

***RIVERSIDE COUNTY TRANSPORTATION COMMISSION***

<b>DATE:</b>	November 28, 2011
<b>TO:</b>	Western Riverside County Programs and Projects Committee
<b>FROM:</b>	Jillian Edmiston, Staff Analyst Brian Cunanan, Commuter Assistance Manager
<b>THROUGH:</b>	Robert Yates, Multimodal Services Director
<b>SUBJECT:</b>	Agreement for Reimbursement of Call Answering Center Services

**STAFF RECOMMENDATION:**

This item is for the Committee to:

- 1) Approve Agreement No. 12-45-033-00 (C-12139) with San Bernardino Service Authority for Freeway Emergencies to provide for the reimbursement of call answering center services related to the operation of call boxes in an amount not to exceed \$190,000;
- 2) Authorize the Chairman, pursuant to legal counsel review, to execute the agreement on behalf of the Commission; and
- 3) Forward to the Commission for final action.

**BACKGROUND INFORMATION:**

In 1986, the Commission established itself as the Riverside County Service Authority for Freeway Emergencies (RC SAFE) after the enactment of SB 1199 in 1985. The purpose of the formation of SAFEs in California was to provide call box services and, with excess funds, provide additional motorist aid services. Funding for RC SAFE is derived from a one dollar per vehicle registration fee on vehicles registered in Riverside County. Initially, these funds were used only for the call box program. As additional motorist aid services were developed, SAFE funds were also used to provide Freeway Service Patrol (FSP) and the Inland Empire 511 traveler information services as part of a comprehensive motorist aid system in Riverside County.

The Commission, acting in its capacity as the RC SAFE, has operated a system of call boxes along the freeways and highways in Riverside County since 1990. At its peak, the call box program had 1,149 call boxes in operation throughout Riverside County. With the advancement of technology and the proliferation of cellular phone owners over the past several years, the Commission has taken steps to reduce the number of call boxes in the Riverside County system. The reduction of call boxes over time to nearly half of its peak number has led to significant cost

savings, in addition to a more efficient operation of the call box program. Today, the Commission operates and maintains 614 call boxes.

The process by which a call box may be used by the motoring public is as follows: A motorist who becomes stranded on a Riverside County freeway locates a call box and picks up the receiver; a trained call answering center operator addresses the motorist. In communicating with the motorist, the operator is able to understand the problem the motorist is experiencing and determines a solution. Solutions range from transferring the motorist to the California Highway Patrol (CHP) dispatch in a freeway emergency situation to helping to dispatch FSP when on duty to assist in the repair of vehicles experiencing mechanical problems.

The Commission and the San Bernardino Associated Governments (SANBAG), serving as the SAFE for San Bernardino County, jointly operate a private call answering center through a SANBAG contract with Professional Communications Network (PCN) that was procured on a competitive basis. The Commission's agreement with SANBAG for call answering center services provided by PCN is set to expire on December 31, 2011. Consistent with years passed, the Commission, in conjunction with SANBAG and Orange County Transportation Authority (OCTA), serving as the SAFE for Orange County, has conducted a joint procurement for call answering services in an effort to obtain a lower cost per call and eliminate the need to develop a new software application to support the program. Execution of a cooperative agreement is necessary to finalize this joint procurement.

### **DISCUSSION:**

The joint procurement in which the Commission participated with SANBAG and OCTA for call box call answering center services was conducted in September 2011. Because call box call volumes have dropped exponentially for all three agencies, it was anticipated that the combined call volume would result in a lower cost per call for all agencies. Additionally, the call answering protocols and training materials used in the handling of call box calls were previously developed and are owned by SANBAG. The Commission will reap the benefit of not having to develop these procedures and seek approval from the California Highway Patrol, resulting in a savings of approximately \$100,000.

Currently, through its contract with SANBAG for PCN's services, the Commission pays \$3.58 per call, plus language translation services when needed. Including the language translation service, the average cost per call is \$4.35. It should be noted that calls for assistance made from Riverside County call boxes have dropped from 15,532 in FY 2005/06, when PCN began the contract, to 5,251 in FY 2010/11. In addition to calls for assistance, PCN also handles approximately 2,700 call box maintenance calls each year.

Under the terms of the cooperative agreement, the Commission will reimburse SANBAG for Phase I implementation costs which include the setup of a remote messaging system at the Commission to monitor call box calls. Reimbursement of Phase II costs will include a flat rate per call answered, annual preventative maintenance of equipment located in Riverside County, and any additional programming needed. Attachment 1 includes an estimate of all costs to be reimbursed under the agreement, along with anticipated call volumes through the term of the agreement.

### **Procurement Process**

This procurement was handled by SANBAG in accordance with its procedures for professional and technical services. Award is recommended to the firm offering the most effective overall proposal considering such factors as staffing and project organization, prior experience with similar projects, work plan, and a fair and reasonable price structure.

On August 3, Request for Proposals (RFP) 12005 was issued by SANBAG. The project was advertised in newspapers of general circulation in San Bernardino, Riverside, and Orange Counties. Publications in Riverside County occurred on August 5 and August 11. A pre-proposal conference was held on August 12 with seven attendees representing five firms: Alston Tascom, Aspire Answering Service, Covenant Industries, MAP Communications, Inc., and Professional Communications Network.

On September 16, two proposals were received: Professional Answering Service and Professional Communications Network. An evaluation committee comprised of staff from SANBAG, the Commission, and OCTA met to review the submitted proposals. A SANBAG contracts procurement consultant was present to ensure all procedures were properly followed. Technical factors used to evaluate the proposers under this procurement included elements such as the firm's staffing capacity, qualifications, facilities and equipment, work plan and operations. Price comprised of 15 percent of the maximum possible points under the evaluation criteria.

The evaluation committee first evaluated the written proposals based on technical merit reviewing the above criteria. Based on the totals of each committee member's score of the technical evaluation criteria for each proposal, both firms were invited for an interview.

The interviews consisted of a site visit to each firm's facility, followed by questions and answers. After the interviews, the evaluation committee met to complete the evaluation. The firms were evaluated based on technical merit, proposed rates,

and the interviews. SANBAG issued a request for a best and final offer (BAFO) to each firm on September 30, 2011.

Based on the evaluation of the written proposals, the firms' qualifications, the proposed rates received from the BAFO, and the information obtained from the interviews and site visits, the evaluation committee recommended the selection of PCN as the top-ranked firm to provide call box call answering center services.

### **Conclusion**

PCN has extensive experience in operating a call box call answering center. The firm currently provides these services for SANBAG, the Commission, and OCTA, and was one of the first private call box call answering centers in California. The firm has an excellent working relationship with the California Highway Patrol communications centers and is extremely knowledgeable with prioritizing calls received from motorists stranded on the freeway. PCN has exceeded all level of service standards. Additionally, PCN offered the best overall price, with initial equipment/start-up costs \$3,150 lower than the other proposer. Moreover, the cost per call rate for stationary call boxes offered by PCN was \$1.30 lower than the other proposer during the first fiscal year of the agreement, and \$2.25 lower than the other proposer during the last option term of the agreement.

The rate per call for the initial year of the agreement for stationary call boxes is \$4.85. This rate is inclusive of all translation services and is approximately 11.5 percent higher than the amount the Commission currently pays. The rate per call escalates an average of 3.2 percent per year for the initial term of the agreement, and 2.5 percent per year for each option term.

The SANBAG Board of Directors took action on November 2 to approve the agreement.

The final step in the joint procurement is to enter into a cooperative agreement with SANBAG for the reimbursement of costs associated with answering stationary call boxes in Riverside County. SANBAG's Cooperative Agreement No. C-12139 is attached.

Based on the information provided, staff recommends executing Agreement No. 12-45-033-00 (C-12139) with SANBAG, in an amount not to exceed \$190,000 over a six and a half year term, for call box call answering services provided by PCN procured through a joint procurement process.

Financial Information					
In Fiscal Year Budget:	Y N/A	Year:	FY 2011/12 FY 2013+	Amount:	\$17,752 \$172,248
Source of Funds:	SAFE			Budget Adjustment:	N/A
GL/Project Accounting No.:	002174 81016 00000 0000 202 45 81002				
Fiscal Procedures Approved:	<i>Theresa Irwin</i>			Date:	11/14/11

**Attachments:**

- 1) Cost Estimate for Call Box Call Answering Center Services
- 2) Agreement No. 12-45-033-00 (C-12139) Between Riverside County Transportation Commission and San Bernardino County Association of Governments, acting as San Bernardino County Service Authority for Freeway Emergencies (SAFE) for the Provision of Call Box Call Answering Services for Riverside County

**Cost Estimate for  
Call Box Call Answering Center Services**

**Phase I Cost Summary**

**Implement Remote Messaging System**

FY 11/12	\$ 3,750.00
	<b>\$ 3,750.00</b>

**Phase II Cost Summary for the first Three and a Half Years**

	Annual Call Volume	Cost per Call	Annual Cost	Annual Maintenance	Mileage	Programming Costs	Total
<b>FY 11/12 (6 Months)</b>	2,718	\$ 4.85	\$ 13,182.30	\$ 750.00	\$ 70.00	\$ -	\$ 14,002.30
<b>FY 12/13</b>	5,085	\$ 5.01	\$ 25,476.08	\$ 772.50	\$ 70.00	\$ 1,850.00	\$ 28,168.58
<b>FY 13/14</b>	5,034	\$ 5.17	\$ 26,025.86	\$ 795.68	\$ 70.00	\$ 1,000.00	\$ 27,891.53
<b>FY 14/15</b>	4,984	\$ 5.33	\$ 26,564.35	\$ 819.55	\$ 70.00	\$ 1,000.00	\$ 28,453.89
					Phase II Expenses		<b>\$ 98,516.30</b>
					Phase 1 Expense		\$ 3,750.00
							<b>\$ 102,266.30</b>

**Phase II Cost Summary for the Three One-Year Option Terms**

	Annual Call Volume	Cost per Call	Annual Cost	Annual Maintenance	Mileage	Programming Costs	Total
<b>FY 15/16</b>	4,934	\$ 5.45	\$ 26,889.46	\$ 844.13	\$ 70.00	\$ 1,000.00	\$ 28,803.59
<b>FY 16/17</b>	4,885	\$ 5.57	\$ 27,207.81	\$ 869.46	\$ 70.00	\$ 1,000.00	\$ 29,147.26
<b>FY 17/18</b>	4,836	\$ 5.69	\$ 27,514.36	\$ 895.54	\$ 70.00	\$ 1,000.00	\$ 29,479.90
							<b>\$ 87,430.75</b>

**Total Potential Cooperative Agreement Value**

**\$ 189,697.05**

**COOPERATIVE AGREEMENT NO. C-12139 BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY  
ACTING AS, SAN BERNARDINO SERVICE AUTHORITY FOR FREEWAY  
EMERGENCIES (SAN BERNARDINO COUNTY SAFE)**

**AND**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
ACTING AS, RIVERSIDE COUNTY SERVICE AUTHORITY FOR FREEWAY  
EMERGENCIES (RIVERSIDE COUNTY SAFE)**

**FOR**

**THE PROVISION OF CALL BOX CALL ANSWERING SERVICES**

**FOR**

**RIVERSIDE COUNTY**

**1. PARTIES AND DATE**

This Cooperative Agreement is effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the San Bernardino County Service Authority for Freeway Emergencies, a public agency (the "SAN BERNARDINO COUNTY SAFE") whose address is 1170 W. 3<sup>rd</sup> Street, San Bernardino, California 92410-1715, and the Riverside County Transportation Commission, acting in its capacity as the Riverside County Service Authority for Freeway Emergencies, a public agency (the "Riverside County SAFE"), located at 4080 Lemon Street, 3rd Floor, Riverside, California 92502-2208. SAN BERNARDINO COUNTYSAFE and RIVERSIDE COUNTY SAFE, are each a "Party" and collectively "Parties" herein.

**2. RECITALS**

**WHEREAS**, SAN BERNARDINO COUNTY SAFE is the regional public agency created pursuant to California Streets and Highways Code section 2550 et seq.; and

**WHEREAS**, RIVERSIDE COUNTY SAFE is the regional public agency created pursuant to California Streets and Highways Code section 2550 et seq.; and

**WHEREAS**, SAN BERNARDINO COUNTY SAFE has engaged Professional Communications Network ("PCN") as the contractor ("Contractor") to render services for the provision of call box call answering center services within San Bernardino County, Riverside County, and Orange County ("Services"), as set forth in the SAN BERNARDINO COUNTY SAFE Contract No. C12005, executed on November 2, 2011 (the "Primary Agreement"), attached as Exhibit "A" and incorporated herein by reference; and

**WHEREAS**, this Cooperative Agreement (hereinafter referred to as “Agreement”) defines the specific terms and conditions between the RIVERSIDE COUNTY SAFE and SAN BERNARDINO COUNTY SAFE only as they may relate to the subject matter and no other purpose;

**NOW THEREFORE**, the Parties hereto wish to enter into this Agreement in order to allocate the costs of paying Contractor for Services under the Primary Agreement in accordance with the call box phone calls serviced by the Contractor within the geographical areas of the respective Parties hereto. In consideration of their mutual obligations set forth herein, the Parties agree as follows:

### **3. TERMS.**

3.1 Term. The Agreement shall commence on the date first set forth above, and shall continue in full force and effect through June 30, 2018, concurrent with the Primary Agreement unless earlier terminated or extended as provided in this Agreement. Should one or more of the option terms of the Primary Agreement not be exercised, this Agreement shall terminate. In the event this Agreement is terminated by one Party, SAN BERNARDINO COUNTY SAFE shall notify Contractor of such termination and may thereafter enter into an agreement for the provision of Services.

3.2 Primary Agreement. The terms of the Primary Agreement, including without limitation, the definitions provided therein, are hereby incorporated by reference as though fully set forth herein. The Parties hereto shall use their best efforts to perform and uphold the obligations of the respective Parties hereto and of the Primary Agreement, including, without limitation, the prosecution to conclusion or settlement of any remedy provided by law for the breach thereof by the Contractor.

3.3 Payment. RIVERSIDE COUNTY SAFE shall pay to SAN BERNARDINO COUNTY SAFE, in consideration for the Services rendered to the RIVERSIDE COUNTY SAFE through SAN BERNARDINO COUNTY SAFE by the Contractor, quarterly payments, with the first invoice commencing three (3) months after effective date of this Agreement. The RIVERSIDE COUNTY SAFE shall pay for Phase I and Phase II costs set forth in Exhibit “B” attached hereto and incorporated by reference herein (the “Compensation and Payment”).

3.4 Maximum Obligation. Notwithstanding any provisions of this Agreement to the contrary, RIVERSIDE COUNTY SAFE and SAN BERNARDINO COUNTY SAFE mutually agree that Riverside County SAFE’s maximum cumulative payment obligation shall be One Hundred Ninety Thousand Dollars (\$190,000) which shall include all amounts payable to the Contractor in payments as set forth in Exhibit “A.”

#### 3.5 Termination.

3.5.1 Notice; Reason. The Parties hereto may, by written notice, terminate this Agreement, in whole or in part, by giving a written notice of such termination 90



days prior to the effective date thereof (“Notice of Termination”). This Agreement shall terminate on the effective date of the Notice of Termination.

3.5.2 Such termination may be for Party's convenience or because of the failure of the other Party to perform its duties and obligations under this Agreement, including, but not limited to, the failure of SAN BERNARDINO SAFE to obtain timely and full performance of the Services pursuant to the Primary Agreement described in Exhibit “A”. In the event RIVERSIDE COUNTY SAFE terminates this Agreement, SAN BERNARDINO COUNTY SAFE shall, in accordance with Article 17 of the Primary Agreement, terminate the obligations and rights of the Contractor under the Primary Agreement as to the geographical area encompassed within Riverside County SAFE’s jurisdiction and shall, if requested by RIVERSIDE COUNTY SAFE, assign any and all rights to performance of the Services under the Primary Agreement to RIVERSIDE COUNTY SAFE. In the event this Agreement is terminated by SAN BERNARDINO COUNTY SAFE, SAN BERNARDINO COUNTY SAFE shall, in accordance with Article 39 of the Primary Agreement assign the rights and obligations of the Primary Agreement as requested by RIVERSIDE COUNTY SAFE in writing. Should the RIVERSIDE COUNTY SAFE terminate the Agreement for convenience or cause, RIVERSIDE COUNTY SAFE shall bear all reasonable costs associated with transitioning the call answering center calls from the Contractor to another location.

3.5.3 Documents and Data. Upon receipt of the written Notice of Termination, the terminating Party shall be entitled to receive certain Documents and Data related to RIVERSIDE COUNTY SAFE, as defined in Article 16 and Article 23 of the Primary Agreement and as provided in the Notice of Termination.

3.5.4 Effect of Termination for Convenience. If the termination is for the convenience of the Party, the terminating Party, shall compensate the non-terminating party, or, in the event SAN BERNARDINO COUNTY SAFE is the terminating Party, the Contractor, for Services fully and adequately provided through the effective date of termination as provided in the Notice of Termination and in accordance with the Exhibit “B” of this agreement. Such payment shall include a pro-rated amount of profit, as applicable to the terminating Party, up through the date of such effective date, but no amount shall be due for anticipated profit on unperformed Services past such effective date.

3.5.5 Effect of Termination for Cause. If the termination is for cause, the terminating party shall compensate the non-terminating Party, or, in the event SAN BERNARDINO COUNTY SAFE is the terminating Party, the Contractor, for those Services which have been fully and adequately completed and accepted in accordance with the Compensation and Payment. In such case, the terminating Party may take over the Services to be rendered to the terminating Party and prosecute the same to completion by contract or otherwise.

3.5.6 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.

3.5.7 Procurement of Similar Services. In the event this Agreement is

terminated, in whole or in part, as provided by this Section, the terminating Party may procure, upon such terms and in such manner as it deems appropriate, Services similar to those terminated.

3.6 Trend Meetings. The Parties' Representatives shall participate in trend meetings with the Contractor and other interested parties, as provided in Scope of Services, Attachment "A" of the Primary Agreement.

3.6.1 Progress Reports. SAN BERNARDINO COUNTY SAFE shall submit to the RIVERSIDE COUNTY SAFE the Contractor's monthly progress report required under Article 9 of the Primary Agreement. Submission of such progress report by SAN BERNARDINO COUNTY SAFE shall be a condition precedent to receipt of payment from the RIVERSIDE COUNTY SAFE for each monthly invoice submitted.

3.7 Delay in Performance.

3.7.1 Excusable Delays. Should either Party be delayed or prevented from the timely performance of any act or Services required by the terms of this Agreement by reason of acts of God or of the public enemy, acts or omissions of the other Party or other governmental agencies in either their sovereign or contractual capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather, performance of such act or Services shall be excused for the period of such delay.

3.7.2 Written Notice. If a Party believes it is entitled to an extension of time due to conditions set forth in subsection 3.7.1, it shall provide written notice to the other Party within seven (7) working days from the time the Party knows, or reasonably should have known, that performance of the applicable act or Services will be delayed due to such conditions. Failure to provide such timely notice shall constitute a waiver of any right to an excusable delay in time of performance.

3.7.3 Mutual Agreement. Performance of any Services under this Agreement may be delayed upon mutual agreement of the Parties.

3.8 Status of Contractor/Subcontractors.

3.8.1 Independent Contractor. The Services under the Primary Agreement shall be performed by the Contractor or under its supervision. The Contractor will determine the means, methods and details of performing the Services subject to the requirements of the Primary Agreement. SAN BERNARDINO COUNTY SAFE has retained Contractor on an independent contractor basis and not as an employee, agent or representative of the SAN BERNARDINO COUNTY SAFE or RIVERSIDE COUNTY SAFE. The parties hereto acknowledge that: (1) Contractor retains the right to perform similar or different services for others during the term of the Primary Agreement; (2) Any additional personnel performing the Services under the Primary Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control; (3) Contractor shall pay all wages, salaries and other amounts due such personnel in connection with their performance of Services and as required by law; and (4) Contractor shall be responsible for all reports and obligations respecting

such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, disability insurance, and workers' compensation insurance.

3.9 Indemnification of RIVERSIDE COUNTY SAFE. SAN BERNARDINO COUNTY SAFE shall indemnify and hold the Riverside County SAFE, its directors, officials, officers, agents, contractors, consultants, employees and volunteers free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to alleged negligent acts, omissions or willful misconduct of the SAN BERNARDINO COUNTY SAFE, Contractor and/or their officials, officers, employees, agents, and consultants, arising out of or in connection with the performance of this Agreement, and including without limitation, the payment of all consequential damages, attorneys fees and other related costs and expenses. SAN BERNARDINO COUNTY SAFE shall defend, at its own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the RIVERSIDE COUNTY SAFE, its directors, officials, officers, agents, consultants, employees and volunteers. SAN BERNARDINO COUNTY SAFE shall pay and satisfy any judgment, award or decree that may be rendered against the RIVERSIDE COUNTY SAFE, its directors, officials, officers, agents, consultants, employees and volunteers, in any such suit, action or other legal proceeding. SAN BERNARDINO COUNTY SAFE shall reimburse the RIVERSIDE COUNTY SAFE and its directors, officials, officers, agents, consultants, employees and volunteers, for any and all legal expenses and costs, including reasonable attorney's fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. SAN BERNARDINO COUNTY SAFE's obligation to indemnify, defend and hold harmless shall not be restricted to insurance proceeds, if any, received by the RIVERSIDE COUNTY SAFE, or their directors, officials, officers, agents, consultants, employees and volunteers, and shall continue in existence past the termination of this Agreement or the Primary Agreement by either of the Parties hereto or thereto, respectively.

3.10 Indemnification of SAN BERNARDINO COUNTY SAFE. RIVERSIDE COUNTY SAFE shall indemnify and hold the SAN BERNARDINO COUNTY SAFE, its directors, officials, officers, agents, contractors, consultants, employees and volunteers free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to alleged negligent acts, omissions or willful misconduct of the RIVERSIDE COUNTY SAFE, its officials, officers, employees, agents, and consultants, arising out of or in connection with the performance of this Agreement, including without limitation, the payment of all consequential damages, attorneys fees and other related costs and expenses. RIVERSIDE COUNTY SAFE shall defend, at its own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the SAN BERNARDINO COUNTY SAFE, its directors, officials, officers, agents, contractors, consultants, employees and volunteers. RIVERSIDE COUNTY SAFE shall pay and satisfy any judgment, award or decree that may be rendered against the SAN BERNARDINO COUNTY SAFE, its directors, officials, officers, agents, consultants, employees and volunteers, in any such suit, action or other legal proceeding. RIVERSIDE COUNTY SAFE shall reimburse the SAN BERNARDINO COUNTY SAFE and its directors, officials, officers, agents, consultants, employees and volunteers, for any and all legal expenses

and costs, including reasonable attorney's fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. RIVERSIDE COUNTY SAFE's obligation to indemnify, defend and hold harmless shall not be restricted to insurance proceeds, if any, received by the SAN BERNARDINO COUNTY SAFE, or their directors, officials, officers, agents, consultants, employees and volunteers, and shall continue in existence past the termination of this Agreement or the Primary Agreement by either of the Parties hereto or thereto, respectively.

3.11 Right to Employ Other Contractors. SAN BERNARDINO COUNTY SAFE and RIVERSIDE COUNTY SAFE reserve right to employ other contractors in connection with the Services to be rendered under the Primary Agreement.

3.12 Governing Law. This Agreement shall be subject to the law and jurisdiction of the State of California. The Parties agree that the venue for any action or claim brought by any Party to this Agreement shall be in San Bernardino County.

3.13 Attorneys' Fees. If any legal action is instituted to enforce or declare any Party's rights hereunder, each Party, including the prevailing party, must bear its own costs and attorney's fees. This section shall not apply to those costs and attorney's fees directly arising from any third party legal action against a Party hereto and payable under the indemnity provisions of this Agreement.

3.14 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.15 Headings. Article and section headings, paragraph captions or marginal headings contained in this Agreement are for convenience only and shall have no effect in the construction or interpretation of any provision herein.

3.16 Notices. Any and all notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**TO SAN BERNARDINO COUNTY SAFE**  
San Bernardino Associated Governments  
1170 W. 3<sup>rd</sup> Street,  
San Bernardino, CA 92410-1715  
  
Attn: SAFE Program Manager

**TO RIVERSIDE COUNTY SAFE:**  
Riverside County Transportation Commission  
4080 Lemon Street, 3rd Floor  
P.O. Box 12008 (Mailing Address)  
Riverside, CA 92502-2208  
  
Attn: SAFE Program Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. mail, first class postage prepaid, and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.17 Conflicting Provisions. In the event that provisions of any attached 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 performance of the Services. In the event that provisions of this Agreement conflict in any way with the provisions of the Primary Agreement, the request for proposal, and/or Contractor's response thereto ("Contract Documents"), the terms of this Agreement shall control. Otherwise, the Contract Documents are intended to be complementary. Acts or Services required by one of the Contract Documents and not by others shall be performed as required by all.

3.18 Amendment or Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

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

3.20 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.21 No Waiver. Failure of the Parties hereto to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

3.22 Counterparts. This Agreement may be signed in one or more counterparts, any one of which shall be effective as an original document.

This Agreement shall be made effective upon execution by both Parties.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Cooperative Agreement No. C12139 to be executed on the date first above written.

**SAN BERNARDINO COUNTY SAFE**

**RIVERSIDE COUNTY SAFE**

By: \_\_\_\_\_  
Larry McCallon  
Board President

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

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Penny Alexander-Kelley  
General Counsel

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

**CONCURRENCE:**

By: \_\_\_\_\_  
Kathleen Murphy-Perez  
Contracts Manager

# Insert executed C12005

Link to C12005 on SANBAG portal: <http://portal.sanbag.ca.gov/mgmt/APOR-Mgmt/Shared%20Documents/C12005.docx>

**COMPENSATION AND PAYMENT**

RIVERSIDE COUNTY SAFE and SAN BERNARDINO COUNTY SAFE agree to share the call box answering services center costs as set forth below:

**I. PHASE I** – RIVERSIDE COUNTY SAFE and SAN BERNARDINO COUNTY SAFE agree to share the call box answering services center costs incurred for Phase I under the Primary Agreement as follows:

- a. RIVERSIDE COUNTY SAFE shall reimburse SAN BERNARDINO COUNTY SAFE \$7,500 of the Phase I invoices paid by SAN BERNARDINO COUNTY SAFE. Said invoices will be submitted by Contractor to SAN BERNARDINO COUNTY SAFE within 10 days of the completed and accepted milestone.
- b. Phase I includes the following activities:
  - 1. Implementation of remote agents.

**II. PHASE II** - The RIVERSIDE COUNTY SAFE and SAN BERNARDINO COUNTY SAFE agree to share the call box answering services center costs incurred for Phase II under the “Primary Agreement” as follows:

- a. The RIVERSIDE COUNTY SAFE shall reimburse SAN BERNARDINO COUNTY SAFE for the actual number of calls answered by the Contractor from stationary call boxes located in Riverside County based on the following rate per call:

Initial Term	Rate per call
Fiscal Year 2011-12	\$4.85
Fiscal Year 2012-13	\$5.01
Fiscal year 2013-14	\$5.17
Fiscal Year 2014-15	\$5.33

Option Terms	Rate per call
Fiscal Year 2015-16	\$5.45
Fiscal Year 2016-17	\$5.57
Fiscal Year 2017-18	\$5.69

- b. The RIVERSIDE COUNTY SAFE shall reimburse SAN BERNARDINO COUNTY SAFE for Riverside County’s share of the actual costs associated with annual maintenance and cleaning of equipment located at the CHP Inland and Indio Communication Centers and the RIVERSIDE COUNTY SAFE. These costs shall not exceed \$750 for Fiscal Year 2011-12 plus mileage reimbursement at the current year’s Internal Revenue Services mileage reimbursement rate. The maintenance and cleaning costs shall escalate at a rate of three percent per fiscal year.



- c. The RIVERSIDE COUNTY SAFE shall fully reimburse SAN BERNARDINO COUNTY SAFE any programming costs it requests. Any programming costs requested by all Parties that benefit all Parties shall be shared at 33.3% of the total costs. The rate for fiscal year 2011-12 shall be \$60 per hour to be escalated by three percent each fiscal year thereafter.
- d. Phase II is the operational element and includes the following activities:
  1. staffing and training,
  2. commencing actual operations of the call center, all monitoring and statistical data collection elements for performance monitoring must be in place prior to beginning Phase II,
  3. annual maintenance and cleaning of equipment located at traffic management centers and call box providers' locations, and
  4. programming based on the needs of the call box program.