AIR FORCE BASE, THERE IS NO LONGER AN ALLOCATION OF POPULATION TO THE CITIES IN THE VICTOR VALLEY.
- (6) - UNINCORPORATED URBAN FIGURES FROM PLANNING DEPARTMENT ESTIMATES CONTROLLED TO DOF UNINCORPORATED TOTALS AND CALTRANS URBAN AREA BOUNDARIES.
- (7) - UNINCORPORATED RURAL FIGURES FROM PLANNING DEPARTMENT ESTIMATES CONTROLLED TO DOF UNINCORPORATED TOTALS AND BASED ON AREAS OUTSIDE THE CALTRANS URBAN AREA BOUNDARIES.

Additional Information

GENERAL POLICY COMMITTEE ATTENDANCE RECORD – 2022

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Paul Cook Board of Supervisors	X	X	X	X	X							
Dawn Rowe Board of Supervisors	X		X	X	X							
Curt Hagman Board of Supervisors	X	X	X	X	X							
Art Bishop Town of Apple Valley	X	X	X	X	X							
Ray Marquez City of Chino Hills	X	X	X									
Frank Navarro City of Colton	X	X	X	X	X							
Acquanetta Warren City of Fontana	X	X	X	X								
Darcy McNaboe City of Grand Terrace	X	X	X	X	X							
Larry McCallon City of Highland	X	X	X		X							
Edward Paget City of Needles		X		X	X							
Alan Wapner City of Ontario	X	X		X	X							
Debra Jones City of Victorville	X	X	X	X								

Communication: Attendance (Additional Information)

X = Member attended meeting.
Shaded box = No meeting.

* = Alternate member attended meeting.

Empty box = Member did not attend meeting.

Crossed out box = Not a Board Member at the time.

This list provides information on acronyms commonly used by transportation planning professionals. This information is provided in an effort to assist Board Members and partners as they participate in deliberations at Board meetings. While a complete list of all acronyms which may arise at any given time is not possible, this list attempts to provide the most commonly-used terms. Staff makes every effort to minimize use of acronyms to ensure good communication and understanding of complex transportation processes.

AB	Assembly Bill
ACE	Alameda Corridor East
ACT	Association for Commuter Transportation
ADA	Americans with Disabilities Act
ADT	Average Daily Traffic
APTA	American Public Transportation Association
AQMP	Air Quality Management Plan
ARRA	American Recovery and Reinvestment Act
ATMIS	Advanced Transportation Management Information Systems
BAT	Barstow Area Transit
CALACT	California Association for Coordination Transportation
CALCOG	California Association of Councils of Governments
CALSAFE	California Committee for Service Authorities for Freeway Emergencies
CARB	California Air Resources Board
CEQA	California Environmental Quality Act
CMAQ	Congestion Mitigation and Air Quality
CMIA	Corridor Mobility Improvement Account
CMP	Congestion Management Program
CNG	Compressed Natural Gas
COG	Council of Governments
CPUC	California Public Utilities Commission
CSAC	California State Association of Counties
CTA	California Transit Association
CTC	California Transportation Commission
CTC	County Transportation Commission
CTP	Comprehensive Transportation Plan
DBE	Disadvantaged Business Enterprise
DEMO	Federal Demonstration Funds
DOT	Department of Transportation
EA	Environmental Assessment
E&D	Elderly and Disabled
E&H	Elderly and Handicapped
EIR	Environmental Impact Report (California)
EIS	Environmental Impact Statement (Federal)
EPA	Environmental Protection Agency
FHWA	Federal Highway Administration
FSP	Freeway Service Patrol
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
FTIP	Federal Transportation Improvement Program
GFOA	Government Finance Officers Association
GIS	Geographic Information Systems
HOV	High-Occupancy Vehicle
ICTC	Interstate Clean Transportation Corridor
IEEP	Inland Empire Economic Partnership
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
IIP/ITIP	Interregional Transportation Improvement Program
ITS	Intelligent Transportation Systems
IVDA	Inland Valley Development Agency
JARC	Job Access Reverse Commute
LACMTA	Los Angeles County Metropolitan Transportation Authority
LNG	Liquefied Natural Gas
LTF	Local Transportation Funds

Acronym List

MAGLEV	Magnetic Levitation
MARTA	Mountain Area Regional Transportation Authority
MBTA	Morongo Basin Transit Authority
MDAB	Mojave Desert Air Basin
MDAQMD	Mojave Desert Air Quality Management District
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
MSRC	Mobile Source Air Pollution Reduction Review Committee
NAT	Needles Area Transit
NEPA	National Environmental Policy Act
OA	Obligation Authority
OCTA	Orange County Transportation Authority
PA&ED	Project Approval and Environmental Document
PASTACC	Public and Specialized Transportation Advisory and Coordinating Council
PDT	Project Development Team
PNRS	Projects of National and Regional Significance
PPM	Planning, Programming and Monitoring Funds
PSE	Plans, Specifications and Estimates
PSR	Project Study Report
PTA	Public Transportation Account
PTC	Positive Train Control
PTMISEA	Public Transportation Modernization, Improvement and Service Enhancement Account
RCTC	Riverside County Transportation Commission
RDA	Redevelopment Agency
RFP	Request for Proposal
RIP	Regional Improvement Program
RSTIS	Regionally Significant Transportation Investment Study
RTIP	Regional Transportation Improvement Program
RTP	Regional Transportation Plan
RTPA	Regional Transportation Planning Agencies
SB	Senate Bill
SAFE	Service Authority for Freeway Emergencies
SAFETEA-LU	Safe Accountable Flexible Efficient Transportation Equity Act – A Legacy for Users
SCAB	South Coast Air Basin
SCAG	Southern California Association of Governments
SCAQMD	South Coast Air Quality Management District
SCRRA	Southern California Regional Rail Authority
SHA	State Highway Account
SHOPP	State Highway Operations and Protection Program
SOV	Single-Occupant Vehicle
SRTP	Short Range Transit Plan
STAF	State Transit Assistance Funds
STIP	State Transportation Improvement Program
STP	Surface Transportation Program
TAC	Technical Advisory Committee
TCIF	Trade Corridor Improvement Fund
TCM	Transportation Control Measure
TCRP	Traffic Congestion Relief Program
TDA	Transportation Development Act
TEA	Transportation Enhancement Activities
TEA-21	Transportation Equity Act for the 21 st Century
TMC	Transportation Management Center
TMEE	Traffic Management and Environmental Enhancement
TSM	Transportation Systems Management
TSSDRA	Transit System Safety, Security and Disaster Response Account
USFWS	United States Fish and Wildlife Service
VCTC	Ventura County Transportation Commission
VVTA	Victor Valley Transit Authority
WRCOG	Western Riverside Council of Governments



MISSION STATEMENT

Our mission is to improve the quality of life and mobility in San Bernardino County. Safety is the cornerstone of all we do.

We achieve this by:

- Making all transportation modes as efficient, economical, and environmentally responsible as possible.
- Envisioning the future, embracing emerging technology, and innovating to ensure our transportation options are successful and sustainable.
- Promoting collaboration among all levels of government.
- Optimizing our impact in regional, state, and federal policy and funding decisions.
- Using all revenue sources in the most responsible and transparent way.

Approved December 4, 2019