

SBCAG STAFF REPORT

SUBJECT: Transportation Infrastructure Finance and Innovation Act (TIFIA)

MEETING DATE: February 17, 2022

AGENDA ITEM: 5

STAFF CONTACT: Sarkes Khachek and Martha Gibbs

RECOMMENDATION:

- A. Receive an update on SBCAG's pursuit of a Federal TIFIA Loan under the Measure A program.
- B. Adopt Resolution No. 22-03 approving and authorizing the Chair and the Executive Director to execute and deliver to the California Department of Tax and Fee Administration (CDTFA) an Amended and Restated Agreement between SBCAG and the CDTFA to continue administration of the local transactions and use tax.
- C. Adopt Resolution No. 22-05 authorizing the Executive Director, other SBCAG staff designated by the Executive Director, and Hinderliter, de Llamas and Associates to examine sales, use and transaction records of the California Department of Tax and Fee Administration (CDTFA) for purposes related to revenue forecasts for the Measure A program.
- D. Approve and authorize the Chair to execute an Agreement (**Attachment C**) with Hinderliter, De Llamas, and Associates an annual amount not to exceed \$65,000 plus audit recovery fees at a rate of 25% commencing on February 28, 2022. CPI shall be applied annually with a maximum annual renewal of four additional years.
- E. Approve and authorize the Executive Director to extend the period of performance to the Agreement with Hinderliter, De Llamas, and Associates up to four times, with each extension being up to one additional year in accordance with Agreement section 4 "Term."

DISCUSSION:

TIFIA Loan Process

SBCAG staff continues to take the steps necessary to advance the procurement of a TIFIA Loan with the U.S. Department of Transportation (U.S. DOT) – Build America Bureau (BAB). The TIFIA Loan borrowing will help mitigate Measure A cash flow needs given anticipated construction costs associated with the Santa Barbara Highway 101 High Occupancy Vehicle (HOV) project over the next several years.

The following key TIFIA Loan milestones have been completed:

- The BAB Credit Review Team (CRT) approved the Highway 101 HOV Project as an eligible project to advance to the Creditworthiness Phase of the TIFIA Loan process.
- BAB completed a formal procurement process to engage outside financial and legal advisors and invited SBCAG to deliver a formal project and credit presentation to the BAB internal and advisor team.

- SBCAG presented the Highway 101 HOV Project to the BAB team on December 10, 2021 and received positive feedback on the project, the plan of finance, and proposed security structure (the pledge of Measure A sales tax revenues).
- SBCAG staff and its financial and legal advisors have completed financial and legal due diligence questions submitted to SBCAG by BAB following the project presentation.
- The SBCAG and BAB teams implemented bi-weekly calls commencing on January 27, 2022 to advance due diligence requirements and begin negotiations with regard to the TIFIA Loan Agreement between the Santa Barbara County Local Transportation Authority (Authority) (as borrower) and the U.S. DOT (as lender).

Amended and Restated Agreement with CDTFA

Currently, CDTFA administers and collects the Measure A transactions and use taxes and remits said revenues monthly to SBCAG by and through the Authority. The California State Board of Equalization (BOE), predecessor to CDTFA, required that the Authority enter into an “Agreement for State Administration of District Transaction and Use Taxes” prior to implementation of the Measure A tax.

The TIFIA Loan borrowing requires that the Authority pledge Measure A sales tax revenues for the repayment of principal and interest on the TIFIA Loan. The pledge of Measure A sales tax revenues requires that CDTFA collect and directly distribute all Measure A sales tax revenues to a Revenue Account held by a third-party Trustee. The Trustee then makes principal and interest payments on the TIFIA Loan to the U.S. DOT prior to allocating monthly sales tax revenues to the Authority.

Provisions in the original agreement with the BOE allows for a third-party Trustee to intercept Measure A sales tax revenues for the payment of TIFIA Loan debt service. Since the CDTFA now administers and collects Measure A transactions and use taxes on behalf of SBCAG, the CDTFA requires the SBCAG Board, acting as the Authority, approve an Amended and Restated Agreement with them for implementation of a local transactions and use tax (**Attachment A**).

SBCAG staff intends to present to the Board for approval all documents necessary to execute the TIFIA Loan closer to closing on the TIFIA Loan financing (summer 2022); however, given the Amended and Restated Agreement with CDTFA is critical to the TIFIA Loan negotiation process, SBCAG staff is seeking Board approval at this time to accommodate the lead time CDTFA requires for the review and process of the revised agreement.

SBCAG’s TIFIA consultant, KNN Public Finance, will provide a presentation to the SBCAG Board on February 17. KNN will update the Board on the Measure A financing needs, the TIFIA Loan process, and the proposed TIFIA Loan security structure. In addition, SBCAG would like to give the Board the opportunity to provide feedback.

The above recommended actions are not a project pursuant to the California Environmental Quality Act guidelines section 15378.

ATTACHMENT:

- A. Resolution 22-03 - Amended and Restated Agreement with the California Department of Tax and Fee Administration
- B. Resolution 22-05 - Examination of sale, use transaction tax records.
- C. Agreement with Hinderliter, De Llamas, and Associates to perform sales, use transaction tax monitoring. (web posting only)

ATTACHMENT A

A RESOLUTION OF THE SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS ACTING AS THE SANTA BARBARA COUNTY LOCAL TRANSPORTATION AUTHORITY

APPROVING AND AUTHORIZING THE CHAIR AND)
EXECUTIVE DIRECTOR TO EXECUTE AND DELIVER) RESOLUTION NO. 22-03
AN AMENDED AND RESTATED AGREEMENT WITH)
THE CALIFORNIA DEPARTMENT OF TAX AND FEE)
ADMINISTRATION TO CONTINUE ADMINISTRATION)
OF THE LOCAL TRANSACTIONS AND USE TAX.)
_____)

WHEREAS, the Santa Barbara County Association of Governments is a joint powers agency that has been designated as the Local Transportation Authority for Santa Barbara County pursuant to California Public Utilities Code section 180000 *et seq.* and as the transportation planning agency pursuant to California Government Code section 29532; and

WHEREAS, on June 19, 2008, the Santa Barbara County Association of Governments, acting as the Santa Barbara County Local Transportation Authority (Authority) adopted, and on November 4, 2008 the voters of the County of Santa Barbara approved by the required majority vote, the Santa Barbara County Road Repair, Traffic Relief, and Transportation Safety Measure (Ordinance No. 5) providing for a local transactions and use tax; and

WHEREAS, in April 2009, the California State Board of Equalization (BOE) and the Authority, as required by the BOE, entered into an “Agreement for State Administration of District Transaction and Use Taxes” (Administration Agreement) prior to implementation of said taxes; and

WHEREAS, the Taxpayer Transparency and Fairness Act of 2017 transferred certain duties from the BOE to the California Department of Tax and Fee Administration (Department) including the administration and collection the transactions and use taxes for all applicable jurisdictions within the State of California; and

WHEREAS, the Department is responsible to administer and collect the transactions and use tax for the Authority; and

WHEREAS, the Authority desires to amend and restate the Administration Agreement with the Department, as successor to the BOE, so as to bind the Department and Authority to all terms set forth in the Administration Agreement and to accommodate bond financings supported by transactions and use taxes transferred to a bond trustee, which is referred to as the “Amended and Restated Agreement for State Administration of District Transactions and Use Taxes”; and

WHEREAS, the Department requires that the Authority authorize the Amended and Restated Agreement for State Administration of District Transactions and Use Taxes;

WHEREAS, the Santa Barbara County Association of Governments, acting as the Santa Barbara County Local Transportation Authority, desires to authorize the Chair and the Executive Director to execute the Amended and Restated Agreement for State Administration of District Transactions and Use Taxes.

NOW, THEREFORE BE IT RESOLVED by the Santa Barbara County Association of Governments, acting as the Santa Barbara County Local Transportation Authority, that the "Amended and Restated Agreement for State Administration of District Transactions and Use Taxes" in the form on file with the Board Clerk is hereby approved and the Chair of the Board and the Executive Director, each acting singly, are hereby authorized to execute the agreement in substantially similar form to that on file with the Board Clerk, with such additions and changes described herein, and such approval to be conclusively evidenced by the execution and delivery thereof.

PASSED AND ADOPTED this 17th day of February 2022 by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

ATTEST:

Marjie Kirn
Executive Director

Das Williams, Chair
Santa Barbara County
Association of Governments

Dated: _____

APPROVED AS TO FORM:
Rachel Van Mullem
County Counsel

By: 

Deputy County Counsel

ATTACHMENT B

A RESOLUTION OF THE SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS

EXAMINATION OF SALES, USE)
TRANSACTION TAX RECORDS)
_____)

RESOLUTION NO. 22-05

WHEREAS, pursuant to Ordinance No. 5, the Santa Barbara County Road Repair, Traffic Relief and Transportation Safety Measure, also known as "Measure A", the Santa Barbara County Association of Governments (herein referred to as SBCAG) entered into a contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and collection of local sales, use and transactions taxes; and

WHEREAS, the Executive Director of SBCAG deems it desirable and necessary for authorized representatives of SBCAG to examine confidential sales, use and transactions tax records of the California Department of Tax and Fee Administration pertaining to sales, use and transactions taxes collected for SBCAG pursuant to that contract; and

WHEREAS, Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of California Department of Tax and Fee Administration records, and establishes criminal penalties for the unlawful disclosure of information contained in, or derived from, the sales, use and transactions tax records of the Board of Equalization.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF SBCAG HEREBY RESOLVES AS FOLLOWS:

Section 1. That the Executive Director, or other officer or employee of SBCAG designated in writing by the Executive Director to the California Department of Tax and Fee Administration (hereafter referred to as CDTFA), is hereby appointed to represent SBCAG with authority to examine records of the CDTFA pertaining to sales, use and transactions taxes collected for SBCAG by the CDTFA pursuant to the agreement between SBCAG and the CDTFA. The information obtained by examination of CDTFA records shall be used only for purposes related to the collection of sales, use and transactions taxes by the CDTFA pursuant to that agreement.

Section 2. That the Executive Director, or other officer or employee of SBCAG designated in writing by the Executive Director to the CDTFA, is hereby appointed to represent SBCAG with authority to examine those sales, use and transactions tax records of the CDTFA, for purposes related to revenue management and revenue forecasts for the Measure A program.

The information obtained by examination of CDTFA records shall be used only for those governmental functions of SBCAG listed above.

Section 3. That Hinderliter, de Llamas & Associates is hereby designated to examine the records of SBCAG pertaining to sales, use and transactions taxes collected for SBCAG by the Board. The person or entity designated by this section meets all of the following conditions:

- (a) has an existing contract with SBCAG to examine those sales, use and transactions tax records;
- (b) is required by that contract to disclose information contained in, or derived from, those sales, use and transactions tax records only to the officer or employee authorized under Sections 1 or 2 of this resolution to examine the information.
- (c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract; and
- (d) is prohibited by that contract from retaining the information contained in, or derived from those sales, use and transactions tax records, after that contract has expired.

The information obtained by examination of CDTFA records shall be used only for purposes related to the collection of sales, use and transactions taxes by the CDTFA pursuant to the contract between SBCAG and CDTFA and for purposes relating to the governmental functions of SBCAG listed in section 2 of this resolution.

PASSED AND ADOPTED this 17th day of February 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

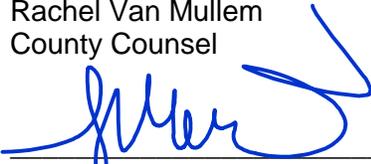
ATTEST:

Santa Barbara County
Association of Governments

Marjorie C. Kirn
Executive Director

Das Williams, Chair

APPROVED AS TO FORM:
Rachel Van Mullem
County Counsel



Deputy County Counsel

ATTACHMENT B

A RESOLUTION OF THE SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS

EXAMINATION OF SALES, USE)
TRANSACTION TAX RECORDS)
_____)

RESOLUTION NO. 22-05

WHEREAS, pursuant to Ordinance No. 5, the Santa Barbara County Road Repair, Traffic Relief and Transportation Safety Measure, also known as "Measure A", the Santa Barbara County Association of Governments (herein referred to as SBCAG) entered into a contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and collection of local sales, use and transactions taxes; and

WHEREAS, the Executive Director of SBCAG deems it desirable and necessary for authorized representatives of SBCAG to examine confidential sales, use and transactions tax records of the California Department of Tax and Fee Administration pertaining to sales, use and transactions taxes collected for SBCAG pursuant to that contract; and

WHEREAS, Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of California Department of Tax and Fee Administration records, and establishes criminal penalties for the unlawful disclosure of information contained in, or derived from, the sales, use and transactions tax records of the Board of Equalization.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF SBCAG HEREBY RESOLVES AS FOLLOWS:

Section 1. That the Executive Director, or other officer or employee of SBCAG designated in writing by the Executive Director to the California Department of Tax and Fee Administration (hereafter referred to as CDTFA), is hereby appointed to represent SBCAG with authority to examine records of the CDTFA pertaining to sales, use and transactions taxes collected for SBCAG by the CDTFA pursuant to the agreement between SBCAG and the CDTFA. The information obtained by examination of CDTFA records shall be used only for purposes related to the collection of sales, use and transactions taxes by the CDTFA pursuant to that agreement.

Section 2. That the Executive Director, or other officer or employee of SBCAG designated in writing by the Executive Director to the CDTFA, is hereby appointed to represent SBCAG with authority to examine those sales, use and transactions tax records of the CDTFA, for purposes related to revenue management and revenue forecasts for the Measure A program.

The information obtained by examination of CDTFA records shall be used only for those governmental functions of SBCAG listed above.

Section 3. That Hinderliter, de Llamas & Associates is hereby designated to examine the records of SBCAG pertaining to sales, use and transactions taxes collected for SBCAG by the Board. The person or entity designated by this section meets all of the following conditions:

- (a) has an existing contract with SBCAG to examine those sales, use and transactions tax records;
- (b) is required by that contract to disclose information contained in, or derived from, those sales, use and transactions tax records only to the officer or employee authorized under Sections 1 or 2 of this resolution to examine the information.
- (c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract; and
- (d) is prohibited by that contract from retaining the information contained in, or derived from those sales, use and transactions tax records, after that contract has expired.

The information obtained by examination of CDTFA records shall be used only for purposes related to the collection of sales, use and transactions taxes by the CDTFA pursuant to the contract between SBCAG and CDTFA and for purposes relating to the governmental functions of SBCAG listed in section 2 of this resolution.

PASSED AND ADOPTED this 17th day of February 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

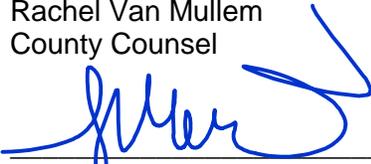
ATTEST:

Santa Barbara County
Association of Governments

Marjorie C. Kirn
Executive Director

Das Williams, Chair

APPROVED AS TO FORM:
Rachel Van Mullem
County Counsel



Deputy County Counsel