



MEETING AGENDA

Western Riverside County Programs and Projects Committee

Time: 1:30 p.m.
Date: August 28, 2023
Location: BOARD ROOM - County of Riverside Administration Center
4080 Lemon St, First Floor, Riverside, CA 92501
TELECONFERENCE SITE
LARGE CONFERENCE ROOM – French Valley Airport
37600 Sky Canyon Drive, Murrieta, CA 92563

COMMITTEE MEMBERS

Brian Berkson, **Chair**/Armando Carmona, City of Jurupa Valley
Wes Speake, **Vice Chair** / Jim Steiner, City of Corona
Sheri Flynn / Rick Minjares, City of Banning
Clint Lorimore / Todd Rigby, City of Eastvale
Linda Krupa / Malcolm Lilienthal, City of Hemet
Bill Zimmerman / Dean Deines, City of Menifee
Berwin Hanna / Katherine Aleman, City of Norco
Michael Vargas / Rita Rogers, City of Perris
Chuck Conder / Patricia Lock Dawson, City of Riverside
Joseph Morabito, / Ashlee DePhillippo, City of Wildomar
Kevin Jeffries, County of Riverside, District I
Karen Spiegel, County of Riverside, District II

STAFF

Anne Mayer, Executive Director
Aaron Hake, Deputy Executive Director

AREAS OF RESPONSIBILITY

Air Quality, Capital Projects, Communications and Outreach Programs, Intermodal Programs, Motorist Services, New Corridors, Regional Agencies/Regional Planning, Regional Transportation Improvement Program (RTIP), Specific Transit Projects, State Transportation Improvement Program (STIP)

Transportation Uniform Mitigation Fee (TUMF) Program, and Provide Policy Direction on Transportation Programs and Projects related to Western Riverside County and other areas as may be prescribed by the Commission.

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE**

www.rctc.org

AGENDA*

**Actions may be taken on any item listed on the agenda*

1:30 p.m.

Monday, August 28, 2023

BOARD ROOM

**County Administrative Center
4080 Lemon Street, First Floor
Riverside, California**

TELECONFERENCE SITE

LARGE CONFERENCE ROOM

**French Valley Airport
37600 Sky Canyon Drive
Murrieta, California**

In compliance with the Brown Act and Government Code Section 54957.5, agenda materials distributed 72 hours prior to the meeting, which are public records relating to open session agenda items, will be available for inspection by members of the public prior to the meeting at the Commission office, 4080 Lemon Street, Third Floor, Riverside, CA, and on the Commission's website, www.rctc.org.

In compliance with the Americans with Disabilities Act, Government Code Section 54954.2, and the Federal Transit Administration Title VI, please contact the Clerk of the Board at (951) 787-7141 if special assistance is needed to participate in a Commission meeting, including accessibility and translation services. Assistance is provided free of charge. Notification of at least 48 hours prior to the meeting time will assist staff in assuring reasonable arrangements can be made to provide assistance at the meeting.

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PLEDGE OF ALLEGIANCE**

4. **PUBLIC COMMENTS** – *Each individual speaker is limited to speak three (3) continuous minutes or less. The Committee may, either at the direction of the Chair or by majority vote of the Committee, waive this three minute time limitation. Depending on the number of items on the Agenda and the number of speakers, the Chair may, at his/her discretion, reduce the time of each speaker to two (2) continuous minutes. Also, the Committee may terminate public comments if such comments become repetitious. In addition, the maximum time for public comment for any individual item or topic is thirty (30) minutes. Speakers may not yield their time to others without the consent of the Chair. Any written documents to be distributed or presented to the Committee shall be submitted to the Clerk of the Board. This policy applies to Public Comments and comments on Agenda Items.*

Under the Brown Act, the Board should not take action on or discuss matters raised during public comment portion of the agenda which are not listed on the agenda. Board members may refer such matters to staff for factual information or to be placed on the subsequent agenda for consideration.

5. **ADDITIONS/REVISIONS** *(The Committee may add an item to the Agenda after making a finding that there is a need to take immediate action on the item and that the item came to the attention of the Committee subsequent to the posting of the agenda. An action adding an item to the agenda requires 2/3 vote of the Committee. If there are less than 2/3 of the Committee members present, adding an item to the agenda requires a unanimous vote. Added items will be placed for discussion at the end of the agenda.)*
6. **CONSENT CALENDAR** - *All matters on the Consent Calendar will be approved in a single motion unless a Commissioner(s) requests separate action on specific item(s). Items pulled from the Consent Calendar will be placed for discussion at the end of the agenda.*

6A. APPROVAL OF MINUTES – JUNE 26, 2023

Page 1

7. **AGREEMENTS FOR COMPREHENSIVE PROFESSIONAL SERVICES AND SOFTWARE AS A SERVICE WITH TRANSMAX FOR THE INTERSTATE 15 SMART FREEWAY PILOT PROJECT**

Page 7

Overview

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Award Agreement No. 23-031-035-00 to Transmax Pty Ltd (Transmax) for comprehensive professional services for the Interstate 15 SMART Freeway Pilot Project (Project), in the amount of \$1,889,038 plus a contingency amount of \$283,356 for a total amount not to exceed \$2,172,394;
- 2) Award Agreement No. 23-031-034-00 to Transmax for Software as a Service (SaaS) for the Project in the amount \$2,510,237, plus a contingency amount of \$376,536 for a total amount not to exceed \$2,886,773;
- 3) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements on behalf of the Commission;

- 4) Authorize the Executive Director, or designee, to approve contingency work as may be required for the Project; and
- 5) Authorize the Executive Director or designee, pursuant to legal counsel review, to execute non-funding amendments to the agreements on behalf of the Commission.

8. INTERSTATE 15 FRANKLIN STREET INTERCHANGE PROJECT COOPERATIVE AGREEMENT WITH THE CITY OF LAKE ELSINORE

Page 88

Overview

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Approve Cooperative Agreement No. 24-31-023-00, with the city of Lake Elsinore (City) for funding of the plans, specifications & estimate (PS&E) phase of the Interstate 15 Franklin Street Interchange Project, in the amounts of \$9,500,000 from the Western Riverside Council of Governments (WRCOG) local Transportation Uniform Mitigation Fees (TUMF), and \$3,000,000 in local funds from the City, for a total amount of \$12,500,000;
- 2) Authorize Commission staff to be the lead agency on behalf of the city of Lake Elsinore, as stated in the terms of Cooperative Agreement No. 24-31-023-00; and
- 3) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements and future non-funding agreements and/or amendments on behalf of the Commission.

9. AMENDMENT TO AGREEMENT WITH FALCON ENGINEERING SERVICES TO PROVIDE CONSTRUCTION MANAGEMENT SERVICES FOR STATE ROUTE 60 TRUCK LANES PROJECT

Page 122

Overview

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Approve Agreement No. 18-31-164-04, Amendment No. 4 to Agreement No. 18-31-164-00, with Falcon Engineering Services Inc. (Falcon) for construction management (CM), services for the State Route 60 Truck Lanes project for an additional amount of \$151,818, and a total amount not to exceed \$17,664,366; and
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the amendment on behalf of the Commission.

10. AMENDMENT TO AGREEMENT WITH VALI COOPER & ASSOCIATES, INC. TO PROVIDE CONSTRUCTION MANAGEMENT SERVICES, MATERIALS TESTING, AND CONSTRUCTION SURVEYING FOR THE INTERSTATE 215/PLACENTIA AVENUE INTERCHANGE PROJECT

Page 136

Overview

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Approve Agreement No. 18-31-148-04, Amendment No. 4 to Agreement No. 18-31-148-00, with Vali Cooper & Associates, Inc. (Vali Cooper), for construction management (CM) services for the Interstate 215/Placentia Avenue Interchange, in the amount of \$100,560, plus a contingency amount of \$10,056, for an additional amount of \$110,616, and a total amount not to exceed of \$6,551,659;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the amendment on behalf of the Commission; and
- 3) Authorize the Executive Director or designee to approve the use of the contingency amount as may be required for the Project.

11. EXECUTIVE DIRECTOR REPORT

- 241/91 Connector Status

12. COMMISSIONER COMMENTS

Overview

This item provides the opportunity for brief announcements or comments on items or matters of general interest.

13. ADJOURNMENT

The next Western Riverside County Programs and Projects Committee meeting is scheduled to be held at **1:30 p.m., Monday, October 23, 2023.**

AGENDA ITEM 6A

MINUTES

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE

Monday, June 26, 2023

MINUTES

1. CALL TO ORDER

The meeting of the Western Riverside County Programs and Projects Committee was called to order by Vice Chair Wes Speake at 1:31 p.m. Teleconference site: Large Conference Room, French Valley Airport, 37600 Sky Canyon Drive, Murrieta, CA.

2. ROLL CALL

At this time, Lisa Mobley, Administrative Services Director/Clerk of the Board, clarified with Haviva Shane, Legal Counsel, if a roll call vote should be done since the satellite location was listed on the agenda but there are no Commissioners or public present at that location. Ms. Shane replied they do not have to. Ms. Mobley noted she will make sure the votes are announced.

Vice Chair Speake noted that he sees the satellite office on his screen with no one in it.

Members/Alternates Present

Berwin Hanna
Kevin Jeffries
Linda Krupa
Clint Lorimore
Joseph Morabito
Wes Speake
Karen Spiegel
Michael Vargas

Members Absent

Brian Berkson
Chuck Conder
Sheri Flynn
Bill Zimmerman

3. PLEDGE OF ALLEGIANCE

Commissioner Clint Lorimore led the Western Riverside County Programs and Projects Committee in a flag salute.

4. PUBLIC COMMENTS

There were no requests to speak from the public.

5. ADDITIONS/REVISIONS

There were no additions or revisions to the agenda.

M/S/C (Krupa/Speake) to approve the minutes as submitted.

6. APPROVAL OF MINUTES – MAY 22, 2023

7. AGREEMENT FOR FREEWAY SERVICE PATROL TOW TRUCK SERVICE

Commissioner Kevin Jeffries moved staff recommendation. Commissioner Karen Spiegel seconded the motion.

M/S/C (Jeffries/Spiegel) to:

- 1) Award Agreement No. 23-45-060-00 to Royal Coaches Auto Body and Towing (Royal Coaches) for Freeway Service Patrol (FSP) tow truck services on Interstate 15, Beat No. 35, for a five-year term, in the amount of \$3,150,630, plus a contingency amount of \$157,540 for a total amount not to exceed \$3,308,170;**
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements on behalf of the Commission; and**
- 3) Authorize the Executive Director, or designee, to approve the use of the contingency amount as may be required for these services.**

At this time, Vice Chair Speake recused himself due to a conflict and stepped out of the Board Room while Agenda Item 8 was being presented, and Commissioner Michael Vargas took over as Chair.

8. AMENDMENT TO AGREEMENT WITH PARSONS TRANSPORTATION GROUP TO PROVIDE PLANS, SPECIFICATIONS, AND COST ESTIMATES SERVICES AND AMENDMENT TO AGREEMENT WITH FALCON ENGINEERING SERVICES TO PROVIDE CONSTRUCTION MANAGEMENT SERVICES FOR STATE ROUTE 71/STATE ROUTE 91 INTERCHANGE IMPROVEMENT PROJECT

Commissioner Jeffries moved staff recommendation and Commissioner Clint Lorimore seconded the motion.

M/S/C (Jeffries/Lorimore) to:

- 1) Approve Agreement No. 11-31-110-17, Amendment No. 17 to Agreement No. 11-31-110-00, with Parsons Transportation Group Inc. (Parsons) for preparation of plans, specifications, and cost estimates (PS&E) for construction of State Route 71/State Route 91 Interchange Improvements Project (Project), in the amount of \$991,075, plus a**

- contingency amount of \$110,000, for an additional amount of \$1,101,075, and a total amount not to exceed \$15,268,100;
- 2) **Approve Agreement No. 21-31-012-01, Amendment No. 1 to Agreement No. 21-31-012-00, with Falcon Engineering Services Inc. (Falcon) for construction management (CM) services, materials testing, construction surveying and public outreach for the Project for an additional amount of \$2,021,453, and a total amount not to exceed \$20,221,453;**
 - 3) **Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements on behalf of the Commission; and**
 - 4) **Authorize the Executive Director or designee to approve the use of the contingency amount as may be required for the project.**

At this time, Vice Chair Speake rejoined the meeting and took over as the Chair.

9. AGREEMENT FOR SECURITY GUARD SERVICES AT COMMISSION OWNED COMMUTER RAIL STATIONS

Gary Ratliff, Facilities Administrator, presented the security guard services for the Commission owned Commuter Rail stations, highlighting the following areas:

- Displayed a map of the RCTC stations
- Security upgrades – CCTV digital, video storage, cameras (186), gates, fencing, and signage
- Security guard services – Observe station conditions, inform and assist patrons, patrol assigned areas, open and close stations, report safety hazards, and report crimes to law enforcement
- Security guard presence – Deter theft, break-ins, vandalism and graffiti; discourage unsafe activities at the station such as crossing the tracks, skateboarding on station premises, loitering, and encampments; saves on maintenance cost
- Procurement five-year agreement

Anne Mayer, Executive Director, explained this is a big dollar contract for security and the past couple of years have reinforced just how important the security effort is at the Commission owned stations. There has been an increasing number of incidents with greater severity and frequency and some significant activity at the stations leading to dangerous situations. She discussed an incident that occurred last month with a group of passengers getting off the beach train with alcohol that involved a Riverside Transit Agency (RTA) guard along with the Commission guards. She explained they are going to undertake ongoing security analyses at all the Commission owned stations and reminded the Commissioners that RCTC is the only member of the Metrolink system that owns all of their stations; all the other stations are owned by the city in which the station resides; which puts RCTC in a slightly different position. Staff is cognizant of the amount, but safety is becoming the top concern of their transit riders and there will be more discussions about this in the coming months. San Bernardino is looking at having San

Bernardino County Sheriff on all the trains that are running in San Bernardino County and Los Angeles County Sheriff ride the trains on the system on an intermittent basis.

In response to Commissioner Lorimore's clarification this dollar amount initially started in 2016 when the contract was at \$18 million which was for seven years, Gary Ratliff replied yes. In response to Commissioner Lorimore's question the new contract is for \$21 million for three years, Gary Ratliff replied the contract is for three years with two one-year options so the total amount would be \$22.5 million. Commissioner Lorimore stated the Commission originally contracted with Universal Protection Services, LP (Universal) and asked if the Commission just added the new stations as part of the contract. Mr. Ratliff replied that the Commission had just added the new stations. In response to Commissioner Lorimore's question if Universal is armed with pepper spray, Gary Ratliff replied yes. In response to Commissioner Lorimore's clarification the security is not licensed with firearms, Gary Ratliff replied no. Commissioner Lorimore stated in reading the news and hearing from his constituents there is a safety concern when riding rail and asked if RCTC has considered looking towards the sheriff's department about getting deputies at these stations. Mr. Ratliff replied they have started discussions with management about looking into that.

Commissioner Lorimore stated he realizes this is the lowest bid but aside from inflation there is a discrepancy between \$18 million for seven years and now \$22.5 million for five years and asked Gary Ratliff to expand on that. Mr. Ratliff replied when this contract went out almost nine months later, they knew the minimum wage rate for employment had just risen from \$12.00 per hour to \$15.00 per hour and the Commission is in an area where they have to pay their guards comparable to have good guards on staff and to retain their guards. He explained the change in salary is going to cost the Commission to keep people there otherwise they will lose them to other areas, and they all lose when that happens because of the revolving door of employees.

Commissioner Linda Krupa asked if this service is strictly exterior of the train itself and if there will be intercommunication between possible problems when getting off the train.

Gary Ratliff replied they work with law enforcement that is on the train and sometimes they have law enforcement park at the stations and at the West Corona Metrolink station and they have recently seen Los Angeles sheriff come into the station and park there. He stated they work with all the agencies and the Riverside Transit Agency (RTA) as well to support each other as much as they can.

Commissioner Krupa stated it is extremely important to get a heads up if there is the possibility of trouble getting off the train itself and then getting into the station. Gary Ratliff replied they are starting to have meetings with Metrolink security to just be involved and work out things so they can do their jobs better.

Commissioner Joseph Morabito explained this also relates to security as the Southern California Association of Governments (SCAG) had a conference out in the desert and one

of their vendors was encouraging rail support of mass transit and it comes down to security and safety. He stated Riverside County is pretty good compared to some of the areas in Southern California and even though gas costs a lot of money and it does take time in the car at some point it is probably a good investment to just spend the time and the money if the safety part is not there.

Commissioner Michael Vargas stated it was mentioned about looking at what San Bernardino is doing but also Metrolink is looking at the formation of their own police department, and suggested the Commission could be in talks with them and be included in that contract. Gary Ratliff replied they will reach out and make sure they are a part of that conversation.

Vice Chair Speake noted he read about the issues in Los Angeles, and they do not have ones that have approached that, but things could get there by not addressing those things.

M/S/C (Jeffries/Vargas) to:

- 1) Award Agreement No. 23-24-050-00 to Universal Protection Services, LP (Universal) for the provision of security services at the Commission owned Commuter Rail stations for a three-year term, and two one-year options to extend the agreement, in an amount of \$21,450,000, plus a contingency amount of \$1,072,500 for a total amount not to exceed \$22,522,500;**
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement, including option years, on behalf of the Commission; and**
- 3) Authorize the Executive Director or designee to approve contingency work up to the total not to exceed amount as required for these services.**

10. EXECUTIVE DIRECTOR REPORT

Anne Mayer announced:

- On June 27 she will be in Sacramento for a Senate Transportation Committee Hearing on AB 1385 (Garcia) and for the Senate Committee on Governance and Finance on July 5. That bill will have its last two hearings and noted there is a lot of budget conversation taking place as well.
- On June 28 she and Jillian Guizado, Planning and Programming Director will be at the California Transportation Commission (CTC) meeting as they are expecting the CTC to approve the staff recommendation for the \$44.5 million of SB 1 money for Mid County Parkway Segment 3, \$33.5 million for the Potrero Interchange on State Route 60 for the city of Beaumont, and the city of Riverside should also be receiving some money.

11. COMMISSIONER COMMENTS

There were no comments from the Commissioners.

12. ADJOURNMENT

There being no further business for consideration by the Western Riverside County Programs and Projects Committee, the meeting was at 1:53 p.m.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Lisa Mobley", with a long horizontal flourish extending to the right.

Lisa Mobley
Administrative Services Director/
Clerk of the Board

AGENDA ITEM 7

RIVERSIDE COUNTY TRANSPORTATION COMMISSION	
DATE:	August 28, 2023
TO:	Western Riverside County Programs and Projects Committee
FROM:	Erik Galloway, Project Delivery Director
THROUGH:	Anne Mayer, Executive Director
SUBJECT:	Agreements for Comprehensive Professional Services and Software as a Service with Transmax for the Interstate 15 SMART Freeway Pilot Project

STAFF RECOMMENDATION:

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Award Agreement No. 23-031-035-00 to Transmax Pty Ltd (Transmax) for comprehensive professional services for the Interstate 15 SMART Freeway Pilot Project (Project), in the amount of \$1,889,038 plus a contingency amount of \$283,356 for a total amount not to exceed \$2,172,394;
- 2) Award Agreement No. 23-031-034-00 to Transmax for Software as a Service (SaaS) for the Project in the amount \$2,510,237, plus a contingency amount of \$376,536 for a total amount not to exceed \$2,886,773;
- 3) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements on behalf of the Commission;
- 4) Authorize the Executive Director, or designee, to approve contingency work as may be required for the Project; and
- 5) Authorize the Executive Director or designee, pursuant to legal counsel review, to execute non-funding amendments to the agreements on behalf of the Commission.

BACKGROUND INFORMATION:

At the Annual Commission Workshop held on January 31, 2020, a presentation was provided about technology-based traffic management strategies, referred to as “SMART Freeways”. This meeting launched a feasibility study for a pilot project along the I-15 from the San Diego County line to Winchester Road in Temecula. The proposed pilot project would control traffic using a software called STREAMS, developed by an Australian company called Transmax.

Subsequently on September 28, 2020, Interstate 15 Corridor Ad Hoc Committee received an update on the project status which outlined the framework for the next steps after completion of the feasibility study.

At the May 12, 2021, Commission meeting, the Commission awarded Agreement No. 21-31-063-00 to WSP USA Inc. (WSP), to provide professional services for preliminary

engineering, environmental documents, final design, construction support, and operation support services for the Project. In addition, the Committee approved Agreement No. 21-31-059-00 with Caltrans to obtain State Highway Operation and Protection Program (SHOPP) Minor Funds contribution of \$1.2 million towards the Project's construction.

At the November 9, 2022, Commission meeting, the Commission approved the award of Agreement No. 22-31-098-00 to Anser Advisory for construction management services, materials testing, and construction surveying for the Project.

Project Scope

The scope of the Project is to add active traffic management strategies to the northbound direction of I-15 from the San Diego County line to Winchester Road in the city of Temecula. The integrated traffic management system was developed by the Victoria Department of Transport (VDOT) and implemented by Transmax in Australia and will be a first-of-kind approach in California. The system has been extensively used in Melbourne's Managed Motorway system and extends over 100 miles of freeway. The system and software to be utilized have been piloted in the United States between 2021 to 2022 on I-25 in Colorado as part of Colorado Department of Transportation (CDOT) SMART 25 project. In addition, Contra Costa Transportation Authority (CCTA) is developing a similar project on the I-680 called the Innovate 680 program. CCTA's program will utilize STREAMS software as well as other ITS Systems and elements utilized in Melbourne's Managed Motorway system.

The Project to be implemented on I-15 will include the following elements:

- Improvements to the northbound entrance ramps at Temecula Parkway and Rancho California Road, including pavement widening, barriers, and miscellaneous civil improvements; (civil improvements);
- Installation of an Intelligent Transportation System, which includes enhanced traffic detection devices consisting of traditional loop detectors, TIRTLs (The Infra-Red Traffic Logger) and Coordinated Adaptive Ramp Metering (CARM) at northbound Temecula Parkway, Rancho California Road, and Winchester Parkway (ITS improvements); and
- Implementation of the STREAMS software platform provided by Transmax to monitor and operate the CARM system during the two-year pilot period.

This pilot Project will construct the improvements and operate the system for two years. Regular monitoring reports will be prepared during the operations phase and presented to the Commission and Caltrans. The reports will compare the performance of the system to established criteria. The criteria that will be used in this assessment include travel time and savings, average speeds, traffic flow during peak periods, decrease in congestion time, ramp meter queue length and duration. At the end of the pilot period, the Commission, in partnership with Caltrans, will assess the data and reports to decide whether to continue operating the system after the pilot period.

During the pilot period, discussions will be held with Caltrans to identify funding and the necessary agreements to allow for the continued operation of the SMART freeway system if the results are positive and it is determined to continue the systems operation under Caltrans management.

Project Status

After the May 12, 2021, Commission meeting, RCTC staff and the consultant team commenced development of the environmental and design documents for the project. As of July 5, 2023, the 100 percent design submittal has been issued to Caltrans for review and approval. It is anticipated that the design and all necessary documents, approvals, and funding authorizations will allow for advertisement for construction by late 2023.

During project planning it was noted that the French Valley Parkway Project Phase II(FVPW) improvements would fall within the Project's footprint. The FVPW project has since been awarded and commenced construction. The Project team has coordinated the Project design with the FVPW team. As part of this coordination, it was determined that a modified design was necessary to address construction staging and modifications to the north bound I-15 by the FVPW project. This modified design for the Project was necessary to ensure the SMART freeway system could remain in operation during construction of the FVPW project. The modified design was developed by WSP and coordinated with the city of Temecula to be incorporated as part of the FVPW project.

In addition, two Caltrans Auxiliary Lane Projects were identified within the Project's footprint. The two projects are progressing through the environmental and design phases, and it is anticipated that they will enter construction prior to or during the 2-year pilot project phase. The Project's design team has been in coordination with Caltrans to ensure the auxiliary lane projects incorporate the Project's design and do not impede the systems operation during the pilot period.

As detailed in the agenda item for the April 26, 2021, Interstate 15 Corridor Ad Hoc Committee, the Commission will be required to enter into multiple agreements for this Project. Additional agreements have been identified and the table has been updated and lists all the agreements necessary to complete this project through the 2-year pilot period. In addition, the table summarizes changes in the costs of the agreements based on the issues encountered during the environmental and design phases, and agreement negotiations.

Required Agreements

Party	Scope	Amount Estimated (2021)	Amount (2023)	When (Commission Meeting)
WSP	Preliminary engineering, environmental, final design, construction support, and operations support	\$4,000,000	\$4,000,000	Completed (May 12, 2021)
	Amendment No. 2 - final design, construction support, and operations support	N/A	\$800,000 (estimated and under negotiation)	November 8, 2023
Caltrans	Financial contribution to the Project	(\$1,200,000)	(\$1,200,000)	Completed (May 12, 2021)
	Operations and maintenance	No cost	No cost	November 8, 2023
Transmax	Software license, configuration and support	\$2,950,000	Replaced with Two Agreements Below	
	Comprehensive Professional Services - Implementation Agreement		\$1,889,038+\$283,356(contingency) = \$2,172,394	September 13, 2023
	SAAS (Software License and Support)		\$2,510,237+\$376,536(contingency) = \$2,886,773	September 13, 2023
Consultant	ITS System Operator	Anticipated to be Included in Transmax	\$950,000	May 8, 2024
Contractor	Civil improvements	\$3,440,000	\$10,521,449+\$1,564,704 (contingency) = \$12,086,153	March 13, 2024
Contractor	ITS improvements	\$5,250,000		April 10, 2024
Anser	Construction management	\$1,630,000	\$2,072,210/\$207,221(contingency) = \$2,279,431	Completed (November 9, 2022)
Total Net Cost After Caltrans Contribution:		\$16,070,000	\$23,974,751	

A number of issues have occurred during the 2 years of project development resulting in the increase in the total project cost. It should be noted that the total project cost presented in 2021 was based on the feasibility study that included a preliminary cost estimate of what the project would cost as it was finalized and constructed. Some of the issues that occurred which impacted the total project cost include:

- Design was modified to incorporate FVPW project improvements;
- Additional coordination with Caltrans for the inclusion of the two Auxiliary Lane Projects;
- Additional unforeseen design efforts to implement a first-of-kind project and non-standard system within the Caltrans organization and highway system;
- Detailed negotiations with the ITS software consultant, Transmax, including addressing conflicts between US and Australian contract and legal standards;
- Updated Software licenses costs;
- Incorporation of lessons learned from the CDOT SMART-25 project;
- RCTC to contract with an ITS System Operator in lieu of Transmax operating the system remotely from Australia – lesson learned from Colorado DOT SMART-25 project;
- Updated construction and materials cost increases due to inflation;
- Additional efforts in development of an Operations and Maintenance Agreement with Caltrans due to non-standard project and due to it being a first of kind in the state;
- Increased contingency due to the unknowns in implementing a first of kind project that is non-standard within the Caltrans organization and highway system.

Staff will continue to work diligently on the issues and challenges presented by this type of project. Additionally, updates will be provided in the future commission items.

DISCUSSION:

Transmax Agreements

Transmax is the developer of the software, STREAMS, which will control, monitor, and adjust the CARM system. Transmax is a government-owned entity, ownership is held by Queensland Department of Transport and Main Roads, that developed and owns the STREAMS ITS platform. The Transmax agreements need to be executed prior to advertisement for construction to allow for configuration of the software and development of project specific ITS system drivers. The two agreements that are required for implementation of the STREAMS software are the following:

- Comprehensive Professional Service Agreement
- SaaS (Software as a Service), Software License Agreement

The comprehensive professional service agreement will cover the system design and implementation, configuration of the STREAMS software to be compatible with the project design, the development of custom software drivers for the ITS devices used by Caltrans, commissioning of the ITS system and support, supply of the field processors to integrate the ITS devices, algorithm tuning, and user training. These elements need to be implemented prior to and during construction and operations of the system during the pilot period.

The SaaS software license agreement covers the use and maintenance of the STREAMS software for the 2-year pilot period. The annual software license fee is not based on the size of a project but is an annual cost for the use of the software. As noted in the draft agreement, the 2nd year of the license agreement cost is higher than the first. This is due to the annual costs increase as a result of CPI changes and costs to provide the final system performance report.

Staff negotiated the scope, cost, and schedule proposals received from Transmax for the two agreements and established a fair and reasonable price. The proposed cost for the Comprehensive Professional Services Agreement No. 23-031-035-00 is \$1,889,038 plus a contingency of \$283,356 for a total amount not to exceed \$2,172,394. The proposed cost for the SaaS Software License Agreement No. 23-031-034-00 is \$2,510,237, plus a contingency amount of \$376,536 for a total amount not to exceed \$2,886,773.

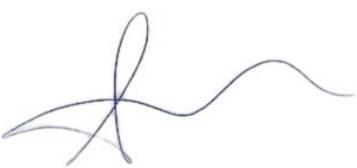
FISCAL IMPACT:

Funding Source Breakdown

	Item	Dollar Amount	Fund Source
1	Transmax - Comprehensive Professional Service Agreement	\$2,172,394	CMAQ
2	Transmax - SaaS (Software as a Service), Software License Agreement	\$2,886,773	CMAQ
	Total	\$5,059,167	

Expenditure Schedule

	Item	FY 2023/24	FY 2024/25+	GL/Project Accounting No.
1	Transmax - Comprehensive Professional Service Agreement	\$2,172,394	0	003051 81110 00000 0000 / 261 31 81101
2	Transmax - SaaS (Software as a Service), Software License Agreement	\$1,267,797	\$1,618,976	003051 81016 00000 0000 / 261 31 81002
	Total	\$3,440,191	\$1,618,976	

Financial Information					
In Fiscal Year Budget:	Yes	Year:	FY 2023/24 FY 2024/25+	Amount:	\$3,440,191 \$1,618,976
Source of Funds:	CMAQ			Budget Adjustment:	No
GL/Project Accounting No.:	003051 81110 00000 0000 / 261 31 81101 003051 81016 00000 0000 / 261 31 81002				
Fiscal Procedures Approved:				Date:	08/14/2023

Attachments:

- 1) Transmax Comprehensive Professional Services Draft Agreement No. 23-031-035-00
- 2) Draft Scope of Work for Comprehensive Professional Services Agreement
- 3) Transmax SaaS Draft Agreement No. 23-031-034-00

4) Draft Product Description for SaaS Agreement



COMPREHENSIVE PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made on [date]

BETWEEN:

[legal name of Customer] of [address]

("Customer")

AND

Transmax Pty Ltd (ABN 59 099 487 573) Level 5, 143 Coronation Drive, Milton, Queensland 4064, Australia
("Transmax")

The parties agree as follows:

1 OVERVIEW

1.1 Summary

- (a) Transmax agrees to provide the Services to the Customer in accordance with this Agreement.
- (b) This Agreement allows for the Customer's purchase of Services from Transmax as set forth in clause 3 below. To do this, the parties need to agree to one or more Statements of Work (SoW) that set out a package of work to be undertaken by Transmax.
- (c) The Services are for the Customer's Smart Freeway Project.

1.2 The Agreement

- (a) This Agreement includes these standard terms, the details set out in the Schedules, and any agreed Statements of Work.

1.3 Precedence

- (a) In the event of any inconsistency between the main body of this Agreement and the Schedules and any Statement of Work, the main body will prevail.

2 TERM

- (a) This Agreement commences on the Commencement Date and continues until the expiry of the Initial Term, unless terminated earlier in accordance with clause 9 or renewed under clause 2(b).
- (b) Prior to the expiry of the Initial Term, the Customer will have the option to extend the Agreement for the Renewal Term by providing Transmax with no less than 14 days' written notice prior to the expiry of the Initial Term.
- (c) Each Statement of Work may have a term. The term for a Statement of Work may extend beyond the Term. If that occurs, this Agreement continues to apply to that Statement of Work.
- (d) Customer shall have the right, in its sole discretion, to novate this Agreement to the California Department of Transportation ("Caltrans") for the Renewal Term. In the event that Transmax is required to undertake additional work because of the novation or to comply with Caltrans' policies and procedures, Transmax can reprice as part of the novation process.

3 SERVICES AND DELIVERABLES

3.1 Statement of Work

- (a) Transmax will perform the Services and provide the Deliverables in accordance with the descriptions, specifications, fees and delivery schedule set forth in a Statement of Work, or otherwise agreed in writing between the parties.
- (b) Statements of Work will be in substantially the same format as the attached Schedule 2.
- (c) Each signed Statement of Work will constitute a separate contract for the performance of those Services which is subject to the terms of this Agreement.
- (d) To be valid, a Statement of Work must be agreed and signed by both parties.
- (e) Each draft or agreed Statement of Work may contain Confidential Information of Transmax. Transmax shall mark as confidential any portion(s) of the Statement of Work that it believes is not subject to disclosure under the California Public Records Act and, upon request from RCTC, shall provide a legal basis for withholding of such portion(s) of the Statement of Work. RCTC shall endeavour to hold such information confidential pursuant to the terms of this Agreement.
- (f) The parties may agree to additional conditions that apply to all Statements of Work. These additional conditions are set out in Schedule 1.

3.2 Services

- (a) Transmax will provide the Services in a professional manner and in accordance with good industry practice.
- (b) The parties will consult and cooperate to coordinate the Services with the activities of the Customer's employees and other representatives.
- (c) Transmax will perform the Services in an efficient and expeditious manner and will ensure that all persons performing any Services are properly trained, qualified and experienced to perform the Services.
- (d) Upon the Customer's reasonable request, Transmax will remove any person that the Customer determines to be unsuitable, unqualified or otherwise objectionable from performing the Services.
- (e) In providing the Services, Transmax will comply with all relevant Laws.

3.3 Key Personnel

- (a) Each Statement of Work may specify Key Personnel.
- (b) Transmax will ensure that the Key Personnel (if applicable) are actively involved in the provision of the Services in accordance with the relevant Statement of Work. If any Key Personnel leaves Transmax or ceases to be involved in the provision of the Services for any reason, Transmax will promptly consult with the Customer and, subject to the Customer's prior written approval, appoint a suitable replacement who has comparable skills, qualifications and experience.

3.4 Customer Materials

- (a) Each Statement of Work may specify Customer Materials that the Customer must provide to Transmax for the purposes of performing the Services.
- (b) The Customer must provide the Customer Materials to Transmax as and when specified in the Statement of Work.

3.5 The Deliverables

- (a) Each Statement of Work will specify any Deliverables to be provided by Transmax to the Customer as part of the Services.
- (b) Transmax will ensure that the Deliverables are free from defects, of high quality, are not second-hand or used, and will operate correctly and in accordance with the specifications and requirements in a Statement of Work.
- (c) If the Deliverables include software, Transmax will not include in the Deliverables:
 - (i) any third party code or third party intellectual property without the Customer's prior written consent, and without obtaining all necessary rights and licenses from such third party to allow Customer's use of the third party code or intellectual property throughout the Term or
 - (ii) any viruses, timebombs, lockups or backdoors.
- (d) If the Deliverables include equipment, hardware or software, Transmax will, upon request by the Customer, provide the Customer with any documentation reasonably required to use and maintain the Deliverables.
- (e) The Deliverables must not be defamatory, derogatory towards any person, obscene or otherwise offensive.

3.6 Cooperation

- (a) Transmax will act in a professional and cooperative manner when dealing with the Customer.
- (b) The parties will always act reasonably and in good faith when dealing with each other.
- (c) If Transmax is required by the Customer to work with other suppliers or contractors of the Customer, Transmax will act cooperatively and in a friendly manner when doing so.
- (d) If Transmax attends the Customer's premises or sites, Transmax must comply with the Customer's relevant policies and directions known or made known to Transmax.
- (e) The Customer agrees to prepare for and attend scheduled or agreed meetings, and actively participate in such meetings as required. The Customer's Personnel who attend such meetings must be knowledgeable about the issues relevant to the Customer that are agenda items for such meetings.
- (f) Where the Customer is required to review or approve a document, Deliverable or other item, the Customer must do so promptly and if required must provide detailed and considered feedback to Transmax.

3.7 Timeframes

- (a) Each Statement of Work may specify timeframes, such as a delivery schedule or milestones, for the performance of the Services.

- (b) Transmax will supply the Services and deliver the Deliverables to meet any timeframes set out in each Statement of Work.
- (c) If a Statement of Work does not set forth a delivery schedule or milestones for the performance of the Services, then Transmax will perform such Services with reasonable due diligence under the circumstances.
- (d) If Transmax believes that Transmax will be late or is late in meeting the timeframes in a Statement of Work, Transmax will notify the Customer as soon as reasonably practical.
- (e) If Transmax requires the Customer to provide anything to Transmax or to do anything so that Transmax can provide the Services, then the Customer's obligations to do so are set out in the Statement of Work and the Customer must fulfil these obligations. The Customer cannot make any claim against Transmax, including for failure to meet any timeframes, if the Customer does not fulfil its obligations or fails to provide any Customer Materials as required by a Statement of Work.

3.8 Reports and Review Meetings

- (a) Transmax will prepare and furnish reports to the Customer, upon request or as otherwise required by a Statement of Work, concerning Transmax's progress of the Services and any Deliverables.
- (b) Transmax will provide the progress reports in the form and with the content reasonably requested by the Customer.
- (c) The parties shall meet at regular intervals as set out in the Statement of Work, or as reasonably requested by the Customer to review the status and provision of the Services and Deliverables. These meetings may take place using electronic conferencing technology.

3.9 Changes to Services

- (a) The Customer may from time-to-time request changes to the Services by issuing a Change Order Request. Transmax will promptly respond in writing to any Change Order Request, stating how the proposed modifications to the Services will affect the time or materials required for Transmax to perform the Services, as well as any change of price.
- (b) If the Customer agrees in writing to such response from Transmax, the parties will prepare and execute a Change Order in substantially the format of the attached Schedule 3 which incorporates the agreed-upon revisions to the Services and Fees.

3.10 Acceptance

- (a) Acceptance of a Deliverable will be determined in accordance with the procedure set forth in the applicable Statement of Work.
- (b) If no acceptance procedure is specified in the Statement of Work, then acceptance will occur upon the first of following to occur: (I) the Customer's written notice of acceptance (which notice may be an e-mail notice to Transmax); or (II) within 30 business days after delivery of the Deliverable, provided that the Customer has not issued a notice of rejection of the Deliverable in that time frame.
- (c) The Customer may issue a notice of non-acceptance of a Deliverable by sending an email to Transmax setting out, in detail, why the Deliverable is rejected.
- (d) Within 30 days (or such other mutually agreed timeframe) after receiving notice of non-acceptance, Transmax will, at its own expense, repair or replace, any Deliverable not accepted by the Customer.

3.11 Location

- (a) The Customer acknowledges that, unless explicitly set out in a Statement of Work, the Services may be provided from Australia.
- (b) Unless explicitly set out in a Statement of Work, there is no requirement for Transmax's Personnel, including Key Personnel to reside in or work from the United States.

4 INTELLECTUAL PROPERTY

- (a) Unless explicitly stated to the contrary in a Statement of Work, Transmax will own all Intellectual Property Rights in the Deliverables. This includes Intellectual Property Rights in any documentation, reports, computer code, characters, artwork, logos and branding, and the look & feel of the Deliverables.
- (b) In furtherance of (a) above, Transmax hereby grants a perpetual, worldwide, non-transferrable, personal, non-sublicensable, royalty-free license to Customer to use and copy the Deliverables for the Customer's operations of the Deliverable. This license does not cover any software or computer code, which must be separately licensed from Transmax.
- (c) All right, title and interest in and to any specifications, designs or other information supplied by the Customer to Transmax, including but not limited to the Customer Materials, and any modifications thereto whether made by Transmax or by the Customer, remain the property of the Customer.
- (d) Transmax acknowledges and agrees that the Customer owns all rights, title and interests (including Intellectual Property Rights) in the materials provided by the Customer to Transmax as set out in (c). The Customer represents that the Customer has the right to supply such materials to Transmax.
- (e) The Customer hereby grants a worldwide, non-transferrable, personal, non-sublicensable, royalty-free license to Transmax to use and copy the materials set out in (c) for the purposes of providing the Services and Deliverables and, if applicable, to enhance and implement into Transmax's software or computer code (including providing and licensing such software and computer code to other customers and users).
- (f) Transmax will not infringe any Intellectual Property Rights when performing the Services or in creating the Deliverables.
- (g) Transmax warrants that the Customer's use of the Deliverables will not infringe any Intellectual Property Rights in the United States.
- (h) Transmax indemnifies the Customer against any liability (including liability for reasonable legal costs) based on a claim that use of the Deliverables in the United States is an infringement of the Intellectual Property Rights of any third person.
- (i) As a condition of reimbursement under the indemnity in paragraph (h) above, the Customer must notify Transmax of a claim as soon as practical, keep Transmax informed of all material aspects of the claim of which the Customer is aware, and follow all reasonable directions of Transmax relating to the claim. The Customer must not settle or compromise the claim, or take any steps in relation to the claim that may prejudice Transmax in any way without Transmax's prior consent. The Customer must, at Transmax's cost, provide all cooperation and assistance reasonably requested by Transmax in defending or otherwise addressing any claim. If Transmax requests, Transmax will conduct the defence of the claim at Transmax's expense.
- (j) If a party becomes aware that any Deliverables are, or are threatened to become subject to any injunction, or are determined to be infringing of any rights, that party must notify the other party. If so, Transmax has the option to (I) procure for the Customer the right to continue use of the

Deliverables (or any portion thereof) as contemplated under this Agreement or (II) replace or modify the Deliverables (or any portion thereof) such that they are non-infringing, provided that the replacement or modification is equivalent in function and meets the requirements and specifications of this Agreement to the Customer's satisfaction. If (I) or (II) are not available to Transmax, Transmax has the right to terminate the relevant Statement of Work, or require the Customer to cease use of and return the relevant Deliverable. When Customer so complies, Transmax will then refund to the Customer all amounts paid for such Deliverable.

- (k) Transmax has no right to use the Customer's trademarks or brands unless explicitly provided for in a separate trademark licence agreement or in a Statement of Work.
- (l) If Customer provides or discloses ideas, concepts, improvements or knowhow to Transmax relating to Transmax's software or computer code, then notwithstanding the foregoing, Transmax will own all such ideas, concepts, improvements and knowhow, and the Customer hereby assigns all Intellectual Property Rights therein to Transmax.

5 FEES, PAYMENT AND TAXES

5.1 Fees and Payment

- (a) The Customer must pay the Fees set out in each invoice within 28 days of receipt, in accordance with this clause 5.
- (b) The Fees must be paid by the Customer to Transmax in U.S. dollars, by electronic bank transfer or wire transfer into Transmax's Australian bank account in U.S. dollars.
- (c) If the currency exchange rate between the US dollar and Australian dollar, where the current rate is 1 US Dollar = 1.47 Australian dollar, varies by more than 5% for a period of no less than 3 months, either party may seek to adjust the pricing to reflect the change in the currency exchange rate. The exchange rate information used to inform this decision will be sourced from the US Federal Reserve Federal Reserve Board - Foreign Exchange Rates - Country Data - H.10. (<https://www.federalreserve.gov/releases/h10/hist/>). The intent of this section is to adjust for the value of U.S. dollar pricing in Australian dollars such that, through the term of this Agreement, Transmax will generally receive the same number of Australian dollars after conversion.
- (d) Transmax may only issue invoices to the Customer in accordance with the terms of this Agreement and in accordance with any timeframes for invoicing or payment set out in a Statement of Work. Invoices shall be in such form and contain such information as reasonably required by Customer.
- (e) The total amount to be paid by Customer under this Agreement shall not exceed [REDACTED], unless approved in writing by Customer's Executive Director.
- (f) If a Statement of Work specifies that a Deliverable is subject to acceptance testing by the Customer, Transmax may only invoice for that Deliverable once it has been accepted by the Customer.
- (g) The Customer may dispute an invoice. If so, the Customer may withhold payment of the amount in dispute until the dispute is resolved but must pay the undisputed portion of the invoice on time.
- (h) If an invoice is disputed, the parties will work together to resolve such dispute in good faith and where applicable, Transmax will submit a revised invoice to the Customer.
- (i) The parties have no right of set-off against each other.
- (j) The Customer will only reimburse expenses that are set out in the Statement of Work as reimbursable expenses.

5.2 Taxes

- (a) The Fees exclude any taxes or duties payable in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties are payable by Transmax, the Customer must pay to Transmax the amount of such taxes or duties in addition to any fees owed under this Agreement.
- (b) Notwithstanding the foregoing, if the Customer has obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed, the Customer may provide Transmax with such exemption information, and Transmax will use reasonable efforts to provide the Customer with invoicing documents designed to enable the Customer to obtain a refund or credit from the relevant revenue authority, if such a refund or credit is available.
- (c) The Customer will pay all fees net of any applicable withholding taxes. The parties will work together to avoid any withholding tax if exemptions, or a reduced treaty withholding rate, are available. If Transmax qualifies for a tax exemption, or a reduced treaty withholding rate, Transmax will provide the Customer with reasonable documentary proof. The Customer will provide Transmax reasonable evidence that the Customer has paid the relevant authority for the sum withheld or deducted.
- (d) Transmax notified the Customer of THE DOUBLE TAXATION TAXES ON INCOME CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND AUSTRALIA, available at <https://www.irs.gov/pub/irs-trty/aus.pdf>.

6 CONFIDENTIALITY

- (a) Each party agrees to keep strictly confidential, and not to disclose, the Confidential Information of the other party.
- (b) Each party agrees to use the Confidential Information of the other party solely to carry out its obligations or receive the benefits of this Agreement.
- (c) Notwithstanding the foregoing, a party may disclose Confidential Information of the other party:
 - (i) to its legal advisors, accountants, auditors on a confidential need-to-know basis;
 - (ii) to its employees and contractors on a confidential need-to-know basis;
 - (iii) in enforcing this Agreement or in a proceeding arising out of or in connection with this Agreement; or
 - (iv) to the extent required by Law including, but not limited to, the California Public Records Act (“CPRA”) or pursuant to a binding order of a government agency or court.
- (d) Subject to clause 6(e) below, the Customer must not disclose specific confidential information contained in this Agreement and marked as confidential, to anyone other than to the Customer’s legal advisors, accountants and auditors on a confidential basis. Transmax acknowledges that Customer is subject to the CPRA. Transmax acknowledges that the entirety of this Agreement is not exempt from disclosure under the CPRA. If Customer receives a CPRA request, Transmax shall provide in writing to Customer a valid legal basis under the CPRA for nondisclosure of any portion of the Agreement marked as confidential.
- (e) In addition to the above, the following shall apply to any withholding by Customer of Transmax Confidential Information:

- (i) Transmax, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the withholding from disclosure under the CPRA by Customer at Transmax's request of any Transmax Confidential Information.
- (ii) Transmax shall indemnify and hold Customer harmless from all costs and expenses, including attorney's fees in connection with any such action; and
- (iii) Customer shall have no liability to Transmax for disclosing any records in compliance with its requirements under the CPRA.

7 PRIVACY AND SECURITY

- (a) Each party must comply with all applicable Privacy Laws in respect of Personal Information that:
 - (i) one party discloses to the other party; or
 - (ii) comes into the possession or control of that party arising out of or in relation to the performance of this Agreement.
- (b) The Customer must not provide Personal Information to Transmax.
- (c) Transmax must not, directly or indirectly, collect, store or use Personal Information of the Customer's staff or its customers.
- (d) Transmax must comply with all reasonable directions of the Customer regarding privacy and security. If there are extra costs to Transmax in doing so, Transmax will notify the Customer and the Customer must pay the extra costs.
- (e) Notwithstanding the foregoing, Transmax may identify the Customer as a customer of Transmax including in marketing and promotional materials. In bids for new work, Transmax may use the Customer as a reference site but will inform the Customer prior to doing so.

8 FORCE MAJEURE

- (a) Subject to the requirement to give notice under this clause, if the performance by any party (Affected Party) of all or any of its obligations under this Agreement is prevented or delayed (in whole or in part) due to any Force Majeure Event, this Agreement will continue and remain in effect but the Affected Party will not be in breach of this Agreement for that reason only, and the Affected Party will be granted a reasonable extension of time to complete performance of its affected obligations.
- (b) The Affected Party must promptly, not to exceed twenty-one (21) days, after becoming aware of a Force Majeure Event, give written notice to the other party of the nature of the Force Majeure Event and the way and the extent to which its obligations are prevented or delayed and notify the other party of any material change in these matters and use its reasonable endeavours to limit the effects of the Force Majeure Event, and promptly carry out its obligations as soon as, and to the extent that, it is able to do so.

9 TERMINATION

- (a) Either party may terminate this Agreement or any individual Statement of Work with immediate effect by giving written notice to the other party at any time if:
 - (i) the other party experiences an Insolvency Event; or
 - (ii) the other party breaches any material provision of this Agreement which is incapable of being remedied, or where the breach is capable of being remedied, fails to remedy the breach within 21 days after receiving written notice from the terminating party requiring it to do so.

- (b) The Customer may terminate this Agreement or any individual Statement of Work on 90 days' written notice for any reason and without cause. If the Customer does so, the Customer must pay Transmax for all work done by Transmax up until the end of that 90-day period.
- (c) The Customer may not suspend work on the Services without Transmax's written consent. Transmax may suspend provisions of the Services if the Customer is overdue on payment of Fees by more than 14 days.
- (d) If at the expiration or termination of this Agreement there is an outstanding Statement of Work that has not been completed, this Agreement will remain in effect until such Statement of Work has expired or been terminated as provided for in this Agreement or all Deliverables have been accepted.
- (e) Following any termination or expiration of this Agreement or individual Statement(s) of Work, Transmax will not be obligated to continue performing any terminated Services, and the Customer must pay to Transmax all undisputed Fees for terminated Services completed prior to termination. Upon request, each party shall return any Confidential Information or property of the other party.
- (f) Following any termination or expiration of this Agreement, at the Customer's request, Transmax will make its staff reasonably available to assist with any transition of the Services on mutually agreeable hourly rates.

10 WARRANTIES

Each party warrants that it:

- (a) has the authority to enter into and perform its obligations under this Agreement and that this Agreement has been duly executed and is a legal, valid and binding Agreement;
- (b) will comply at all times with applicable Laws; and
- (c) will not do anything or make any statement that could be reasonably expected to harm the reputation of the other party.

11 TRANSMAX WARRANTIES

(a) Transmax warrants that:

- (i) Transmax has all applicable licenses, permits and authorisations required to perform its obligations in accordance with this Agreement; and
- (ii) the use by the Customer of any Deliverables will not infringe the rights (including Intellectual Property Rights) of any other person in the United States; and
- (iii) the Deliverables will be free from defects and will materially conform to the descriptions and specifications set forth in the applicable Statement of Work and to any relevant published descriptions and specifications in effect on the date the Deliverables are delivered; and
- (iv) the media containing the Deliverables will be free from physical defects; and
- (v) Transmax will implement security procedures that Transmax considers to be appropriate and that comply with industry best practice to identify reasonably foreseeable risks to security and unauthorized access to the software and to minimize security risks, including through risk assessment and regular testing. Transmax will designate one or more employees to coordinate and be accountable for the security procedures.

- (b) Transmax acknowledges that the Customer has entered into this Agreement in reliance on the warranties in detailed in this clause.

12 INDEMNIFICATION; DISCLAIMER AND LIMITATIONS ON LIABILITY

- (a) Transmax shall indemnify and defend the Customer and its subcontractors and personnel against Losses reasonably sustained or incurred by the Customer as a result of any third-party claim for a cause of action, liability, claim, proceeding, suit or demand arising out of or in connection with any wilful misconduct or unlawful or fraudulent act or omission of Transmax in performance of the Services or relating to this Agreement. In addition, the foregoing indemnification and defense obligation shall also apply to any negligence of Transmax in performance of the Services or this Agreement, but such obligation shall be limited to the extent covered by insurance.
- (b) THE SERVICE ARE PROVIDED “AS IS.” EXCEPT TO THE EXTENT PROHIBITED BY LAW, OR TO THE EXTENT ANY STATUTORY RIGHTS APPLY THAT CANNOT BE EXCLUDED, LIMITED OR WAIVED, OR TO THE EXTENT EXPRESSLY SET OUT IN THIS AGREEMENT, TRANSMAX (A) MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICES, AND (B) DISCLAIMS ALL WARRANTIES, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES (I) OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR QUIET ENJOYMENT, (II) ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE, (III) THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, AND (IV) THAT ANY CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR ALTERED.
- (c) Except to the extent prohibited by Law, neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party whether in contract, tort (including negligence) or otherwise in connection with the Agreement, even if a party has been advised of or is aware of the possibility of such damage.
- (d) Subject to clause 12(e), except to the extent prohibited by Law, the maximum liability of one party to the other party, whether in contract, tort (including negligence) or otherwise in connection with the Agreement (including under an indemnity), is limited to an amount equal to the Fees paid or to be paid by the Customer to Transmax under this Agreement.
- (e) The exclusions and limitations of liability in clauses 12(d) do not apply to liability in relation to:
 - (i) personal injury, including sickness and death;
 - (ii) loss of, or damage to, tangible property;
 - (iii) an infringement of Intellectual Property Rights;
 - (iv) a third party claim that is covered by clause 12(a);
 - (v) any fraudulent act or omission;
 - (vi) any breach of any obligation under clause 6; or
 - (vii) any obligation to pay Fees to Transmax.
- (f) The parties agree that the waivers and limitations specified in this clause 12 apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.
- (g) A party who suffers loss or damage must use reasonable steps to mitigate its loss. The other party will not be responsible for any loss, damage or expenses to the extent that the injured party could have avoided or reduced the amount of the loss, damage or expense, by taking reasonable steps to mitigate its loss.

- (h) Transmax's liability under this Agreement will be reduced proportionally to the extent to which any loss was caused or contributed to by any negligence or wilful misconduct of the Customer or its employees or agents.
- (i) Except as otherwise expressly set forth in this Agreement, and except to the extent prohibited by Law, Transmax excludes liability to the Customer whether in contract, tort (including negligence) or otherwise in connection with the Agreement (including under an indemnity) for:
 - (i) the way the Customer and its Personnel use any software provided by Transmax or for the safety of road users; or
 - (ii) personal injury, death or property damage arising from or related to the failed use, misuse, non-operation or incorrect operation by the Customer of any software provided by Transmax or because of any advice given by Transmax; or
 - (iii) claims made by third parties against the Customer for, relating to or because of the failed use, misuse, non-operation or incorrect operation by the Customer of any software provided by Transmax or because of any advice given by Transmax.

The foregoing exclusion shall not apply to liability that arises from a third-party claim covered by clause 12(a).

13 RECORDS AND AUDIT

- (a) During the Term and for a period of one year thereafter, Transmax will keep all usual and proper records related to the Services and this Agreement including but not limited to details of all time spent by Transmax personnel in providing the Services, payments to third parties and all supporting receipts and other documentation.
- (b) The Customer, Caltrans and the U.S. Federal Highway Administration ("FHWA") may, upon seven days' notice, audit Transmax's records and consult with Transmax's accountants for the purpose of verifying Transmax's compliance with the terms of this Agreement, provided that any such audits must be conducted during normal business hours in such a manner as to not unreasonably interfere with the normal business operations of Transmax. Transmax shall provide remote access to records relevant to the audit and reasonably requested by the Customer, as necessary, for Customer, Caltrans and FHWA to exercise its rights under this clause.
- (c) Transmax agrees to promptly correct any deficiencies detected in the audit and will promptly refund any overpayments disclosed by such an audit.

14 INSURANCE COVERAGE

- (a) Transmax warrants that it will maintain sufficient insurance coverage to enable it to meet its obligations created by this Agreement and by law.
- (b) Without limiting the foregoing, to the extent this Agreement creates exposure generally covered by the following insurance policies, Transmax will maintain at its sole cost and expense at least the following insurance covering its obligations under this Agreement:
 - (i) Public & Products Liability at limits no less than A\$20 million in aggregate;
 - (ii) Workers' Compensation, as required by law;
 - (iii) Technical Professional Indemnity insurance at limits no less than A\$5 million in aggregate;
 - (iv) Cyber liability at limits no less than A\$1 million in aggregate.

- (c) Transmax will use reasonable commercial endeavours to have the Customer noted on the relevant insurance policies listed above (other than Workers' Compensation).

15 ANTI-BRIBERY AND CORRUPTION

Each party represents to the other that neither it, nor any of its representatives have been induced to enter into this Agreement or a Statement of Work, or to cause this Agreement or a Statement of Work to be entered into, as a result of any illegitimate gift, consideration or other benefit paid by a person to any other person.

16 CONFLICTS OF INTEREST

Each party must take appropriate steps to ensure that Transmax is not placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of Transmax and the duties owed to the Customer under the provisions of the Agreement. Transmax will disclose to the Customer full particulars of any such conflict of interest which may arise.

17 ACCESS TO CUSTOMER IT SYSTEMS

- (a) The Customer may provide Transmax with access to and use of its information technology systems, including development, test and production environments ("IT Systems") to enable Transmax to provide the Services.
- (b) If Transmax is granted such access and use, Transmax must:
 - (i) access and use only the part of the IT Systems for which it is specifically authorised and no other part of the Customer's computer systems;
 - (ii) access and use the IT Systems only to perform its obligations under this Agreement and not for any other purpose; and
 - (iii) comply with any policies notified to it by the Customer from time to time.
- (c) If Transmax is granted such access and use, Transmax must not:
 - (i) use the IT Systems directly or indirectly for any activity or transmit any information or material unlawfully or which is obscene, indecent, uses offensive language, defames or offends any person;
 - (ii) tamper with, hinder the operation of or make unauthorised modifications to the IT Systems;
 - (iii) copy or collect in any way any data from the IT Systems, other than as necessary to perform its obligations under this Agreement;
 - (iv) knowingly, recklessly or negligently transmit any virus or other disabling feature to or from the IT Systems;
 - (v) remove, disable or modify any security, antivirus or other software in the IT Systems;
 - (vi) damage any of the Customer's hardware; or
 - (vii) upload anything onto the IT Systems without the Customer's prior approval.
- (d) Transmax agrees that the Customer may monitor Transmax's activities in performing its obligations under this clause, including by computer surveillance.

18 ASSIGNMENT, SUBCONTRACTING AND NON-SOLICITATION

- (a) Transmax must not assign or novate, directly or indirectly, any of its rights or obligations under this Agreement without the prior written consent of the Customer, except that Transmax may assign this

Agreement in connection with the sale or reorganisation of all or part of Transmax's business, or due to a machinery of government change.

- (b) Transmax must not subcontract or delegate any of its obligations under this Agreement unless explicitly allowed in a Statement of Work.
- (c) Transmax is an independent contractor for the Customer, and nothing in this Agreement is intended to create or shall be construed as creating an employer-employee relationship or a partnership, agency, joint venture, or franchise.
- (d) Transmax acknowledges that it is not authorised to make any contract, agreement or warranty on behalf of the Customer.
- (e) The Customer acknowledges that it is not authorised to make any contract, agreement or warranty on behalf of Transmax.
- (f) During the period commencing on the Commencement Date and ending one year following the end of the Term, neither party must not, without the other party's prior written consent, directly or indirectly; (i) solicit or encourage any person to leave the employment or other service of the other party; or (ii) hire any person who has left the employment within the one year period following the termination of that person's employment with the other party.

19 SURVIVAL

Without limiting any other provision of this agreement, clauses 4, 6, 7 and 12 survive termination or expiry of this Agreement for any reason.

20 REPRESENTATIVES

Schedule 1 sets out the representatives of each party for the purposes of this Agreement. These representatives will be the first point of contact between the parties in relation to any matter relevant to the Agreement. The contact details of each representative may be updated from time to time by the party that appointed the relevant representative by notice in writing to the other party.

21 NOTICES

Any notice, demand, consent or other communication (a Notice) given or made under this Agreement:

- (a) must be in writing and signed by the representative or a person duly authorised by the representative;
- (b) must be addressed and delivered to the intended recipient by prepaid air courier or by hand or email to the address or email address of the representative of the party as specified in Schedule 1, or as last notified by the intended recipient to the representative; and
- (c) will be conclusively taken to be duly given or made when delivered, received or left at the above address, or received at the above email address, provided that for email notice to be effective, the email must be copied to the Customer's secondary contact, as identified in Schedule 1. If delivery or receipt occurs on a day that is not a business day in the place to which the Notice is sent or is later than 4pm (local time) at that place, it will be conclusively taken to have been duly given or made at the commencement of business on the next business day in that place.

22 DISPUTE RESOLUTION

- (a) If a dispute arises out of or in relation to this Agreement, either party may notify the other in writing in which case the nominated representative of each affected party must promptly attempt in good faith to resolve the dispute. If the parties are unable to resolve the dispute within seven days of the written notification referred to in this clause, each party must promptly refer the dispute for

resolution to one of the Managing Director, Chief Executive or Chief Operating Officer (Senior Executive) of that party.

- (b) If the parties are unable to resolve the dispute within 21 days following referral to the Senior Executive of the relevant parties, then the dispute must be resolved by arbitration in accordance with clause (c).
- (c) Any dispute, controversy or claim arising under, out of or relating to this Agreement (including any Statement of Work) and any subsequent amendments of this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, must be referred to and finally determined by arbitration in accordance with the International Chamber Of Commerce (ICC) Rules of Arbitration. The arbitral tribunal shall consist of a sole arbitrator. The Parties agree that arbitration shall be held virtually. The language to be used in the arbitral proceedings shall be English. The dispute, controversy or claim shall be decided in accordance with the law applicable in the federal and state courts of California in the United States, without regard to any conflict of law principles.
- (d) Nothing in this clause 22, shall prevent a party from seeking urgent injunctive relief before an appropriate court.

23 GENERAL

- (a) This Agreement contains the entire agreement between the parties with respect to its subject matter.
- (b) Unless otherwise specifically provided in the applicable Statement of Work nothing herein shall be construed as creating a minimum commitment for business on the part of the Customer to Transmax.
- (c) This Agreement may only be amended by written agreement executed by all the parties.
- (d) No failure to exercise or delay in exercising any right, power or remedy under this Agreement operates as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (e) The rights, powers and remedies provided to a party in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or any agreement.
- (f) Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.
- (g) Any claim for breach of contract or breach of warranty must be notified to the other party within 90 days of the breach occurring, and any lawsuit relating to such breach must be filed within 1 year of the breach occurring.
- (h) Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.
- (i) This Agreement and, to the extent permitted by law, all related matters including non-contractual matters, is governed by the laws of the State of California. In relation to such matters each party irrevocably accepts the exclusive jurisdiction of the Federal and State courts within the State of California and waives any right to object to the venue on any grounds.

- (j) This Agreement may be executed in any number of counterparts. All counterparts will be taken to constitute one agreement.

24 DEFINITIONS AND INTERPRETATION

24.1 DEFINITIONS

The following definitions apply unless the context requires otherwise.

Change Order Request is a request in writing by the Customer for a change to the Services provided under a Statement of Work, which may include additional services as outlined in Schedule 3.

Commencement Date is defined in Schedule 1.

Confidential Information means all non-public business or technical information, in any form whether tangible or not, disclosed or communicated by a party to the other, or learnt or accessed by, or to which the other party is exposed as a result of entering into this Agreement.

Confidential Information does not include information which party can demonstrate by written records was:

- (a) already known to that party;
- (b) received by that party from a third party not under a duty of confidence; or
- (c) independently developed by that party by people who did not have access to the Confidential Information of the other party.

Consequential Loss means any indirect or consequential Loss, including any loss of profits, loss of revenue, loss of or damage to data, loss of contract value, loss of anticipated savings, loss of opportunity, and loss of reputation or goodwill.

Deliverables are any works, reports, materials or items that Transmax is required by this Agreement to provide to Customer, including those deliverables specified in a Statement of Work.

Fees means the fees and expenses set out in a Statement of Work.

Force Majeure Event affecting a party means a circumstance beyond the reasonable control of that party causing that party to be unable to observe or perform on time an obligation under this Agreement, including acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, revolution and acts of war and war, general strikes (other than of its own staff), embargo, pandemic, or power, water and other utility shortage.

Initial Term means the initial term set out in Schedule 1.

An Insolvency Event occurs in respect of a person where:

- (a) the person ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of all or a substantial part of its assets;
- (b) upon the institution against the person of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of the person's debts;
- (c) upon the person making an assignment for the benefit of creditors;
- (d) upon the person's dissolution; or
- (e) any analogous or comparable event takes place in any jurisdiction.

Intellectual Property Rights means all industrial and intellectual property rights of any kind including but not limited to copyrights (including rights in computer software), trademarks, service marks, designs, patents, trade secrets, semi-conductor or circuit layout rights, trade, business, domain or company names, rights in

Confidential Information, know-how and other proprietary rights (whether or not any of these are registered and including any application, or right to apply, for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these, which may subsist anywhere in the world, but excludes moral rights, and similar personal rights, which by law are non-assignable.

Law means all applicable laws including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by laws, rules, regulatory principles, requirements and determinations, mandatory codes of conduct and standards, writs, orders, injunctions and judgments, and includes any Privacy Laws of the United States.

Loss means any claim, loss, damage, liability, cost, charge or expense (including legal expenses on a full indemnity basis), however arising, and whether present or future, fixed or unascertained, actual or contingent.

Personal Information means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.

Personnel means, in respect of a person, any officer, employee, contractor, servant, agent, or other person under the person's direct or indirect control and includes any subcontractors.

Privacy Laws means any international, national, federal, provincial, state, or local law, code, rule or regulation that regulates the processing of Personal Information in any way, including data protection laws, laws regulating marketing communications or electronic communications, information security regulations and security breach notification rules.

Related Body Corporate has the meaning given to that term in section 9 of the Corporations Act.

Renewal Term means the periods for which the Term shall successively renew, as set out in Schedule 1.

Services are specified in each Statement of Work.

Term means the period from the Commencement Date until the end of the Initial Term or any applicable Renewal Term.

24.2 INTERPRETATION

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) the singular includes the plural and conversely;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to a person includes any body corporate, unincorporated body or other entity and conversely;
- (d) a reference to any party to this Agreement or any other agreement or document includes the party's successors and permitted assigns;
- (e) a reference to any agreement or document (including a reference to this Agreement) is to that agreement or document as amended, notated, supplemented, varied or replaced from time to time, where applicable, in accordance with this Agreement or that other agreement or document;
- (f) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (g) a reference to conduct includes any omissions, statement or undertaking, whether or not in writing;
- (h) a reference to includes, means includes without limitation; and

- (i) all references to \$ are to U.S. dollars, unless otherwise specified. Clause 14 (insurance) is Australian dollars.

DRAFT

Executed as an Agreement.

Signed for Transmax Pty Ltd by
its authorised representative in
the presence of:

Authorised Representative Signature

Witness Signature

Print Name:

Print Name

Position:

Signed for [] by its authorised
representative in the presence of:

Authorised Representative Signature

Witness Signature

Print Name

Print Name

Position

Schedule 1 to Comprehensive Services Agreement

A. Contract Number	
B. Type of Services	
C. Commencement Date	
D. Initial Term	
E. Renewal Term (if any)	
F. Standard Hourly Fees -	
G. Additional Conditions	Transmax has reviewed the Caltrans/FHWA Funding Requirements document provided by the Customer to Transmax, which is attached hereto as Exhibit A and incorporated herein by reference. Transmax agrees to comply with the requirements set out therein. The Customer represents that this Agreement is federally funded. Transmax will provide all statements of compliance as required by law or as set out in Exhibit A.
H. Transmax Representative and address for notices	Name: Lynette Sperling [this is just an example] Role: Chief Operating Officer Address: Level 5, 143 Coronation Drive, Milton QLD 4064 Email: lynette.sperling@transmax.com.au cc to: [insert]
I. Customer Representative and address for notices	Name: [insert] Role: [insert] Address: [insert] Email: [insert] Customer secondary contact for email notices: [insert]

CONFIDENTIALITY NOTICE

This document contains certain confidential information of Transmax Pty Ltd as herein identified. Clause 6(d) and (e) shall apply to any request for distribution of this Agreement.

TRADEMARKS

TRANSMAX® and STREAMS® are registered trademarks of Transmax Pty Ltd in Australia. They are protected against unauthorised use under the *Trade Marks Act (1995)* and are valuable business assets.

DRAFT

**SCHEDULE 2:
FORM STATEMENT OF WORK**

STATEMENT OF WORK TO SERVICES AGREEMENT

SOW Effective Date	2023
SOW Identifier	SoW 1
The Customer	[Riverside County Transportation Commission]

This Statement of Work (“SOW”) incorporates and is governed by the Services Agreement, dated and effective], by and between Transmax Pty Ltd (“Transmax”) and [Riverside County Transportation Commission] (“the Customer”). The combination of the terms of the Services Agreement and the provisions of this SOW together constitutes the contract between the parties in respect of the Services. All capitalized terms, where not otherwise defined in this SOW, have the meanings set out in the Agreement.

1. Background

Transmax has a smart motorways product (“STREAMS® Smart Motorways”) that can deliver excellent outcomes for road authorities and road users. Benefits include improved efficiency, productivity, safety and reliability of the freeway corridor. STREAMS Smart Motorways is used extensively in Australia and was recently trialed by the Colorado Department of Transportation (CDOT) in the SMART-25 project, implementing coordinated adaptive ramp metering along Interstate Highway 25 (I-25) northbound between Ridgeway Parkway and University Boulevard.

Riverside County Transportation Commission (RCTC) has identified a suitable corridor to pilot Transmax’s STREAMS Smart Motorways technology. The project area is a northbound segment of I-15 in Temecula, California, extending from the San Diego/Riverside County line to the I-15/I-215 diverge. The corridor is approximately 10 miles long and encompasses three service interchanges and five ramps (one diamond interchange and two partial cloverleaf interchanges).

Transmax has prepared this SOW. It covers design support; device driver development for control of loops (either via 2070’s or 222i card), advisory VLS and VMS with pre-stored frames; software localization; implementation; algorithm tuning; and operator training. Software licensing, hosting and support is not covered under this SOW and will be provided under a separate Software as a Service (SaaS) agreement.

1.1 Solution Overview

STREAMS Smart Motorways natively contains most features required to meet the objectives of the project, although the I-15 pilot does contain some aspects that will require software refinement.

The solution will be cloud hosted (AWS data center in the United States) in an environment managed by Transmax. RCTC and other end users will access the solution via a web-based user interface (UI). There are some components of the solution that are not currently localized for the US such as algorithm configuration tools that Transmax will use during the pilot to provide elements of their scope.

Field processors (FPs) are ruggedized edge connectors installed in cabinets on the roadside that intermediate connections between the Intelligent Transport System (ITS) devices and the application server. Field Processors implement low latency control requests. Crucially, they also implement sensible logic if a network disconnection between the field and cloud-hosted application server occurs.

The I-15 project corridor is expected to include advisory Variable Speed Limit Sign (VSLS) devices. Each VSLS site will be accompanied by a cabinet containing a field processor and a site or group controller to ensure synchronization and that conflicting requests cannot be placed on different signs at the same site (e.g., due to configuration or user error).

Data on the operation of the system will also be available via Representational State Transfer (REST) interfaces. Caltrans may configure their existing systems (e.g., Ramp Metering Information System (RMIS), Advanced Traffic Management System (ATMS) or Performance Monitoring System (PeMS) as desired to poll these interfaces for current device information.

DRAFT

1.2 Device Connections

This solution includes several different types of field devices that will be managed by STREAMS Smart Motorways.

The Transmax website contains a current list of Supported Devices. Device makes and models not listed on this page (or using a different protocol) will require software customization. The supported devices and protocol information can be found at:

<https://www.transmax.com.au/what-we-do/streams/supported-devices/>

Below is an overview of the types of field devices and how they will be integrated with STREAMS Smart Motorways

Vehicle Detection

RCTC intends to use The Infra-Red Traffic Logger (TIRTL) vehicle detectors provided by CEOS on the mainline. The TIRTL controller and FP in the roadside cabinet communicate via an Ethernet (TCP/IP) switch. The FP aggregates data from the TIRTL and sends this to STREAMS Smart Motorways (also via the ethernet switch) for processing. TIRTLs are part of several STREAMS installations and if the standard, proprietary protocol is used then software customization should not be required.

RCTC intends to use a combination of new and existing vehicle detector loops on entry and exit ramps. Transmax will need to develop a device driver to communicate with the loop controllers. Pending further investigative work and driver development, the FP will either consume vehicle detection information either from the 2070 controllers (preferred); or from dedicated loop controllers meeting Caltrans Transportation Electrical Equipment Specification (TEES) for model 222i intelligent loop detector sensor units.

Ramp Signals

Ramp signal controllers (RSC) will be connected to STREAMS Smart Motorways via FPs in the roadside cabinet. The current RSC at Temecula Parkway is an Intelight 2070 ATC controller. This is the same controller used in the CDOT Smart 25 pilot and will be the same model used on all ramps in the I-15 pilot. In Australia and Denver, vehicles are released from ramps simultaneously at all lanes and if the same configuration, model, and protocol is used, then no software customization should be required.

It is assumed that any accompanying warning beacons are controlled directly via the 2070 ATC.

Variable Message Signs

Variable message signs (VMS) and sign controllers will be connected to STREAMS Smart Motorways via FPs in the roadside cabinet. The VMS and associated controllers to be used on the project will all be of a common type and specification and will comply with Caltrans Specification for Changeable Message Sign System, CMS Model 700 series or similar, TEES 2020. All signs will be controllable using the same protocol and collection of NTCIP v1203 object definitions. Transmax will develop driver(s) to support control of the following types of VMS to be deployed:

- Ramp Status VMS
- Part Time Shoulder and Lane Use Management VMS
- Advisory Variable Speed Limit Signs and Co-located VMS

Ramp Status VMS

A Ramp Status VMS will be installed at the entrance to ramps. It is a requirement that the System Operator be able to override Ramp Status signs with a message such as “Ramp Closed”. This will require the sign to be controlled by STREAMS rather than the 2070 ATC.

Part Time Shoulder and Lane Use Management

Part Time Shoulder and Lane Use Management System (LUMS) signs will be installed at one site approaching the Rancho California Road interchange. The signs will change display depending upon the current metering status of the 2070 ATC. The Rancho California ramp meter will still be permitted to meter traffic in the event that the part time shoulder and lane use management signs become unavailable.

Advisory Variable Speed Limit Signs and Co-Located Variable Message Signs

Advisory VSLS will be used to slow or warn traffic of a potential queue ahead. A group or site controller must be installed roadside, and intermediates between the FP and signs, to ensure that pairs of VSLS are synchronized, cannot show conflicting messages, and blanks in some failure modes such as comms disconnections. The co-located VMS will be configured to display a single message such as “slow traffic ahead” when the advisory VSLS are active.

Independent to the VMS described above, there are a limited number of additional VMS within the corridor that will continue to be controlled by the existing VMS control system and are out of scope of the I-15 pilot.

CCTV

There are multiple closed-circuit television (CCTV) cameras installed along the route. These will be connected to the existing CCTV system, rather than to STREAMS Smart Motorways. Transmax will require access and permission to view and control the relevant cameras in this system to assist with professional services delivery as described later in this document.

2. Description of Services and Specifications

2.1 Overview of services

To support the RCTC I-15 Smart Motorways Pilot Project, Transmax proposes to provide the following services:

- Support during the preparation of the Concept of Operations (ConOps) and Systems Engineering Management Plan (SEMP)
- Software localization and/or customization to ensure the system meets project needs
- Design and implementation of a cloud-hosted STREAMS Smart Motorways solution
- System configuration & commissioning support
- Supply of FPs to enable device connections from the roadside
- Configuration and tuning of coordinated ramp metering system
- User training
- Develop drivers to accommodate and support the system

2.2 CONOPS/SEMP preparation support

Transmax will provide support for the ConOps documentation and implementation with a focus on how STREAMS Smart Motorways works to inform the overall design.

This is anticipated to include ConOps content addressing:

- System monitoring needs
- Ramp metering control needs
- VLS control needs
- Data management needs
- Testing procedures
- Potential constraints

Transmax will assist with review of other sections of the ConOps documentation to help align the proposed system with targeted traffic management outcomes during implementation. This is anticipated to include review of:

- System users and their needs
- Operational scenarios
- Traffic management devices

Transmax does not accept responsibility for the safety of design and recommends this be provided by subject matter experts external to Transmax

2.3 Software customization and localization

STREAMS Smart Motorways software natively contains most features required to meet the objectives of the project, although the I-15 pilot does contain some aspects that will require software modifications to support the project. Transmax will undertake the following software changes to enable delivery of the pilot:

- Adaptions to enable VLS displaying speeds in miles per hour for standard increments (as defined in the Concept of Operations)
- Addition of a web-based interface that allows the override of ramp metering
- Addition of a web-based interface that allows the transportation management center (TMC) to turn off the VLS

2.4 System design and implementation

Transmax will analyze, design, and deliver a STREAMS Smart Motorways system utilizing cloud-based services. Transmax will document a high-level system architecture and design document of the STREAMS Smart Motorways system to be deployed for the trial.

Based on the system design, Transmax will establish the system hosting and deploy STREAMS Smart Motorways and the required application components ready for device configuration and commissioning.

2.5 System configuration & commissioning support

The system needs to be configured with the core components, integrated systems, and device connections.

Transmax will configure the necessary ITS device objects in the system i.e STREAMS*, to facilitate monitoring and control of the approved ITS infrastructure on the road. This will include FPs, 2070 ATCs, vehicle detectors, VMS and VSLs. Transmax will also configure, in STREAMS*, the transport network specification, system rules, system parameters, algorithms, and control logic that governs the system's control of approved ITS infrastructure on the road.

In addition, to configuration undertaken within the system, Transmax will provide support to the project during site installation and acceptance testing of devices, to support this Transmax will provide a resource onsite for a period of four weeks., currently forecast to be March 2024 as per current programme schedule. The identified duration of 4 weeks assumes that key technical personnel from both the customer (RCTC & or CALTRANS) and installation contractors are available as required during this period.

*Transmax provides configuration support within STREAMS ONLY, other ITS vendor systems will need to be configured by others

2.6 Supply of Field Processors

Field processors (FPs) are industrial computing devices that are a key component of the device integration functionality in STREAMS. To support the solution for RCTC, Transmax will supply, and ship 35 FP devices prepared for installation. RCTC will be required to arrange for the installation of FPs in the field cabinets as part of construction works.

Any additional FP's required beyond the identified number of 35 will be delivered at an additional cost.

2.7 Algorithm tuning

Transmax will assess vehicle detection data and existing ramp and VSL behavior and performance during a 12-week data collection period in the lead up to, and for the four weeks following go-live of full operations. This assessment will govern the initial value setting of attributes controlling VSL and ramp behavior.

In addition, Transmax will review and adjust ramp metering and VSL operations on a quarterly basis for the the first year of operation, and once every six months during the second year of operation.

This review will include recommendations and adjustment to ramp management algorithm attributes and VSL attributes. The intent of this ongoing tuning is to ensure the system

continues to deliver maximum possible benefit while traffic volumes and driver behavior change over time.

2.8 User training

To ensure RCTC operators and project stakeholders are comfortable and confident in the use of the provided Web Based UI, Transmax will provide:

- Online training in the use of the dashboards and reporting toolkits. This will include training on advisory VLS operations and ramp overrides
- Remote training delivery will comprise 6 x 1.5-hour sessions delivered to a group of up to six RCTC participants each.
- Access to self-service instructional videos.

2.9 Clarifications

For clarity, please be aware of the following points and/or assumptions:

1. All connections to field devices will be via FPs locally installed in the ITS network and not directly to the cloud system.
2. RCTC will arrange for the installation and maintenance of field devices and the field network, including Transmax supplied FPs
3. Ramp signal controllers will be provided by RCTC and will be Intelight 2070 LC ATCs with firmware MaxTime RampMeter v2.x. Any device and firmware used that is different to this will fall under the exclusion below for additional device driver development.
4. Others, such as WSP USA will be responsible for performance reporting Transmax will support WSP with reporting capability from the Smart Motorways Dashboard and assist with management of performance reporting information.
5. Transmax will be provided with detailed "For Construction" and "As Constructed" design drawings showing the placement of ITS infrastructure in advance of STREAMS configuration.
6. Transmax will be provided with ITS device configuration information including accurate latitude and longitude of each ITS device, IP addresses and ports used for system communication, credentials, and device identifiers necessary to support STREAMS configuration activities.
7. Transmax will be provided access to CCTV cameras for the purpose of performing algorithm tuning.
8. RCTC is required to implement and manage connectivity between the ITS field network and Transmax's AWS point of presence in the AWS US West (Northern California) region, consistent with a design to be agreed as part of the project.

2.10 Exclusions

1. Control and presentation of the VMS signs along the start of the route as this will be controlled by the existing ATMS system. Transmax assumes this will be done via monitoring the API feed for VLS activations.
2. Any customizations required to the ATMS or PeMS systems to poll the API for traffic or device data. Transmax assumes this will be done by those familiar with those systems.
3. Travel to site other than to provide commissioning support as described in section 2.5 system configuration is excluded
4. Any real time operations of the software
5. Software licensing, hosting, and support for the solution, which will be provided under a separate agreement.
6. Re-tuning of algorithms to support major changes to the physical transport network, such as additional lanes or changes to ramps.

Anything not explicitly documented in Section 2 “Description of Services and Specifications” of this document

DRAFT

3. Deliverables

The deliverables for the project are as follows.

1. Support during the preparation of the CONOPS/Systems Engineering Management Plan (SEMP) and other early design documentation and system implementation
2. Updated software to support pilot (as per section 2.3)
3. High Level system architecture documentation
4. Configured STREAMS Smart Motorways system and access to Web based User Interface (i.e. SMART Motorways Dashboard)
5. Supplied Field Processors
6. Device Drivers

4. Key Personnel

The following key personnel will be assigned to provide the services under this SOW.

Customer Key Personnel	
Name	Role
David Lewis	RCTC Project Manager – Environmental and Design Support
Joie Edles	RCTC Project Manager – Design and Construction Support
Erik Galloway	RCTC Principle-in-charge
Bryce Johnston	RCTC Construction Manager - Civil and ITS contractors

Transmax Key Personnel	
Name	Role
Anant Singh	Project Manager
Matt Kluck	Principal Consultant
Isaac Rooskov	Product Manager (STREAMS Smart Motorways)
Damien Assink	Director – Professional Services

5. Customer materials

- Plan drawings of the project corridor identifying:
 - Mile points
 - Lane, line, and signage information
 - Posted speed limits
 - Placement of existing and planned:
 - CCTV cameras
 - Loops
 - TIRTLs
 - VSL signs
 - VMS
 - Ramp signals
 - Ramp control signs and beacons
 - 2070 controllers
 - Cabinets

- Network switches
- Static speed signs and other roadside signs
- Latitude and longitude (within two feet) and chainage of each of the previous devices.
- Details and examples of naming conventions employed by RCTC / Caltrans for ITS and network devices.
- ITS device controller specifications for loops, TIRTLs, VSL signs, VMS, ramp control signs and beacons, 2070s identifying:
 - Make and model
 - Firmware version
 - Ethernet and port details (or alternate required communication settings)
 - Supported protocols and protocol documentation
 - Support documentation
- Access to product host control system (configuration tool) supporting each ITS device type
- ITS network diagrams and documentation identifying:
 - IP address and DNS name for each network switch to which an ITS device will be connected
 - IP address and required port numbers for each ITS device controller
 - IP address range reservations for each ITS device type
 - Details of network endpoints and security requirements for the (Direct Connect / IPSec / Other) connection between Caltrans' ITS field network and the STREAMS network in AWS.
- Wiring diagrams for roadside cabinets
- Remote desktop access to a host on Caltrans' ITS field network providing network access to each ITS device
- Test lab with at least one device of each type (for integration testing and setup purposes)
- Names and email addresses for STREAMS Smart Motorways Dashboard users
- Specification and sample copies of existing performance reports used by Caltrans / RCTC
- Details and locations of existing INRIX (or other) travel time stations (if used).
- Remote desktop access to Caltrans CCTV system with the ability for pan/tilt/zoom control of cameras located within the project limits.

6. Acceptance Procedure

Live software demonstration including.

- User override of ramps
- User override of VSLS
- Ramp algorithm in use
- Reporting and analytics tools functioning

7. Project schedule and milestones

This SOW will terminate upon the earlier of the completion of the Services specified above, or the termination of this SOW as set forth in the Agreement.

Item	Target Completion Date
CONOPS/SEMP preparation support	TBC
Software Customization	(TBC
System Design and Implementation	TBC
STREAMS Configuration	TBC
Supply of Field Processors	TBC
Algorithm Tuning	TBC – initial tuning xx/Ongoing through pilot
User Training	TBC

8. Service Fees and Payment Terms

Fees

Item	Amount USD
CONOPS/SEMP preparation support	\$75,000.00
Software customization and localization	\$300,000.00
System Design and Implementation	\$295,000.00
System Configuration & commissioning support	\$225,000.00
Supply of Field Processors	\$95,000.00
Algorithm tuning	\$209,000.00
User Training	\$40,000.00
Device Drivers	\$650,000.00
TOTAL	\$1,889,000.00

Payment Terms

The customer will be invoiced monthly based on the percentage complete of the items above. In the event works are delayed for reasons beyond Transmax's control, Transmax will invoice the full fee for the relevant activity, on the previously agreed completion date for that activity. The customer must pay fees set out in each invoice within 28 days of receipt.

CONFIDENTIAL

9. Additional Terms

There are no additional terms included in this Statement of Works

This Statement of Work shall be attached to and incorporated into the Agreement and is subject to all the terms and conditions of the Agreement.

Transmax Pty Ltd

[Insert Customer Legal Entity Name]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Signature Date: _____

Signature Date: _____

DRAFT

**SCHEDULE 3:
FORM OF CHANGE ORDER AMENDMENT
AMENDMENT TO STATEMENT OF WORK**

SOW Effective Date	[Insert Date]
SOW Identifier	[E.g., SOW #2 / 2022]
The Customer	[Insert Customer Legal Entity Name]

This amendment (“Amendment”) is made as of **[Insert Date]** (the “Effective Date”) by and between **Transmax Pty Ltd** (“Transmax”), and **[Insert Customer Legal Entity Name]**, (“Customer”) and amends Statement of Work with an effective date of **[Insert SOW Effective Date]** submitted pursuant to the Transmax Services Agreement with an effective date of **[Insert Services Agreement Effective Date]** (“Agreement”). Capitalised terms in this Amendment will have the same meaning given them in the Agreement or the Statement of Work, unless otherwise stated in this Amendment.

1. **Change Notice.** The parties now wish to amend the SOW pursuant to clause 3.9 of the Agreement.
2. **Revised Services.** **[Identify changes to Services, scope, milestone dates etc.]**
3. **Revised Pricing.** **[Identify changes in fees and/or payment dates.]**

By signing below, the Parties agree to be bound by the terms of this Amendment:

Transmax Pty Ltd

[Insert Customer Legal Entity Name]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Signature Date: _____

Signature Date: _____



SaaS AGREEMENT
FOR I-15 SMART FREEWAY PILOT PROJECT

TRANSMAX
&
RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DRAFT

SaaS AGREEMENT

FOR I-15 SMART FREEWAY PILOT PROJECT

THIS Software as a Service (SaaS) AGREEMENT (“Agreement”) is made on [date]

BETWEEN:

[legal name of Customer] of [address]

(“Customer”)

AND

Transmax Pty Ltd (ABN 59 099 487 573) Level 5, 143 Coronation Drive, Milton, Queensland 4064, Australia
(“Transmax”)

The parties agree as follows:

1 OVERVIEW

1.1 Summary

- (a) This Agreement sets out the terms and conditions that govern the Customers access to and use of the Software.
- (b) This Agreement also sets out the Service Levels that apply to the availability and performance of the Software.
- (c) Transmax agrees to provide the access to Software to the Customer for the Term so that the Customer can use the Software during the Term, in accordance with this Agreement.
- (d) This Agreement does not cover professional services, such as installation, configuration or training services. Transmax may agree to provide such services to the Customer in accordance with that certain Transmax Comprehensive Professional Services Agreement entered into between the parties.
- (e) This Agreement is initially for Customer’s I-15 Smart Freeway Pilot Project and can be continued after the trial or expanded to cover other freeways as agreed by the parties.

1.2 The Agreement

- (a) This Agreement includes these standard terms and the details set out in the Schedules.

1.3 Precedence

- (a) In the event of any inconsistency between the main body of this Agreement and the Schedules, the main body will prevail.

2 TERM

- (a) This Agreement commences on the Commencement Date and continues until the expiry of the Initial Term, unless terminated earlier in accordance with clause 10 or renewed under clause 2(b).

- (b) Prior to the expiry of the Initial Term, or any subsequent renewal term, the Customer will have the option to extend the Agreement by providing Transmax with no less than 90 days' written notice prior to the expiry of the Initial Term or then current renewal term, as the case may be.
- (c) The Customer shall have the right, in its sole discretion, to novate this Agreement to the California Department of Transportation ("Caltrans"). The terms and pricing until 31 December 2026 shall remain the same, provided that, in the event that Transmax is required to undertake additional work because of the novation or to comply with Caltrans' policies and procedures, Transmax can reprice as part of the novation process. Transmax may increase prices by no more than 10% a year after 31 December 2026.

3 THE SOFTWARE

3.1 Provision of license and access to the Software

- (a) Subject to the terms and conditions of this Agreement, Transmax hereby grants to Customer a renewable, non-exclusive, non-transferable (except as otherwise specified herein) right and license for Customer and its End Users, as defined below, to access and use the Software, including any Third Party Products, as defined below, during the Term. This license does not require Transmax to provide the Customer or its End Users access to or a copy of the source code for the Software. The Customer may allow Caltrans to access the product dashboard for the Software as used by the Customer.
- (b) To access and successfully use the Software, the Customer must use a fast Internet connection and browser software that meets the requirements set out in the Product Description. The Customer must also establish and maintain a network connection incorporating redundancy between Transmax's managed service environment and the Customer's ITS field network.
- (c) Transmax will use reasonable commercial endeavours to provide access to the Software on a "24 hours 7 days a week" basis, subject to scheduled downtime and service interruptions. The Service Levels specify the Customer's rights and Transmax's obligations in respect of service interruptions caused by Transmax.
- (d) Transmax will provide access to the Software in a professional manner and in accordance with good industry practice.
- (e) In providing access to the Software, Transmax will comply with all relevant Laws that are applicable to Transmax.
- (f) The production instance of the Software will be hosted in the United States.
- (g) Transmax's technical personnel are in Australia. The Customer acknowledges that Transmax may access the Software remotely from Australia.
- (h) Transmax reserves the right to discontinue access to the Software at the end of the Term unless this Agreement is replaced by a new agreement providing rights of access to and use of the Software.

Functionality

- (i) As at the Commencement Date, the Software will have the functionality as set out in the Product Description.
- (j) Transmax may change functionality of the Software from time to time, provided that such changes do not reduce or eliminate the functionality existing as of the Commencement Date. Unless an

urgent change is needed. Transmax will endeavour to give the Client 90 days' notice of any such change. If the change reduces or eliminates functionality, in addition to any other rights or remedies the Customer may have under this Agreement, the Fee shall be reduced to reflect the value of the reduced or eliminated functionality. If applicable, Transmax shall remit a refund to Customer of any such portion of the Fee paid in advance by Customer.

- (k) Transmax may make available enhancements or updates to the Software, but is under no obligation to do so, unless such enhancements or updates are necessary to ensure the functionality of the Software as described in this Agreement, in which case Transmax shall make the enhancement or updates available to Customer. Any bug fixes, enhancements and updates as determined by Transmax, and necessary enhancements and updates to maintain the functionality of the Software, as described in this Agreement shall be provided to Customer at no additional cost. If Customer requires custom enhancements to the Software, Customer may engage Transmax to create such enhancements pursuant to the Transmax Comprehensive Professional Services Agreement.
- (l) Where Transmax chooses or is required to make available any patches, updates, enhancements, add-ons or hot-fixes to the Software, this Agreement also applies to these changes unless they are accompanied by separate terms that are agreed to by the Customer.
- (m) Subject to paragraph (b) above, Transmax reserves the right to discontinue any functionality of the Software in respect of security or intellectual property issue or to comply with Law.
- (n) In order to provide the Software, Transmax may use data and software from external sources ("Third Party Products"). The Customer agrees to comply with the legal or contractual requirements in respect of the Third-Party Products. Any breach of these requirements will be deemed to be a breach of this Agreement. The requirements for Third Party Products are accessible through the customers user interfaces and may be amended by Transmax from time to time. Transmax may alter or cease providing some or all of the Third-Party Products at any time without prior notice to the Customer, provided that such actions do not reduce the functionality of the Software. Transmax will provide support to Customer for any issues concerning the functioning of any Third-Party Products.

3.2 Documentation

- (a) Transmax will provide the Documentation to the Customer.
- (b) The Documentation will be in English, and will be understandable by a typical end user.
- (c) Transmax will periodically update the Documentation so that it accurately relates to the Software.

3.3 Cooperation

- (a) Transmax will act in a professional and cooperative manner when dealing with the Customer.
- (b) The parties will always act reasonably and in good faith when dealing with each other.
- (c) If Transmax is required by the Customer to work with other suppliers or contractors of the Customer, Transmax will act cooperatively and in a friendly and professional manner when doing so.
- (d) If Transmax attends the Customer's premises or sites, Transmax must comply with the Customer's relevant policies and directions known or made known to Transmax.
- (e) Where a party is required to review or approve a document or other item, the reviewing party must do so promptly, within in 10-working days, and if required must provide detailed and considered feedback to the other party.
- (f) The Customer agrees to prepare for and attend scheduled or agreed meetings, and actively participate in such meetings as required. The Customer's Personnel who attend such meetings

must be knowledgeable about the issues relevant to the Customer that are agenda items for such meetings.

- (g) The parties shall meet at regular intervals, at a minimum monthly or quarterly, as agreed or requested by the Customer to review the Customer's use of the Software and to obtain the Customer's feedback. These meetings may take place using electronic conferencing technology.

3.4 Transmax's Responsibilities

- (a) To support the Software, Transmax will be responsible for the following:
 - (i) System monitoring of the Software;
 - (ii) Provision of technical advice and support to the Customer that is related to the Software;
 - (iii) Updating the Software;
 - (iv) Provision of third-party system monitoring required for the Software;
 - (v) Customer issue investigation and support in line with agreed services levels in the Product Description for the Software; and
 - (vi) Customer change request management in line with agreed services levels in the Product Description for the Software.
 - (vii) Coordination with the Customer's Intelligent Transportation System (ITS) operator as set out in Schedule 2.

4 THE CUSTOMER'S RESPONSIBILITIES

4.1 Accounts

- (a) To access the Software, the Customer must establish one or more user accounts, each with a user name and password. The Customer may only establish user accounts for its employees, Caltrans, contractors and consultants ("End Users"). The Customer must not establish accounts for people who are not its employees, contractors or consultants.
- (b) Each of the Customer's End Users must have their own user account and must not allow others to access the Software via that End User's user account. User accounts, access credentials and passwords must not be shared.
- (c) The Customer must ensure that user names, access credentials and passwords for its End Users are kept confidential and secure.
- (d) The Customer is responsible for all use and activities that occur under the user accounts of the Customer's End Users, regardless of whether such use and activities are authorized by the Customer.
- (e) Transmax is not responsible for unauthorized access to the Customer's account, unless such unauthorized access is the result of Transmax's failure to comply with its security obligations as set forth in Section 12(a) of this Agreement.
- (f) The Customer is responsible for End Users' use of the Software.
- (g) The Customer must ensure that all End Users comply with the Customer's obligations under this Agreement. Transmax may require that each End User agree with legal terms that are not inconsistent with this Agreement before using the Software.

- (h) If the Customer becomes aware of any violation of the Customer's obligations under this Agreement caused by an End User, the Customer will immediately suspend access to the Software by such End User and inform Transmax.
- (i) The Customer must nominate a single Customer Representative that will be the primary point of contact for Transmax and who is authorised to make decisions on behalf of the Customer in relation to the Software. The initial Customer Representative is set out in Schedule 1.

4.2 Content, Data and Configurations

- (a) Transmax will pre-configure the Software for the Customer so that the Software operates in accordance with Schedule 2.
- (b) The Customer is responsible for all content, data and configurations that are set or input by the Customer into the Software. The Customer is responsible for the development, maintenance, accuracy and use of such content, data and configurations.
- (c) The Customer must ensure that all content, data and configurations set or input by the Customer into the Software do not violate any laws, will not adversely impact the operation of the Software and will not impact other users of the Software.

4.3 Customer's Security and Backup

- (a) The Customer is responsible for taking appropriate action to secure, protect and backup the Customer's accounts used to access the Software in a manner that will provide appropriate security and protection.

4.4 Customer's Own Use

- (a) The Customer may only use the Software and the Documentation for the Software (i.e., the product documentation) for the Customer's own use. This clause does not govern how the Customer may use the Customer's data, the output of the Software and KPI data.
- (b) The Customer may only use the Software for the purpose for which the Software is designed.
- (c) The Customer must not resell the Software, must not use the Software to provide services to others and must not use the Software to operate a service bureau.
- (d) The Customer must not copy or attempt to copy any Software code.

4.5 Field Network

- (a) The Customer is responsible for provisioning and maintaining:
 - (i) ITS field equipment that connects to the Software; and
 - (ii) network connectivity between ITS field equipment, any edge devices with components of the Software installed, the ITS Network, and the Software itself.
- (b) Where specified in Schedule 2 that Transmax supplies the Customer with equipment that includes part of the Software embedded in the equipment, Transmax grants to the Customer a perpetual license to use that Software in the equipment supplied. The equipment may include functionality to allow the remote updating of the Software. If the parties agree, Transmax may update the Software on such equipment remotely.

4.6 Support

- (a) The Customer must provide a means for Transmax's support Personnel to determine whether the Software is available when resolving incidents.

- (b) If reasonably requested by Transmax, where the Customer raises a support incident, the Customer must assist Transmax's support Personnel with troubleshooting activities.
- (c) The Customer must keep Transmax informed of relevant changes to the Customer's infrastructure and organisation that may impact the operation of the Software.

5 INTELLECTUAL PROPERTY

5.1 General

- (a) No Intellectual Property Rights are transferred or assigned from one party to the other by virtue of this Agreement.

5.2 Customer Intellectual Property

- (a) The Customer owns all Intellectual Property Rights in all content, data and configurations that are set or input by the Customer into the Software.
- (b) The Customer hereby grants to Transmax a non-transferrable, personal, royalty-free license to Transmax for the Term to use and copy content, data and configurations that are set or input by the Customer into the Software to enable the Customer's operations of the Software and for Transmax's internal research, development, testing and product improvement purposes.
- (c) Transmax has no right to use the Customer's trademarks or brands unless explicitly provided for in a separate trademark licence agreement.
- (d) With Customer's prior written consent, Transmax may identify the Customer as a customer of Transmax including in marketing and promotional materials. In bids for new work, Transmax may use the Customer as a reference site but will inform the Customer and obtain the Customer's prior written consent before to doing so.

5.3 Transmax Intellectual Property

- (a) Transmax owns all Intellectual Property Rights in the Software and Documentation. This includes Intellectual Property Rights in any reports, computer code, interfaces, methodologies, know-how, artwork, logos and branding and the look & feel of or relating to the Software.
- (b) Transmax hereby grants to the Customer a non-transferrable, personal, non-sublicensable, royalty-free license for the Term to use and copy the Documentation for the Customer's operations of the Software.

5.4 Non-infringement by Transmax

- (a) Transmax will not infringe any Intellectual Property Rights when providing the Software or in creating the Documentation.
- (b) Transmax warrants that the Customer's use of the Software will not infringe any Intellectual Property Rights in the United States.
- (c) Transmax indemnifies the Customer against any liability (including liability for reasonable legal costs) based on a claim that use of the Software by the Customer and the Customer's End Users in the United States in accordance with this Agreement is an infringement of the Intellectual Property Rights of any third person.
- (d) As a condition of reimbursement under the indemnity in paragraph (c) above, the Customer must notify Transmax of a claim as soon as practical, keep Transmax informed of all material aspects of the claim of which the Customer is aware, and follow all reasonable directions of Transmax relating

to the claim. The Customer must not settle or compromise the claim, or take any steps in relation to the claim that may prejudice Transmax in any way without Transmax's prior consent. The Customer must, at Transmax's cost, provide all cooperation and assistance reasonably requested by Transmax in defending or otherwise addressing any claim. If Transmax requests, Transmax will conduct the defence of the claim at Transmax's expense.

- (e) If a party becomes aware that the Software or Documentation are, or are threatened to become subject to any injunction, or are determined to be infringing of any rights, that party must notify the other party. If so, Transmax has the option to (I) procure for the Customer the right to continue use of the Software or Documentation (or any portion thereof) as contemplated under this Agreement or (II) replace or modify the Software or Documentation (or any portion thereof) such that they are non-infringing, provided that the replacement or modification is equivalent in function and meets the requirements and specifications of this Agreement to the Customer's satisfaction. If (I) or (II) are not available to Transmax, Transmax has the right to terminate this Agreement, or require the Customer to cease use of the relevant Software or Documentation. When the Customer so complies, the Customer will not be liable to make further payments to Transmax directly relating to use of such Software or Documentation.

5.5 Infringement By Customer

- (a) The Customer must not infringe any Intellectual Property Rights in the way the Customer uses the Software or in inputting or setting any content, data or configurations into the Software.

5.6 Improvements to the Software and Documentation

- (a) If Customer provides or discloses ideas, concepts, improvements or knowhow to Transmax relating to the Software or Documentation, then notwithstanding the foregoing, Transmax will own all such ideas, concepts, improvements and knowhow, and the Customer hereby assigns all Intellectual Property Rights therein to Transmax.

6 FEES, PAYMENT AND TAXES

6.1 Fees and Payment

- (a) The Customer must pay the Fees set out in each invoice within 45 days of receipt, in accordance with this clause 6.
- (b) The total amount to be paid by Customer under this Agreement for the Initial Term shall not exceed _____, unless approved in writing by Customer's Executive Director.
- (c) The Fees must be paid by the Customer to Transmax in U.S. dollars, by electronic bank transfer or wire transfer into Transmax's Australian bank account in U.S. dollars.
- (d) If the currency exchange rate between the US dollar and Australian dollar, where the current rate is 1 US Dollar = 1.47 Australian dollar, varies by more than 5% for a period of no less than 3 months, either party may seek to adjust the pricing to reflect the change in the currency exchange rate. The exchange rate information used to inform this decision will be sourced from the US Federal Reserve Federal Reserve Board - Foreign Exchange Rates - Country Data - H.10. (<https://www.federalreserve.gov/releases/h10/hist/>). The intent of this section is to adjust for the value of U.S. dollar pricing in Australian dollars such that, through the term of this Agreement, Transmax will generally receive the same number of Australian dollars after conversion.
- (e) Transmax may only issue invoices to the Customer in accordance with the terms of this Agreement. Invoices shall be in such form and contain such information as reasonably required by the Customer.

- (f) The Customer may, acting reasonably and in good faith, dispute an invoice. If so, the Customer may withhold payment of the amount in dispute until the dispute is resolved but must pay the undisputed portion of the invoice on time.
- (g) If an invoice is disputed, the parties will work together to resolve such dispute in good faith and where applicable, Transmax will submit a revised invoice to the Customer.
- (h) The parties have no right of set-off against each other.
- (i) If the Customer requests additional functionality or software modules not covered by this Agreement but that are available from Transmax, Transmax will provide the Customer with the price for such functionality or software modules, and the Customer may purchase such additional functionality or software modules if the Customer so desires. Subject to the foregoing, Transmax may not increase the Fees or add new Fees until after 31 December 2026. After that date, Transmax may increase the Fees by no more than 10% a year by giving the Customer at least 30 days' prior notice.
- (j) Transmax may elect to charge the Customer interest at the rate of 1.5% per month (or the highest rate permitted by Law, if less) on all late payments.
- (k) All Fees paid by the Customer to Transmax are non-refundable, unless otherwise stated in this Agreement.

6.2 Taxes

- (a) The Fees exclude any taxes or duties payable in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties are payable by Transmax, the Customer must pay to Transmax the amount of such taxes or duties in addition to any fees owed under this Agreement.
- (b) Notwithstanding the foregoing, if the Customer has obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed, the Customer may provide Transmax with such exemption information, and Transmax will use reasonable efforts to provide the Customer with invoicing documents designed to enable the Customer to obtain a refund or credit from the relevant revenue authority, if such a refund or credit is available.
- (c) The Customer will pay all fees net of any applicable withholding taxes. The parties will work together to avoid any withholding tax if exemptions, or a reduced treaty withholding rate, are available. If Transmax qualifies for a tax exemption, or a reduced treaty withholding rate, Transmax will provide the Customer with reasonable documentary proof. The Customer will provide Transmax reasonable evidence that the Customer has paid the relevant authority for the sum withheld or deducted.
- (d) Transmax notified the Customer of THE DOUBLE TAXATION TAXES ON INCOME CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND AUSTRALIA, available at <https://www.irs.gov/pub/irs-trty/aus.pdf>.

7 CONFIDENTIALITY

- (a) Each party agrees to keep strictly confidential, and not to disclose, the Confidential Information of the other party.
- (b) Each party agrees to use the Confidential Information of the other party solely to carry out its obligations or receive the benefits of this Agreement.
- (c) Notwithstanding the foregoing, a party may disclose Confidential Information of the other party:
 - (i) to its legal advisors, accountants, auditors on a confidential need-to-know basis;

- (ii) to its employees and contractors on a confidential need-to-know basis;
 - (iii) in enforcing this Agreement or in a proceeding arising out of or in connection with this Agreement; or
 - (iv) to the extent required by Law including, but not limited to, the California Public Records Act (“CPRA”) or pursuant to a binding order of a government agency or court.
- (d) Subject to clause 6(e) below, the Customer must not disclose specific confidential information contained in this Agreement and marked as confidential, to anyone other than to the Customer’s legal advisors, accountants and auditors on a confidential basis. Transmax acknowledges that Customer is subject to the CPRA. Transmax acknowledges that the entirety of this Agreement is not exempt from disclosure under the CPRA. If Customer receives a CPRA request, Transmax shall provide in writing to Customer a valid legal basis under the CPRA for nondisclosure of any portion of the Agreement marked as confidential.
- (e) In addition to the above, the following shall apply to any withholding by Customer of Transmax Confidential Information:
- (i) Transmax, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the withholding from disclosure under the CPRA by Customer at Transmax’s request of any Transmax Confidential Information.
 - (ii) Transmax shall indemnify and hold Customer harmless from all costs and expenses, including attorney’s fees in connection with any such action; and
 - (iii) Customer shall have no liability to Transmax for disclosing any records in compliance with its requirements under the CPRA.

8 PRIVACY

- (a) Each party must comply with all applicable Privacy Laws in respect of Personal Information that:
- (i) one party discloses to the other party; or
 - (ii) comes into the possession or control of that party arising out of or in relation to the performance of this Agreement.
- (b) The Software is not designed to process Personal Information and the Customer must not input Personal Information into the Software.

9 FORCE MAJEURE

- (a) Subject to the requirement to give notice under this clause, if the performance by any party (Affected Party) of all or any of its obligations under this Agreement is prevented or delayed (in whole or in part) due to any Force Majeure Event, this Agreement will continue and remain in effect but the Affected Party will not be in breach of this Agreement for that reason only, and the Affected Party will be granted a reasonable extension of time to complete performance of its affected obligations.
- (b) The Affected Party must promptly, not to exceed twenty-one (21) days, after becoming aware of a Force Majeure Event, give written notice to the other party of the nature of the Force Majeure Event and the way and the extent to which its obligations are prevented or delayed and notify the other party of any material change in these matters and use its reasonable endeavours to limit the effects of the Force Majeure Event, and promptly carry out its obligations as soon as, and to the extent that, it is able to do so.

10 TERMINATION AND SUSPENSION

- (a) Either party may terminate this Agreement with immediate effect by giving written notice to the other party at any time if:
- (i) the other party experiences an Insolvency Event; or
 - (ii) the other party breaches any material provision of this Agreement which is incapable of being remedied, or where the breach is capable of being remedied, fails to remedy the breach within 21 days after receiving written notice from the terminating party requiring it to do so; or
 - (iii) required to comply with any Law.
- (b) The Customer may terminate this Agreement on 90 days' written notice for any reason and without cause. If the Customer does so, the Customer must pay Transmax for any outstanding sums due or incurred prior to the date of termination and the early termination fee as set out in Schedule 3.
- (c) Without limiting Transmax's right to terminate, Transmax may immediately suspend provision of the Software to the Customer:
- (i) if the Customer is overdue on payment of Fees by more than 7 days after notice from Transmax of such overdue Fees, such notice not to be given until 45 days after the relevant invoice for such Fees was issued to the Customer; or
 - (ii) the Customer's or an End User's use of the Software poses a security risk to the Software or any third party, could adversely impact Transmax's systems, the Software or the systems of any other customer, or could be fraudulent, as reasonably determined by Transmax; or
 - (iii) if the Customer otherwise breaches this Agreement after notice of such breach and reasonable opportunity to cure.
- Transmax shall immediately notify Customer of the cause for suspension, and the actions of Customer required in order for Transmax to reinstate provision of the Software.
- (d) The Service Levels do not apply during any period of suspension.
- (e) The Customer may not withhold payment of Fees because of or during any period of suspension.
- (f) Following any termination or expiration of this Agreement, at the Customer's request, Transmax will make its staff reasonably available to assist with any transition from the Software to other software on mutually agreeable hourly rates.
- (g) If the Customer terminates this Agreement under clause 10(a)(ii), then Transmax must refund to the Customer all Fees paid by the Customer to Transmax related to the period after the date of termination on a pro rata basis.

11 WARRANTIES

Each party warrants that it:

- (a) has the authority to enter into and perform its obligations under this Agreement and that this Agreement has been duly executed and is a legal, valid and binding Agreement;
- (b) will comply at all times with applicable Laws; and
- (c) will not do anything or make any statement that could be reasonably expected to harm the reputation of the other party.

12 TRANSMAX WARRANTIES

- (a) Transmax warrants that:
- (i) Transmax has all applicable licenses, permits and authorisations required to perform its obligations in accordance with this Agreement; and
 - (ii) as at the Commencement Date, the Software will have the functionality as set out in the Product Description; and
 - (iii) Transmax will implement security procedures that Transmax considers to be appropriate and that comply with industry best practice to identify reasonably foreseeable risks to security and unauthorized access to the software and to minimize security risks, including through risk assessment and regular testing. Transmax will designate one or more employees to coordinate and be accountable for the security procedures.
- (b) Transmax acknowledges that the Customer has entered into this Agreement in reliance on the warranties in detailed in this clause.

13 INDEMNIFICATION, DISCLAIMER AND LIMITATIONS ON LIABILITY

- (a) Transmax shall indemnify and defend the Customer and its subcontractors, personnel and Caltrans against Losses reasonably sustained or incurred by the Customer as a result of any third-party claim for a cause of action, liability, claim, proceeding, suit or demand arising out of or in connection with any wilful misconduct or unlawful or fraudulent act or omission of Transmax relating to this Agreement. In addition, the foregoing indemnification and defense obligation shall also apply to any negligence of Transmax in performance of this Agreement, but such obligation shall be limited to the extent covered by insurance.
- (b) THE SOFTWARE IS PROVIDED “AS IS.” EXCEPT TO THE EXTENT PROHIBITED BY LAW, OR TO THE EXTENT ANY STATUTORY RIGHTS APPLY THAT CANNOT BE EXCLUDED, LIMITED OR WAIVED, OR TO THE EXTENT EXPRESSLY SET OUT IN THIS AGREEMENT, TRANSMAX (A) MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SOFTWARE, AND (B) DISCLAIMS ALL WARRANTIES, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES (I) OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR QUIET ENJOYMENT, (II) ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE, (III) THAT THE SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, AND (IV) THAT ANY CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR ALTERED.
- (c) Except to the extent prohibited by Law, neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party whether in contract, tort (including negligence) or otherwise in connection with the Agreement, even if a party has been advised of or is aware of the possibility of such damage.
- (d) Subject to clause 13(e), except to the extent prohibited by Law, the maximum liability of one party to the other party, whether in contract, tort (including negligence) or otherwise in connection with the Agreement (including under an indemnity), is limited to the Fees paid to Transmax under this Agreement in the one year period prior to the event occurring that gives rise to the liability.
- (e) The exclusions and limitations of liability in clauses 13(d) do not apply to liability in relation to:
- (i) personal injury, including sickness and death;
 - (ii) loss of, or damage to, tangible property;
 - (iii) an infringement of Intellectual Property Rights;

- (iv) any wilful misconduct, or fraudulent act or omission;
 - (v) a third party claim covered by clause 13(a);
 - (vi) any breach of any obligation under clause 7; or
 - (vii) any obligation to pay Fees to Transmax.
- (f) The parties agree that the waivers and limitations specified in this clause 13 apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.
- (g) A party who suffers loss or damage must use reasonable steps to mitigate its loss. The other party will not be responsible for any loss, damage or expenses to the extent that the injured party could have avoided or reduced the amount of the loss, damage or expense, by taking reasonable steps to mitigate its loss.
- (h) Transmax's liability under this Agreement will be reduced proportionally to the extent to which any loss was caused or contributed to by any negligence or wilful misconduct of the Customer or its employees or agents.
- (i) Except as otherwise expressly set forth in this Agreement, and except to the extent prohibited by Law, Transmax excludes liability to the Customer whether in contract, tort (including negligence) or otherwise in connection with the Agreement (including under an indemnity) for:
- (i) the way the Customer and its Personnel use the Software or for the safety of road users; or
 - (ii) personal injury, death or property damage arising from or related to the failed use, misuse, non-operation or incorrect operation by the Customer of the Software or because of any advice given by Transmax; or
 - (iii) claims made by third parties against the Customer for, relating to or because of the failed use, misuse, non-operation or incorrect operation by the Customer of the Software or because of any advice given by Transmax.

The foregoing exclusion shall not apply to liability that arises from a third-party claim covered by clause 13(a).

14 INSURANCE COVERAGE

- (a) Transmax warrants that it will maintain sufficient insurance coverage to enable it to meet its obligations created by this Agreement and by law.
- (b) Without limiting the foregoing, to the extent this Agreement creates exposure generally covered by the following insurance policies, Transmax will maintain at its sole cost and expense at least the following insurance covering its obligations under this Agreement:
- (i) Public & Products Liability at limits no less than A\$20 million in aggregate;
 - (ii) Workers' Compensation, as required by law;
 - (iii) Technical Professional Indemnity insurance at limits no less than A\$5 million in aggregate;
 - (iv) Cyber liability at limits no less than A\$1 million in aggregate.
- (c) Transmax will have the Customer noted on the relevant insurance policies listed above (other than Workers' Compensation).

15 ANTI-BRIBERY AND CORRUPTION

Each party represents to the other that neither it, nor any of its representatives have been induced to enter into this Agreement, or to cause this Agreement to be entered into, as a result of any illegitimate gift, consideration or other benefit paid by a person to any other person.

16 CONFLICTS OF INTEREST

Each party must take appropriate steps to ensure that the other party is not placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of a party, its officials, officers or employees under this Agreement. The parties will disclose to each other the full particulars of any such conflict of interest which may arise.

17 ACCESS TO CUSTOMER IT SYSTEMS

- (a) The Customer will coordinate with Caltrans who may provide Transmax with access to and use of its information technology systems, including development, test and production environments (“IT Systems”).
- (b) If Transmax is granted such access and use, Transmax must:
- (i) access and use only the part of the IT Systems for which it is specifically authorised and no other part of the Caltrans IT Systems;
 - (ii) access and use the IT Systems only to perform its obligations under this Agreement and not for any other purpose; and
 - (iii) comply with the policies set out in Schedule 4. If the policies are materially updated or changed, or if the Customer requires compliance with new policies, then Transmax (acting reasonably) may charge additional Fees if such updates, changes or additions increase Transmax’s costs.
- (c) If Transmax is granted such access and use, Transmax must not:
- (i) use the IT Systems directly or indirectly for any activity or transmit any information or material unlawfully or which is obscene, indecent, uses offensive language, defames or offends any person;
 - (ii) tamper with, hinder the operation of or make unauthorised modifications to the IT Systems;
 - (iii) copy or collect in any way any data from the IT Systems, other than as necessary to perform its obligations under this Agreement;
 - (iv) knowingly, recklessly or negligently transmit any virus or other disabling feature to or from the IT Systems;
 - (v) remove, disable or modify any security, antivirus or other software in the IT Systems;
 - (vi) damage any of the Customer’s hardware; or
 - (vii) upload anything onto the IT Systems without the Customer’s prior approval.
- (d) Transmax agrees that the Customer may monitor Transmax’s activities in performing its obligations under this clause, including by computer surveillance.
- (e) All networking equipment and cloud services provided by Transmax under this Agreement shall meet the ISO27001 security standard or equivalent. Transmax shall make reasonable efforts to ensure that any networking equipment and cloud services provided by Transmax under this Agreement meet Caltrans IT Standards and are configured to meet existing Caltrans security requirements as

set out in Schedule 2. This clause applies from when the Software goes-live in a production environment. If there is non-compliance with this clause at go-live, Transmax will use reasonable endeavors to come into compliance as soon as reasonably practical and will not be deemed a breach of contract.

18 RECORDS AND AUDIT

- (a) During the Term and for a period of one year thereafter, Transmax will keep all usual and proper records related to the Software and this Agreement.
- (b) The Customer, Caltrans and the U.S. Federal Highway Administration (“FHWA”) may, upon seven days’ notice, audit Transmax’s records and consult with Transmax’s accountants for the purpose of verifying Transmax’s compliance with the terms of this Agreement, provided that any such audits must be conducted during normal business hours in such a manner as to not unreasonably interfere with the normal business operations of Transmax. Transmax shall provide remote access to records relevant to the audit and reasonably requested by the Customer, as necessary, for Customer, Caltrans and FHWA to exercise its rights under this clause.
- (c) Transmax agrees to promptly correct any deficiencies detected in the audit and will promptly refund any overpayments disclosed by such an audit.

19 ASSIGNMENT, SUBCONTRACTING AND NON-SOLICITATION

- (a) Transmax must not assign or novate, directly or indirectly, any of its rights or obligations under this Agreement without the prior written consent of the Customer, except that Transmax may assign this Agreement in connection with the sale or reorganisation of all or part of Transmax’s business, or due to Queensland government machinery of government change.
- (b) Transmax may not subcontract any of its obligations and responsibilities under this Agreement without obtaining advance written consent of the Customer., Transmax remains responsible for the performance and conduct of its subcontractors. The Customer gives Transmax permission to subcontract to AWS.
- (c) Transmax is an independent contractor for the Customer, and nothing in this Agreement is intended to create or shall be construed as creating an employer-employee relationship or a partnership, agency, joint venture, or franchise.
- (d) Transmax acknowledges that it is not authorised to make any contract, agreement or warranty on behalf of the Customer.
- (e) The Customer acknowledges that it is not authorised to make any contract, agreement or warranty on behalf of Transmax.
- (f) During the period commencing on the Commencement Date and ending one year following the end of the Term, neither party must not, without the other party’s prior written consent, directly or indirectly; (i) solicit or encourage any person to leave the employment or other service of the other party; or (ii) hire any person who has left the employment within the one year period following the termination of that person’s employment with the other party.

20 SURVIVAL

Without limiting any other provision of this agreement, clauses 5, 7, 8, 13 and 23 survive termination or expiry of this Agreement for any reason.

21 REPRESENTATIVES

Schedule 1 sets out the representatives of each party for the purposes of this Agreement. These representatives will be the first point of contact between the parties in relation to any matter relevant to the Agreement. The contact details of each representative may be updated from time to time by the party that appointed the relevant representative by notice in writing to the other party.

22 NOTICES

Any notice, demand, consent or other communication (a Notice) given or made under this Agreement:

- (a) must be in writing and signed by the representative or a person duly authorised by the representative;
- (b) must be addressed and delivered to the intended recipient by prepaid air courier or by hand or email to the address or email address of the representative of the party as specified in Schedule 1, or as last notified by the intended recipient to the representative; and
- (c) will be conclusively taken to be duly given or made when delivered, received or left at the above address, or received at the above email address, provided that for email notice to be effective, the email must be copied to the Customer's secondary contact, as identified in Schedule 1. If delivery or receipt occurs on a day that is not a business day in the place to which the Notice is sent or is later than 4pm (local time) at that place, it will be conclusively taken to have been duly given or made at the commencement of business on the next business day in that place.

23 DISPUTE RESOLUTION

- (a) If a dispute arises out of or in relation to this Agreement, either party may notify the other in writing in which case the nominated representative of each affected party must promptly attempt in good faith to resolve the dispute. If the parties are unable to resolve the dispute within seven days of the written notification referred to in this clause, each party must promptly refer the dispute for resolution to one of the Managing Director, Chief Executive or Chief Operating Officer (Senior Executive) of that party.
- (b) If the parties are unable to resolve the dispute within 21 days following referral to the Senior Executive of the relevant parties, then the dispute must be resolved by arbitration in accordance with clause (c).
- (c) Any dispute, controversy or claim arising under, out of or relating to this Agreement (including any Statement of Work) and any subsequent amendments of this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, must be referred to and finally determined by arbitration in accordance with the International Chamber Of Commerce (ICC) Rules of Arbitration. The arbitral tribunal shall consist of a sole arbitrator. The parties agree that arbitration shall be held virtually. The language to be used in the arbitral proceedings shall be English. The dispute, controversy or claim shall be decided in accordance with the law applicable in the federal and state courts of California in the United States, without regard to any conflict of law principles.
- (d) Nothing in this clause 23, shall prevent a party from seeking urgent injunctive relief before an appropriate court.

24 GENERAL

- (a) This Agreement contains the entire agreement between the parties with respect to its subject matter.

- (b) Unless otherwise specifically provided in a Schedule, nothing herein shall be construed as creating a minimum commitment for business on the part of the Customer to Transmax.
- (c) This Agreement may only be amended by written agreement executed by all the parties.
- (d) No failure to exercise or delay in exercising any right, power or remedy under this Agreement operates as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (e) The rights, powers and remedies provided to a party in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or any agreement.
- (f) Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.
- (g) Any claim for breach of contract or breach of warranty must be notified to the other party within 90 days of the breach occurring, and any lawsuit relating to such breach must be filed within 1 year of the breach occurring.
- (h) Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.
- (i) Except as to any rights or obligations of Caltrans expressly set forth herein, this Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to this Agreement.
- (j) This Agreement and, to the extent permitted by law, all related matters including non-contractual matters, is governed by the laws of the State of California. In relation to such matters each party irrevocably accepts the exclusive jurisdiction of the Federal and State courts within the State of California and waives any right to object to the venue on any grounds.
- (k) This Agreement may be executed in any number of counterparts. All counterparts will be taken to constitute one agreement.

25 DEFINITIONS AND INTERPRETATION

25.1 DEFINITIONS

The following definitions apply unless the context requires otherwise.

Commencement Date is defined in Schedule 1.

Confidential Information means all non-public business or technical information, in any form whether tangible or not, disclosed or communicated by a party to the other, or learnt or accessed by, or to which the other party is exposed as a result of entering into this Agreement, and any information or data of Customer provided by Customer or generated through use of the Software.

Confidential Information does not include information which party can demonstrate by written records was:

- (a) already known to that party;
- (b) received by that party from a third party not under a duty of confidence; or
- (c) independently developed by that party by people who did not have access to the Confidential Information of the other party.

Consequential Loss means any indirect or consequential Loss, including any loss of profits, loss of revenue, loss of or damage to data, loss of contract value, loss of anticipated savings, loss of opportunity, and loss of reputation or goodwill.

CPI means the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items (1982-84=100), as reported by the Bureau of Labor Statistics of the U.S.

Documentation means the documentation and other explanatory materials that is generally provided by Transmax to the users of the Software, whether in hard copy or electronic format, to assist the users of the Software understand and use the Software.

End Users are the employees, contractors and consultants of the Customer as set out in clause 4.1.

Fees means the fees and expenses set out in Schedule 1.

Force Majeure Event affecting a party means a circumstance beyond the reasonable control of that party causing that party to be unable to observe or perform on time an obligation under this Agreement, including acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, revolution and acts of war and war, general strikes (other than of its own staff), embargo, pandemic, or power, water and other utility shortage.

Initial Term means the initial term set out in Schedule 1.

An Insolvency Event occurs in respect of a person where:

- (a) the person ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of all or a substantial part of its assets;
- (b) upon the institution against the person of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of the person's debts;
- (c) upon the person making an assignment for the benefit of creditors;
- (d) upon the person's dissolution; or
- (e) any analogous or comparable event takes place in any jurisdiction.

Intellectual Property Rights means all industrial and intellectual property rights of any kind including but not limited to copyrights (including rights in computer software), trademarks, service marks, designs, patents, trade secrets, semi-conductor or circuit layout rights, trade, business, domain or company names, rights in Confidential Information, know-how and other proprietary rights (whether or not any of these are registered and including any application, or right to apply, for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these, which may subsist anywhere in the world, but excludes moral rights, and similar personal rights, which by law are non-assignable.

Law means all applicable laws including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by laws, rules, regulatory principles, requirements and determinations, mandatory codes of conduct and standards, writs, orders, injunctions and judgments, and includes any Privacy Laws of the United States.

Loss means any claim, loss, damage, liability, cost, charge or expense (including legal expenses on a full indemnity basis), however arising, and whether present or future, fixed or unascertained, actual or contingent.

Personal Information means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.

Personnel means, in respect of a person, any officer, employee, contractor, servant, agent, or other person under the person's direct or indirect control and includes any subcontractors.

Privacy Laws means any international, national, federal, provincial, state, or local law, code, rule or regulation that regulates the processing of Personal Information in any way, including data protection laws, laws regulating marketing communications or electronic communications, information security regulations and security breach notification rules.

Product Description is a description of the Software as set out in Schedule 2.

Service Levels for the availability and performance of the Software are specified in the Product Description in Schedule 2.

Software is listed in Schedule 1, including the modules of the Software provided under this Agreement.

Term means the period from the Commencement Date until the end of the Initial Term or any applicable renewal term.

25.2 INTERPRETATION

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) the singular includes the plural and conversely;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to a person includes any body corporate, unincorporated body or other entity and conversely;
- (d) a reference to any party to this Agreement or any other agreement or document includes the party's successors and permitted assigns;
- (e) a reference to any agreement or document (including a reference to this Agreement) is to that agreement or document as amended, notated, supplemented, varied or replaced from time to time, where applicable, in accordance with this Agreement or that other agreement or document;
- (f) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (g) a reference to conduct includes any omissions, statement or undertaking, whether or not in writing;
- (h) a reference to includes, means includes without limitation; and
- (i) all references to \$ are to U.S. dollars, unless otherwise specified. Clause 14 (insurance) is Australian dollars.

Executed as an Agreement.

Signed for Transmax Pty Ltd by
its authorised representative in
the presence of:

	_____	Authorised Representative Signature
_____	_____	Print Name:
_____	_____	Position:

Signed for [] by its authorised
representative in the presence of:

	_____	Authorised Representative Signature
_____	_____	Print Name
_____	_____	Position

Schedule 1 to SaaS

Agreement

Schedule 1 to SaaS Agreement

A. Contract Number	
B. Software	STREAMS Smart Motorways
C. Software Modules provided	
D. Commencement Date	
E. Initial Term	Two Years from the Commencement Date
F. Fees	See Schedule 3
G. Additional Conditions	
H. Transmax Representative and address for notices	Name: Lynette Sperling [this is just an example] Role: Chief Operating Officer Address: Level 5, 143 Coronation Drive, Milton QLD 4064 Email: lynette.sperling@transmax.com.au cc to: [insert]
I. Customer Representative and address for notices	Name: [insert] Role: [insert] Address: [insert] Email: [insert] Customer secondary contact for email notices: [insert]

CONFIDENTIALITY NOTICE

This document contains confidential information of Transmax Pty Ltd, and may not be distributed, published or given to any individual or organisation without prior written consent from Transmax Pty Ltd.

TRADEMARKS

TRANSMAX® and STREAMS® are registered trademarks of Transmax Pty Ltd in Australia. They are protected against unauthorised use under the Trade Marks Act (1995) and are valuable business assets.

DRAFT

Schedule 2 to SaaS Agreement

PRODUCT DESCRIPTION (INCLUDING SERVICE LEVELS)

DRAFT

Schedule 3 to SaaS Agreement

FEES AND PRICING

Table 1

Item	Amount (USD)
Year 1 SaaS	\$1,212,675
Year 2 SaaS	\$1,297,562
Total Contract Value	\$2,510,237

Early Termination Fee Schedule

In the event of termination for convenience by the customer, prior to the expiry of the 2-year term, the customer shall pay a pro-rated fee to the contractor equal to the following amount at the following times. The customer agrees to pay 85% of the total fees outstanding and acknowledges this amount represents the contractor's reasonable business costs and does not represent a penalty.

Equation is - Total Contract Value, divided by Term (24 months), multiplied by months remaining when termination requested, minus 15%, equals Early Termination Fee

Table 2

Number of months remaining in contract term when early termination request is made	Early Termination Fee
24 months	\$2,133,701
21 months	\$1,866,989
18 months	\$1,600,276
15 months	\$1,333,563
12 months	\$1,066,851
9 months	\$800,138
6 months	\$533,425
3 months	\$313,780

Schedule 4 to SaaS Agreement

POLICIES

DRAFT

PRODUCT DESCRIPTION

STREAMS® SMART MOTORWAYS

August 2023

© Copyright 2023 Transmax Pty Ltd. All rights reserved.



DOCUMENT REVISION HISTORY

Date	Revision	Description	Completed by
16/09/2022	1.0	Initial version	Todd Pursey
13/12/2022	1.0	Final version	Declan Lucas & Paul Smith

CONFIDENTIALITY NOTICE AND DISCLAIMER

- (a) This document contains certain confidential information of Transmax Pty Ltd. Transmax acknowledges that Customer is subject to the California Public Records Act (the "Act"). If Customer receives a public records act request for this document, Customer shall inform Transmax, and Transmax shall mark as confidential those portion(s) of this document that it believes are not subject to disclosure under the Act and, shall provide a legal basis for withholding of such portion(s) of the document. Such information shall be timely provided to Customer so that Customer can meet its obligations under the Act. Customer shall endeavour to hold such information confidential pursuant to the terms of the Services Agreement.

Any use of this documentation or the information contained herein is permitted only for purposes contemplated in the agreements between the parties, or pursuant to the terms of a written agreement with Transmax Pty Ltd

TRADEMARKS

TRANSMAX® and STREAMS® are registered trademarks of Transmax Pty Ltd in Australia. They are protected against unauthorised use under the Trade Marks Act (1995) and are valuable business assets. To preserve trademark rights, all trademarks must be used consistent with these guidelines. More information on trademarks is available at www.ipaustralia.gov.au

CONTENTS

1. DEFINITIONS	4
2. PURPOSE	5
3. SERVICE RESPONSIBILITIES	ERROR! BOOKMARK NOT DEFINED.
3.1 TRANSMAX RESPONSIBILITIES	ERROR! BOOKMARK NOT DEFINED.
3.2 CUSTOMER RESPONSIBILITIES - GENERAL	ERROR! BOOKMARK NOT DEFINED.
3.3 CUSTOMER RESPONSIBILITIES – SAFE OPERATION	5
4. PRODUCT DESCRIPTION	7
4.1 STREAMS SMART MOTORWAYS OVERVIEW	7
4.2 CAPABILITIES	7
4.2.1 COORDINATED ADAPTIVE RAMP METERING	7
4.2.2 ADVISORY VSL (VARIABLE SPEED LIMITS)	8
4.2.3 VARIABLE MESSAGE SIGNS (VMS)	8
4.2.4 TRAFFIC MONITORING AND INTERVENTION	9
4.2.5 REPORTING AND ANALYTICS	11
5. STANDARD ARRANGEMENTS	12
5.1 RETENTION PERIODS	12
5.2 TRANSMAX MANAGED SERVICE ENVIRONMENT	12
5.3 SUPPORTED BROWSERS	12
5.4 SECURITY	12
5.4.1 DATA CENTRE SECURITY	12
5.4.2 PENETRATION TESTING	12
5.5 DATA SOVEREIGNTY	12
5.6 SCHEDULED DOWNTIME	13
5.7 CHANGE MANAGEMENT	13
5.7.1 STANDARD CHANGES	13
5.7.2 PLANNED CHANGES	13
5.7.3 MAJOR CHANGES	13
5.7.4 EMERGENCY CHANGES	13
6. SERVICE LEVELS AND SUPPORT	14
6.1 SUPPORT HOURS AND CONTACT DETAILS	14
6.2 SEVERITY LEVELS	14
6.3 SERVICE LEVELS	14
6.3.1 INCIDENT RESPONSE AND RESOLUTION	14
6.3.2 AVAILABILITY	15
6.3.2.1 AVAILABILITY TARGETS	15
6.3.3 MEASUREMENT	15
6.4 LIMITATIONS	15
6.5 EXCLUSIONS FROM SERVICE LEVELS	15

1. DEFINITIONS

Availability means all features and functionality of the Software are available to the Customer's users in a live production environment.

Transmax Managed Services Environment - The cloud environment used by Transmax for the hosting of the Software and any other systems or environments (including but not limited to testing or training environments).

Business Days are Monday to Friday PST/PDT, excluding days that are a public holiday in California.

Incident means an unplanned interruption to a service or a reduction in the quality of a service.

Incident Update means the notification/s provided by Transmax to the Customer during Incident Resolution which provide:

- (a) any actions which can be performed by the Customer to mitigate the impact of the Incident on the Customer's operations or use of the application;
- (b) the current status of the activities being undertaken by Transmax to provide a Workaround or Fix to restore service; and
- (c) such other information as reasonably requested by the Customer.

ITS means Intelligent Transport System

Fix means the corrective action that fixes the root cause of an Incident.

Incident Resolution means normal service is restored via a Workaround or Fix. Where an Incident is resolved by a workaround, a Fix may be provided in a timeframe negotiated with the Customer.

Maintenance Window the time during which regular maintenance is performed

Incident Resolution Time means the elapsed time within the Support Hours, between the time:

- (a) the Customer reports the Incident to Transmax or Transmax identifies the Incident, and
- (b) the time Transmax provides a workaround or Fix for the Incident.

Response means the initial notification provided by Transmax to the Customer which:

- (a) notifies the Customer of the existence of the Incident; or
- (b) acknowledges the Customer's reporting of the Incident

Response Time means the elapsed time within the Support Hours, between the time:

- (a) the Customer reports the Incident to Transmax or Transmax identifies the Incident, and
- (b) the time Transmax provides a Response.

Software means the STREAMS Smart Motorways software program as described in this Product Description.

Support Hours is defined in section 6.1.

System Owner means a primary Customer point of contact who is authorised to make decisions in relation to STREAMS Smart Motorways.

Workaround means a solution that reduces or eliminates the impact of an Incident for which a full resolution is not yet available.

2. PURPOSE

The purpose of this document is to provide STREAMS Smart Motorways customers with key information including:

- Description of the product offering
- Definition of key responsibilities for both Transmax and the Customer in the ongoing support of the service
- Definition of service levels provided by Transmax to the Customer.

3. CUSTOMER RESPONSIBILITIES

3.1 Customer responsibilities – Safe Operation

Transmax is not responsible for the safe operation of the infrastructure managed by the Software, or for the assessment, management, and mitigation of risks arising from the operational use of Software."

STREAMS Smart Motorways is designed to assist road operators manage aspects of road use; it is not a safety system.

STREAMS Smart Motorways is not certified for use in safety critical applications determined by the Customer or any other authority or entity.

STREAMS Smart Motorways is not suited for use as a hazard control mechanism. A road system must rely either on passive systems or other, suitably accredited, active safety systems.

It is necessary for the Customer to evaluate the risk and management of hazardous events and make the determination that the road system is appropriate for the Software.

3.2 Customer responsibilities – Safe Operation assumptions

Transmax makes the following assumptions regarding the design and use of the STREAMS® Smart Motorways product:

1. It is the driver's responsibility to act appropriately given the current conditions of the road.
2. The road has been designed, constructed, and maintained in a safe manner.
3. Appropriate controls ensure the road is operated, and used, in a safe manner.
4. The Customer has implemented any necessary interlocking and conflict monitoring of related sets of ITS equipment to prevent unsafe conditions, including the prevention of simultaneous right of way for conflicting traffic movements, independent of and separate from the Software.
5. That any ITS equipment or network could fail, lose power, or be unable to implement requests or report correct data at any time.
6. The Customer acknowledges that the default behaviour of ITS equipment (commonly a 'blank request') is appropriately configured and well understood. It is always an appropriate fall-back when failures or other uncontrollable conditions arise.

7. The Customer acknowledges that where ITS alters traffic behaviour such as causing an unexpected change in speed or queue, that these traffic conditions still fall within the design criteria of the road.
8. Before use in a production environment, the Customer, with assistance from Transmax, has completed the necessary factory acceptance tests and site acceptance tests, if any, and has accepted that the Software meets the Customer's requirements and specifications, including any safety requirements; and
9. The Customer has adequate policies and procedures in place to ensure the safety of road users using the infrastructure, roads and motorways managed in whole or in part by the Software. These policies and procedures should as a minimum, deal with the assessment of skill levels of personnel, legal rights of personnel to make changes to traffic control devices, supervision of personnel and procedures for configuring and operating the Software and dealing with override, exceptions, and other safety functionality.

Usage scenarios that conflict with these assumptions by applying the Software as a hazard control mechanism or safety system are not appropriate usage.

Some examples include (but are not limited to):

1. Configuration of the variable speed signage environment such that presentation of a blank message could result in drivers travelling at an unsafe speed.
2. Raising speed limits beyond those designed for the road.
3. Raising speed limits beyond those designed for the road or current road condition.
4. Active electronic signage being required to enforce opening of a lane that should be closed under normal and fail-safe conditions (e.g., changing direction of reversible lanes, opening of the hard shoulder during heavy traffic etc.) Relying on the traffic control system, rather than appropriate specialised interlocking components, to ensure that device transitions do not cause conflicts (such as controlling the set of allowable combinations of symbols on a Lane Use Management Sign gantry).
5. Using the Software to control safety critical functions such as fire suppression or automatic responses from automated incident detection.
6. Using ITS to maintain a fundamental safety warning.
7. It is essential the customer undertakes a thorough risk review process, (including techniques such as HAZOP, CHAZOP, FMEA, SIL Assessment), to ensure that the impact of failures of elements of the ITS including the Software still result in a road that can be safely negotiated by competent road users without undue reliance on the ITS functionality.

4. PRODUCT DESCRIPTION

4.1 STREAMS Smart Motorways Overview

STREAMS Smart Motorways is a suite of motorway management tools that optimises existing motorway capacity and infrastructure, to improve transportation outcomes for road users in terms of travel safety, efficiency, and reliability.

Implemented as a comprehensive, coordinated system to manage traffic flows on a proactive basis, the cloud hosted, web-based application employs a combination of sophisticated algorithms to minimise potential for flow breakdown and accidents before they happen.

In addition, Transmax's solution provides active management tools to manage disruptions by coordinating variable speed signs, ramp signals and dynamic message signs that respond in real time to whatever is happening on the motorway. Informed by powerful historical and real-time visualisations and analytics, Customers can proactively monitor their motorway network.

STREAMS Smart Motorways is delivered to the Customer "as a service."

4.2 Capabilities

4.2.1 Coordinated Adaptive Ramp Metering

STREAMS Smart Motorways ramp metering capability maximises the storage and flow management capabilities of freeway entrance ramps using ramp signal controls. This is achieved through STREAMS running a suite of algorithms to balance the demand for freeway access from ramps throughout the entire corridor on a dynamic, coordinated, and real-time basis.

STREAMS Smart Motorways manages freeway occupancy and traffic flow along the freeway mainline using ramp metering by:

- Breaking up platoons entering from the arterial network
- Adjusting the entry flows based on the available capacity of the motorway
- Finding the moving bottleneck locations and calculating their dynamic capacity
- Balancing the workload and queues across all available ramps

The system responds and adapts to traffic conditions as they approach saturated conditions and recognise the potential breakdown of corridor traffic flow. Driven by real time vehicle detector data and algorithm parameters, metering rates are adjusted every 20 seconds. This proactive approach allows the system to adapt and respond to influxes of volume and occupancy, and to recover as soon as possible in the event of congestion occurring.

The STREAMS Smart Motorways system implements both local and system-wide control in response to changing conditions, coordinating the operation at all ramps to balance ramp queues and waiting times and manage multiple bottlenecks. This allows the system to prevent, minimize or delay the breakdown of mainline traffic flow, while simultaneously preventing ramp queues from backing up onto any given arterial roadway. Additionally, STREAMS Smart Motorways assists with recovery of mainline flow to stable conditions should unstable conditions or flow breakdown occur (including after a traffic incident).

4.2.2 Advisory Variable Speed Limit

STREAMS Smart Motorways utilises Variable Speed Limit (VSL) signs to display speed limit changes in response to traffic conditions (e.g., an accident), congestion, or even weather conditions affecting traffic on the motorway. These algorithms driven VSL signs warn drivers to reduce their speed before reaching the back of a stationary queue, reducing turbulence, and improving safety.

STREAMS Smart Motorways displays a schematic indicating where integrated VSL signs are located along the corridor and the status of each site including whether the VSLs are activated. When VSL functionality activates in response to changing traffic conditions, the new advisory speed limit is displayed through the application.

VSLs activate and deactivate dynamically based on the detection of slow-moving downstream traffic. This allows VSL messages to revert to a default blank state, switching off when needed, to reduce messages displayed to motorists.

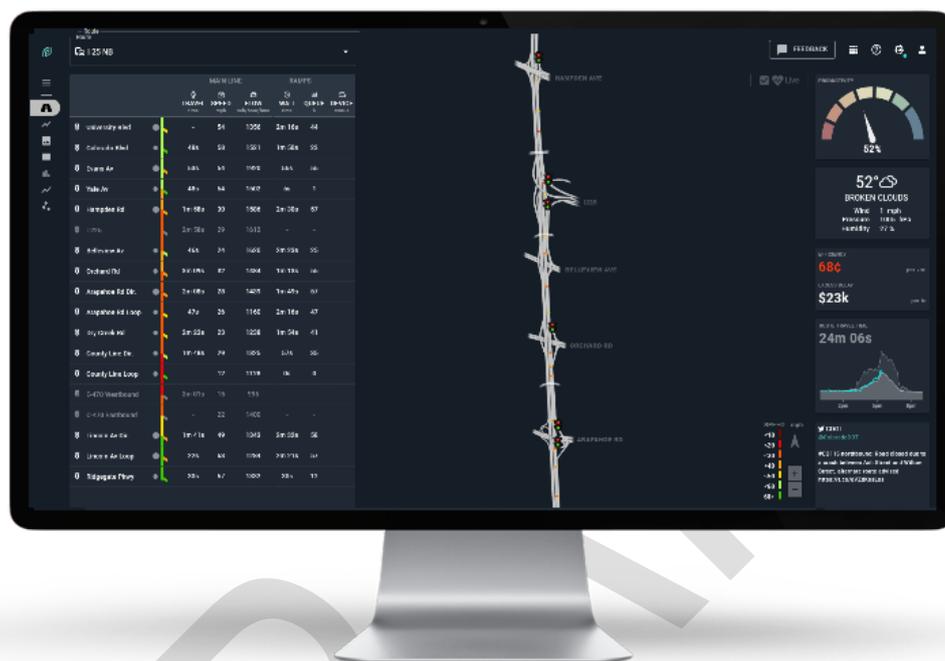
4.2.3 Variable Message Signs

STREAMS Smart Motorways integrates with Variable Message Signs (VMS) along the corridor, displaying advisory information for downstream destinations, allowing motorists to make informed routing decisions.

VMS capabilities are used to complement other ITS devices such as VSL. Complementary VMS messaging is intended to increase compliance and overall impact of advisory VSL signage to enhance system performance. A VMS message can be activated dynamically by STREAMS Smart Motorways' control system concurrently with VSL signs.

4.2.4 Traffic Monitoring and Intervention

STREAMS Smart Motorways enables operators and route managers to identify how traffic conditions are changing along their freeway route in real time. The application interface empowers network operators to know when to intervene due to unusual events, critical device failures or, in scarce occasions, degraded system behaviour.



The STREAMS Smart Motorways interface displays a schematic along with key mainline statistics including:

- Travel Time
- Speed
- Flow

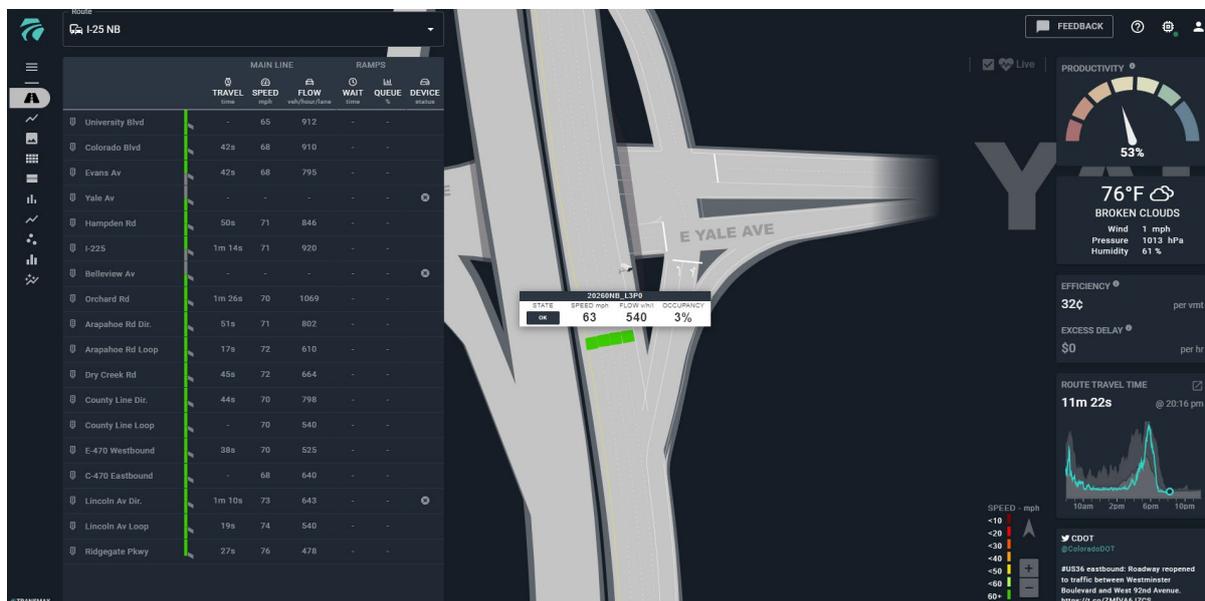
Key on-ramp statistics that can be seen from the live schematic view include:

- Wait Time
- Queue percentage
- Device status

The STREAMS Smart Motorways interface allows operators to quickly identify the severity and impact of changing traffic conditions via:

- Colour legends representing mainline and ramp speed along the corridor
- Easily identify the status of ITS devices (in/active)
- Identify when system wide control is activated, requiring multiple ramps to coordinate to manage traffic flows
- View fundamental traffic criteria (speed, flow, occupancy) at a per-lane basis along the corridor

- Integration with transportation department social channels such as Twitter
- KPI widgets including motorway productivity
- Real time status of critical ITS devices and equipment.



RAMP METERING OVERRIDE CONTROL

Where necessary, system operators can override automated system control to deactivate individual ramp signals along the corridor from STREAMS Smart Motorways.

VARIABLE SPEED LIMIT OVERRIDE CONTROL

These manual override abilities support transport network operators (and other users) with a traffic incident or emergency responses, allowing emergency vehicles to enter the mainline without waiting through a timed queue or adhering to an advisory VSL. System control for ramp metering and advisory VSLs can be reactivated by system operators when appropriate.

4.2.5 Reporting and Analytics

The STREAMS Smart Motorways application interface provides transport network operators (and related users) with a suite of visualisations, analytics and insights into motorway on-ramp, bottleneck, and mainline performance. Reporting and analytic capabilities include:

- Easily identifying relevant information where route and motorway network performance is performing abnormally
- Identifying capacity constraints and bottleneck trends across the motorway network that may require the attention of broader travel demand management considerations
- Limiting the impact of a disruption by identifying areas that are oversaturated or have additional capacity
- Understanding generalised traffic patterns of congestion and seasonal changes.

STREAMS Smart Motorways facilitates these capabilities through live monitoring, playback, and some statistical analysis across a range of visualisations including travel time trends, heat plots, snapshots, probability of congestion, and fundamental relationships of freeway flow. These visualisations range from the vehicle detector to the route level.

DRAFT

5. STANDARD ARRANGEMENTS

5.1 Retention Periods

Transmax stores historical data to enable the reporting and analytical capabilities of the software.

The table below outlines the indicative retention periods, which are subject to change by Transmax.

Log granularity	Retention Period (days)
20 second data	100
60 second data	365
15-minute data	7 years

Table 1: STREAMS Smart Motorways Dashboard Retention Periods

5.2 Transmax Managed Service environment

STREAMS Smart Motorways is hosted using public infrastructure and parts of the solution are multi-tenanted. All tenancies are hosted within the US. Transmax delivers the service from its own cloud tenancy.

5.3 Supported browsers

Transmax supports Google Chrome and Microsoft Edge running a version updated in the last 6 months. Other Chromium based browsers are also likely to function, but not officially supported.

5.4 Security

5.4.1 Data centre security

If requested by the Customer, Transmax will attempt to obtain the latest Security and Organisation Controls (SOC) Type 2 report from AWS and provide it to the Customer.

5.4.2 Penetration testing

Transmax performs annual penetration test as part of an internal security program. If the Customer wishes to undertake a separate penetration test, approval must be sought from Transmax before commencing penetration testing of STREAMS Smart Motorways. Transmax is obligated to seek authorisation from its cloud provider before penetration testing commences. The Customer is responsible for all costs associated with Customer initiated penetration testing.

5.5 Data Sovereignty

Transmax will deliver STREAMS Smart Motorways from a data centre based in the United States.

Transmax resources will access data from Australia for the purpose of providing the services and may sometimes transfer data to Australia for the purpose of performing this work.

Transmax cannot guarantee that Customer or third-party data consumers will not transfer data outside of the United States because STREAMS Smart Motorways does not monitor the location of data consumers or implement network geo-blocking.

5.6 Scheduled downtime

The standard Maintenance Window is between 8pm and 11pm Monday – Friday, Pacific Standard Time (PST). Transmax will only use this Maintenance Window when changes are required.

On occasion, major changes will require an extended maintenance window. If a major change requires an extended maintenance window, Transmax will provide 7 days' notice of the change and the extended maintenance window duration.

5.7 Change management

Transmax classifies changes as per the following definitions.

5.7.1 Standard changes

Standard changes are routine, low risk changes that may require an outage of <5 minutes for non-critical components. Transmax will regularly make this type of change as part of service delivery.

5.7.2 Planned changes

Changes that are expected to affect access to the system or cause a service outage (>5 minutes), will be performed during the Maintenance Window. Where possible Transmax will minimise service interruptions that may occur as part of these updates.

5.7.3 Major changes

Major changes are changes that have a high risk of business impact or are expected to cause a service outage (>30 minutes). Transmax will provide 7 days' notice for these changes.

Transmax will perform release changes during the Maintenance Window. Transmax will use its best efforts to minimise service interruptions that may occur as part of these updates.

5.7.4 Emergency changes

Emergency changes may be required to restore normal service following an Incident. Transmax will notify the System Owner using an appropriate channel, prior to the implementation of an emergency change.

6. SERVICE LEVELS AND SUPPORT

6.1 Support hours and contact details

Support hours are 24 x 7. Access to the Transmax Service Desk is via the Service Desk Customer Portal and Transmax staff will provide support to resolve Incidents based on their priority.

6.2 Severity Levels

Transmax Service Desk determines Incident priority based on business impact and urgency. Table 2 defines the severity levels.

Severity level	Description
P1 - Critical	Mission-critical functionality is inoperable or has failed
P2 - High	Mission-critical functionality is impaired or loss of redundant component
P3 - Medium	Incidents and requests that are not mission-critical but have impact on normal operations
P4 - Low	Inconvenient

Table 2: Severity Levels

6.3 Service Levels

6.3.1 Incident response and resolution

Table 3 defines the agreed service levels, for Response and the Resolution of Incidents

Severity level	Response Time	Target Service Resolution Time
Critical	Less than one hour	Less than 8 hours
High	Less than 24 hours	Less than three days
Medium	Less than three Business Days	Less than seven Business Days
Low	Less than three Business Days	Less than 21 Business Days

Table 3: Service levels for Incident response and resolution

6.3.2 Availability

6.3.2.1 Availability targets

Table 4 defines the availability targets for the STREAMS Smart Motorways service. Transmax aims to ensure that the STREAMS Smart Motorways solution is available 24 hours a day, 7 days a week.

Delivery mechanism	Service Availability Target	Measurement Period
Critical functions*	99%	Quarterly
Supporting functions**	95%	Quarterly

Table 4: Availability targets

*Critical Functions are functions that directly control on road devices and may have on road impacts.

** Supporting Functions are all other functionality required to support the operation of STREAMS Smart Motorways.

6.3.3 Measurement

The formula used to measure against the Availability targets is

$$\text{Availability} = (\text{Service Hours} - \text{Unplanned Downtime}) / \text{Service Hours}$$

Note: $\text{Service Hours} = \text{Total Time} - \text{Planned Downtime}$

The Availability targets do not include planned downtime (downtime that has occurred due to a planned change nor outages that are outside of Transmax's responsibility or control.

6.4 Limitations

Service Levels are subject to the following:

- In the situation where a Customer reported issue cannot be replicated by Transmax and/or determined not able to be rectified in the product or service, Transmax will provide supporting information, if available, to assist the Customer with their investigation.
- Issues or faults caused by either incorrect use or errors in other software or hardware products will not be remediated.
- Where a root cause is identified as something outside of Transmax's responsibilities, additional charges may apply.

6.5 Exclusions from service levels

For the purpose of measuring STREAMS Smart Motorways service levels, the following exclusions apply:

- Incident resolution service level measurement will be paused when waiting on a response from the Customer.
- Incident and availability service levels, where the root cause of an outage or Incident is deemed to be outside of the reasonable control of Transmax
- Incident and availability service levels that are due to network outages:
 - Where the web interface is unreachable from the Customer's network specifically but is still reachable via the general internet

- Where the ITS field network is unable to communicate with the Transmax managed environment
- Incident and availability service levels where the root cause is related to faults with field devices.

DRAFT

AGENDA ITEM 8

RIVERSIDE COUNTY TRANSPORTATION COMMISSION	
DATE:	August 28, 2023
TO:	Western Riverside County Programs and Projects Committee
FROM:	Joie Edles Yanez, Capital Projects Manager Erik Galloway, Project Delivery Director
THROUGH:	Anne Mayer, Executive Director
SUBJECT:	Interstate 15 Franklin Street Interchange Project Cooperative Agreement with the City of Lake Elsinore

STAFF RECOMMENDATION:

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Approve Cooperative Agreement No. 24-31-023-00, with the city of Lake Elsinore (City) for funding of the plans, specifications & estimate (PS&E) phase of the Interstate 15 Franklin Street Interchange Project, in the amounts of \$9,500,000 from the Western Riverside Council of Governments (WRCOG) local Transportation Uniform Mitigation Fees (TUMF), and \$3,000,000 in local funds from the City, for a total amount of \$12,500,000;
- 2) Authorize Commission staff to be the lead agency on behalf of the city of Lake Elsinore, as stated in the terms of Cooperative Agreement No. 24-31-023-00; and
- 3) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements and future non-funding agreements and/or amendments on behalf of the Commission.

BACKGROUND INFORMATION:

The I-15 Franklin Street Interchange Project (Project) proposes to design and build a new freeway connection interchange north of the existing Franklin Street overcrossing. This Project is Phase II of the overall I-15 improvements projects in the city of Lake Elsinore, with Phase I being the I-15 Railroad Canyon Road Interchange Project, which completed construction in the fall of 2022 and is now fully operational. The Riverside County Transportation Commission (RCTC) acted as the lead agency on behalf of the City for Phase I and has been requested by the City to lead Phase II as well.

The City has identified and earmarked funding for the Project to proceed into the PS&E phase and for RCTC staff time to manage the Project. In cooperation with the City and Caltrans, the Project is ready to begin the procurement process to enlist the services of a professional and best qualified engineering firm to work on the PS&E and Right of Way (ROW) engineering phases of the Project.

DISCUSSION:

Agency Agreements

City of Lake Elsinore Cooperative Agreement

A cooperative agreement with the City is required to establish the Commission as the lead agency for the PS&E phase, as well as identify the obligations and responsibilities of each agency. The Project will be designed in accordance with Caltrans standards and at the completion of construction will become part of the state highway system.

As part of the agreement, the City is contributing \$12,500,000 for the final design of the Project, which consists of \$9,500,000 from WRCOG and \$3,000,000 from the City. The cooperative agreement includes language to allow RCTC to recover project costs expended from the agreements effective date.

Other Agreements

A cooperative agreement with Caltrans, City, and Commission will be needed to identify the responsibilities of all parties for ROW acquisition, the Commission as the implementing agency, and City and Caltrans responsibilities of quality assurance reviews. Staff will request approval of this cooperative agreement at the time of PS&E contract award.

Procurement of PS&E Consultant

Staff has developed the request for qualifications (RFQ) for procurement of the PS&E services for the project and will be advertised once finalized.

ROW Engineering

It is anticipated that seven partial ROW acquisitions and temporary construction easements will be required for the Project. The final environmental document for the I-15 Railroad Canyon Road Improvement Project indicated that up to 50 parcels were identified for partial acquisition and 12 parcels were identified for full acquisition as part of Phase II. Both commercial and residential properties are expected to be impacted.

The selected engineering firm will perform ROW engineering which includes research and determination of the actual ROW requirements, which will confirm the required full and partial acquisitions.

Staff will return to the Commission for approval of ROW acquisitions and utility relocations once parcels have been identified and costs determined.

Funding

The cooperative agreement between the City and the Commission establishes that all project cost will be borne by the City, and that the Commission will be reimbursed for all its costs associated with the project, including those for staff and the consultant. Funding for PS&E and ROW has been identified by the City as primarily TUMF program funds, administered by WRCOG in accordance with the TUMF Nexus Study.

Additional funding will be provided locally by the City for ROW acquisition, utility relocation, and construction phases.

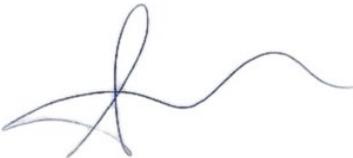
FISCAL IMPACT:

Funding for PS&E services will be provided by local TUMF and City local funds.

There are sufficient funds in the Fiscal Year 2023/24 FY budget to begin PS&E services. No budget amendments are required at this time. PS&E will continue to be budgeted for subsequent years to complete these phases of the Project.

Expenditure Schedule

Item	FY 2023/24	FY 2024/25+	Dollar Amount	Fund Source
1 PS&E	\$789,900	\$8,710,100	\$9,500,000	TUMF
		\$3,000,000	\$3,000,000	Local City Funds
Total	\$789,900	\$11,710,100	\$12,500,000	

Financial Information					
In Fiscal Year Budget:	Yes	Year:	FY 2023/24 FY 2024/25+	Amount:	\$789,900 \$11,710,100
Source of Funds:	Local TUMF and Local City		Budget Adjustment:	No	
GL/Project Accounting No.:	Revenue:		005138 41607 210 72 42110 \$9,500,000 (Local TUMF)		
			005138 41604 210 72 41203 \$3,000,000 (Local City Funds)		
	Expenditure:		005138 81102 210 72 81101 \$12,500,000 (Final Design)		
Fiscal Procedures Approved:				Date:	08/14/2023

Attachments:

- 1) Draft Commission - City of Lake Elsinore Cooperative Agreement No. 24-31-023-00

2) WRCOG – City of Lake Elsinore TUMF Agreement No. 22-SW-LEL-1204

Agreement No. 24-31-023-00

**COOPERATIVE AGREEMENT
BETWEEN**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION,
CITY OF LAKE ELSINORE**

**FOR THE INTERSTATE 15 (I-15) FRANKLIN STREET INTERCHANGE PROJECT
PLANS SPECIFICATIONS AND ESTIMATES PHASE**

1. Parties and Date. This Cooperative Agreement is made and entered into this ____ day of _____, 2023 (“Effective Date”), by and between the Riverside County Transportation Commission (“RCTC”) and the City of Lake Elsinore (“City”). RCTC and the City are sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

2. Recitals.

2.1 The Western Riverside Council of Governments (WRCOG) has allocated \$9.5 Million for the Plans, Specifications, and Estimates phase for the I-15 Franklin Street Interchange Project (“Project”).

2.2 The PS&E phase for the Project includes preparation of the PS&E final design, right-of-way management, right-of-way acquisitions, and RCTC internal costs consisting of program management and legal services (“PS&E Phase”)

2.3 WRCOG and City have entered in a funding agreement allocating the above referenced \$9.5 Million to City for the PS&E Phase. An additional \$3.0 Million in local funds from the City will be committed to the PS&E Phase, for a total of \$12.5 Million towards the PS&E Phase.

2.4 The Project is located adjacent to and within the jurisdictional boundaries of the City of Lake Elsinore and may require improvements to streets within the City.

2.5 The City has requested that RCTC be the lead agency for the PS&E Phase.

2.6 RCTC has agreed to act as the lead agency for the the PS&E Phase.

3. Terms.

3.1 PS&E Phase Work.

A. RCTC shall be the lead agency for the PS&E Phase. RCTC shall select, retain and oversee consultants to complete the PS&E Phase work and services including, but not limited to, preparation of the PS&E document. The PS&E Phase work and services shall be funded by the funding sources set forth in Section 2.3 above. The

Parties agree that RCTC shall not have any obligation to fund the PS&E Phase work or services using its own funds. In the case that additional funds are needed to complete the PS&E Phase work or services, beyond the funding described in Section 2.3, the City shall be responsible for identifying and obtaining such additional funding. Allocation of additional funding shall be by amendment to this Cooperative Agreement or by separate agreement.

B. RCTC shall complete the PS&E Phase work and services within the term of this Agreement, as provided in Section 3.2, unless extended by mutual agreement of the Parties.

C. Funding and responsibilities for any other phases of the Project, or construction of any portion or all of the Project, shall be by separate agreement.

3.2 Term of Agreement. The term of this Cooperative Agreement shall extend from the Effective Date and shall remain in effect through December 31, 2030, or until written agreement by the Parties that the PS&E Phase has been completed, unless earlier terminated as provided in this Cooperative Agreement.

3.3 Cooperation. RCTC and the City agree to cooperate in the development of the PS&E document for the Project, completion of the PS&E Phase work and services, and the implementation of this Cooperative Agreement.

3.4 Reporting. RCTC shall, in a timely manner, provide milestone reports to the City, detailing the progress of the PS&E Phase work and services.

3.5 Obligations of the City.

- A. RCTC shall submit invoices no less frequently than quarterly in any quarter in which reimbursable expenses are incurred but not to exceed once per month. The City shall timely review and pay approved invoices within thirty (30) days. The City shall promptly notify RCTC of any disputed charges.
- B. The City may provide a City oversight engineer or other City staff to oversee the PS&E Phase work and services at its own cost.
- C. The City shall process any City encroachment permits required for the PS&E Phase at no cost to RCTC or its consultant(s) provided that RCTC or the consultant(s), as the case may be, submits a complete application for such encroachment permits consistent with City's requirements. The determination on whether the application is complete and whether an encroachment permit may be issued shall be made by the City in its sole and absolute discretion pursuant to its municipal code, policies, procedures, and any other applicable law.
- D. The City shall timely review design plans for the Project including, but not limited to, the PS&E document and provide any approvals or

comments within thirty (30) days of receipt of the plans. If the City fails to provide any comments or its approval within said time period, RCTC shall provide notice to the City Engineer of the City that the design plans shall be deemed approved by the City if no comments are received within an additional 15 days. The CITY shall inspect any other PS&E Phase work or services upon written notice of completion of the work or services by RCTC to the City, and shall timely provide approval or identify any nonconformities identified by the City within thirty (30) days, or such other reasonable period requested by RCTC.

3.6 Obligations of RCTC

- A. RCTC shall serve as the lead agency for the PS&E Phase. RCTC shall be responsible for procuring, retaining and overseeing consultant(s) as required for completion of the PS&E Phase, or as reasonably necessary for PS&E Phase completion.
- B. RCTC shall provide the City an opportunity to review and approve all design documents for the Project prior to finalization of such design document for the Project for public bidding purposes.
- C. RCTC shall invoice the City for PS&E Phase expenses incurred in accordance with this Cooperative Agreement, no less frequently than quarterly in any quarter in which reimbursable expenses are incurred, but not to exceed once per month. Invoices submitted to the City shall be in a form and include such detail as reasonably requested by the City.
- D. RCTC shall require that the consultant(s) retained for the PS&E Phase include the City as an additional insured and indemnified party under RCTC's agreements with the consultant(s).

3.7 Mutual Indemnification.

A. RCTC shall, at its sole cost and expense, indemnify, defend and hold the City, its officials, officers, employees, consultants and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, judgments, penalties, damages or injuries, in law or in equity, to property or persons, including wrongful death, whether actual, alleged or threatened, which arise in any manner out of, pertain to, or relate to, in whole or in part, to any negligent acts, omissions or breach of law, recklessness, or willful misconduct of RCTC, its officials, officers, employees, agents, consultants or contractors in the performance of RCTC's obligations under this Cooperative Agreement, including but not limited to the payment of expert witness fees and reasonable attorneys' fees and costs.

B. The City shall, at its sole cost and expense, indemnify, defend and hold RCTC and its officials, officers, employees, consultants and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, judgments, penalties, damages or injuries, in law or in equity, to property or

persons, including wrongful death, whether actual, alleged or threatened, which in any manner arise out of, pertain to, or relate to, in whole or in part, to any negligent acts, omissions or breach of law, recklessness, or willful misconduct of City, its officials, officers, employees, agents, consultants or contractors in the performance of City obligations under this Cooperative Agreement, including but not limited to the payment of expert witness fees and reasonable attorneys' fees and costs.

3.8 Amendments. The terms and conditions of this Cooperative Agreement shall not be altered or modified at any time except by a written amendment executed by the mutual consent of the Parties by an instrument in writing.

3.9 Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of either Party shall be deemed to waive or render unnecessary such Party's consent to or approval of any subsequent act of the other Party. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Cooperative Agreement.

3.10 Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Cooperative Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Funding Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

3.11 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Cooperative Agreement, shall survive any such expiration or termination.

3.12 RCTC Disclaimer. In no event shall RCTC be responsible or liable for the quality, suitability, operability or condition of any design or construction by the Project consultants or the contractor, as applicable, and RCTC expressly disclaims any and all express or implied representations or warranties with respect thereto, including any warranties of suitability or fitness for use.

3.13 Third Party Beneficiaries. There are no third-party beneficiaries to this Cooperative Agreement.

3.14 Termination. Any Party may terminate this Cooperative Agreement by giving thirty (30) days written notice thereof.

3.15 Assignment or Transfer. The Parties shall not assign, hypothecate, or transfer, either directly or by operation of law, this Cooperative Agreement or any interest herein without the prior written consent of the other Parties. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.16 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation

3.17 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To RCTC: Riverside County Transportation Commission
4080 Lemon Street, Third Floor
P.O. Box 12008
Riverside, CA 92502-2208
Attention: Executive Director

Copy to: Best, Best & Krieger, LLP
3390 University Ave. 5fl.
Riverside, CA 92501
Attention: Steven C. DeBaun

To City: City of Lake Elsinore
130 South Main Street
Lake Elsinore, CA 92530
Attention: City Manager

Copy to: Leibold McClendon & Mann
9841 Irvine Center Drive
Suite 230
Irvine, California 92618
Attention: Barbara Leibold, City Attorney

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

3.18 Time of Performance. Time is of the essence in the performance of this Agreement.

3.19 Governing Law. This Agreement is in all respects governed by California law and venue for any dispute shall be in Riverside County.

3.20 Insurance. The Parties each verify that they are self-insured or maintain insurance coverage through a Joint Powers Authority in reasonable and customary amounts for their respective operations.

3.21 Authority to Enter into Agreement. Each Party warrants that the individuals who have signed this Cooperative Agreement have the legal power, right and authority to make this Cooperative Agreement and bind each respective Party.

3.22 Counterparts. This Cooperative Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

3.23 Entire Agreement. This Cooperative Agreement contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings.

IN WITNESS WHEREOF, the parties hereto have executed this Cooperative Agreement on the date first herein above written.

[Signatures on following page]

**SIGNATURE PAGE
TO
INTERSTATE 15 FRANKLIN STREET INTERCHANGE PROJECT
PLANS SPECIFICATIONS, AND ESTIMATES PHASE COOPERATIVE AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have executed the Agreement as of the Effective Date.

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

CITY OF LAKE ELSINORE

By: _____
Anne Mayer, Executive Director

By: _____

Title: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
Counsel to RCTC

By: _____

Title: _____

ATTEST:

By: _____

Title: _____

22-SW-LEL-1204

**\TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM
AGREEMENT TO REIMBURSE TUMF FUNDS
INTERSTATE 15 FRANKLIN STREET INTERCHANGE IMPROVEMENT PROJECT
FINAL PS&E PHASE**

THIS REIMBURSEMENT AGREEMENT (“Agreement”) is entered into as of this 10th day of January, 20²³, by and between the Western Riverside Council of Governments (“WRCOG”), a California joint powers authority and **City of Lake Elsinore**, a California municipal corporation (“AGENCY”). WRCOG and AGENCY are sometimes hereinafter referred to individually as “Party” and collectively as “Parties”.

RECITALS

A. WRCOG is the Administrator of the Transportation Uniform Mitigation Fee Program of Western Riverside County (“TUMF Program”).

B. WRCOG has identified and designated certain transportation improvement projects throughout Western Riverside County as projects of regional importance (“Qualifying Projects” or “Projects”). The Qualifying Projects are more specifically described in that certain WRCOG study titled “TUMF Nexus Study”, as may be amended from time to time. Qualifying Projects can have Regional or Zonal significance as further described in the TUMF Nexus Study.

C. The TUMF Program is funded by TUMF fees paid by new development in Western Riverside County (collectively, “TUMF Program Funds”). TUMF Program Funds are held in trust by WRCOG for the purpose of funding the Qualifying Projects.

D. The AGENCY proposes to implement a Qualifying Project, and it is the purpose of this Agreement to identify the project and to set forth the terms and conditions by which WRCOG will release TUMF Program Funds.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and subject to the conditions contained herein, the Parties hereby agree as follows:

1. Description of the Qualifying Project. This Agreement is intended to distribute TUMF Program Funds to the AGENCY for **Interstate 15 Franklin Street Interchange Improvement Project**, (the “Project”), a Qualifying Project. The Work, including a timetable and a detailed scope of work, is more fully described in Exhibit “A” attached hereto and incorporated herein by reference and, pursuant to Section 20 below, is subject to modification if requested by the AGENCY and approved by WRCOG. The work shall be consistent with one or more of the defined WRCOG Call for Projects phases detailed herein as follows:

1) PS&E – Plans, Specifications and Estimates

2. WRCOG Funding Amount. WRCOG hereby agrees to distribute to AGENCY, on the terms and conditions set forth herein, a sum not to exceed **Six Million Dollars**

(\$6,000,000), to be used for reimbursing the AGENCY for eligible Project expenses as described in Section 3 herein (“Funding Amount”). The Parties acknowledge and agree that the Funding Amount may be less than the actual cost of the Project. Nevertheless, the Parties acknowledge and agree that WRCOG shall not be obligated to contribute TUMF Program Funds in excess of the maximum TUMF share identified in the TUMF Nexus Study (“Maximum TUMF Share”), as may be amended from time to time.

3. Project Costs Eligible for Advance/Reimbursement. The total Project costs (“Total Project Cost”) may include the following items, provided that such items are included in the scope of work attached hereto as Exhibit “A” (“Scope of Work”): (1) AGENCY and/or consultant costs associated with direct Project coordination and support; (2) funds expended in preparation of preliminary engineering studies; (3) funds expended for preparation of environmental review documentation for the Project; (4) all costs associated with right-of-way acquisition, including right-of-way engineering, appraisal, acquisition, legal costs for condemnation procedures if authorized by the AGENCY, and costs of reviewing appraisals and offers for property acquisition; (5) costs reasonably incurred if condemnation proceeds; (6) costs incurred in the preparation of plans, specifications, and estimates by AGENCY or consultants; (7) AGENCY costs associated with bidding, advertising and awarding of the Project contracts; (8) construction costs, including change orders to construction contract approved by the AGENCY; (9) construction management, field inspection and material testing costs; and (10) any AGENCY administrative cost to deliver the Project.

4. Ineligible Project Costs. The Total Project Cost shall not include the following items which shall be borne solely by the AGENCY without reimbursement: (1) any AGENCY administrative fees attributed to the reviewing and processing of the Project; and (2) expenses for items of work not included within the Scope of Work in Exhibit “A”.

5. Procedures for Distribution of TUMF Program Funds to AGENCY.

(a) Initial Payment by the AGENCY. The AGENCY shall be responsible for initial payment of all the Project costs as they are incurred. Following payment of such Project costs, the AGENCY shall submit invoices to WRCOG requesting reimbursement of eligible Project costs. Each invoice shall be accompanied by detailed contractor invoices, or other demands for payment addressed to the AGENCY, and documents evidencing the AGENCY’S payment of the invoices or demands for payment. Documents evidencing the AGENCY’S payment of the invoices shall be retained for four (4) years and shall be made available for review by WRCOG. The AGENCY shall submit invoices not more often than monthly and not less often than quarterly.

(b) Review and Reimbursement by WRCOG. Upon receipt of an invoice from the AGENCY, WRCOG may request additional documentation or explanation of the Project costs for which reimbursement is sought. Undisputed amounts shall be paid by WRCOG to the AGENCY within thirty (30) days. In the event that WRCOG disputes the eligibility of the AGENCY for reimbursement of all or a portion of an invoiced amount, the Parties shall meet and confer in an attempt to resolve the dispute. If the meet and confer process is unsuccessful in resolving the dispute, the AGENCY may appeal WRCOG’S decision as to the eligibility of one or more invoices to WRCOG’S Executive Director. The WRCOG Executive Director shall

provide his/her decision in writing. If the AGENCY disagrees with the Executive Director's decision, the AGENCY may appeal the decision of the Executive Director to the full WRCOG Executive Committee, provided the AGENCY submits its request for appeal to WRCOG within ten (10) days of the Executive Director's written decision. The decision of the WRCOG Executive Committee shall be final. Additional details concerning the procedure for the AGENCY's submittal of invoices to WRCOG and WRCOG's consideration and payment of submitted invoices are set forth in Exhibit "B", attached hereto and incorporated herein by reference.

(c) Funding Amount/Adjustment. If a post Project audit or review indicates that WRCOG has provided reimbursement to the AGENCY in an amount in excess of the Maximum TUMF Share of the Project, or has provided reimbursement of ineligible Project costs, the AGENCY shall reimburse WRCOG for the excess or ineligible payments within 30 days of notification by WRCOG.

6. Increases in Project Funding. The Funding Amount may, in WRCOG's sole discretion, be augmented with additional TUMF Program Funds if the TUMF Nexus Study is amended to increase the maximum eligible TUMF share for the Project. Any such increase in the Funding Amount must be approved in writing by WRCOG's Executive Director. In no case shall the amount of TUMF Program Funds allocated to the AGENCY exceed the then-current maximum eligible TUMF share for the Project. No such increased funding shall be expended to pay for any Project already completed. For purposes of this Agreement, the Project or any portion thereof shall be deemed complete upon its acceptance by WRCOG's Executive Director which shall be communicated to the AGENCY in writing.

7. No Funding for Temporary Improvements. Only segments or components of the construction that are intended to form part of or be integrated into the Project may be funded by TUMF Program Funds. No improvement which is temporary in nature, including but not limited to temporary roads, curbs, tapers or drainage facilities, shall be funded with TUMF Program Funds, except as needed for staged construction of the Project.

8. AGENCY's Funding Obligation to Complete the Project. In the event that the TUMF Program Funds allocated to the Project represent less than the total cost of the Project, the AGENCY shall provide such additional funds as may be required to complete the Project.

9. AGENCY's Obligation to Repay TUMF Program Funds to WRCOG; Exception For PA&ED Phase Work. Except as otherwise expressly excepted within this paragraph, in the event that: (i) the AGENCY, for any reason, determines not to proceed with or complete the Project; or (ii) the Project is not timely completed, subject to any extension of time granted by WRCOG pursuant to the terms of this Agreement; the AGENCY agrees that any TUMF Program Funds that were distributed to the AGENCY for the Project shall be repaid in full to WRCOG, and the Parties shall enter into good faith negotiations to establish a reasonable repayment schedule and repayment mechanism. If the Project involves work pursuant to a PA&ED phase, AGENCY shall not be obligated to repay TUMF Program Funds to WRCOG relating solely to PA&ED phase work performed for the Project.

10. AGENCY local match funding is not required, as shown in Exhibit "A" and as called out in the AGENCY's Project Nomination Form submitted to WRCOG in response to its Call for Projects.

11. Term/Notice of Completion. The term of this Agreement shall be from the date first herein above written until the earlier of the following: (i) the date WRCOG formally accepts the Project as complete, pursuant to Section 6; (ii) termination of this Agreement pursuant to Section 15; or (iii) the AGENCY has fully satisfied its obligations under this Agreement. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

12. Representatives of the Parties. WRCOG's Executive Director, or his or her designee, shall serve as WRCOG's representative and shall have the authority to act on behalf of WRCOG for all purposes under this Agreement. The AGENCY hereby designates **Jason Simpson, City Manager**, or his or her designee, as the AGENCY's representative to WRCOG. The AGENCY's representative shall have the authority to act on behalf of the AGENCY for all purposes under this Agreement and shall coordinate all activities of the Project under the AGENCY's responsibility. The AGENCY shall work closely and cooperate fully with WRCOG's representative and any other agencies which may have jurisdiction over or an interest in the Project.

13. Expenditure of Funds by AGENCY Prior to Execution of Agreement. Nothing in this Agreement shall be construed to prevent or preclude the AGENCY from expending funds on the Project prior to the execution of the Agreement, or from being reimbursed by WRCOG for such expenditures. However, the AGENCY understands and acknowledges that any expenditure of funds on the Project prior to the execution of the Agreement is made at the AGENCY's sole risk, and that some expenditures by the AGENCY may not be eligible for reimbursement under this Agreement.

14. Review of Services. The AGENCY shall allow WRCOG's Representative to inspect or review the progress of the Project at any reasonable time in order to determine whether the terms of this Agreement are being met.

15. Termination.

(a) Notice. Either WRCOG or AGENCY may, by written notice to the other party, terminate this Agreement, in whole or in part, in response to a material breach hereof by the other Party, by giving written notice to the other party of such termination and specifying the effective date thereof. The written notice shall provide a 30 day period to cure any alleged breach. During the 30 day cure period, the Parties shall discuss, in good faith, the manner in which the breach can be cured.

(b) Effect of Termination. In the event that the AGENCY terminates this Agreement, the AGENCY shall, within 180 days, repay to WRCOG any unexpended TUMF Program Funds provided to the AGENCY under this Agreement and shall complete any portion or segment of work for the Project for which TUMF Program Funds have been provided. In the event that WRCOG terminates this Agreement, WRCOG shall, within 90 days, distribute to the

AGENCY TUMF Program Funds in an amount equal to the aggregate total of all unpaid invoices which have been received from the AGENCY regarding the Project at the time of the notice of termination; provided, however, that WRCOG shall be entitled to exercise its rights under Section 5(b), including but not limited to conducting a review of the invoices and requesting additional information. Upon such termination, the AGENCY shall, within 180 days, complete any portion or segment of work for the Project for which TUMF Program Funds have been provided. This Agreement shall terminate upon receipt by the non-terminating Party of the amounts due to it hereunder and upon completion of the segment or portion of Project work for which TUMF Program Funds have been provided.

(c) Cumulative Remedies. The rights and remedies of the Parties provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

16. Prevailing Wages. The AGENCY and any other person or entity hired to perform services on the Project are alerted to the requirements of California Labor Code Sections 1770 et seq., which would require the payment of prevailing wages were the services or any portion thereof determined to be a public work, as defined therein. The AGENCY shall ensure compliance with these prevailing wage requirements by any person or entity hired to perform the Project. The AGENCY shall defend, indemnify, and hold harmless WRCOG, its officers, employees, consultants, and agents from any claim or liability, including without limitation attorneys, fees, arising from its failure or alleged failure to comply with California Labor Code Sections 1770 et seq.

17. Progress Reports. WRCOG may request the AGENCY to provide WRCOG with progress reports concerning the status of the Project.

18. Indemnification.

(a) AGENCY Responsibilities. In addition to the indemnification required under Section 16, the AGENCY agrees to indemnify and hold harmless WRCOG, its officers, agents, consultants, and employees from any and all claims, demands, costs or liability arising from or connected with all activities governed by this Agreement including all design and construction activities, due to negligent acts, errors or omissions or willful misconduct of the AGENCY or its subcontractors. The AGENCY will reimburse WRCOG for any expenditures, including reasonable attorneys' fees, incurred by WRCOG, in defending against claims ultimately determined to be due to negligent acts, errors or omissions or willful misconduct of the AGENCY.

(b) WRCOG Responsibilities. WRCOG agrees to indemnify and hold harmless the AGENCY, its officers, agents, consultants, and employees from any and all claims, demands, costs or liability arising from or connected with all activities governed by this Agreement including all design and construction activities, due to negligent acts, errors or omissions or willful misconduct of WRCOG or its sub-consultants. WRCOG will reimburse the AGENCY for any expenditures, including reasonable attorneys' fees, incurred by the AGENCY, in defending against claims ultimately determined to be due to negligent acts, errors or omissions or willful misconduct of WRCOG.

(c) Effect of Acceptance. The AGENCY shall be responsible for the professional quality, technical accuracy and the coordination of any services provided to complete the Project. WRCOG's review, acceptance or funding of any services performed by the AGENCY or any other person or entity under this Agreement shall not be construed to operate as a waiver of any rights WRCOG may hold under this Agreement or of any cause of action arising out of this Agreement. Further, the AGENCY shall be and remain liable to WRCOG, in accordance with applicable law, for all damages to WRCOG caused by the AGENCY's negligent performance of this Agreement or supervision of any services provided to complete the Project.

19. Insurance. The AGENCY shall require, at a minimum, all persons or entities hired to perform the Project to obtain, and require their subcontractors to obtain, insurance of the types and in the amounts described below and satisfactory to the AGENCY and WRCOG. Such insurance shall be maintained throughout the term of this Agreement, or until completion of the Project, whichever occurs last.

(a) Commercial General Liability Insurance. Occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than \$1,000,000.00 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Project or be no less than two times the occurrence limit. Such insurance shall:

(i) Name WRCOG and AGENCY, and their respective officials, officers, employees, agents, and consultants as insured with respect to performance of the services on the Project and shall contain no special limitations on the scope of coverage or the protection afforded to these insured;

(ii) Be primary with respect to any insurance or self-insurance programs covering WRCOG and AGENCY, and/or their respective officials, officers, employees, agents, and consultants; and

(iii) Contain standard separation of insured provisions.

(b) Business Automobile Liability Insurance. Business automobile liability insurance or equivalent form with a combined single limit of not less than \$1,000,000.00 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

(c) Professional Liability Insurance. Errors and omissions liability insurance with a limit of not less than \$1,000,000.00 Professional liability insurance shall only be required of design or engineering professionals.

(d) Workers' Compensation Insurance. Workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$1,000,000.00 each accident.

20. Project Amendments. Changes to the characteristics of the Project, including the deadline for Project completion, and any responsibilities of the AGENCY or WRCOG may be requested in writing by the AGENCY and are subject to the approval of WRCOG's Representative, which approval will not be unreasonably withheld, provided that extensions of time for completion of the Project shall be approved in the sole discretion of WRCOG's Representative. Nothing in this Agreement shall be construed to require or allow completion of the Project without full compliance with the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*; "CEQA") and the National Environmental Policy Act of 1969 (42 USC 4231 *et seq.*), if applicable, but the necessity of compliance with CEQA and/or NEPA shall not justify, excuse, or permit a delay in completion of the Project.

21. Conflict of Interest. For the term of this Agreement, no member, officer or employee of the AGENCY or WRCOG, during the term of his or her service with the AGENCY or WRCOG, as the case may be, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

22. Limited Scope of Duties. WRCOG's and the AGENCY's duties and obligations under this Agreement are limited to those described herein. WRCOG has no obligation with respect to the safety of any Project performed at a job site. In addition, WRCOG shall not be liable for any action of AGENCY or its contractors relating to the condemnation of property undertaken by AGENCY or construction related to the Project.

23. Books and Records. Each party shall maintain complete, accurate, and clearly identifiable records with respect to costs incurred for the Project under this Agreement. They shall make available for examination by the other party, its authorized agents, officers or employees any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged to the other party pursuant to this Agreement. Further, each party shall furnish to the other party, its agents or employees such other evidence or information as they may require with respect to any such expense or disbursement charged by them. All such information shall be retained by the Parties for at least four (4) years following termination of this Agreement, and they shall have access to such information during the four-year period for the purposes of examination or audit.

24. Equal Opportunity Employment. The Parties represent that they are equal opportunity employers and they shall not discriminate against any employee or applicant of reemployment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

25. Governing Law. This Agreement shall be governed by and construed with the laws of the State of California.

26. Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

33. Integration; Amendment. This Agreement contains the entire agreement between the PARTIES. Any agreement or representation respecting matters addressed herein that are not expressly set forth in this Agreement is null and void. This Agreement may be amended only by mutual written agreement of the PARTIES.

34. Severability. If any term, provision, condition or covenant of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

35. Conflicting Provisions. In the event that provisions of any attached appendices or exhibits conflict in any way with the provisions set forth in this Agreement, the language, terms and conditions contained in this Agreement shall control the actions and obligations of the Parties and the interpretation of the Parties' understanding concerning the Agreement.

36. Independent Contractors. Any person or entities retained by the AGENCY or any contractor shall be retained on an independent contractor basis and shall not be employees of WRCOG. Any personnel performing services on the Project shall at all times be under the exclusive direction and control of the AGENCY or contractor, whichever is applicable. The AGENCY or contractor shall pay all wages, salaries and other amounts due such personnel in connection with their performance of services on the Project and as required by law. The AGENCY or consultant shall be responsible for all reports and obligations respecting such personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance and workers' compensation insurance.

37. Effective Date. This Agreement shall not be effective until executed by both Parties. The failure of one party to execute this Agreement within forty-five (45) days of the other party executing this Agreement shall render any execution of this Agreement ineffective.

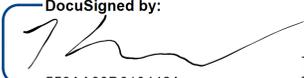
38. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives to be effective on the day and year first above-written.

WESTERN RIVERSIDE COUNCIL
OF GOVERNMENTS

CITY OF LAKE ELSINORE

DocuSigned by:

By: _____ Date: 4/24/23
559AA08D610442A...
Dr. Kurt Wilson
Executive Director

DocuSigned by:

By: _____ Date: 4/24/2023
BE68BD681A5A4F5...
Natasha Johnson
Mayor

Approved to Form:
DocuSigned by:

By: _____ Date: 2/15/2023
E54DE3F1B3634C0...
Steven C. DeBaun
General Counsel

Approved to Form:
DocuSigned by:

By: _____ Date: 4/3/2023
A5080D9096AF48C...
Barbara Leibold
City Attorney

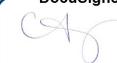
Attestation:
DocuSigned by:

By: _____ Date: 4/24/2023
2941E149748C400...
Candice Alvarez, MMC
City Clerk

EXHIBIT "A"

SCOPE OF WORK

SCOPE OF WORK:

This TUMF Reimbursement is for the Final Plans, Specifications, and Estimate (PS&E) Phase only. Final PS&E includes the development of the plans, specifications, and construction cost estimate; obtaining any resource agency permits, and advertisement/award of the construction contract.

From approved FTIP:

CONS NEW I-15/FRANKLIN ST INC, CONST AUX LNS FROM FRANKLIN ST IC TO MAI NST IC & FROM FRANKLIN ST IC TO RR CYN IC, REALIGN & RECONSTRUCT MAIN ST SB ON RAMP FROM 1-2 LNS, ON WS OF I-15 CONST AUTO CENTER DR EXTNSN FROM EX FRANKLIN ST TO ADOBE ST & ON ES OF I-15 AND CONST CNY ESTATE DR EXT FROM EX FRANKLIN ST TO CAMINO DEL NORTE

EXHIBIT "A-1"**ESTIMATE OF COST**

Phase	TUMF	LOCAL	TOTAL
PA&ED			
PS&E	\$6,000,000	\$2,000,000	\$8,000,000
RIGHT OF WAY			
CONSTRUCTION			
TOTAL	\$6,000,000	\$2,000,000	\$8,000,000

EXHIBIT “A-2”**PROJECT SCHEDULE****TIMETABLE:**

This TUMF Reimbursement is for Final PS&E Phase only.

Final PS&E is anticipated to begin February 2023 with estimated completion date of February 2025.

Phase	Estimated Completion Date	Estimated Cost	Comments
PA&ED	August 2017	\$3,786,801	PA&ED completed with RR Canyon IC
PS&E	February 2025	\$8,000,000	Est. Start Date: February 2023
RIGHT OF WAY	February 2026	\$8,000,000	
CONSTRUCTION	July 2028	\$80,000,000	
TOTAL		\$99,786,801	

Elements of Compensation

EXHIBIT "B"

PROCEDURES FOR SUBMITTAL, CONSIDERATION AND PAYMENT OF INVOICES

1. For professional services, WRCOG recommends that the AGENCY incorporate this Exhibit "B-1" into its contracts with any subcontractors to establish a standard method for preparation of invoices by contractors to the AGENCY and ultimately to WRCOG for reimbursement of AGENCY contractor costs.
2. Each month the AGENCY shall submit an invoice for eligible Project costs incurred during the preceding month. The original invoice shall be submitted to WRCOG's Executive Director with a copy to WRCOG's Project Coordinator. Each invoice shall be accompanied by a cover letter in a format substantially similar to that of Exhibit "B-2".
3. For jurisdictions with large construction projects (with the total construction cost exceeding \$10 million) under construction at the same time, may with the approval of WRCOG submit invoices to WRCOG for payment at the same time they are received by the jurisdiction. WRCOG must receive the invoice by the 5th day of the month in order to process the invoice within 30 days. WRCOG will retain 10% of the invoice until all costs have been verified as eligible and will release the balance at regular intervals not more than quarterly and not less than semi-annually. If there is a discrepancy or ineligible costs that exceed 10% of the previous invoice WRCOG will deduct that amount from the next payment.
4. Each invoice shall include documentation from each contractor used by the AGENCY for the Project, listing labor costs, subcontractor costs, and other expenses. Each invoice shall also include a monthly progress report and spreadsheets showing the hours or amounts expended by each contractor or subcontractor for the month and for the entire Project to date. Samples of acceptable task level documentation and progress reports are attached as Exhibits "B-4" and "B-5". All documentation from the Agency's contractors should be accompanied by a cover letter in a format substantially similar to that of Exhibit "B-3".
5. If the AGENCY is seeking reimbursement for direct expenses incurred by AGENCY staff for eligible Project costs, the AGENCY shall provide the same level of information for its labor and any expenses as required of its contractors pursuant to Exhibit "B" and its attachments.
6. Charges for each task and milestone listed in Exhibit "A" shall be listed separately in the invoice.
7. Each invoice shall include a certification signed by the AGENCY Representative or his or her designee which reads as follows:

“I hereby certify that the hours and salary rates submitted for reimbursement in this invoice are the actual hours and rates worked and paid to the contractors or subcontractors listed.

Signed _____

Title _____

Date _____

Invoice No. _____

8. WRCOG will pay the AGENCY within 30 days after receipt by WRCOG of an invoice. If WRCOG disputes any portion of an invoice, payment for that portion will be withheld, without interest, pending resolution of the dispute, but the uncontested balance will be paid.
9. The final payment under this Agreement will be made only after: (I) the AGENCY has obtained a Release and Certificate of Final Payment from each contractor or subcontractor used on the Project; (ii) the AGENCY has executed a Release and Certificate of Final Payment; and (iii) the AGENCY has provided copies of each such Release to WRCOG.

**EXHIBIT “B-1”
[Sample for Professional Services]**

For the satisfactory performance and completion of the Services under this Agreement, Agency will pay the Contractor compensation as set forth herein. The total compensation for this service shall not exceed (____INSERT WRITTEN DOLLAR AMOUNT____) (\$__INSERT NUMERICAL DOLLAR AMOUNT__) without written approval of Agency’s City Manager [or applicable position] (“Total Compensation”).

1. ELEMENTS OF COMPENSATION.

Compensation for the Services will be comprised of the following elements: 1.1 Direct Labor Costs; 1.2 Fixed Fee; and 1.3 Additional Direct Costs.

1.1 DIRECT LABOR COSTS.

Direct Labor costs shall be paid in an amount equal to the product of the Direct Salary Costs and the Multiplier which are defined as follows:

1.1.1 DIRECT SALARY COSTS

Direct Salary Costs are the base salaries and wages actually paid to the Contractor's personnel directly engaged in performance of the Services under the Agreement. (The range of hourly rates paid to the Contractor's personnel appears in Section 2 below.)

1.1.2 MULTIPLIER

The Multiplier to be applied to the Direct Salary Costs to determine the Direct Labor Costs is _____, and is the sum of the following components:

1.1.2.1 Direct Salary Costs _____

1.1.2.2 Payroll Additives _____

The Decimal Ratio of Payroll Additives to Direct Salary Costs. Payroll Additives include all employee benefits, allowances for vacation, sick leave, and holidays, and company portion of employee insurance and social and retirement benefits, all federal and state payroll taxes, premiums for insurance which are measured by payroll costs, and other contributions and benefits imposed by applicable laws and regulations.

1.1.2.3 Overhead Costs _____

The Decimal Ratio of Allowable Overhead Costs to the Contractor Firm's Total Direct Salary Costs. Allowable Overhead Costs include general, administrative and overhead costs of maintaining and operating established offices, and consistent with established firm policies, and as defined in the Federal Acquisitions Regulations, Part 31.2.

Total Multiplier
(sum of 1.1.2.1, 1.1.2.2, and 1.1.2.3) _____

1.2 FIXED FEE.

1.2.1 The fixed fee is \$_____.

1.2.2 A pro-rata share of the Fixed Fee shall be applied to the total Direct Labor Costs expended for services each month, and shall be included on each monthly invoice.

1.3 ADDITIONAL DIRECT COSTS.

Additional Direct Costs directly identifiable to the performance of the services of this Agreement shall be reimbursed at the rates below, or at actual invoiced cost.

Rates for identified Additional Direct Costs are as follows:

<u>ITEM</u>	<u>REIMBURSEMENT RATE</u>
	<i>[__insert charges__]</i>
Per Diem	\$ /day
Car mileage	\$ /mile
Travel	\$ /trip
Computer Charges	\$ /hour
Photocopies	\$ /copy
Blueline	\$ /sheet
LD Telephone	\$ /call
Fax	\$ /sheet
Photographs	\$ /sheet

Travel by air and travel in excess of 100 miles from the Contractor's office nearest to Agency's office must have Agency's prior written approval to be reimbursed under this Agreement.

2. DIRECT SALARY RATES

Direct Salary Rates, which are the range of hourly rates to be used in determining Direct Salary Costs in Section 1.1.1 above, are given below and are subject to the following:

- 2.1 Direct Salary Rates shall be applicable to both straight time and overtime work, unless payment of a premium for overtime work is required by law, regulation or craft agreement, or is otherwise specified in this Agreement. In such event, the premium portion of Direct Salary Costs will not be subject to the Multiplier defined in Paragraph 1.1.2 above.
- 2.2 Direct Salary Rates shown herein are in effect for one year following the effective date of the Agreement. Thereafter, they may be adjusted annually to reflect the Contractor's adjustments to individual compensation. The Contractor shall notify Agency in writing prior to a change in the range of rates included herein, and prior to each subsequent change.

<u>POSITION OR CLASSIFICATION</u>	<u>RANGE OF HOURLY RATES</u>
[<i>sample</i>]	
Principal	\$.00 - \$.00/hour
Project Manager	\$.00 - \$.00/hour
Sr. Engineer/Planner	\$.00 - \$.00/hour
Project Engineer/Planner	\$.00 - \$.00/hour
Assoc. Engineer/Planner	\$.00 - \$.00/hour
Technician	\$.00 - \$.00/hour
Drafter/CADD Operator	\$.00 - \$.00/hour
Word Processor	\$.00 - \$.00/hour

- 2.3 The above rates are for the Contractor only. All rates for subcontractors to the Contractor will be in accordance with the Contractor's cost proposal.

3. INVOICING.

- 3.1 Each month the Contractor shall submit an invoice for Services performed during the preceding month. The original invoice shall be submitted to Agency's Executive Director with two (2) copies to Agency's Project Coordinator.
- 3.2 Charges shall be billed in accordance with the terms and rates included herein, unless otherwise agreed in writing by Agency's Representative.
- 3.3 Base Work and Extra Work shall be charged separately, and the charges for each task and Milestone listed in the Scope of Services, shall be listed separately. The charges for each individual assigned by the Contractor under this Agreement shall be listed separately on an attachment to the invoice.

- 3.4 A charge of \$500 or more for any one item of Additional Direct Costs shall be accompanied by substantiating documentation satisfactory to Agency such as invoices, telephone logs, etc.
- 3.5 Each copy of each invoice shall be accompanied by a Monthly Progress Report and spreadsheets showing hours expended by task for each month and total project to date.
- 3.6 If applicable, each invoice shall indicate payments to DBE subcontractors or supplies by dollar amount and as a percentage of the total invoice.
- 3.7 Each invoice shall include a certification signed by the Contractor's Representative or an officer of the firm which reads as follows:

I hereby certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the employees listed.

Signed _____
 Title _____
 Date _____
 Invoice No. _____

4. PAYMENT

- 4.1 Agency shall pay the Contractor within four to six weeks after receipt by Agency of an original invoice. Should Agency contest any portion of an invoice, that portion shall be held for resolution, without interest, but the uncontested balance shall be paid.
- 4.2 The final payment for Services under this Agreement will be made only after the Contractor has executed a Release and Certificate of Final Payment.

EXHIBIT B-2
Sample Cover Letter to WRCOG

Date
Western Riverside Council of Governments
3390 University Avenue; Suite 450
Riverside, California 92501
Attention: Deputy Executive Director
ATTN: Accounts Payable

Re: Project Title - Invoice #__

Enclosed for your review and payment approval is the AGENCY’s invoice for professional and technical services that was rendered by our contractors in connection with the 2002 Measure “A” Local Streets and Roads Funding per Agreement No. _____ effective (Month/Day/Year). The required support documentation received from each contractor is included as backup to the invoice.

Invoice period covered is from Month/Date/Year to Month/Date/Year.

Total Authorized Agreement Amount:	\$0,000,000.00
Total Invoiced to Date:	\$0,000,000.00
Total Previously Invoiced:	\$0,000,000.00
Balance Remaining:	\$0,000,000.00

Amount due this Invoice:	\$0,000,000.00 =====
---------------------------------	--------------------------------

I certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the contractors listed.

By: _____
Name
Title

cc:

EXHIBIT B-3
Sample Letter from Contractor to AGENCY

Month/Date/Year

Western Riverside Council of Governments
3390 University Avenue; Suite 200
Riverside, California 92501
Attention: Deputy Executive Director
Attn: Accounts Payable

Invoice # _____

For **[type of services]** rendered by **[contractor name]** in connection with **[name of project]**
This is per agreement No. XX-XX-XXX effective Month/Date/Year .

Invoice period covered is from Month/Date/Year to Month/Date/Year .

Total Base Contract Amount:	\$000,000.00
Authorized Extra Work (if Applicable)	\$000,000.00

TOTAL AUTHORIZED CONTRACT AMOUNT:	\$000,000.00
Total Invoice to Date:	\$000,000.00
Total Previously Billed:	\$000,000.00
Balance Remaining:	\$000,000.00
Amount Due this Invoice:	\$000,000.00
	=====

I certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the employees listed,

By: _____
Name
Title

**EXHIBIT B-4
SAMPLE TASK SUMMARY SCHEDULE
(OPTIONAL)**

EXHIBIT B-5
Sample Progress Report

REPORTING PERIOD: Month/Date/Year to Month/Date/Year
PROGRESS REPORT: #1

A. Activities and Work Completed during Current Work Periods

TASK 01 – 100% PS&E SUBMITTAL

1. Responded to Segment 1 comments from Department of Transportation
2. Completed and submitted Segment 1 final PS&E

B. Current/Potential Problems Encountered & Corrective Action

Problems	Corrective Action
None	None

C. Work Planned Next Period

TASK 01 – 100% PS&E SUBMITTAL

1. Completing and to submit Traffic Signal and Electrical Design plans
2. Responding to review comments

AGENDA ITEM 9

RIVERSIDE COUNTY TRANSPORTATION COMMISSION	
DATE:	August 28, 2023
TO:	Western Riverside County Programs and Projects Committee
FROM:	Bryce Johnston, Senior Capital Projects Manager
THROUGH:	Erik Galloway, Project Delivery Director
SUBJECT:	Amendment to Agreement with Falcon Engineering Services to provide Construction Management Services for State Route 60 Truck Lanes Project

STAFF RECOMMENDATION:

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Approve Agreement No. 18-31-164-04, Amendment No. 4 to Agreement No. 18-31-164-00, with Falcon Engineering Services Inc. (Falcon) for construction management (CM), services for the State Route 60 Truck Lanes project for an additional amount of \$151,818, and a total amount not to exceed \$17,664,366; and
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the amendment on behalf of the Commission.

BACKGROUND INFORMATION:

The SR-60 Truck Lanes project (Project) is located east of Moreno Valley from Gilman Springs Road to Jack Rabbit Trail. The project scope includes an eastbound truck climbing lane and a westbound truck descending lane plus inside and outside standard shoulders along a 4.5-mile stretch of SR-60. The Project is designed to enhance safety and improve operations. The Project is a combination of a Caltrans-sponsored safety project to construct shoulders and the Commission’s project to construct the truck lanes, as well as a Caltrans-sponsored pavement rehabilitation project.

DISCUSSION:

On December 12, 2018, the Commission awarded Agreement No. 18-31-164-00 to Falcon to perform CM, materials testing, construction surveying, and environmental monitoring services for the Project in the amount of \$15,920,498, plus a contingency amount of \$1,592,050, for a total not to exceed of \$17,512,548. To address Caltrans’ pre-award audit findings, the contract was reduced by \$163,529. This resulted in the execution of the contract with Falcon in the amount of \$15,756,969, plus a contingency amount of \$1,755,579, for a total not to exceed of \$17,512,548. There have been three amendments to the agreement with no change to original commission authorization, which addressed the following:

- Changed Paleontology monitoring hours from twice a week to whenever roadway excavation was performed, per the revised Caltrans Paleontology Mitigation Plan issued on May 16, 2019;
- Increased oversight working hours from 40 hours per week to 60 hours per week for the period from August 2019 to February 2022, to provide oversight for extended construction hours;
- Increased surveying in support of slope failure scope and additional environmental scope;
- Increased source inspection for steel soldier piles and galvanized members installed to protect Edison power pole;
- Increased oversight for Plant Establishment scope of service;
- Increased oversight for additional slope stabilization scope to obtain Notice of Termination from Water Board;
- Increased oversight for installation of Caltrans District 8 Real Time Network Station, an innovation GPS technology which serves the District with safer and more efficient means of collecting accurate data which provides 3D positioning in real time for various Caltrans needs;
- Increased inspection and coordination with Western Riverside County Regional Conservation Authority (RCA) and County Parks for the wildlife corridor camera specifications and setup; and
- Increased oversight for installation of wildlife corridor monitoring cameras, and vehicle access prevention barriers.

The Project is currently in its final closeout stage and punch list items are being addressed. The extremely wet winter experienced in 2023, has resulted in a number of issues that have delayed the completion of the Project. These issues are summarized as follows:

- Delay in the completion of punch list items due to wet conditions, which resulted in Falcon providing staff beyond their demobilization date. Punch list work included crack repair, delineation, slope protection, guardrail repair, fence repair, and installation of boulders.
- Various slope repair and stabilization: Slopes for the Project were constructed in accordance with the Caltrans design plans at a 1:1 ratio. Historically, slopes within the SR-60 corridor have experienced surficial slope failure. Caltrans recommended that additional slope stabilization be performed and completed as a project punch-list item. However, due to extreme wet season experienced in winter 2023, slopes continued to fail and slide onto the roadway, causing damage to shoulders, drainage swells, and right of

way fence. Falcon provided oversight for work performed by construction contractor to repair, stabilize, and reinstall the right of way fence.

- Emergency Repair for Road Settlement: Due to the roadway settlement in the area of the 20'x20' wildlife crossing, investigation, monitoring, coordination with Caltrans, and oversight of emergency and permanent repair were performed.

The issues noted above have exhausted all of the available contingency in the current Falcon agreement and additional funds are now needed in order to permit Falcon to complete CM services through completion of punch list items, road settlement permanent repair, and closeout of the Project.

FISCAL IMPACT:

Funding Sources and Budget Expenditure Schedule

Fund Source	FY 2023/24	FY2024/25+	Total This Amendment	GL/Project Accounting No.
State Transportation Improvement Program (STIP)	\$131,818	\$20,000	\$151,818	003029

Financial Information					
In Fiscal Year Budget:	Yes	Year:	FY 2023/24 FY 2024/25+	Amount:	\$ 131,818 \$20,000
Source of Funds:	SB1 STIP			Budget Adjustment:	No
GL/Project Accounting No.:	003029 81302 00000 0000 262 31 81301 Construction Management				
Fiscal Procedures Approved:				Date:	08/14/2023

Attachments:

- 1) Amendment No. 4 (Falcon) Proposal
- 2) Draft Agreement No. 18-31-164-04 Amendment No. 04 with Falcon

CM Agreement Change Notice –

Agreement 18-31-164-00 – Falcon Engineering Services, Inc
Construction Management Services for Route 60 Truck Lanes project

Date: 6/5/2023

Per Agreement paragraph 11, Scope of Services, and paragraph 19, Fees and Payment, the following work is added to the agreement:

Scope description:

- Construction Management services were needed to be extended due to:
 - An extremely wet winter season has delayed the completion of the punch-list and Caltrans issuing relief of maintenance.
 - The wet winter season caused multiple Slope failures that had to be addressed.
 - Settlement of the roadway section near the RCB at STA 735+00 is being addressed through emergency repairs.

Description	Amount
Falcon Engineering Services*	\$ 151,818.21

* Attached for reference (SR-60 Truck Lanes - Amendment #4.xlsx)

Total cost of change is **\$ 151,818.21**

NOTES:

1. Key personnel must be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant’s annual accounting period and established by a cognizant agency or accepted by Caltrans.
3. Anticipated salary increases calculation (page 2) must accompany.

EXHIBIT 10-H1 COST PROPOSAL Page 3 of 3

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. Title 23 United States Code Section 112 - Letting of Contracts
4. 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
5. 23 Code of Federal Regulations Part 172 - Procurement, Management, and Administration of Engineering and Design Related Services
6. 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

Prime Consultant or Subconsultant Certifying:

Name: Wael Faqih, PE
 Signature: 
 Email: wfaqih@falcon-ca.com
 Address: 1020 Aquino Circle
Corona, CA 92879

Title*: Vice President
 Date of Certification: June 5, 2023
 Phone Number: (951) 264-2350

*An individual executive or financial officer of the consultant’s or subconsultant’s organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List of services the consultant is providing under the proposed contract.

Construction Management and Inspection

Agreement No. 18-31-164-04

**AMENDMENT NO. 4
TO AGREEMENT WITH
FALCON ENGINEERING SERVICES INCORPORATED
FOR
CONSTRUCTION MANAGEMENT SERVICES
FOR THE
STATE ROUTE 60 TRUCK LANE PROJECT**

1. PARTIES AND DATE

This Amendment No. 4 to Agreement for Construction Management Services ("Amendment No. 4") is entered into as of this ____ day of October, 2023, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("Commission") and FALCON ENGINEERING SERVICES INCORPORATED ("Consultant"), a California corporation.

2. RECITALS

- 2.1 The Commission and the Consultant have entered into Agreement No. 18-31-164-00, dated January 16, 2019, (the "Master Agreement") for the purpose of providing construction management services for the State Route 60 Truck Lane Project (the "Project")
- 2.2 The Commission and Consultant entered into Amendment No. 1 to the Master Agreement, dated December 3, 2021, in order to provide additional funding to compensate Consultant for additional services required for the Project.
- 2.3 The Commission and the Consultant entered into Amendment No. 2 to Master Agreement dated July 12, 2022, in order to provide additional funding to compensate Consultant for additional Consultant services required for the Project.
- 2.4 The Commission and the Consultant entered into Amendment No. 3 to Master Agreement dated November 8, 2022, in order to provide additional funding to compensate Consultant for additional Consultant services required for the Project
- 2.5 The Commission and the Consultant now desire to amend the Master Agreement in order to provide additional funding to compensate Consultant for additional Consultant services required for the Project.

3. TERMS

- 3.1 The Services, as that term is defined in the Master Agreement, shall be amended to include the additional services required to complete the Project, as further described in Exhibit "A" attached to this Amendment No. 4 and incorporated herein by reference.
- 3.2 The maximum compensation to be provided under this Amendment No. 4 for the Services as set forth in the attached Exhibit "A" shall not exceed One Hundred Fifty-One Thousand, Eight Hundred Eighteen Dollars (\$151,818), as further detailed in Exhibit "B" attached to this Amendment No. 4 and incorporated herein by reference.
- 3.3 The total not to exceed contract value of the Master Agreement, as amended by this Amendment No. 4, is Seventeen Million, Six Hundred Sixty-Four Thousand, Three Hundred Sixty-Five Dollars (\$17,664,365).
- 3.4 Except as amended by this Amendment No. 4, all provisions of the Master Agreement, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the parties under this Amendment No. 4.
- 3.5 This Amendment No. 4 shall be governed by the laws of the State of California. Venue shall be in Riverside County.
- 3.6 A manually signed copy of this Amendment No. 4 which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment No. 4 for all purposes. This Amendment No. 4 may be signed using an electronic signature.
- 3.7 This Amendment No. 4 may be signed in counterparts, each of which shall constitute an original.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE
TO
AGREEMENT NO. 18-31-164-04**

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first herein above written.

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

**FALCON ENGINEERING
SERVICES INCORPORATED**

By: _____
Anne Mayer, Executive Director

By: _____
Signature

Name

Title

APPROVED AS TO FORM

ATTEST:

By: _____
Best Best & Krieger LLP
General Counsel

By: _____
Its: President / Chief Financial Officer

* A corporation requires the signatures of two corporate officers.

One signature shall be that of the chairman of board, the president or any vice president and the second signature (on the attest line) shall be that of the secretary, any assistant secretary, the chief financial officer or any assistant treasurer of such corporation.

If the above persons are not the intended signators, evidence of signature authority shall be provided to RCTC.

EXHIBIT A
SCOPE OF SERVICES

DRAFT

CM Agreement Change Notice –

Agreement 18-31-164-00 – Falcon Engineering Services, Inc
Construction Management Services for Route 60 Truck Lanes project

Date: 6/5/2023

Per Agreement paragraph 11, Scope of Services, and paragraph 19, Fees and Payment, the following work is added to the agreement:

Scope description:

- Construction Management services were needed to be extended due to:
 - An extremely wet winter season has delayed the completion of the punch-list and Caltrans issuing relief of maintenance.
 - The wet winter season caused multiple Slope failures that had to be addressed.
 - Settlement of the roadway section near the RCB at STA 735+00 is being addressed through emergency repairs.

Description	Amount
Falcon Engineering Services*	\$ 151,818.21

* Attached for reference (SR-60 Truck Lanes - Amendment #4.xlsx)

Total cost of change is **\$ 151,818.21**

EXHIBIT B
COMPENSATION

DRAFT

NOTES:

1. Key personnel must be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant’s annual accounting period and established by a cognizant agency or accepted by Caltrans.
3. Anticipated salary increases calculation (page 2) must accompany.

EXHIBIT 10-H1 COST PROPOSAL Page 3 of 3

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. Title 23 United States Code Section 112 - Letting of Contracts
4. 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
5. 23 Code of Federal Regulations Part 172 - Procurement, Management, and Administration of Engineering and Design Related Services
6. 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

Prime Consultant or Subconsultant Certifying:

Name: Wael Faqih, PE
 Signature: 
 Email: wfaqih@falcon-ca.com
 Address: 1020 Aquino Circle
Corona, CA 92879

Title*: Vice President
 Date of Certification: June 5, 2023
 Phone Number: (951) 264-2350

*An individual executive or financial officer of the consultant’s or subconsultant’s organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List of services the consultant is providing under the proposed contract.

Construction Management and Inspection

AGENDA ITEM 10

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	August 28, 2023
TO:	Western Riverside County Programs and Projects Committee
FROM:	Bryce Johnston, Senior Capital Projects Manager
THROUGH:	Erik Galloway, Project Delivery Director
SUBJECT:	Amendment to Agreement with Vali Cooper & Associates, Inc. to Provide Construction Management Services, Materials Testing, and Construction Surveying for the Interstate 215/Placentia Avenue Interchange Project

STAFF RECOMMENDATION:

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Approve Agreement No. 18-31-148-04, Amendment No. 4 to Agreement No. 18-31-148-00, with Vali Cooper & Associates, Inc. (Vali Cooper), for construction management (CM) services for the Interstate 215/Placentia Avenue Interchange, in the amount of \$100,560, plus a contingency amount of \$10,056, for an additional amount of \$110,616, and a total amount not to exceed of \$6,551,659;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the amendment on behalf of the Commission; and
- 3) Authorize the Executive Director or designee to approve the use of the contingency amount as may be required for the Project.

BACKGROUND INFORMATION:

The Mid County Parkway Project (MCP) has been under development by the Commission since 2002. The purpose of the MCP is to provide a transportation facility that effectively and efficiently accommodates regional west-east movement of people, goods, and services between and through the cities of Perris and San Jacinto.

The I-215/Placentia Avenue Interchange (Project) in the city of Perris is the first segment of the MCP to be constructed, which includes a new interchange at I-215/Placentia Avenue and four lanes on Placentia Avenue between East Frontage Road and Indian Avenue, connecting to the existing two-lane section of Placentia Avenue between Indian Avenue and Perris Boulevard.

At its January 2016 meeting, the Commission authorized staff to proceed with design and right of way (ROW) acquisition for the Project as the first construction contract for MCP notwithstanding the legal challenges. In June 2018, the Commission entered into a settlement agreement to resolve the legal challenges.

DISCUSSION:

In January 2019, the Commission awarded a contract to Vali Cooper to perform CM, materials testing, and construction surveying services for the Project in the amount of \$5,496,274, plus a contingency amount of \$549,627, and a total not to exceed of \$6,045,901. To address Caltrans' pre-award audit findings, the contract was reduced by \$35,407. This resulted in the execution of the contract with Vali Cooper in the amount of \$5,460,867, plus a contingency amount of \$585,034.00, and a total not to exceed of \$6,045,901.

There have been three amendments to the agreement with one resulting in a change in the original Commission authorization amount, the amendments were required to add drone services, extend the CM service to match the construction duration, and additional funds to replenish the CM contract contingency to ensure an adequate budget to address anticipated construction contract change orders.

The Project was anticipated to be completed in February 2023, however number of issues have delayed the Project completion. These issues are summarized as follows:

- **Overhead Powerline Removal:** The Project's scope of work includes the installation of signal poles at the intersection of Harvill Avenue / Placentia Avenue. At this intersection, a sequence of construction activities was to proceed the Project contractor's installation of signal poles. Riverside County's contractor was to complete installation of underground powerline, followed by Southern California Edison (SCE) removing overhead powerlines. Activities to remove the overhead powerlines were delayed by six months and due to this delay, the installation of signal poles for the project concluded on June 06, 2023, with an eight-month delay in overall Project completion.
- **Fiber Optic:** During the design phase of the Project, a vault to tie into the existing highway fiber optic system was identified and approved by Caltrans. During construction the vault was determined to not be a viable connection point, which lead to several alternate locations being identified and vetted. Caltrans accepted an alternate vault location and related fiber optic design on February 16, 2023. The alternate fiberoptic tie-in location added 3,792 ft of fiber optic cable, conduit and directional boring. The work was completed and accepted by Caltrans on March 16, 2023.
- **Relocation of Pull box at Gore Area:** All pull boxes for ramp metering systems were installed in accordance with the project approved plans and specifications. During the field punch list review, the Caltrans safety review committee identified that all pull boxes installed at the left side of the on-ramp and off-ramp lanes (in the gore area) needed to be relocated to the right side of the lanes, for the safety of maintenance personnel. This requirement was added to Caltrans punch list as a precondition to grant relief from maintenance for the Project. The pull box location design change was approved by Caltrans on April 16, 2023, and work was completed on May 25, 2023, final testing and acceptance is now pending Caltrans approval.

- Install Additional Advance Detector Loop: All vehicle detector loops were installed in accordance with project approved plans and specifications. The left turn from eastbound Placentia Avenue to the northbound on-ramp has two lanes, and the vehicle movement was managed by sharing the same advanced detection channel. During the field punch list review, Caltrans identified that in order for an accurate vehicle count to be obtained, each lane needed an advanced detection channel of its own. This new scope required the installation of new loop and communication cable to be pulled to the cabinet. The work was completed on April 18, 2023, and accepted by Caltrans on April 20, 2023.

Southern California Edison

- Streetlights at County Area (Placentia Avenue / Harvill Avenue): The Placentia Avenue / Harvill intersection streetlight foundations and underground electrical infrastructure were installed in accordance with the Project's approved plans and specifications. On November 18, 2023, during the effort to install new meters for streetlights, SCE noted that Project plans for foundations and conduit size did not meet SCE standards and required SCE to redesign the streetlight foundations and infrastructure, otherwise Riverside County and SCE would not be able to accept the Project and provide future maintenance after Project completion. The final SCE design was provided on March 23, 2023, and required installation of new conduit using open excavation. This construction method would result in the damage of all sidewalks, horse trails, and slopes constructed for the Project. RCTC is negotiating with SCE to allow for the construction method of directional boring instead of open excavations. Upon final agreement with SCE Vali Cooper will perform oversight of the construction activities. An assumption of Vali Cooper's effort has been made and included in this amendment.

Vandalism

The Project experienced the following vandalism events which required rework and additional protection:

- Streetlight Wiring over Placentia Avenue Overcrossing and Overhead Bridges (November 28, 2022) - All streetlight wiring (approximately 4,000 ft of wiring) was stolen from the conduits and electrical pull boxes were damaged.
- Caltrans ROW Chain Link Fence (November 28, 2022) – The northbound on-ramp fence (240 ft) was stolen.
- Railroad ROW Slatted Chain Link Fence (January 01, 2023) - The southbound on-ramp fence (280 ft) was stolen. To prevent future vandalism, it required extraordinary efforts to secure the fence by welding the fence to 491 posts with 2,946 weld locations.
- Streetlight Wiring over Placentia Avenue Overcrossing and Overhead bridges (March 9, 2023) – For the second time, all streetlight wiring (approximately 4,000 ft of wire) was stolen, and the electrical pull boxes were damaged. All metal pull boxes were welded, and fiberglass pull boxes were sealed with epoxy to prevent future vandalism.

- Caltrans ROW Chain Link Fence (May 11, 2022) – Northbound on-ramp fence (310 ft) was stolen.

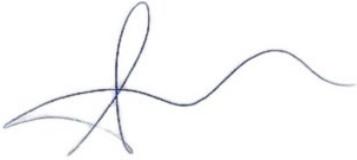
The issues noted above have exhausted the available contingency in the Vali Cooper agreement for the Project and additional funds are now needed to permit CM services for Caltrans punch list items, SCE additional scope, plant establishment, and closeout of the Project.

FISCAL IMPACT:

Funding Sources and Budget Expenditure Schedule

Fund Source	FY 2023/24	FY 2023/24+	Total This Amendment	GL/Project Accounting No.
Measure A Western County (WC) New Corridors Funds	\$55,308	\$0	\$55,308	002317
SB1 Local Partnership	\$55,308	\$0	\$55,308	002317
Total Funds	\$110,616	\$0	\$110,616	002317

Budget Expenditure Schedule

Financial Information					
In Fiscal Year Budget:	Yes	Year:	FY 2023/24	Amount:	\$110,616
Source of Funds:	Measure A WC New Corridors			Budget Adjustment:	No
GL/Project Accounting No.:	002317 81302 00000 0000 261 31 81301 Construction Management				
Fiscal Procedures Approved:				Date:	08/11/2023

Attachments:

- 1) Draft Agreement No. 18-31-164-04 Amendment No. 04 with Vali Cooper
- 2) Additional Fund Estimate

Agreement No. 18-31-148-04**AMENDMENT NO. 4 TO AGREEMENT
FOR CONSTRUCTION MANAGEMENT SERVICES, MATERIALS
TESTING, AND CONSTRUCTION SURVEYING FOR THE
INTERSTATE 215/PLACENTIA AVENUE INTERCHANGE
PROJECT WITH VALI COOPER & ASSOCIATES, INC.****1. PARTIES AND DATE**

This Amendment No. 4 to the Agreement for construction management services, materials testing, and construction surveying is made and entered into as of this ___ day of _____, 2023, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("Commission") and VALI COOPER & ASSOCIATES, INC. ("Consultant"), a California corporation.

2. RECITALS

- 2.1 The Commission and Consultant have entered into an agreement dated May 10, 2019, for the purpose of providing the construction management services, materials testing, and construction surveying for the Interstate 215/Placentia Avenue Interchange Project (the "Master Agreement").
- 2.2 The Commission and Consultant entered into Amendment No. 1 to the Master Agreement, dated August 6, 2020, in order to provide additional compensation for additional services for the Interstate 215/Placentia Avenue Interchange Project.
- 2.3 The Commission and Consultant entered into Amendment No. 2 to the Master Agreement, dated August 3, 2022, in order to provide additional compensation for additional 100 working days of construction duration, one-year plant establishment period and environmental reviews.
- 2.4 The Commission and Consultant entered into Amendment No. 3 to the Master Agreement, dated February 1, 2023, in order to provide additional compensation for additional and extended services required for the Interstate 215/Placentia Avenue Interchange Project.
- 2.5 The parties now desire to amend the Master Agreement in order to provide additional compensation for additional services required for the Interstate 215/Placentia Avenue Interchange Project, as described in more detail in the attached Exhibit "A".

3. TERMS

- 3.1 The Services, as that term is defined in the Master Agreement, shall be amended to include additional services required for completion of the Project, as further set forth in Exhibit "A" attached to this Amendment No. 3 and incorporated herein by reference.
- 3.2 The maximum compensation for Services performed pursuant to this Amendment No. 4 shall be Thirty-Five Thousand, Nine Hundred Twenty-Two Dollars (\$35,922).
- 3.3 The total not-to-exceed amount of the Master Agreement, as amended by this Amendment No. 4, shall be Six Million, Four Hundred Forty-Four Thousand, Forty-Three Dollars (\$6,441,043).
- 3.4 Except as amended by this Amendment No. 4, all provisions of the Master Agreement, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the parties under this Amendment.
- 3.5 This Amendment No. 4 shall be governed by the laws of the State of California. Venue shall be in Riverside County.
- 3.6 This Amendment No. 4 may be signed in counterparts, each of which shall constitute an original.
- 3.7 A manually signed copy of this Amendment No. 4 which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment No. 4 for all purposes. This Amendment No. 4 may be signed using an electronic signature.

[Signatures on following page]

SIGNATURE PAGE
TO
AGREEMENT NO. 18-31-148-04

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first herein above written.

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

VALI COOPER & ASSOCIATES

By: _____
Anne Mayer, Executive Director

By: _____
Signature

Name

Title

APPROVED AS TO FORM

ATTEST:

By: _____
Best & Krieger LLP
Counsel to Riverside County
Transportation Commission

By: _____

Its: _____

* A corporation requires the signatures of two corporate officers.

One signature shall be that of the chairman of board, the president or any vice president and the second signature (on the attest line) shall be that of the secretary, any assistant secretary, the chief financial officer or any assistant treasurer of such corporation.

If the above persons are not the intended signators, evidence of signature authority shall be provided to RCTC.

EXHIBIT "A"
AMENDMENT NO. 4
SCOPE OF SERVICES

Additional compensation to provide oversight due to the following:

- Delay in Overhead Powerline Removal
- New Location for Fiber Optic Tie-in Vault
- Relocation of Gore Area Pull Boxes
- Installation of additional Advance Detector Loop System
- Revised Streetlighting infrastructure west of Placentia Ave OH Bridge
- Streetlight Electrical Vandalism

[attached behind this page]

	Unit Rate	September		October		November		December		January	
		Hr	Dollars	Hr	Dollars	Hr	Dollars	Hr	Dollars	Hr	Dollars
Olimpia Infante	96.41	160	15,425.60	160	15,425.60	160	15,425.60	140	13,497.40	120	11,569.20
Albert Murillo	152.04	2	304.08	2	304.08	2	304.08		0.00		0.00
Amy Comte	164.16	8	1,313.28	8	1,313.28						
Patel Jagdish	242.04	2	484.08	2	484.08	2	484.08	2	484.08	2	484.08
Total Labor			17,527.04		17,527.04		16,213.76		13,981.48		12,053.28
ProCore			150.00		150.00		150.00		150.00		150.00
FCCM = 0.04% of Labor			7.01		7.01		6.49		5.59		4.82
Total Prime Consultant Costs			157.01		157.01		156.49		155.59		154.82
David Evans and Associates Surveying	66.32	60	3,979.20	40	2,652.80	20	1,326.40				
Dynamic Engineering Services - Labor Compliance	214.55	12	2,574.60	12	2,574.60	12	2,574.60				
Electrical Inspector	197.90	8	1,583.20	8	1,583.20						
HDR Leighton Consulting, Inc. LSA Associates, Inc. Westbound Communication ZT Consulting Group, Inc. Ghirardelli Associates Gannett Fleming	226.70	8	1,813.60	4	906.80	4	906.80				
SubConsultants Total			9,950.60		7,717.40		4,807.80		0.00		0.00
Total			27,634.65		25,401.45		21,178.05		14,137.07		12,208.10
											100,559.32

Rounded 100,560

Eden 001208		Authorization	Contract Amount
18-31-148-00	Award	6,045,901	5,460,867
18-31-148-01	AMD-01		32,830
18-31-148-02	AMD-02		552,204
18-31-148-03	AMD-03	395,142	359,220
Current Contract Amount		6,441,043	6,405,121
18-31-148-04	AMD-04	100,560	100,560
	Contingency	10,056	
Additional Authorization		110,616	100,560
Total Not To Exceed		6,551,659	