

***RIVERSIDE COUNTY TRANSPORTATION COMMISSION***

<b>DATE:</b>	December 10, 2008
<b>TO:</b>	Riverside County Transportation Commission
<b>FROM:</b>	Budget and Implementation "Committee of the Whole" Jerry Rivera, Motorist Assistance Manager
<b>THROUGH:</b>	Anne Mayer, Executive Director
<b>SUBJECT:</b>	Fund Transfer Agreement for Operation of a Freeway Service Patrol Program in Riverside County

**BUDGET AND IMPLEMENTATION "COMMITTEE OF THE WHOLE" AND STAFF RECOMMENDATION:**

This item is for the Commission to approve Fund Transfer Agreement No. 09-45-059-00 with the state of California Department of Transportation (Caltrans) for the Riverside County Freeway Service Patrol (FSP) program in the amount of \$1,656,238 in state funding for FY 2008/09.

**BACKGROUND INFORMATION:**

The Riverside County FSP program has been in operation for over 14 years and provides roving tow truck service on nine beats on State Route 60, State Route 91, Interstate 215/SR-60, and Interstate 15 during the morning and afternoon commute hours. The FSP program is funded by the state of California (80%) and local Service Authority for Freeway Emergencies (SAFE) fees (20%). Funds are allocated to participating agencies through a formula based on population, urban freeway lane miles, and levels of congestion.

The agreement for FY 2008/09 provides for continued state funding in the amount of \$1,656,238 and requires a local match of \$414,060. This is an increase of \$137,759 in state funds over the funding level for FY 2007/08. The Commission's FY 2008/09 budget for the Motorist Assistance Program includes \$1,416,300 in State funding. The additional state funds are not being requested at this time. Staff, along with the California Highway Patrol (CHP) and Caltrans, will review the hours of operation and service level to determine if any additional service or a new beat is warranted. Any state funds not claimed in the current fiscal year may be carried over and claimed in FY 2009/10.

Annually, the program provides approximately 45,500 assists to stranded motorists along Riverside County freeways. The Commission contracts with four tow truck operators to provide twenty tow trucks to patrol these routes Monday through Friday during the peak commute hours, 5:30 a.m. to 8:30 a.m. and 3:00 p.m. to 7:00 p.m. The programs day to day field supervision is handled by the CHP.

Financial Information					
In Fiscal Year Budget:	Yes	Year:	FY 2008/09	Amount:	\$1,656,238
Source of Funds:	State of California			Budget Adjustment:	No
GLA No.:	201-45-41505				
Fiscal Procedures Approved:	<i>Theresa Trevino</i>			Date:	11/13/2008

Attachment: FSP Program Fund Transfer Agreement No. 09-45-049-00

FREEWAY SERVICE PATROL PROGRAM  
FUND TRANSFER AGREEMENT (Non Federal)

Agreement No. FSP09-6054(060)  
Project No. FSP09-6054(060)

Location: 08-RIV-Var-RCTC  
EA: 08-925095L

THIS AGREEMENT, effective on July 1, 2008, is between the State of California, acting by and through the Department of Transportation, hereinafter referred to as STATE, and the Riverside County Transportation Commission, a public agency, hereinafter referred to as "ADMINISTERING AGENCY."

WHEREAS, Streets and Highways Code (S&HC) Section 2560 et seq. authorizes STATE and administering agencies to develop and implement a Freeway Service Patrol (FSP) Program on traffic-congested urban freeways throughout the state; and

WHEREAS, STATE has distributed available State Highway Account funds to administering agencies participating in the FSP Program in accordance with S&HC Section 2562; and

WHEREAS, ADMINISTERING AGENCY has applied to STATE and has been selected to receive funds from the FSP Program for the purpose of Freeway Service Patrol for FY 2008-2009, hereinafter referred to as "PROJECT"; and

WHEREAS, proposed PROJECT funding is as follows:

Total Cost	State Funds	Local Funds	
\$2,070,298.00	\$1,656,238.00	\$414,060.00	; and

WHEREAS, STATE is required to enter into an agreement with ADMINISTERING AGENCY to delineate the respective responsibilities of the parties relative to prosecution of said PROJECT; and

WHEREAS, STATE and ADMINISTERING AGENCY mutually desire to cooperate and jointly participate in the FSP Program and desire to specify herein the terms and conditions under which the FSP program is to be conducted; and

WHEREAS, ADMINISTERING AGENCY has approved entering into this Agreement under authority of Resolution No. 05-012 approved by ADMINISTERING AGENCY on 9/14/05, a copy of which is attached.

For Caltrans Use Only

I hereby Certify upon my own personal knowledge that budgeted funds are available for this encumbrance

<i>Caleb Kwong</i>		Accounting Officer	Date	\$ 1,656,238.00
Chapter	Statutes	Item	Fiscal Year	Program
268	2008	2660-102-042	2008/2009	20.30.010.600
				C
				262040
				114-042-T
				\$

NOW, THEREFORE, the parties agree as follows:

## SECTION I

### STATE AGREES:

1. To define or specify, in cooperation with ADMINISTERING AGENCY, the limits of the State Highway segments to be served by the FSP as well as the nature and amount of the FSP dedicated equipment, if any, that is to be funded under the FSP Program.
2. To pay ADMINISTERING AGENCY the STATE's share, in amount not to exceed \$1,656,238.00, of eligible participating PROJECT costs.
3. To deposit with ADMINISTERING AGENCY, upon ADMINISTERING AGENCY's award of a contract for PROJECT services and receipt of an original and two signed copies of an invoice in the proper form, including identification of this Agreement Number and Project Number, from ADMINISTERING AGENCY, the amount of \$264,998.08. This initial deposit represents STATE's share of the estimated costs for the initial two months of PROJECT. Thereafter, to make reimbursements to ADMINISTERING AGENCY as promptly as state fiscal procedures will permit, but not more often than monthly in arrears, upon receipt of an original and two signed copies of invoices in the proper form covering actual allowable costs incurred for the prior sequential month's period of the Progress Payment Invoice. (The initial deposit will be calculated at 16% of the STATE's total share.)
4. When conducting an audit of the costs claimed by ADMINISTERING AGENCY under the provisions of this Agreement, STATE will rely to the maximum extent possible on any prior audit of ADMINISTERING AGENCY performed pursuant to the provisions of state and federal laws. In the absence of such an audit, work of other auditors will be relied upon to the extent that work is acceptable to STATE when planning and conducting additional audits.

## SECTION II

### ADMINISTERING AGENCY AGREES:

1. To commit and contribute matching funds from ADMINISTERING AGENCY resources which shall be an amount not less than 25 percent of the amount provided by STATE from the State Highway Account.
2. The ADMINISTERING AGENCY's detailed PROJECT Cost Proposal is attached hereto and made an express part of this Agreement. The detailed PROJECT Cost Proposal reflects the provisions and/or regulations of Section III, Article 8, of this Agreement.
3. To use all state funds paid hereunder only for those transportation related PROJECT purposes that conform to Article XIX of the California State Constitution.
4. STATE funds provided to ADMINISTERING AGENCY under this Agreement shall not be used for administrative purposes by ADMINISTERING AGENCY.

5. To develop, in cooperation with STATE, advertise, award, and administer PROJECT contract(s) in accordance with ADMINISTERING AGENCY competitive procurement procedures.

6. Upon award of a contract for PROJECT, to prepare and submit to STATE an original and two signed copies of invoicing for STATE's initial deposit specified in Section I, Article 3. Thereafter, to prepare and submit to STATE an original and two signed copies of progress invoicing for STATE's share of actual expenditures for allowable PROJECT costs.

7. Said invoicing shall evidence the expenditure of ADMINISTERING AGENCY's PROJECT participation in paying not less than 20% of all allowable PROJECT costs and shall contain the information described in Chapter 5 of the Local Assistance Procedures Manual and shall be mailed to the Department of Transportation, Accounting Service Center, MS 33, Local Program Accounting Branch, P.O. Box 942874, Sacramento CA, 94274-0001.

8. Within 60 days after completion of PROJECT work to be reimbursed under this Agreement, to prepare a final invoice reporting all actual eligible costs expended, including all costs paid by ADMINISTERING AGENCY and submit that signed invoice, along with any refund due STATE, to the District Local Assistance Engineer. Backup information submitted with said final invoice shall include all FSP operational contract invoices paid by ADMINISTERING AGENCY to contracted operators included in expenditures billed for to STATE under this Agreement.

## 9. COST PRINCIPLES

A) ADMINISTERING AGENCY agrees to comply with, and require all project sponsors to comply with, Office of Management and Budget Circular A-87, Cost Principles for State and Local Government, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

B) ADMINISTERING AGENCY will assure that its Fund recipients will be obligated to agree that (1) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items, and (2) those parties shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving Funds as a contractor or subcontractor under this Agreement shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

C) Any Fund expenditures for costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under Office of Management and Budget Circular A-87, 48 CFR, Chapter 1, Part 31 or 49 CFR, Part 18, are subject to repayment by ADMINISTERING AGENCY to STATE. Should ADMINISTERING AGENCY fail to reimburse Fund moneys due STATE within 30 days of demand, or within such other period as may be agreed in writing between the Parties hereto, STATE is authorized to intercept and withhold future payments due ADMINISTERING AGENCY from STATE or any third-party source, including, but not limited to, the State Treasurer, the State Controller, and the California Transportation Commission.

## 10. THIRD PARTY CONTRACTING

A) ADMINISTERING AGENCY shall not award a construction contract over \$10,000 or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code Sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed using Funds without the prior written approval of STATE.

B) Any subcontract or agreement entered into by ADMINISTERING AGENCY as a result of disbursing Funds received pursuant to this Agreement shall contain all of the fiscal provisions of this Agreement and shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as project costs only after those costs are incurred and paid for by the subcontractors.

C) In addition to the above, the preaward requirements of third party contractor/consultants with ADMINISTERING AGENCY should be consistent with Local Program Procedures as published by STATE.

## 11. ACCOUNTING SYSTEM

ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate Fund expenditures by line item. The accounting system of ADMINISTERING AGENCY, its contractors, and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.

## 12. RIGHT TO AUDIT

For the purpose of determining compliance with this Agreement and other matters connected with the performance of ADMINISTERING AGENCY's contracts with third parties, ADMINISTERING AGENCY, ADMINISTERING AGENCY's contractors and subcontractors, and STATE shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times for three years from the date of final payment of Funds to ADMINISTERING AGENCY. STATE, the California State Auditor, or any duly authorized representative of STATE or the United States Department of Transportation shall each have access to any books, records, and documents that are pertinent for audits, examinations, excerpts, and transactions, and ADMINISTERING AGENCY shall furnish copies thereof if requested.

### 13. TRAVEL AND SUBSISTENCE

Payments to only ADMINISTERING AGENCY for travel and subsistence expenses of ADMINISTERING AGENCY forces and its subcontractors claimed for reimbursement or applied as local match credit shall not exceed rates authorized to be paid exempt non-represented State employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced are in excess of those authorized DPA rates, then ADMINISTERING AGENCY is responsible for the cost difference and any overpayments shall be reimbursed to STATE on demand.

### 14. SINGLE AUDIT

ADMINISTERING AGENCY agrees to include all state (Funds) and federal-funded projects in the schedule of projects to be examined in ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with Office of Management and Budget Circular A-133.

## SECTION III

### IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature and the encumbrance of funds under this Agreement. Funding and reimbursement is available only upon the passage of the State Budget Act containing these STATE funds. The starting date of eligible reimbursable activities shall be JULY 1, 2008.
2. All obligations of ADMINISTERING AGENCY under the terms of this Agreement are subject to authorization and allocation of resources by ADMINISTERING AGENCY.
3. ADMINISTERING AGENCY and STATE shall jointly define the initial FSP program as well as the appropriate level of FSP funding recommendations and scope of service and equipment required to provide and manage the FSP Program. No changes shall be made in these unless mutually agreed to in writing by the parties to this Agreement.
4. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to this Agreement by imposing any standard of care with respect to the maintenance of State highways different from the standard of care imposed by law.
5. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by ADMINISTERING AGENCY under or in connection with any work, authority, or jurisdiction delegated to ADMINISTERING AGENCY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, ADMINISTERING AGENCY shall fully defend, indemnify, and save harmless the State of California, its officers and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under or in connection with any work, authority or jurisdiction delegated to ADMINISTERING AGENCY under this Agreement.

6. Neither ADMINISTERING AGENCY nor any officer or employee thereof is responsible for any injury, damage, or liability occurring or arising by reason of anything done or omitted to be done by STATE under or in connection with any work, authority, or jurisdiction delegated to STATE under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, STATE shall fully defend, indemnify and save harmless ADMINISTERING AGENCY, its officers and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement.

7. ADMINISTERING AGENCY will maintain an inventory of all non-expendable PROJECT equipment, defined as having a useful life of at least two years and an acquisition cost of \$500 or more, paid for with PROJECT funds. At the conclusion of this Agreement, ADMINISTERING AGENCY may either keep such equipment and credit STATE its share of equipment's fair market value or sell such equipment at the best price obtainable at a public or private sale (in accordance with established STATE procedures) and reimburse STATE its proportional share of the sale price.

8. ADMINISTERING AGENCY and its sub-contractors will comply with all applicable Federal and State laws and regulations, including but not limited to, Office of Management and Budget Circular A-97, Cost Principles for State and Local Governments (49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

9. In the event that ADMINISTERING AGENCY fails to operate the PROJECT commenced and reimbursed under this Agreement in accordance with the terms of this Agreement or fails to comply with applicable Federal and State laws and regulations, STATE reserves the right to terminate funding for PROJECT, or portions thereof, upon written notice to ADMINISTERING AGENCY.

10. This Agreement shall terminate on June 30, 2010. However, the non-expendable equipment, and liability clauses shall remain in effect until terminated or modified in writing by mutual agreement.

STATE OF CALIFORNIA

Riverside County Transportation Commission

Department of Transportation

By: \_\_\_\_\_

By: \_\_\_\_\_

Office of Project Implementation, South  
Division of Local Assistance

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_