

STAFF REPORT

SUBJECT: Call Box Call Answering Center

MEETING DATE: February 16, 2006

AGENDA ITEM: 7F

STAFF CONTACT: John Asuncion

RECOMMENDATION:

Authorize the Chair to execute an agreement with CDSNet-MyTransitPlus, Inc. for call box call answering services

SUMMARY:

In November 2005, the SBCAG Board authorized the release of a Call Box Call Answering Center (CAC) Request for Proposal (RFP). A competitive, qualifications-based selection process was used to choose a firm to implement the CAC. Dispatchers from the California Highway Patrol assisted SBCAG staff in reviewing the proposals. CDSNet-MyTransitPlus is recommended as the contractor for the CAC. Staff is recommending that a one year contract be executed. At the completion of one years' service, SBCAG staff would present a report to the Board on the service. If CDSNet-MyTransitPlus is performing satisfactorily, the Board could renew the contract for up to four additional one year terms.

DISCUSSION:

SBCAG serves as the Service Authority for Freeway Emergencies (SAFE) for Santa Barbara County and is responsible for the installation, operation and administration of approximately 340 highway call boxes. This system is financed by a \$1 per year fee on all motor vehicles registered within the county.

In 2005 approximately 4,200 phone calls were fielded by the CHP from SBCAG's 340 call boxes. On the South Coast, call box calls are received at the CHP communication center in the city of Ventura. In the Gaviota area of Highway 101 and throughout the North County, calls made from SBCAG's boxes are received at the CHP communication center in the city of San Luis Obispo. SBCAG annually pays the CHP \$37,000, through a cooperative agreement to answer calls made from its boxes. The use of CHP communications centers to answer call boxes has been the "default" practice for SAFE programs throughout California.

In addition to call box calls, the CHP communication centers handle all 911 calls made from cell phones. According to the 2002 California Performance Review prepared by the Schwarzenegger Administration, CHP call centers answered over 8 million wireless 911 calls alone in 2002. CHP 911 operators are regularly overloaded during peak commute hours and callers often get a busy signal or are put on hold for up to ten minutes. Of the millions of California wireless 911 calls received, it is estimated that between 1.8 million and 3.6 million of

these are “phantom calls.” (Phantom means nonemergency, accidental redials, speed dials, etc.)

Some SAFE’s have contracted with private call answering centers to reduce costs and at the same time alleviate the workload of CHP dispatchers. Under this system, all calls are first answered by the private call answering center, and calls requiring relevant emergency services are then forwarded to a CHP communications center for completion. Rules and guidelines setting forth what constitutes a relevant emergency call are determined by the CHP. In general, such calls are those requiring CHP or police assistance, fire, and/or ambulance services. All other calls (eg., repairs or towing assistance) will be completed and handled by the private call answering center.

SAFE’s that implemented the use of private call answering centers have seen a decrease in communication center costs. Prior to the implementation of a private call center, the San Luis Obispo County SAFE was paying approximately \$1,500/month to the CHP for call box answering services. Since implementing the use of a private center in April 2005, San Luis Obispo County SAFE has paid approximately \$400/month. This works out to a savings of roughly \$13,000/year. The upfront, one-time equipment costs to connect to the private call answering center amounted to \$5,000. Thus, San Luis Obispo County SAFE is anticipating a savings of \$8,000 this year and \$13,000 annually in the years to come. SBCAG staff is anticipating a similar savings for Santa Barbara SAFE once a private call center has been established. The approximately \$30,000 budgeted to the CHP for dispatch services would be reduced to \$5,000. And SBCAG would expend approximately \$14,000 for the private call center’s service. The net savings from switching to a private call center is expected to be \$9,000 per year.

The operating budget for the SAFE call box program in FY 05-06 is \$386,390. CHP dispatch costs are 7.5% of the budget. Dispatch costs would drop to about 3.1% if a private call center were used.

Staff has met with officers and dispatchers at the CHP Ventura communications center and the CHP San Luis Obispo communications center to discuss connecting the call box system to a private call center. CHP Ventura is supportive to the idea. CHP San Luis Obispo also supports this idea and currently works with a private call center hired by the San Luis Obispo SAFE so there should be few difficulties, if any, for CHP San Luis Obispo in making a transition.

Region	Private CAC Company	Location of Private CAC Company	Number of Call Boxes
Los Angeles County	AAMCOM	Redondo Beach, CA	4,470
San Francisco Bay Area	Connections Communications	San Francisco, CA	3,400
Santa Cruz County	Connections Communications	San Francisco, CA	124
Monterey County	Connections Communications	San Francisco, CA	200
San Luis Obispo County	Connections Communications	San Francisco, CA	168
San Bernardino County	PCN	Riverside, CA	1,600
Riverside County	PCN	Riverside, CA	1,123
Orange County	PCN	Riverside, CA	1,500
San Diego County	CDSNet-MyTransitPlus	Los Angeles, CA	1,400
Sacramento Region	CDSNet-MyTransitPlus	Los Angeles, CA	1,284

Currently the regions that are utilizing private call centers to handle their call box phone calls are listed in the table above. Also listed in the table is the company used to operate the private center and the number of call boxes in each region.

The regions that are currently using a private center have reported to SBCAG staff that they have not seen a reduction in performance or decrease in safety.

Request for Proposal

Staff prepared a Request of Proposal (RFP) for a Call Answering Center that was released in November, 2005. At the December 22, 2005 proposal deadline, responses were received from five firms: AAMCOM, CDSNet-MyTransitPlus, Connections Communications, Echo Communications, and PCN. A proposal evaluation committee consisting of John Asuncion, SBCAG’s SAFE Program Manager, Fred Luna, SBCAG Transportation Engineer, and dispatchers from the California Highway Patrol Ventura and San Luis Obispo reviewed the proposals. Site visits were conducted by SBCAG staff for all five firms.

The evaluation committee unanimously recommends that the Board contract with the firm of CDSNet-MyTransitPlus, located in Los Angeles, California. The recommendation is based on their experience as the call box call answering center for San Diego County for the last five years, the high degree of professionalism displayed during their site visit, and the competitive cost proposal submitted by the firm. In addition to their call box experience, CDSNet-MyTransitPlus is also experienced in intelligent transportation system information services, providing route, fare and schedule information for Metrolink, bus line information or the Orange County Transportation Authority, and ridership data for CityRide, L.A.’s paratransit service.

SBCAG Staff Estimated Call Answering Center Costs

Costs	AAMCOM	Connections	Echo	MyTransitPlus	PCN
Start-Up Capital	\$61,400.00	\$15,935.00	\$35,675.00	\$25,400.00	\$32,190.00
3,950 Calls Year 1	\$10,467.50	\$9,717.00	\$15,207.50	\$8,887.50	\$11,297.00
3,900 Calls Option Year 1	\$10,647.00	\$9,750.00	\$15,483.00	\$8,775.00	\$11,505.00
3,850 Calls Option Year 2	\$10,818.50	\$9,817.50	\$15,746.50	\$8,662.50	\$11,665.50
3,800 Calls Option Year 3	\$10,982.00	\$9,880.00	\$15,998.00	\$9,120.00	\$11,894.00
3,750 Calls Option Year 4	\$11,175.00	\$9,937.50	\$16,275.00	\$9,187.50	\$12,075.00
Est. Five Year Total	\$115,490.00	\$65,037.00	\$114,385.00	\$70,032.50	\$90,626.50

Based on the table above, SBCAG staff estimates that CDSNet-MyTransitPlus will have an average annualized cost of \$14,007 over five years, compared to \$37,000 that SBCAG now pays the CHP for dispatching services. CDSNet-MyTransitPlus has strong references from the San Diego SAFE and the Los Angeles Department of Transportation. Staff has met with representatives from CDSNet-MyTransitPlus and they are ready to sign a contract to participate in the call box program for Santa Barbara County.

The contract term is for one year with four one-year renewable options and the estimated one-year cost is \$34,300. Prior to the end of the contract in 2007, staff will provide a report to the Board on the performance of the CAC. If the program's performance is satisfactory, the Board could extend the contract. The contract includes an option for four one-year extensions.

Once the contract has been signed, full implementation of the CAC is expected to be completed by mid-July 2006.

COMMITTEE REVIEW:

An evaluation committee consisting of SBCAG staff and dispatchers from the California Highway Patrol reviewed the five CAC proposals received and recommended CDSNet-MyTransitPlus for the contract.

ATTACHMENTS:

- Contract with CDSNet-MyTransitPlus

AGREEMENT
BETWEEN
SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS
AND
CDSNET-MYTRANSITPLUS CORPORATION

THIS AGREEMENT is made and entered into this 16th day of February, 2006, by and between the Santa Barbara County Association of Governments, 260 N. San Antonio Rd., Suite B, Santa Barbara, CA 93110 (hereinafter referred to as "AGENCY"), and, CDSNet-MyTransitPlus Corporation, (hereinafter referred to as "CONTRACTOR").

WITNESSETH:

WHEREAS, AGENCY requires assistance from CONTRACTOR to establish and operate a call answering center (CAC) for its callbox system; and

WHEREAS, said work cannot be performed by the regular employees of AGENCY; and

WHEREAS, CONTRACTOR has represented that it has the requisite personnel and experience, and is capable of performing such services; and

WHEREAS, CONTRACTOR wishes to perform these services;

NOW, THEREFORE, it is mutually understood and agreed by AGENCY and CONTRACTOR as follows:

ARTICLE 1. COMPLETE AGREEMENT

- A. This agreement, including all exhibits and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the term(s) and condition(s) of the agreement between AGENCY and CONTRACTOR and it supersedes all prior representations, understandings and communications. The invalidity in whole or in part of any term or condition of this Agreement shall not affect the validity of other term(s) or condition(s)
- B. AGENCY's failure to insist in any one or more instances upon CONTRACTOR's performance of any term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of AGENCY's right to such performance or to future performance of such term(s) or condition(s) and CONTRACTOR's obligation in respect thereto shall continue in full force and effect. Changes to any portion of this Agreement shall not be binding upon AGENCY except when specifically confirmed in writing by an authorized representative of AGENCY by way of a written amendment to this Agreement and issued in accordance with the provisions of this Agreement.

ARTICLE 2. AGENCY DESIGNEE

The Executive Director of AGENCY, or designee, shall have the authority to act for and exercise any of the rights of the AGENCY as set forth in this Agreement, subsequent to and in accordance with the authority granted by AGENCY's Board of Directors.

ARTICLE 3. SCOPE OF WORK

- A. CONTRACTOR shall perform the work necessary to complete in a manner satisfactory to AGENCY the services set forth in Exhibit A, entitled "Scope of Work," and attached to and, by this reference, incorporated in and made a part of this Agreement. All services shall be provided at the times and places designated by AGENCY.
- B. CONTRACTOR shall provide the personnel listed below to perform the above-specified services, which persons are hereby designated as key personnel under this Agreement.

<u>Names</u>	<u>Functions</u>
Dirk Schneidermeier	Project Manager
Jackie White	Call Center Supervisor

- C. No person named in paragraph B of this Article, or his/her successor approved by AGENCY, shall be removed or replaced by CONTRACTOR, nor shall his/her agreed-upon function or level of commitment hereunder be charged, without the prior written consent of AGENCY. Should the services of any key person become no longer available to CONTRACTOR, the resume and qualifications of the proposed replacement shall be submitted to AGENCY for approval as soon as possible, but in no event later than seven (7) calendar days prior to the departure of the incumbent key person, unless CONTRACTOR is not provided with such notice by the departing employee. AGENCY shall respond to CONTRACTOR within seven (7) calendar days following receipt of these qualifications concerning acceptance of the candidate for replacement.

ARTICLE 4. TERM OF AGREEMENT

- A. This Agreement shall commence on February 27, 2006, and shall continue in full force and effect through February 26, 2007, unless earlier terminated as provided elsewhere in this Agreement.
- B. AGENCY, at its sole discretion, may elect to extend the term of this Agreement for up to an additional twelve (12) months commencing February 27, 2007 and continuing through February 26, 2008, ("First Option Term"), and thereupon require CONTRACTOR to continue to provide services, and otherwise perform, in accordance with Exhibit A and at the rates set forth in Article 6, "Payment."
- C. AGENCY, at its sole discretion, may elect to extend the term of this Agreement for up to an additional twelve (12) months commencing February 27, 2008 and continuing through February 26, 2009, ("Second Option Term"), and thereupon require CONTRACTOR to continue to provide services, and otherwise perform, in accordance with Exhibit A and at the rates set forth in Article 6, "Payment."
- D. AGENCY, at its sole discretion, may elect to extend the term of this Agreement for up to an additional twelve (12) months commencing February 27, 2009 and continuing through February 26, 2010, ("Third Option Term"), and thereupon require CONTRACTOR to continue to provide services, and otherwise perform, in accordance with Exhibit A and at the rates set forth in Article 6, "Payment."

- E. AGENCY, at its sole discretion, may elect to extend the term of this Agreement for up to an additional twelve (12) months commencing February 27, 2010 and continuing through February 26, 2011, ("Fourth Option Term"), and thereupon require CONTRACTOR to continue to provide services, and otherwise perform, in accordance with Exhibit A and at the rates set forth in Article 6, "Payment."

ARTICLE 5. PAYMENT

- A. For CONTRACTOR's full and complete performance of its obligations under this Agreement and subject to the maximum cumulative payment obligation provisions set forth in Article G.6, AGENCY shall pay CONTRACTOR on a firm fixed price basis in accordance with the following provisions.

- B. The following schedule shall establish the firm fixed price payment to CONTRACTOR by AGENCY for each work task set forth in the Scope of Work, Phase 1.

<u>Tasks</u>	<u>Description</u>	<u>Firm Fixed Price</u>
1	Develop Facilities and Systems Plan	<u>700.00</u>
2	Develop Staffing Plan	<u>0.00</u>
3	Develop Plan for Coordinating with CHP	<u>22,200.00</u>
4	Develop Scripts and Screens	<u>500.00</u>
5	Develop Policies, Procedures and Training Plan	<u>500.00</u>
6	Conduct Operational Testing	<u>1,500.00</u>
TOTAL FIRM FIXED PRICE PAYMENT		<u>25,400.00</u>

- C. The following will establish the cost per call answered as set forth in the Scope of Work, Phase 2.

1. Item 1 – Cost per call answered:

Year 1	<u>\$2.25</u>
Option year 1	<u>\$2.25</u>
Option year 2	<u>\$2.25</u>
Option year 3	<u>\$2.40</u>
Option year 4	<u>\$2.45</u>

- D. For Phase 1, CONTRACTOR shall invoice AGENCY on a monthly basis for payments corresponding to the work actually completed by CONTRACTOR. Percentage of work completed shall be documented in a monthly progress report prepared by CONTRACTOR, which shall accompany each invoice submitted by CONTRACTOR. CONTRACTOR shall also furnish such other information as may be requested by AGENCY to substantiate the validity of an invoice. At its sole discretion, AGENCY may decline to make full payment for any task listed in paragraph B of this Article until such time as CONTRACTOR has documented to AGENCY's satisfaction, that CONTRACTOR has fully completed all work required under this task. AGENCY's payments in full for any task completed shall not constitute AGENCY's final acceptance of CONTRACTOR's work under such task; final acceptance shall occur only when AGENCY's release of the retention described in paragraph E.

- E. A partial security against CONTRACTOR's failure to satisfactorily fulfill all of its obligations under this Agreement, AGENCY shall retain ten percent (10%) of the amount of each invoice submitted for payment by CONTRACTOR. All retained funds shall be released by AGENCY and shall be paid to CONTRACTOR within sixty (60) calendar days of payment of final invoice, unless AGENCY elects to audit CONTRACTOR's records in accordance with Article 16 of this Agreement. If AGENCY elects to audit,

retained funds shall be paid to CONTRACTOR within thirty (30) calendar days of completion of such audit in an amount reflecting any adjustment required by such audit.

- F. For Phase 2, invoices shall be submitted by CONTRACTOR to AGENCY within 10 working days of the end of the billing month for payments corresponding to the per-call contracted rate. A monthly per-call report prepared by CONTRACTOR shall accompany each invoice submitted by CONTRACTOR. CONTRACTOR shall also furnish such other information as may be requested by AGENCY to substantiate the validity of an invoice. At its sole discretion, AGENCY may decline to make full payment for per-call charges until such time as CONTRACTOR has documented to AGENCY's satisfaction.
- G. Invoices shall be submitted by CONTRACTOR in duplicate to AGENCY's Accounts Payable office. Each invoice shall be accompanied by the monthly per-call report specified in paragraph C of this Article. AGENCY shall remit payment within thirty (30) calendar days of the receipt and approval of each notice. All invoices shall include the following information:
 - 1. Specify the task number as shown in Phase I for which payment is being requested;
 - 2. The time period covered by the invoice;
 - 3. Total monthly invoice (including project-to-date cumulative invoice amount for Phase I and per-call charges for Phase 2); and retention;
 - 4. Monthly Per-Call Report;
 - 5. Certification signed by the CONTRACTOR or his/her designated alternate that a) The invoice is a true, complete and correct statement of reimbursable costs and progress; b) The invoice is a true, complete and correct statement of reimbursable costs; c) The backup information included with the invoice is true, complete and correct in all material respects; d) All payments due and owing to subcontractors and suppliers have been made; e) Timely payments will be made to subcontractors and suppliers from the proceeds of the payments covered by the certification and; f) The invoice does not include any amount when CONTRACTOR intends to withhold or retain from a subcontractor or supplier unless so identified on the invoice.
 - 6. Any other information as agreed or requested by AGENCY to substantiate the validity of an invoice.

ARTICLE 6. NOTICES

All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of said notices in person or by depositing said notices in the U.S. mail, registered or certified mail, returned receipt requested, postage prepaid and addressed as follows:

To CONTRACTOR:

MyTransitPlus Corporation
6053 West Century Blvd., 9th Floor
Los Angeles, CA 90045
ATTENTION: Jason Mugford
Vice-President/CTO

To AGENCY:

Santa Barbara County Association of Governments
260 N. San Antonio Rd., Suite B
Santa Barbara, CA 93110
ATTENTION: John Asuncion
Program Manager

ARTICLE 7. INDEPENDENT CONTRACTOR

CONTRACTOR'S relationship to AGENCY in the performance of this Agreement is that of an independent contractor. CONTRACTOR'S personnel performing services under this Agreement shall at all times be under CONTRACTOR's exclusive direction and control and shall

be employees of CONTRACTOR and not employees of AGENCY. CONTRACTOR shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

ARTICLE 8. INSURANCE

- A. CONTRACTOR shall procure and maintain insurance coverage during the entire term of this Agreement. Coverage shall be full coverage and not subject to self-insurance provisions. CONTRACTOR shall provide the following insurance coverage:
1. Commercial General Liability, to include Products/Completed Operations, Independent Contractors', Contractual Liability, and Personal Injury Liability with a minimum limit of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate.
 2. Automobile Liability Insurance to include owned, hired and non-owned autos with a combined single limit of \$1,000,000.00 each accident;
 3. Workers' Compensation with limits as required by the State of California including a waiver of subrogation in favor of AGENCY, its officers, directors, employees or agents;
 4. Employers' Liability with minimum limits of \$1,000,000.00; and
 5. Professional Liability with minimum limits of \$1,000,000.0 per claim.
- B. Proof of such coverage, in the form of an insurance company issued policy endorsement and a broker-issued insurance certificate, must be received by AGENCY prior to commencement of any work. Proof of insurance coverage must be received by AGENCY within ten (10) calendar days from the effective date of this Agreement with the AGENCY, its officers, directors, employees and agents designated as additional insureds on the general and automobile liability. Such insurance shall be primary and non-contributive to any insurance or self-insurance maintained by the AGENCY.
- C. CONTRACTOR shall include on the face of the Certificate of Insurance the Program Manager's Name.
- D. CONTRACTOR shall also include in each subcontract the stipulation that subcontractors shall maintain insurance coverage in the amounts required from CONTRACTOR as provided in this Agreement.

ARTICLE 9. ORDER OF PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, including all exhibits; (2) the provisions of the RFP released by SBCAG on November 17, 2005; (3) CONTRACTOR's proposal dated December 21, 2005; (4) all other documents, if any, cited herein or incorporated by reference.

ARTICLE 10. CHANGES

By written notice or order, AGENCY may, from time to time, order work suspension and/or make changes in the general scope of this Agreement, including, but not limited to, the services furnished to AGENCY by CONTRACTOR as described in the Scope of Work. If any such work suspension or change causes an increase or decrease in the price of this Agreement, or in the time required for its performance, CONTRACTOR shall promptly notify AGENCY thereof and assert its claim for adjustment within ten (10) calendar days after the change of work suspension is ordered, and an equitable adjustment shall be negotiated.

However, nothing in this clause shall excuse CONTRACTOR from proceeding immediately with the agreement as charged.

ARTICLE 11. DISPUTES

- A. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by supplemental agreement shall be decided by AGENCY's Executive Director or designee. The decision of the Executive Director or designee, shall be final and conclusive.
- B. The provisions of this Article shall not be pleaded in any suit involving a question of fact arising under this Agreement as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged, provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this Article, CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.
- C. Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of this Agreement and in accordance with the decision of AGENCY's Executive Director or designee. This Disputes clause does not preclude consideration of questions of law in connection with decisions provided for above. Nothing in this Agreement, however, shall be construed as making final the decision of any AGENCY official or representative on a question of law, which questions shall be settled in accordance with the laws of the state of California.
- D.

ARTICLE 12. TERMINATION

- A. AGENCY may terminate this Agreement for its convenience at any time, in whole or part, by giving CONTRACTOR written notice thereof. Upon said notice, AGENCY shall pay CONTRACTOR its allowable costs incurred to date of termination and those allowable costs determined by AGENCY to be reasonably necessary to effect such termination. Thereafter, CONTRACTOR shall have no further claims against AGENCY under this Agreement.
- B. AGENCY may terminate this Agreement for CONTRACTOR's default if a federal or state proceeding for the relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, or if CONTRACTOR breaches any term(s) or violates any provision(s) of this Agreement and does not cure such breach or violation within ten (10) calendar days after written notice thereof by AGENCY. CONTRACTOR shall be liable for any and all reasonable costs incurred by AUTHORITY as a result of such default including, but not limited to, procurement costs of the same or similar services defaulted by CONTRACTOR under this Agreement.

C.

ARTICLE 13. INDEMNIFICATION

CONTRACTOR shall indemnify, defend and hold harmless AGENCY, its officers, directors, employees and agents from and against any and all claims (including attorneys' fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions or willful misconduct by CONTRACTOR, its officers, directors, employees, agents, subcontractors or suppliers in connection with or arising out of the performance of this Agreement.

ARTICLE 14. ASSIGNMENTS

Neither this Agreement nor any interest herein nor claim hereunder may be assigned by CONTRACTOR either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by CONTRACTOR, without the prior written consent of AGENCY. Consent by AGENCY shall not be deemed to relieve CONTRACTOR of its obligations to comply fully with all terms and conditions of this Agreement.

ARTICLE 15. AUDIT AND INSPECTION OF RECORDS

CONTRACTOR shall provide AGENCY, or other agents of AGENCY, such access to CONTRACTOR's accounting books, records, payroll documents and facilities as AGENCY deems necessary. CONTRACTOR shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during CONTRACTOR's performance hereunder and for a period of four (4) years from the date of final payment by AGENCY. AGENCY's right to audit books and records directly related to this Agreement shall also extend to all first-tier subcontractors identified in Article 15 of this Agreement. CONTRACTOR shall permit any of the foregoing parties to reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

ARTICLE 16. FEDERAL, STATE, AND LOCAL LAWS

CONTRACTOR warrants that in the performance of this Agreement, it shall comply with all applicable federal, state, and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder.

ARTICLE 17. EQUAL EMPLOYMENT OPPORTUNITY

In connection with its performance under this Agreement, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

ARTICLE 18. PROHIBITED INTERESTS

CONTRACTOR covenants that, for the term of this Agreement, no director, member, officer or employee of AGENCY during his/her tenure in office for one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE 19. OWNERSHIP OF REPORTS AND DOCUMENTS

- A. The originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to, and become the property of AGENCY. Copies may be made for CONTRACTOR's records but shall not be furnished to others without written authorization from AGENCY. Such deliverables shall be deemed works made for hire and all rights copyright therein shall be retained by AGENCY.
- B. All ideas, memoranda, specifications, plans, manufacturing, procedures, drawings, descriptions, and all other written information submitted to CONTRACTOR in connection with the performance of this Agreement shall not, without prior written approval of AGENCY, be used for any purposes other than the performance under

this Agreement, nor be disclosed to an entity not connected with the performance of the project. CONTRACTOR shall comply with AGENCY's policies regarding such material. Nothing furnished to CONTRACTOR which is otherwise known to CONTRACTOR or is or becomes generally known to the related industry shall be deemed confidential. CONTRACTOR shall not use AGENCY's name, photographs of the project, or any other publicity pertaining to the project in any professional publication, magazine, trade paper, newspaper, seminar or other medium without the express written consent of AGENCY.

- C. No copies, sketches, computer graphics or graphs, including graphic artwork, are to be released by CONTRACTOR to any other person or agency except after prior written approval by AGENCY, except a necessary for the performance of services under this Agreement. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be handled only by AGENCY unless otherwise agreed to be CONTRACTOR and AGENCY.

D.

ARTICLE 20. PATENT AND COPYRIGHT INFRINGEMENT

- A. In lieu of any other warranty by AGENCY or CONTRACTOR against patent or copyright infringement, statutory or otherwise, it is agreed that CONTRACTOR shall defend at its expense any claim or suit against AGENCY on account of any allegation that any item furnished under this Agreement or the normal use or sale thereof arising out of the performance of this Agreement, infringes upon any presently existing U.S. letters patent or copyright and CONTRACTOR shall pay all costs and damages finally awarded in any such suit or claim, provided that CONTRACTOR is promptly notified in writing of the suit or claim and given authority, information and assistance at CONTRACTOR's expense for the defense of same. However, CONTRACTOR will not indemnify AGENCY if the suit or claim results from: (1) AGENCY's alteration of a deliverable, such that said deliverable in its altered form infringes upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination with other material not provided by CONTRACTOR when such use in combination infringes upon an existing U.S. letters patent or copyright.
- B. CONTRACTOR shall have sole control of the defense of any such claim or suit and all negotiations for settlement thereof. CONTRACTOR shall not be obligated to indemnify AGENCY under any settlement made without CONTRACTOR's consent or on the event AGENCY fails to cooperate fully in the defense of any suit or claim, provided, however, that said defense shall be at CONTRACTOR's expense. If the use or sale of said item, or shall substitute an equivalent item acceptable to AGENCY and extend this patent and copyright indemnity thereto.

ARTICLE 21. FINISHED AND PRELIMINARY DATA

- A. All of CONTRACTOR's finished technical data, including but not limited to illustrations, photographs, tapes, software, software design documents, including without limitation source code, binary code, all media, technical documentation and user documentation, photoprints and other graphic information required to be furnished under this Agreement, shall be AGENCY's property upon payment and shall be furnished with unlimited rights and, as such, shall be free from proprietary restriction except as elsewhere authorized in this Agreement. CONTRACTOR further agrees that it shall have no interest or claim to such finished, AGENCY-owned, technical data; furthermore, said data is subject to the provisions of the Freedom of Information Act, 5 USC 552.

- B. It is expressly understood that any title to preliminary technical data is not passed to AGENCY but is retained by CONTRACTOR. Preliminary data includes roughs, visualizations, software design documents, layouts and comprehensives prepared by CONTRACTOR solely for the purpose of demonstrating an idea or message for AGENCY's acceptance before approval is given for preparation of finished artwork. Preliminary data title and right thereto shall be made available to AGENCY if CONTRACTOR causes AGENCY to exercise Article 11, and a price shall be negotiated for all preliminary data.

C.

ARTICLE 22. ALCOHOL AND DRUG POLICY

AGENCY and CONTRACTOR shall provide under this Agreement, a safe and healthy work environment free from the influence of alcohol and drugs. Failure to comply with this Article may result in nonpayment or termination of this Agreement.

ARTICLE 23. FORCE MAJEURE

Either party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood, acts of God, commandeering of material, products, plants or facilities by the federal, state or local government, national fuel shortage, or a material act or omission by the other party; when satisfactory evidence of such cause is presented to the other party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.

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

IN WITNESS WHEREOF, the parties hereto have below signed and executed the contract on the effective date

CDSNET- MYTRANSITPLUS CORPORATION

SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS

By _____
Jason Mugford
Vice President CTO

By _____
Joe Centeno
Chair

Date: _____

By _____
Jim Kemp
Executive Director

APPROVED AS TO FORM:

By _____
Kevin E. Ready
Deputy County Counsel

Date: _____