

**FUNDING AGREEMENT
BETWEEN
CALIFORNIA HIGHWAY PATROL
AND
SACRAMENTO TRANSPORTATION AUTHORITY**

This Agreement, is made and entered into this _____ day of _____, 2014, by and between the California Highway Patrol (hereinafter called "CHP"), and the Sacramento Transportation Authority (hereinafter called "STA").

RECITALS

Whereas, this agreement pertains to the field supervision and operation of a Freeway Service Patrol (FSP) program in Sacramento and Yolo Counties known as the "Sacramento Metropolitan Freeway Service Patrol", and

Whereas, Section 2401 of the California Vehicle Code (CVC) states that the Commissioner of the CHP shall make adequate provisions for patrol of the highways at all times of the day and night. This section is interpreted to mean that the Commissioner is given broad discretion in determining the means of providing adequate patrol, including the use of FSP vehicles, and

Whereas, Section 21718(a)(7) of the CVC is a provision which specifically allows the CHP to be responsible for FSP stopping on freeways for the purpose of rapid removal of impediments to traffic, and

Whereas, the STA has, under Streets and Highways Code Section 2557(d), the ability to provide funding for FSP on freeways within Sacramento County to assist in transportation system management efforts, provide traffic congestion relief, and expedite the removal of freeway impediments, all of which will have the added benefit of improving air quality.

Now, therefore, in consideration of the mutual promises hereinafter set forth, STA and CHP agree as follows:

TERMS AND CONDITIONS

A. CHP RESPONSIBILITIES

1. CHP agrees to assign and deploy two (2) full-time officers for the exclusive and dedicated purpose of providing field supervision and performing related duties for FSP in Sacramento, Placer, Yolo and El Dorado Counties.
2. All personnel providing services shall be State employees under the sole discretion, supervision, and regulation of the CHP. Said personnel shall work out of the appropriate CHP facilities as designated by the CHP. At no time shall any State employee assigned to the STA FSP program be considered employees, agents, officials, or volunteers of STA.

It is understood and agreed that neither CHP nor CHP assigned personnel shall have any entitlement as an STA employee, right to act on behalf of STA in any capacity whatsoever as agent, nor to bind STA to any obligation whatsoever. Neither CHP nor its assigned personnel shall be covered by worker's compensation; nor shall CHP or its assigned personnel be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by STA to employees of STA.

CHP acknowledges and agrees that CHP is not entitled to receive the following benefits and/or compensation from STA: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees. Should CHP or any employee or agent of CHP seek to obtain such benefits from STA, CHP agrees to indemnify and hold harmless STA from any and all claims that may be made against STA for such benefits.

3. CHP duties shall include but not be limited to:
 - a) The daily field supervision of FSP operators.
 - b) Investigating complaints from the public regarding an STA FSP contractor or operator.
 - c) Performing all necessary driver's license and background checks on all STA FSP operators.
 - d) Inspecting all tow trucks on a periodic basis for compliance with contract requirements for appearance, mandatory equipment and condition.
 - e) Performing necessary daily project field supervision, program management and the oversight of the quality of the contractors' services.
 - f) Provide training to all STA FSP contractors and operators.
 - g) Provide representation for the FSP Technical Advisory Committee.
4. CHP shall have the authority to cancel this agreement without cause with (90) days written notification.

B. STA RESPONSIBILITIES

1. STA shall reimburse CHP for one of the full-time officers described in Section A, Paragraph 1, CHP RESPONSIBILITIES from invoices submitted by CHP on a monthly basis. STA agrees to reimburse CHP for actual costs incurred while providing FSP related duties as specified herein. The estimated monthly cost is \$12,416. In no event shall the total amount exceed \$149,000 for the term of this agreement.
2. STA shall have the authority to cancel the funding of this position without cause with ninety (90) days written notification.

C. GENERAL PROVISIONS

1. Should this agreement be terminated under Section B, Paragraph 2, STA RESPONSIBILITIES, STA agrees to reimburse the CHP for those reasonable costs incurred and associated with the program for field supervision and administrative duties as defined in this agreement up to the point of termination.

2. This Agreement may only be amended by mutual written consent of the parties hereto.
3. The term of this agreement is from July 1, 2013 to June 30, 2014.
4. The Coordinators of this Agreement are shown below:
 - a) Sacramento Transportation Authority
Norman Hom, FSP Program Manager
431 I Street, Suite 106
Sacramento, California 95814-2320
(916) 323-0080
 - b) California Highway Patrol – Research & Planning Section
Lori Gong, Statewide Manager
601 North 7th Street
Sacramento, California 95811
(916) 843-3353
5. Neither the CHP nor any officer, agent or employee shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the STA under or in connection with any work, authority, or jurisdiction delegated to the STA under this Agreement. Pursuant to Government Code Section 895.4, the STA shall fully indemnify and hold CHP harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by the STA under or in connection with any work, authority, or jurisdiction delegated to the STA under this Agreement and for which the STA would otherwise be liable.
6. Neither the STA nor any board member, officer, employee, agent, or representative shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by CHP under or in connection with any work, authority, or jurisdiction delegated to CHP under this Agreement. Pursuant to Government Code Section 895.4, the CHP shall fully indemnify and hold STA harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by the CHP under or in connection with any work, authority, or jurisdiction delegated to the CHP under this Agreement and for which the CHP would otherwise be liable.
7. Notwithstanding any other provision of this Agreement, CHP, including any officer, agent or employee is not liable to STA for any

claim based on negligence of an FSP operator/FSP contractor or for any other claim not based on a negligent act or omission of CHP. The general principles of equitable indemnity have been considered and are expressly excluded. STA agrees notwithstanding any other provision of this Agreement, that no claim for indemnity or contribution will be made unless the accident was caused by affirmative negligence of CHP. STA will include, in its agreements with its FSP operators/FSP contractors, that such operators/contractors agree to indemnify CHP for any claim made against CHP based on Government Code Section 815.2 or 815.4 and arising out of the negligence or alleged negligence of the FSP operator/contractor.

8. Notwithstanding any other provision of this Agreement, STA, including any officer, agent or employee is not liable to CHP for any claim based on negligence of an FSP operator/FSP contractor or for any other claim not based on a negligent act or omission of STA. The general principles of equitable indemnity have been considered and are expressly excluded. CHP agrees, notwithstanding any other provision of this Agreement, that no claim for indemnity or contribution will be made unless the accident was caused by affirmative negligence of STA.
9. The contracting parties hereto shall be subject to the examination and audit of the State for a period of three (3) years after final payment under the contract in accordance with the Government Code Section 10532. In addition, STA and CHP may be subject to the examination and audit by representatives of either party. The examination and audit shall be confined to those matters directly related to this contract.

D. SUBCONTRACTS, ASSIGNMENT

1. CHP shall obtain prior written approval from STA before subcontracting any of the services delivered under this Agreement. CHP remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. CHP shall be held responsible by STA for the performance of any subcontractor whether approved by STA or not.
2. This Agreement is not assignable by CHP in whole or in part, without the prior written consent of STA.

E. **DISPUTES**

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. Pending resolution of any such dispute, CHP shall continue without delay to carry out all its responsibilities under this Agreement unless the Agreement is otherwise terminated in accordance with the Termination provisions herein. STA shall not be required to make payments for any services that are the subject of this dispute resolution process until such dispute has been mutually resolved by the parties. If the dispute cannot be resolved within 15 calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the parties in writing, either party may pursue its available legal and equitable remedies, pursuant to the laws of the State of California. Nothing in this Agreement or provision shall constitute a waiver of any of the government claim filing requirements set forth in Title 1, Division 3.6, of the California Government Code or as otherwise set forth in local, state and federal law.

F. **SEVERABILITY**

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

G. **FORCE MAJEURE**

Neither STA nor CHP shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

H. **SURVIVAL OF TERMS**

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

I. **DUPLICATE COUNTERPARTS**

This Agreement may be executed in duplicate counterparts. This Agreement shall be deemed executed when it has been signed by both parties and the Department of General Service, Office of Legal Services.

J. **ENTIRE AGREEMENT**

This Agreement and any attachments or documents incorporated herein by inclusion or reference constitute the complete and entire agreement between CHP and STA and supersede any prior representations, understandings, communications, commitments, agreements or proposals, oral or written for FSP.

**SACRAMENTO TRANSPORTATION
AUTHORITY**

**DEPARTMENT OF CALIFORNIA
HIGHWAY PATROL**

Brian Williams
Executive Director

T. L. Anderson, Assistant Chief
Administrative Services Division

Date

Date