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District Agreement No. 12-753
OCTA Agreement No. C-6-1431

**CALTRANS/OCTA TOLL OPERATING AGREEMENT
(INCLUDING REAL PROPERTY LEASE)
INTERSTATE 405 EXPRESS LANES IN ORANGE COUNTY**

1. Parties and Date.

This Toll Facility Agreement (“Agreement”) entered into effective on March 3, 2017, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as “Caltrans,” and the ORANGE COUNTY TRANSPORTATION AUTHORITY, referred to herein as “OCTA.” Caltrans and OCTA are sometimes referred to herein, individually, as “Party” and, collectively, as the “Parties”.

2. Recitals.

2.1 WHEREAS, OCTA is a county transportation commission responsible for planning and implementing transportation improvements within and adjacent to Orange County.

2.2 WHEREAS, Caltrans is the State agency vested with the ownership of, and which is responsible for the planning, design, construction, maintenance, and operation of the California State Highway System.

2.3 WHEREAS, pursuant to its rights granted under Section 130000, *et seq.*, of the Public Utilities Code; Section 149.7 of the Streets and Highways Code, and Section 6820, *et seq.*, of the Public Contracts Code, OCTA is, pursuant to a Cooperative Agreement with Caltrans dated June 30, 2015, planning the construction of tolled and non-tolled improvements and the operation of a toll facility on Interstate 405 (I-405) in order to improve traffic conditions within and adjacent to Orange County along the I-405 corridor.

2.4 WHEREAS, Caltrans is the owner of the State Highway System including the right of way over and on which the Toll Facility will be constructed. Concurrent with the commencement of the term of this Agreement, Caltrans grants a lease to OCTA for use of the identified portions of the State Highway right of way for the operation and maintenance of the Toll Facility as is set forth below.

2.5 WHEREAS, the Parties have, prior to this Agreement, negotiated and entered into the Design-Build Cooperative Agreement for the construction of the Project.

2.6 WHEREAS, the purpose of this Agreement is to set forth the roles and responsibilities of Caltrans and OCTA as relates to the potential use, maintenance, reconstruction, operation and condition on return to Caltrans of the Toll Facility.

2.7 WHEREAS, the Parties acknowledge that full compliance with the California Environmental Quality Act ("CEQA"), the National Environmental Policy Act ("NEPA") and other laws are a precondition to any approval or construction of the Project and to that end Caltrans adopted Findings, issued a Statement of Overriding Considerations and certified the Final EIR on March 26, 2015. Caltrans issued a Notice of Determination on June 16, 2015 and a Record of Decision on May 15, 2015 as the CEQA and NEPA lead agency. For its part, OCTA considered the Final EIR on September 28, 2015, as a responsible agency and filed a Notice of Determination thereon on September 29, 2015.

2.8 WHEREAS, the Parties acknowledge and agree that nothing in this Agreement commits OCTA to constructing the Toll Facility, or any portion thereof, as financing for the Toll Facility and award of the design-build contract for the Project have yet to be secured or accomplished.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually understood and agreed by OCTA and Caltrans as follows:

3. **Definitions.**

3.1 **Caltrans.** The term "Caltrans" shall be defined as the California Department of Transportation.

3.2 **Caltrans Parties.** The term "Caltrans Parties" shall mean all or any of Caltrans, the designated Caltrans Representative, and any officials, agents and employees of Caltrans.

3.3 **CHP.** The term "CHP" shall refer to the California Highway Patrol or any successor agency charged with law enforcement on the State Highway System.

3.5 **Claims.** The term "Claim" or "Claims" shall mean any costs, claims, damages, demands, losses, expenses, suits or actions brought or liability imposed by law on account of death, personal injury or damage to real or personal property. **CMS.** The term "CMS" shall mean a changeable message sign.

3.6 **Critical Safety Standard.** The term "Critical Safety Standard" shall mean a (i) standard adopted and published by the FHWA or Caltrans; (ii) applied to all similarly situated existing State transportation facilities; and (iii) necessary to correct an anticipated or actual imminent and substantial endangerment to life or safety.

3.7 **Days.** The term "Days" shall be defined as calendar days.

3.8 **Design-Build Cooperative Agreement.** The term “Design-Build Cooperative Agreement” shall be defined as that certain separate agreement entered into by and between OCTA and Caltrans dated June 30, 2015, relating to the parties’ respective obligations for the design and construction of the Project, including the Toll Facility and any non-toll facilities, as the same may be amended from time to time

3.9 **Effective Date.** The date first set forth in Section 1 above.

3.10 **ETC.** The term “ETC” shall refer to electronic toll collection

3.11 **ETC Data.** The term “ETC Data” shall mean all data generated by or accumulated in connection with the operation of the ETC System, including but not limited to traffic volumes, occupancy data and violation data.

3.12 **ETC Equipment.** The term “ETC Equipment” shall refer to automated vehicle identification systems, video or other surveillance equipment and enforcement equipment, communications equipment and all other hardware necessary for ETC.

3.13 **ETC Facilities.** The term “ETC Facilities” shall mean the signs, gantries and utility connections related to the ETC System.

3.14 **ETC System.** The term “ETC System” shall mean the ETC Equipment and software which monitors, controls or executes the ETC Equipment.

3.15 **Excess Toll Revenue.** The term “Excess Toll Revenue” shall refer to excess Toll Revenues beyond the expenditure needs for the Toll Facility for the purposes of (i) capital outlay, including, but not limited to, the costs of design, construction, right-of-way acquisition, and utility adjustment; (ii) operations and maintenance, including, but not limited to, toll collection and enforcement; (iii) repair and rehabilitation; (iv) indebtedness incurred, including related financing costs; (v) reserves; and (vi) administration.

3.16 **Expenditure Plan.** The term “Expenditure Plan” shall refer to the plan to be developed by OCTA, in partnership with Caltrans and approved by OCTA's Board of Directors, for transportation improvements in the I-405 corridor, which plan shall include projected amount of Excess Toll Revenue available, a proposed completion schedule, estimated project/service/program costs, and delivery schedules.

3.17 **FHWA.** The term “FHWA” shall refer to the Federal Highway Administration or to any delegatee or successor, as the case may be.

3.18 **General Purpose Lanes.** The term “General Purpose Lanes” shall be defined as those non-tolled, traditional highway improvements, including but not limited to freeway lanes, ramps, shoulders, structures, embankments, cut slopes, drainage facilities, utilities, safety devices, traffic control devices, or signage owned and operated by Caltrans.

3.19 **High Occupancy Vehicle.** The term “High Occupancy Vehicle” shall be defined as provided for in California Vehicle Code section 21655.5 or any subsequent amendment.

3.20 **405 Express Lanes.** The term “405 Express Lanes” shall be defined as the Toll Facility being constructed in Orange County which is the subject of this Agreement.

3.21 **Index.** The term “Index” shall be defined as the Consumer Price Index, All Items for Urban Wage Earners and Clerical Workers in the Los Angeles-Riverside-Orange County, California Area, 1982-84=100, published by the United States Department of Labor, Bureau of Labor Statistics.

3.22 **Freeway Maintenance Agreement.** The term “Freeway Maintenance Agreement” shall be defined as that certain agreement for maintenance of the Toll Facility to be entered into by and between OCTA and Caltrans to perform required maintenance of the Toll Facility as further described in this Agreement.

3.23 **Maintenance Standards.** The term “Maintenance Standards” shall be defined as the then applicable published Caltrans maintenance schedules and standards, the Caltrans Maintenance Manual, or any applicable Caltrans guidance of statewide application, which is in effect at that time, to the same extent and manner that Caltrans is applying the same manual or guidance to the maintenance of its own existing facilities of substantially equivalent size, location and character, including the General Purpose Lanes.

3.24 **Major Modifications.** The term “Major Modifications” shall be defined as material changes, alterations, modifications, improvements or additions to the Toll Facility.

3.25 **Minor Modifications.** The term “Minor Modifications” shall be defined as the installation of any new, and not replacement, signs, gantries, and other tolling equipment, traffic control devices and video surveillance and enforcement equipment, and other similar equipment necessary for the safe and efficient operation of the Toll Facility.

3.26 **Project.** The term “Project” shall be defined as the proposed construction of the Toll Facility, and any additional non-toll improvements to the I-405 corridor in Orange County constructed by OCTA concurrently with construction of the Toll Facility.

3.27 **OCTA.** The term “OCTA” shall be defined as the Orange County Transportation Authority.

3.28 **OCTA Parties.** The term “OCTA Parties” shall mean all or any of OCTA, the designated OCTA Representative, and any officials, agents and employees of OCTA.

3.29 **SHOPP.** The term "SHOPP" shall mean the State Highway Operations and Protection Program.

3.30 **State.** The term “State” shall mean the State of California.

3.31 **Toll Facility.** The term “Toll Facility” shall be defined as the elements comprising the I-405 Express Lanes required for tolled operation which are proposed to be constructed in Orange County, as generally depicted on Exhibit “A”. This definition does not include non-tolled portions of any of the contemplated improvements.

3.32 **Third Party Claim.** The term “Third Party Claim” shall mean a Claim asserted by a person or entity against Caltrans or OCTA other than a Caltrans Party or an OCTA Party.

3.33 **Traffic Operations Plan.** The term “Traffic Operations Plan” shall have the meaning set forth in Section 5.7 of this Agreement.

3.33 **Toll Revenue.** The term Toll Revenue shall mean all rates, rents, fees, charges, fines, or other income derived by or allocated to OCTA, directly or indirectly, from or related to vehicular usage of the 405 Express Lanes, including, but not limited to, fees paid for the vehicular usage of the facilities, fines and penalties collected by OCTA with respect to usage of the 405 Express Lanes, and fees for the use of transponders or other devices for the electronic payment of tolls.

4. **Use of Caltrans’ right of way.**

4.1 Grant of Lease.

(a) For the period set forth in Section 4.2(a) below, Caltrans hereby grants to OCTA a lease and such other rights, real property interest or authority for OCTA to utilize Caltrans’ right of way for the Toll Facility (the “Lease”), assuming said facility is built. The Caltrans right of way subject to the Lease is preliminarily described in Exhibit “C” (“Leased Property”).

Prior to commencing toll operations on any segment of the Toll Facility, OCTA shall prepare a draft legal description of that segment of the Toll Facility. Upon review and approval of the draft legal description by Caltrans, the approved legal description(s) shall collectively amend and supersede the preliminary description of the Leased Property, as set forth in the attached Exhibit “C”, and shall reflect the legal description of the real property interests being leased by OCTA.

The Lease shall include any improvements now or hereafter located on the Leased Property. Such rights shall be provided at a cost of \$1.00 per year. From and after the Effective Date of this Agreement, Caltrans shall not sell, convey, transfer, lease or otherwise diminish or encumber its right, title or interest in the real property required for the Toll Facility so as to inhibit its ability to lease said property to OCTA upon the terms and conditions set forth herein.

(b) The Parties recognize the rights conveyed by this Agreement including, without limitation, the Lease, may be over, under or on existing State right of way which crosses several local jurisdictions and which is improved with, among other things, an existing State Highway and other improvements such as local roads and utilities. While OCTA is granted exclusive use and possession of the surface of the Leased Property for operation of the Toll Facility, it is understood that this Agreement is subject to all existing rights conveyed to others, including, but not limited to, local entities and utilities, and Caltrans is not obligated to clear, remove, relocate or otherwise extinguish the rights of third parties as a condition of this Agreement. Further, the grant of exclusive use and possession of the Leased Property as described in the foregoing sentence is not intended to, and shall not prevent Caltrans from entering the Toll Facility to perform its own surveillance, monitoring, inspections and similar activities, provided

that the same do not materially interfere with operation of the Toll Facility. Similarly, this Agreement does not preclude Caltrans from issuing new encroachment permits to third parties nor does it preclude Caltrans from amending or extending the term of existing encroachment permits, provided that OCTA is first provided notice of any new encroachment permits proposed or amendments to existing encroachment permits, is afforded an opportunity to review and comment on to the issuance/amendment of such permits and provided that such permits do not materially impact OCTA's use and operation of the Toll Facility. Moreover, this Agreement does not preclude Caltrans from requesting that existing utilities be relocated or preclude Caltrans from causing utilities to be relocated, provided that OCTA is first provided notice and an opportunity to review and consent to such relocation, and provided that such relocation does not impact OCTA's use and operation of the Toll Facility.

(c) Care and Protection of State Highways. This Agreement is specifically subject to the terms and provisions of Division 1, Chapter 3 of the Streets and Highways Code (Streets and Highways Code section 660 et seq.) and any subsequent amendment thereto, as may be applicable.

4.2 Term of Use Rights. The term of this Agreement and the Lease rights described above in Section 4.1(a) shall be for forty (40) years commencing as of the first day on which the Toll Facility opens for public use and toll operations. If toll revenues are found to be insufficient to fund those expenses authorized and required by Streets and Highways Code section 149.7 subdivision (e)(4) and the refinancing of the debt is required, this Agreement, including the Lease term, may be renegotiated and extended to provide for an extended financing term.

5. Operations

The Parties have collaborated and agreed upon on various goals and policies associated with the operation of Toll Facility. Notwithstanding any other provisions of this Agreement, the Parties agree as follows:

5.1 Discounts.

(a) High Occupancy Vehicle discounts. The 405 Express Lanes Initial Toll Policy, adopted May 23, 2016, includes provisions to offer discounts to High Occupancy Vehicles (HOVs).

(i) The Parties agree vehicles with three or more persons (HOV3+) will be able to use the 405 Express Lanes without imposition of a toll during all hours.

(ii) For at least the first 3 ½ years after opening of the 405 Express Lanes, vehicles with two persons (HOV2s) will be able to use the 405 Express Lanes without imposition of a toll during Non-Peak hours and subsequent to that, HOV2s may continue to be free, discounted, or pay the full 405 Express Lanes' toll during all hours.

(iii) The Parties recognize the policy of allowing discounted or free trips in the Toll Facility may be impacted by various factors including, but not limited to, actual or anticipated revenues or changes in State policy related to changes in the vehicle occupancy requirements. Should the State of California's legal standard related to minimum occupancy requirements for High Occupancy Vehicle lanes change from HOV2+ to HOV3+ within the first

3 ½ years after opening of the 405 Express Lanes, HOV2s would pay the full 405 Express Lanes' toll during all hours.

(b) **Inherently Low-Emission Vehicles.** Inherently low emission vehicles (ILEVs), as defined in Part 88 (commencing with Section 88.101-94) of Title 40 of the Code of Federal Regulations, are permitted to use the 405 Express Lanes without imposition of a toll or at a discounted toll during all hours. Existing state law related to ILEVs traveling in high occupancy vehicle or high occupancy toll lanes expires January 1, 2019. It is unknown whether this legal standard will be renewed or changed. OCTA agrees that the 405 Express Lanes will comply with state law as it evolves. However, OCTA will seek statutory authorization to cap the number of ILEVs at a rate sufficient to meet its toll policy goals.

(c) **Target Speed.** The parties agree to manage the operations of the Toll Facility, including toll rates, such that the average speed of vehicles using the Toll Facility shall be 55 to 60 miles per hour. In the event the 55 to 60 miles per hour target speed causes the facility to fail to meet bond covenants associated with project funding, the Parties will meet to determine whether a modification of the target speed is in the public interest.

(d) **Average Vehicle Occupancy.** It is the Parties' mutual goal to increase average vehicle occupancy in the I-405 corridor. The parties agree to manage operations and implement strategies to maximize average vehicle occupancy.

(e) **Toll Facility Access.** The Parties agree that continuous vehicular access to the Toll Facility may be detrimental to the financial and operational requirements based upon current technology. Should technological advancements allow for effective fare enforcement as well as continuous access, OCTA in partnership with Caltrans may consider a change to the Toll Facility access.

5.2 **Operation of Toll Facility.** OCTA shall be responsible for the operation of the Toll Facility including, but not limited to, performing, or causing to be performed, the administrative, toll collection, and traffic management activities associated with the operation of the Toll Facility for use by the general public. Because operations of the Toll Facility and the non-tolled facility can impact each other, the Parties shall mutually review corridor mobility and operations eighteen months after the opening of the Toll Facility, again at thirty-six months after the opening of the Toll Facility and every three years thereafter.

5.3 **Incident Management Plan.**

(a) The Parties shall develop and mutually agree upon an Incident Management Plan for the Toll Facility.

(b) In implementing the Incident Management Plan, OCTA may enter onto the General Purpose Lanes without an encroachment permit to remove debris or to perform other activities related to the clean-up of an incident which is not confined to the Toll Facility, provided OCTA shall conduct any such activities on the General Purpose Lanes consistent with applicable Caltrans standards, including, but not limited to, the policies or standards relating to lane closures.

5.4 **Tolls.**

(a) It is the intent of the Parties that tolls shall be determined using a Congestion Pricing model in order to manage demand.

(b) Except as provided for above, OCTA shall have authority to impose and collect tolls, fees and charges for use of the Toll Facility and entrance onto the Leased Property pursuant to applicable State and federal law. Caltrans shall have no direct right, title and interest in and to the toll revenues except as may be provided for in the Expenditure Plan.

(c) Except as provided for above, OCTA shall have authority to establish and adjust toll pricing without approval from Caltrans and to collect tolls using ETC or other technology chosen by OCTA, provided that any such actions shall be in compliance with applicable State and federal laws and standards.

(d) All toll equipment utilized for the Toll Facility shall be compatible with Title 21 of the California Code of Regulations or future equivalent standard.

(e) OCTA Toll Facility Policies. Except as provided for above, OCTA shall have the sole right to establish policies and rules governing use of the Toll Facility, including toll systems, pricing system, toll collection methodology, account and violation fees, discounts and exemptions, vehicle occupancy rules, vehicle classifications, tolling policies, business rules, toll rates and evasion/enforcement policies, provided that any such policies and rules shall be in compliance with State and federal laws.

5.5 Safety Investigations and Safety Related Improvements.

(a) Caltrans may, at its sole cost, perform safety investigations and analysis relating to the Toll Facility. Caltrans and OCTA shall cooperatively review the recommendations of the investigations, if any, and jointly determine corrective action necessary, if any, to remedy any identified deficiency or any potential enhancement. OCTA shall fund and implement the jointly identified corrective action or enhancement to the Toll Facility as provided below subsection (d) below.

(b) After consultation with OCTA, including the collaboration described in paragraph (c) below, Caltrans may, if the identified safety issue has a safety index that qualifies the proposed improvement project for funding under the SHOPP 201.010 Program, as detailed in Section 4 of the most recent version of the California Highway Safety Improvement Program (HSIP) Guidelines, or any successor guidance published by Caltrans and adopted pursuant to 23 U.S.C. section 152, issue an order to make a modification to the Toll Facility for safety reasons (a "Safety Improvement Order" or "SIO").

(c) Caltrans and OCTA shall work collaboratively on the scope, design and schedule for implementation of Safety Improvement Orders. Caltrans shall take into consideration all relevant factors including, but not limited to, the extent of the risk which the modification purports to address, and all concerns of OCTA as the Party responsible for the Toll Facility during the term of this Agreement. OCTA shall take into consideration all relevant factors including, but not limited to, the extent of the risk which the modification purports to address, and all concerns of Caltrans as the Party generally responsible for the safety of the State Highway System.

(d) Caltrans may, but is not obligated to, participate in the cost of the SIO. If Caltrans agrees to participate in the cost of implementing the SIO, the cost for the modifications shall be negotiated and allocated between Caltrans and OCTA and the allocation shall be documented in the SIO.

(e) The modifications agreed upon shall be implemented by OCTA in accordance with (i) Caltrans' normal time frames for safety enhancements of similar scope; or (ii) the Safety Improvement Order. If OCTA is unable or unwilling to implement an SIO, Caltrans may unilaterally implement such SIO, and such right shall not be subject to enjoinder per Section 18.6 of this Agreement. Unless otherwise determined pursuant to Section 17.6, OCTA shall reimburse Caltrans for its actual and reasonable costs associated with the implementation of such SIO, as determined pursuant to paragraph (d) above. Caltrans shall assume all costs and liability for any SIO unilaterally implemented by Caltrans, unless the dispute resolution process set forth in Section 18.6 ultimately results in the determination that the SIO was warranted or appropriate, in which case the costs shall be determined in accordance with paragraph (d) above and the SIO will be considered part of the Toll Facility.

5.6 Operation of General Purpose Lanes.

In the case of any major incidents on or blockages of the General Purpose Lanes caused by accidents or debris, Caltrans shall, consistent with available resources and constraints, promptly take reasonable action to assist CHP in performing its duties, consistent with the policies and practices of Caltrans and CHP, and Caltrans shall be responsible for its own costs related thereto.

(a) Caltrans shall be responsible for operation and maintenance of the General Purpose Lanes.

(b) Caltrans shall provide OCTA with ten (10) days prior written notification of any proposed major maintenance, improvement or other modifications to the General Purpose Lanes and shall coordinate the same with OCTA in order to minimize any disruptions to operation of the Toll Facility and to minimize potential impacts of such activities on the Toll Facility. Caltrans shall provide OCTA with annual and quarterly maintenance and capital improvement plans and schedules for any work to be performed on the State Highway System in the vicinity of the Toll Facility. OCTA and Caltrans maintenance and operations staff shall meet at such frequency as determined necessary by the Parties, but no less than quarterly, to discuss maintenance and capital improvement plans, and coordination issues.

5.7 Operation of the Toll Facility.

(a) OCTA shall be responsible for operation and management of the Toll Facility and towing in response to incidents located within the Toll Facility and shall develop a Traffic Operations Plan to address traffic issues and responses within the Toll Facility. Motorists shall be notified of any closures of the Toll Facility through OCTA owned CMS or similar means. The Caltrans Traffic Management Center located in Orange County (District 12) shall be notified of closures of the Toll Facility in accordance with a mutually agreed upon incident management plan so that Caltrans can broadcast such closure through its Traveler Information System and ITS field elements.

(b) The Parties agree that OCTA is authorized to establish and implement additional safety policies, as OCTA deems necessary, for the Toll Facility in addition to those required by law and this Agreement. Such additional safety policies shall be consistent with applicable law. Oversize, overweight and over-length restrictions shall be set by OCTA for the Toll Facility, and shall be included in the Traffic Operations Plan. Oversize, overweight and/or over-length permits shall not be issued by the Parties for vehicles using the State Highway System.

(c) Operations of the Toll Facility may be interrupted as OCTA may deem necessary or advisable for reasons of, among other things, construction, repair, maintenance, improvement, modification, security, emergency and public safety. OCTA shall notify Caltrans five (5) days in advance of any planned closure of the Toll Facility. Notification of planned closures shall be made to the Caltrans Traffic Management Center located in Orange County (District 12).

(d) In the case of any major incidents on or blockages of the Toll Facility caused by accidents or debris, OCTA shall, consistent with available resources and constraints, promptly take reasonable action to assist CHP in performing its duties, consistent with the policies and practices of OCTA and the CHP, and OCTA shall be responsible for its own costs related thereto.

(e) As part of its traffic management activities, OCTA shall share operational data including, but not limited to, traffic volumes, occupancy data including average vehicle occupancy, video surveillance feeds, and changeable message board data for use in state-wide reports and engineering studies.

5.8 Changes in Standards.

(a) Caltrans, after coordination and consultation with OCTA, may issue an order for OCTA to make a modification to the Toll Facility based on adoption of new standards by FHWA or Caltrans (“Standards Modification Order”), provided that any required modification is to the same extent being imposed by Caltrans on existing State-operated, leased or funded transportation facilities of substantially equivalent size, location and character.

(b) The timing, scope, design and schedule for implementation of modifications to the Toll Facility under a Standards Modification Order will be proposed by Caltrans and will be subject to OCTA’s reasonable comment and approval. The modifications agreed upon shall be paid for by OCTA and implemented in consideration of (i) the time in which Caltrans’ applies such improvements to existing facilities it owns and operates or leases of a substantially equivalent

size, location and character; (ii) the time period for implementation set forth in the revised standard, if any; and (iii) the timing for implementation of a pending or scheduled Major Modification, repair or rehabilitation affecting the affected area or structure that is not part of the Standards Modification Order, where implementation of such Standards Modification Order would reasonably be included within the scope of work of the modification.

(c) Caltrans shall consider any request by OCTA for alteration or deferral of a Standards Modification Order, taking into consideration the anticipated availability of OCTA funds, the remaining term of this Agreement in light of OCTA's obligations to its bond-holders and other lenders, the schedule for upcoming repair and rehabilitation of the Toll Facility, the extent of inconvenience and delay necessitated by the modification and the extent of the risk or public benefit which the modification purports to address.

(d) In the case of a Standards Modification Order to address a Critical Safety Standard, after the aforementioned coordination and consultation has occurred, if OCTA fails to implement a mutually approved Standards Modification Order by the deadline contained in the Standards Modification Order, Caltrans reserves the right and authority, but not the obligation, to enter onto the Toll Facility, and to implement the modifications called for in such Standards Modification Order and, unless otherwise determined pursuant to Section 18.6, to invoice OCTA for the actual and reasonable cost of implementation. Caltrans shall assume all liability for such Standards Modification Order unilaterally implemented by Caltrans.

5.9 Coordination Related to Installation of New Equipment.

(a) Unless otherwise agreed upon by the Parties, any equipment installed by OCTA following the Effective Date shall not unreasonably interfere with or adversely affect the operation of any Caltrans' equipment existing at the time OCTA installs its equipment.

(b) Unless otherwise agreed upon by the Parties, any equipment installed by Caltrans shall not unreasonably interfere with or adversely affect the operation of any OCTA equipment existing at the time Caltrans installs its equipment.

5.10 Adverse Effects Due to Other Facilities. Notwithstanding any provision of this Agreement to the contrary, but subject to Section 13.2, Caltrans is authorized to maintain, construct, improve and operate facilities within the I-405 corridor that compete with the Toll Facility, and in no event shall OCTA or OCTA Parties be entitled to compensation for the adverse effects on toll revenue due to those facilities, including short term construction impacts.

6. **Completion of Toll Facility.**

Design-Build Cooperative Agreement. The Toll Facility, and other non-toll improvements will be completed pursuant to the terms of the Design-Build Cooperative Agreement; provided that nothing in this Agreement is intended to obligate OCTA to complete the Toll Facility.

7. **Modification of Toll Facility.**

7.1 Major Modification of Toll Facility.

(a) OCTA shall submit any proposed Major Modification to Caltrans for approval pursuant to the Caltrans' encroachment permit process, as set forth in Streets & Highways Code Section 670, et. seq., as may be amended, and as further established in the relevant Caltrans' procedures manual in effect at the time. Caltrans shall timely review the application for an encroachment permit for a Major Modification, and shall timely issue such encroachment permit on reasonable conditions so long as the Major Modification is consistent with the terms of this Agreement and with State and federal standards. Should Caltrans fail to timely issue an encroachment permit for a Major Modification that is in compliance with the terms set forth in the foregoing sentence, such failure shall be submitted to the dispute resolution process contained in this Agreement.

(b) If OCTA requires any modification that is not within the Toll Facility, a Caltrans encroachment permit shall be required per Caltrans' standard requirements for OCTA, and, as applicable, for its contractors, which permit shall be timely granted by Caltrans upon approval of the modifications. The parties acknowledge that Major Modifications not within the Toll Facility may require a separate agreement pursuant to the procedures set forth in the Caltrans Project Development Procedures Manual.

(c) Major Modifications shall be completed in accordance with all applicable laws and environmental regulations, and to applicable Caltrans/FHWA standards and policies to the extent that Caltrans is applying the same standards to its own existing transportation facilities of substantially equivalent size, location and character.

(d) Upon completion of the Major Modifications, OCTA shall, within 180 Days, provide revised "as-built" plans to Caltrans which address the Major Modifications including, as applicable, all contract records, survey documents, records of surveys, and structure as-built documents according to Caltrans requirements. Should OCTA fail to provide the "as-built" plans within the timeframe specified herein, Caltrans shall provide notice of such failure to OCTA. The notice shall state that if OCTA does not submit the "as-built" plans within thirty (30) days of receipt of the notice, Caltrans may prepare the plans. If Caltrans prepares the plans, OCTA shall pay the actual costs thereof within thirty (30) days following receipt of an invoice from Caltrans.

(e) OCTA shall procure, on its own behalf or through a contract requirement with any contractor, and as a condition precedent to any modification to the Toll Facility, a policy or policies of insurance naming the Caltrans Parties as an additional insured with coverage provided to Caltrans to the same degree as provided to OCTA. Such insurance shall be primary and non-contributory with any insurance maintained by Caltrans. Such policy or policies shall be

consistent with the insurance coverage requirement published by Caltrans in its Standard Specifications or Standard Special Provisions in effect at the time of commencement of construction of the Major Modifications.

7.2 Minor Modification of Toll Facility.

(a) OCTA shall have the right to erect and maintain ETC Facilities and ETC Equipment and to install and utilize traffic control devices necessary for the safe and efficient operation of the Toll Facility. All signs utilized by OCTA for the Toll Facility located within or adjacent to Caltrans' right of way shall comply with the California Manual on Uniform Traffic Control Devices ("MUTCD") or the applicable State and federal standards operative at the time of purchase of such signs. Signs, gantries, or other tolling equipment shall not be installed in a manner which negatively impacts the General Purpose Lanes or in a manner which would cause the General Purpose Lanes to no longer conform to their original design or to applicable State or federal standards in effect at the time of installation. No signage identifying an entity, business or brand other than OCTA, Caltrans, tolling interoperability logos or other logos directly related to operation of the Toll Facility or identifying the "405 Express Lanes" shall be displayed at any location where it is visible from the a State Highway or otherwise in conflict with the Outdoor Advertising Act. Notwithstanding the foregoing, if mutually agreed upon by the Parties, OCTA may display signage related to other transportation opportunities including, but not limited to, signage advertising express bus or other transportation modes providing transportation for the I-405 corridor.

(b) Any installation of new ETC Facilities or ETC equipment necessary for the safe and efficient operation of the Toll Facility which were not included or accepted as part of the Toll Facility shall be considered "Minor Modifications" if they are installed within the Toll Facility. OCTA shall be responsible for the installation and maintenance of said Minor Modifications. To effectuate the purposes of this section, and to maintain an accurate history of all improvements placed in the State right-of-way, OCTA agrees to submit to Caltrans a completed encroachment permit application including OCTA-approved engineering plans, prior to performing any Minor Modifications. This paragraph shall not apply to replacement of equipment accepted as part of the Toll Facility with substantially similar equipment.

7.3 Caltrans Implementation of Modifications. If OCTA requests that Caltrans implement, on behalf of OCTA, modifications to the Toll Facility, OCTA shall reimburse Caltrans for staff time and shall pay for costs associated with such modifications. Any such work performed by Caltrans shall be pursuant to a separate agreement to be negotiated between the Parties.

8. **Maintenance of Toll Facility.**

8.1 OCTA Responsibility for Toll Facility Maintenance. OCTA shall be responsible for regular inspection and maintenance of the Toll Facility, including ETC equipment as well as for the regular inspection and maintenance of all components of those structures which directly connect the Toll Facility to other tolled facilities such as I-405/State Route 73; I-405/State Route 22; and I-405/I-605 as set forth herein.

8.2 Shared Costs for Joint Maintenance. The Parties agree to share the costs related to joint maintenance for storm water which may drain from the Toll Facility to existing Caltrans

facilities. The costs for such maintenance shall be based on the ratio of non-permeable surface area attributable to each Parties' facilities, which shall be determined in accordance with the Caltrans' Storm Water Quality Handbook, SWPPP/WPCP Preparation Manual. Unless otherwise agreed upon by the Parties, Caltrans shall be responsible for storm water maintenance activities in accordance with best management practices for storm water, and shall invoice OCTA for its share of actual maintenance costs based on the foregoing formula.

8.3 Additional Integrated Maintenance Issues. The Parties shall, address any additional integrated maintenance, permit and maintenance liability issues that may arise following commencement of operations of the Toll Facility, and shall, subject to a separate written agreement or an amendment hereto, determine a cost split and shared responsibility for such integrated maintenance issues, if any.

8.4 Maintenance Plan to be Prepared and Implemented by OCTA.

(a) Prior to substantial completion of the Toll Facility, OCTA shall submit to Caltrans for its approval a maintenance plan for the Toll Facility.

(b) OCTA shall be responsible for the maintenance of the Toll Facility in accordance with the Maintenance Standards.

(c) Caltrans shall furnish the Maintenance Standards to OCTA on a timely basis. Receipt of the Maintenance Standards by OCTA shall constitute notice as to the contents therein. OCTA shall not be held responsible for implementing any changes to the Maintenance Standards unless and until actual notice thereof is given to OCTA by Caltrans.

(d) OCTA shall, coordinate its schedule to consider potential impacts of OCTA's maintenance activities on the Toll Facility on the operation of the General Purpose Lanes.

8.5 Option to Enter Freeway Maintenance Agreement with Caltrans. The Parties may enter into a Freeway Maintenance Agreement pursuant to which inspection and maintenance services may be provided by Caltrans in accordance with the maintenance plan approved by Caltrans. Such agreement shall provide for reimbursement of Caltrans for inspection and maintenance services. Irrespective of whether the Parties enter into a Freeway Maintenance Agreement, OCTA shall be responsible for the regular inspection and maintenance of all components of those structures which directly connect the Toll Facility to other tolled facilities such as I-405/State Route 73; I-405/State Route 22; and I-405/I-605; ETC System and ETC Facilities and shall also be responsible for the cost of electrical power and communications for the ETC System and ETC Facilities.

8.6 Responsibilities If a Party Other than Caltrans is Providing Maintenance of the Toll Facility.

(a) The scope of Caltrans oversight responsibilities if a party other than Caltrans is providing maintenance of the Toll Facility shall be as follows:

(i) Caltrans shall be authorized to, but is not obligated to, inspect the maintenance of the Toll Facility and its related structures; provided that such inspection does not interfere with OCTA's operation or maintenance of the Toll Facility.

(ii) If upon inspection it is Caltrans' opinion that appropriate maintenance of the Toll Facility has not been performed in accordance with the applicable Maintenance Standards, Caltrans shall provide OCTA with a written notification of the specific items requiring maintenance.

(b) Upon such written notification and OCTA's agreement therewith, OCTA shall provide Caltrans with a plan to promptly initiate steps to cure maintenance deficiencies identified in the written notice.

8.7 Right of Entry onto General Purpose Lanes for Maintenance. Caltrans hereby grants to OCTA, and its contractors, a right of entry onto the General Purpose Lanes, as required for OCTA to conduct maintenance activities with its own or its contractors' forces, or by contract. OCTA contractors shall, prior to entry onto the General Purpose Lanes, obtain from Caltrans an encroachment permit for such entry pursuant to Caltrans' standard practices and shall provide to Caltrans evidence of insurance reasonably sufficient for the work to be conducted by the OCTA contractor, as determined by OCTA, under which Caltrans shall be added as an additional insured.

8.8 Coordination of Maintenance Schedule. The Parties shall coordinate maintenance schedules with each other in order to minimize impacts of maintenance activities on the General Purpose Lanes or the Toll Facility. Each Party shall notify the other Party five (5) days in advance of any planned closure that may reasonably impact the facility operated by the other Party.

8.9 Coordination of Major Repairs, Modifications and Rehabilitation. The Parties shall cooperate and coordinate, as may be appropriate, in connection with major pavement and structures repair, modification and rehabilitation of the General Purpose Lanes or the Toll Facility.

9. **Reserve Funds.**

OCTA shall establish and maintain adequate reserve funds for maintenance and capital improvements of the Toll Facility, as well as to meet the Handback Requirements identified in Exhibit "C" and which may be required by law or as may be required by OCTA's financing and Transportation Infrastructure Finance and Innovation Act (TIFIA) financing for the Project. Such reserve funds shall be sufficient to adequately provide for the repair, rehabilitation, reconstruction and the maintenance of the Toll Facility in accordance with Maintenance Standards.

10. **Excess Toll Revenue**

10.1 Expenditure Plan. Beginning at least five (5) years prior to the time that it is anticipated Excess Toll Revenues will be available, OCTA in partnership with Caltrans shall develop, and annually update, an Expenditure Plan. The Expenditure Plan shall cover a period of either ten years or the remaining term of any project financing used to construct or maintain any portion of the Toll Facility, whichever period is longer. After working in partnership with Caltrans on a draft Expenditure Plan, OCTA shall provide Caltrans another opportunity to review and comment on the draft Expenditure Plan, and each annual update, at least thirty (30) days prior to submitting the Expenditure Plan to the OCTA Board of Directors for their consideration and approval. The Expenditure Plan, and each annual update, shall be made available for public review and comment no less than thirty (30) days prior to its adoption by OCTA. The Expenditure Plan shall provide for the use of Excess Toll Revenue for any of the following purposes, to the extent permitted by state or federal law:

(a) Projects that maintain or improve the safety, operation, or travel reliability of any transportation mode in the I-405 corridor, or to provide or improve travel options in the I-405 corridor.

(b) Capital improvements, operational improvements or maintenance of the General Purpose lanes shall be eligible expenses and may be included in the Expenditure Plan, or any annual update.

(c) Capital improvements, or investments in public transit operations shall be eligible expenses and may be included in the Expenditure Plan, or any annual update.

(d) The use of net Excess Toll Revenue to fund projects in the Expenditure Plan, or any annual update, shall not result in reducing SHOPP funds targets available for use in Orange County.

(e) Prepayment of indebtedness incurred to fund the Project.

10.2. Implementation of Non-Tolled Project on the State Highway System. Caltrans will be responsible for implementation of non-toll related projects on the State Highway System that are funded from Excess Toll Revenues.

11. **Responsibility for Costs.**

11.1 Costs for Maintenance, Operation and Rehabilitation of Toll Facility. Except as otherwise set forth herein, OCTA shall bear all costs of inspection, maintenance, operation, rehabilitation and reconstruction of the Toll Facility, including ETC Equipment, ETC Facilities and the ETC System for the duration of the Agreement and any extension hereof.

11.2 Costs for Caltrans Services Requested by OCTA. Other than expressly set forth herein or except as otherwise agreed upon by the Parties, OCTA shall be responsible for the costs of any services of Caltrans requested by OCTA including, but not limited to, those services that state law mandates Caltrans to perform, oversight for capital projects and the cost of Pavement Management System testing if OCTA requests Caltrans perform such tests for the Toll Facility.

12. Public Safety/Policing.

12.1 California Highway Patrol (CHP) police services.

(a) OCTA shall enter into an agreement with CHP to engage police services from CHP for the Toll Facility.

(b) At OCTA's request, Caltrans shall assist OCTA in negotiation of the police services contract with CHP.

12.2 Level of Police Services. The Parties agree that the agreement with CHP shall provide that police services for the Toll Facility shall be at least equivalent to that provided on comparable Caltrans-operated routes.

12.3 Toll violation enforcement. OCTA shall have the right to:

(a) Engage services of CHP or other law enforcement agency to apprehend and/or cite toll violators in accordance with State law.

(b) Initiate civil and administrative actions and other toll enforcement and collection actions against toll violators consistent with applicable law.

(c) Enforce all private rights against toll violators.

(d) Engage private security to identify toll violators

(e) Take other legally permissible actions to collect, enforce and protect toll revenues.

12.4 No Right to Toll Facility Customer Information. This Agreement shall not provide Caltrans with any independent right to any Toll Facility customer information.

12.5 Compliance with Laws. OCTA shall follow all applicable traffic enforcement laws and regulations and both Parties shall comply with all applicable privacy laws with respect to customer information.

13. Caltrans Use or Closures of Toll Facility.

13.1 Emergency Use of Toll Facility. Except as otherwise specified herein, Caltrans shall not be entitled to close the Toll Facility or to allow the general public to utilize the Toll Facility without cost except in the case of an emergency, declared or otherwise. Any such action shall be in accordance with the Incident Management Plan. As used in this section, an "emergency" shall mean a circumstance that poses an immediate and grave threat to life or safety, or a serious environmental hazard that cannot be abated except by closure of the Toll Facility. Closures of or traffic on the General Purpose Lanes that cause an inconvenience to the public shall not be considered, on their own, an emergency, as used herein. Closures due to emergencies shall be limited to the shortest reasonable time to address the emergency situation and each Party shall act with all due diligence to address such emergency. Unless infeasible due to the nature of the emergency, Caltrans shall notify OCTA in advance of any intended closure of the Toll Facility

due to an emergency (and if not feasible, Caltrans shall notify OCTA as soon as reasonably practicable). The prohibitions of this paragraph shall not apply to closures initiated or implemented by Caltrans staff at the request or order of the CHP or other authorized law enforcement agency.

13.2 Closures Necessitated by Construction or Maintenance Activities. Should a closure of all or a portion of the Toll Facility be required to accommodate Caltrans' construction or maintenance activities on the General Purpose lanes adjacent to the Toll Facility, Caltrans shall submit a closure plan and closure criteria to OCTA for approval no less than ten (10) days prior to any such proposed closure. No closure of the Toll Facility shall be permitted for the purposes specified in this Section unless and until OCTA has approved the closure plan and closure criteria. Caltrans shall make its best efforts to conduct construction and maintenance activities in such a manner as to minimize any required closures of the Toll Facility.

13.3 Non-Emergency Use of Toll Facility. Caltrans vehicles shall be allowed to access and use the Toll Facility in order to allow Caltrans staff to perform their official duties.

14. **Financing.**

14.1 Responsibility for Project Financing. The responsibility for financing the Project is set forth in the Design-Build Cooperative Agreement.

14.2 Caltrans Assistance with Information Requirements. Caltrans shall provide reasonable assistance with any reporting, documentation and other reasonably necessary informational requirements of OCTA's lenders/bond holders. Any expenditures incurred by Caltrans associated with these efforts shall be reimbursed by OCTA.

(a) Caltrans may be requested to execute certificates associated with lender requirements and agrees to do so as appropriate. Caltrans may also be required to provide periodic estoppel certificates to bondholders or lenders regarding OCTA's compliance under this Agreement (and any other agreement between the Parties relating to the 405 Express Lanes, including any Maintenance Agreement between Caltrans and OCTA). Pursuant to federal law, Caltrans may also be required to annually certify that the Toll Facility being adequately maintained.

(b) The State of California is not to be advertised as backing any financial instrument or offering associated with the Project. Any prospectus or other public statement or offering shall include an express statement that "neither the full faith and credit, nor the taxing authority of the State of California is pledged to the payment of principal of, or the interest on, this instrument."

(c) Caltrans will not certify that the financing meets Securities and Exchange Commission criteria, and will not give any warranties related thereto.

15. Representations and Warranties.

15.1 Representations and Warranties of Caltrans. In addition to the other representations and warranties of Caltrans contained herein, Caltrans hereby represents and warrants as follows:

(a) Caltrans is a department of the executive branch of the State of California, duly organized and existing under the laws and Constitution of the State of California, is authorized to execute and deliver this Agreement and to perform its obligations hereunder and by proper action has duly authorized the execution, delivery and performance of this Agreement.

(b) The execution and delivery by Caltrans of this Agreement and the consummation of the transactions contemplated hereby, is not in conflict with, or a breach of or a default under any law or regulation applicable to Caltrans, and to the best of Caltrans' knowledge after due inquiry, there is no restriction or prohibition which would impair or render unenforceable or illegal, as to Caltrans, any provision of this Agreement including, without limitation, the Lease, or any other related agreement to which it is a party.

(c) Caltrans has determined that OCTA will incur substantial cost and expense to design, develop, acquire, construct, install and operate the Toll Facility, and that it is necessary, appropriate and reasonable to provide the assurances, protections, rights and warranties contained herein.

(d) No litigation is pending or, to the best knowledge of Caltrans, threatened challenging the authority of Caltrans to enter into this Agreement other than that which Caltrans has notified OCTA of by separate letter prior to the Effective Date, and Caltrans is in compliance with all applicable laws and regulations.

(e) Caltrans owns and controls the State Highway System, subject to those existing rights granted to third parties.

(f) The representations and warranties of Caltrans contained herein are, as of the date of execution hereof and thereof, accurate and complete.

15.2 Representations and Warranties of OCTA. In addition to the other representations and warranties of OCTA contained herein, OCTA hereby represents and warrants as follows:

(a) OCTA has the authority to execute, deliver and perform this Agreement, and the terms and conditions hereof are valid and binding obligations of OCTA.

(b) The execution and delivery by OCTA of this Agreement and the consummation of the transactions contemplated hereby is not in conflict with, or a breach of or a default under any law or regulation applicable to OCTA, and to the best of OCTA's knowledge after due inquiry, there is no restriction or prohibition which would impair or render unenforceable or illegal, as to OCTA, any provision of this Agreement, or any other related agreement to which it is a party.

(c) To OCTA's best knowledge, there is no litigation in effect challenging OCTA's authority to enter into this Agreement, other than that which OCTA has notified Caltrans by separate letter prior to the Effective Date, and OCTA is in compliance with all applicable laws and regulations.

(d) The representations and warranties of OCTA contained herein are, as of the date of execution hereof and thereof accurate and complete.

16. Allocation of Responsibility; Liability

16.1 OCTA Obligations Related to Toll Facility. As between Caltrans and OCTA, OCTA shall be responsible for inspecting, operating, maintaining, policing, administering the Toll Facility and for collecting tolls for the use of the Toll Facility, subject to and in accordance with the terms of this Agreement, except to the extent OCTA engages Caltrans to perform maintenance as provided in Section 7, or any other services, and CHP to perform police services as provided in Section 10.

16.2 OCTA Indemnification of Caltrans Parties. OCTA shall indemnify, hold harmless and defend the Caltrans Parties from any Third-Party Claim to the extent such Third-Party Claim is asserted against the Caltrans Parties and arises out of or is attributable to any negligent or willful act or omission of the OCTA Parties in the performance of the activities described in Section 15.1 above, except to the extent that such Third-Party Claim is attributable to or arises out of any of the matters described in Section 15.3 below.

16.3 Caltrans Indemnification of OCTA Parties. Caltrans shall indemnify, hold harmless and defend the OCTA Parties from any Third-Party Claims to the extent such Third-Party Claim is asserted against the OCTA Parties and arises out of or is attributable to any negligent or willful act or omission of the Caltrans Parties in performance of the activities described in Section 15.1 above, except to the extent such Third-Party Claim is attributable to or arises out of the matters described in Section 15.2 above.

16.4 Waiver of Other Indemnity Rights. Except as provided in Sections 15.2 and 15.3, OCTA and Caltrans each waive any and all rights to defense and indemnity of any kind (whether equitable, comparative, express or implied) from each other with respect to Third-Party Claims.

16.5 Resolution of Claims When Caltrans and OCTA are Named Joint Defendants. If Caltrans and OCTA are named joint defendants pursuant to a Third Party Claim arising under this Agreement, the legal issues between the plaintiff(s) bringing forth such claim and Caltrans and OCTA, as joint defendants, shall be resolved first without consideration as to the allocation or apportionment of liability or damages between Caltrans and OCTA, if any liability or damages can be allocated or apportioned between them. A determination regarding allocation or apportionment of liability or damages between Caltrans and OCTA shall be made following final resolution of the Third Party Claim, either in a separate or second phase of trial or by some other mechanism the Parties may agree upon.

16.6 Resolution of Inverse Condemnation Claims. If either Caltrans or OCTA is named as a defendant pursuant to a Third Party Claim for inverse condemnation arising out of or related to the Toll Facility ("Inverse Claim"), the defendant agency shall immediately notify the other party of the existence of the Inverse Claim. If an Inverse Claim is litigated, the legal issues between the plaintiff(s) bringing forth the Inverse Claim and either Caltrans or OCTA, as applicable, shall be resolved first without consideration as to the allocation or apportionment of liability or damages between Caltrans and OCTA, if any liability or damages can be allocated or apportioned between them. The Party that is not a named defendant shall have the right, at its sole cost and expense, to intervene in the action and to participate in the defense and resolution of the Inverse Claim. Within ninety (90) days of the final resolution of the Inverse Claim, either Caltrans or OCTA may refer to the dispute resolution process set forth in Section 19.6 of this Agreement the apportionment of liability or damages for the Inverse Claim between Caltrans and OCTA. Liability or damages will be apportioned based on the extent to which the Claim is found to have arisen out of OCTA's construction or operation of the Toll Facility.

17. **Records.** The Parties shall hold all administrative draft and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for operation and/or maintenance of the Toll Facility in confidence to the extent permitted by law. Where applicable, the provisions of California Government Code section 6254.5(e) shall govern the disclosure of such documents in the event that the Parties share said documents with each other. The Parties shall not distribute, release, or share said documents with anyone other than employees, agents, and consultants of the Parties who require access to such documents for a purpose related to operation and maintenance of the Toll Facility without the written consent of the Party authorized to release them, unless required or authorized to do so by law.

18. **Insurance.**

18.1 Commercial General Liability Insurance.

(a) OCTA shall procure and maintain throughout the term of this Agreement comprehensive general liability insurance protecting OCTA from risks arising from OCTA's activities covered under this Agreement. Such liability insurance policy shall include coverage for bodily injury and property damage. If OCTA uses existing coverage to comply with the requirements contained in this Section 17 and that coverage does not meet these requirements, OCTA agrees to amend, supplement, or endorse the existing coverage to meet the requirements herein.

(b) Caltrans shall be included as an additional first party insured under the insurance policy(ies) described in this Section 16. As respects Caltrans, for claims arising out of the activities contemplated in this Agreement, such insurance shall be primary and non-contributory with any insurance maintained by Caltrans.

(c) The insurance coverage required shall be in amount not less than \$25 million general aggregate per year.

18.2 Evidence of Coverage.

(a) Evidence of insurance in compliance with the requirements of this Section 16 shall be furnished to Caltrans by providing complete copies of the underlying policy(ies) of insurance as well as an endorsement naming Caltrans and all addenda and exclusions as well as by standard certificates of insurance. Neither the insurance policies nor the additional insured endorsements shall contain provisions or exclusions inconsistent with this Agreement. Such policies or endorsements shall include a notice of cancellation, of not less than 30 days (10 days for non-payment of premiums), to Caltrans.

(b) Such insurance shall be issued by a company or companies authorized to transact business in the State.

18.3 Denial of Coverage. If the insurance carriers for the policies of insurance described in this Section 17 deny coverage to OCTA or Caltrans with respect to any Claims reported to such carriers, Caltrans and OCTA shall cooperate to establish whether, to what extent, and how to fund the cost of contesting the denial of coverage.

19. **Default/Remedies.**

19.1 Default. Subject to the extensions of time set forth in this Agreement and/or any extensions agreed upon by the Parties, failure or delay by either Party to perform any material term or provision of this Agreement constitutes a default under this Agreement.

19.2 Notice of Default. The non-defaulting Party shall give written notice of such default to the Party in default, specifying the alleged default. The defaulting Party shall commence to cure, correct and/or remedy the default as soon as reasonably practicable. The Party shall complete the cure of the default within 30 days or such longer time as the non-defaulting Party agrees in the event the default cannot be cured within that time. Except as otherwise expressly provided in this Agreement, any failures or delays by either Party in asserting any of its rights or remedies with respect to a default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either Party in asserting any of its rights and remedies shall not deprive either Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

19.3 Failure to Cure. In the event that the defaulting Party fails to complete the cure or remedy of a default within thirty (30) calendar days following receipt of written notice, or within such time as the non-defaulting Party otherwise agrees, a breach of this Agreement shall be deemed to have occurred, and the defaulting Party shall be liable to the non-defaulting Party for any damages caused by such breach.

19.4 Rights and Remedies. In the event of a breach, the non-defaulting Party may exercise the right to seek damages, specific performance or other injunctive or equitable relief. The exercise of a Party's rights and remedies shall be cumulative with the exercise of other rights and remedies. Caltrans also acknowledges that it shall not have the right to collect or retain toll revenues on account of or as an offset against damages or otherwise during the period that toll revenues are pledged to repayment of indebtedness incurred to finance or refinance the Project.

19.5 Lenders rights and remedies.

(a) Leasehold Mortgages. The holder of any mortgage, pledge or other encumbrance or collateral assignment of this Agreement, including the Lease, and any other agreements between the Parties related to the Toll Facility, and the beneficiary of any such deed of trust or assignment shall be referred to in this Agreement as a “Leasehold Mortgagee”; and the mortgage, pledge, hypothecation, deed of trust, assignment, or other security instrument shall be referred to in this Agreement as a “Leasehold Mortgage”. Leasehold Mortgages shall be subject to the following:

(i) The provisions set forth in Section 20.2(c) of this Agreement.

(ii) OCTA shall provide to Caltrans a fully executed copy of the original note or other evidence of indebtedness secured by any Leasehold Mortgage, together with written notice of the address of the Leasehold Mortgagee (or the address of a trustee, fiscal agent or other person or entity acting on behalf of a number of Leasehold Mortgagees) to which notices may be sent. In the event of an assignment of such Leasehold Mortgage, a copy thereof, together with written notice of the address of the assignee thereof (or the address of a trustee, fiscal agent or other person or entity acting on behalf of a number of assignees) to which notices may be sent, shall be delivered to Caltrans.

(iii) All rights acquired by Leasehold Mortgagees under any Leasehold Mortgage shall be subject to each and all of the provisions of this Agreement, and to all rights of Caltrans hereunder, none of which provisions or rights is or shall be waived by Caltrans by reason of the giving of such Leasehold Mortgage; but nothing herein shall limit or restrict the rights of Leasehold Mortgagees as set forth in this section. Caltrans and OCTA agree that while any Leasehold Mortgage is in existence, there shall be no agreement between Caltrans and OCTA for any modification or amendment of this Agreement that may have a material adverse impact on the rights of the Leasehold Mortgagee without the consent of the Leasehold Mortgagee, provided that such consent shall not be unreasonably withheld or delayed. The Leasehold Mortgagee shall use its reasonable best efforts to respond to any request for a modification or amendment within a reasonable period of time.

(iv) Notwithstanding any foreclosure of any such Leasehold Mortgage, OCTA shall remain liable to Caltrans for the payment of all sums owed to Caltrans hereunder and the performance of all of the provisions of this Agreement which are to be carried out and performed by OCTA.

(b) Rights and Obligations of Leasehold Mortgagees. As long as any Leasehold Mortgage created in accordance with this section shall remain unsatisfied and Caltrans has received the information specified in Section 18.5(a)(ii) above, the following provisions shall apply:

(i) In the event Caltrans shall have issued a notice of default under Section 18.2 hereof, a copy of which Caltrans shall deliver to the Leasehold Mortgagee, and OCTA shall have failed to commence cure of the default within the specified cure period, Caltrans shall provide notice to the Leasehold Mortgagee of OCTA’s failure to cure (“Failure to Cure Notice”). Upon receipt of the Failure to Cure Notice, the Leasehold Mortgagee shall have the right (but not the obligation) to remedy such default or cause the same to be remedied by its qualified and competent designee to effect such cure (a “Substituted Entity”); and Caltrans shall accept such

performance by or at the instigation of such Leasehold Mortgagee or Substituted Entity as if the same had been done by OCTA. The Leasehold Mortgagee shall have thirty (30) days following receipt from Caltrans of the Failure to Cure Notice to commence cure of the default, provided that prior to commencing any cure of an OCTA default, the Leasehold Mortgagee shall first provide notice to Caltrans of its intent to commence cure as permitted hereunder. Notwithstanding anything herein to the contrary, if and to the extent that the Leasehold Mortgagee is prevented from commencing cure by order of or action by a governmental entity, including a court order, the period for commencing cure shall be extended during the period such prohibition is in place.

(ii) OCTA hereby constitutes and appoints the Leasehold Mortgagee as its authorized OCTA representative and attorney-in-fact with full power, in OCTA's name, place and stead, and at OCTA's sole cost and expense, to enter upon the Toll Facility and to perform all acts required or permitted to be performed herein, but only in the event that OCTA is in default hereunder, and fails to timely commence cure of such default, as evidenced by Caltrans' issuance of the Failure to Cure Notice.

(iii) In the event that the default of OCTA is such that the Leasehold Mortgagee, in order to cure the default, shall be required to assume all of OCTA's rights and obligations hereunder, the Leasehold Mortgagee shall execute all documents reasonably requested by Caltrans effecting such assumption.

(iv) Any payment to be made or action to be taken by a Leasehold Mortgagee hereunder shall be deemed properly to have been made or taken by the Leasehold Mortgagee if such payment is made or action is taken by a nominee, agent, or assignee of the right of such Leasehold Mortgagee.

(v) The Parties hereto shall give the Leasehold Mortgagee notice of any proceedings for condemnation of all or part of the Toll Facility or this Agreement. The Leasehold Mortgagee shall have the right to intervene and be made a party to any such condemnation proceedings, and Caltrans and OCTA do hereby consent that the Leasehold Mortgagee may be made such a party or an intervener.

(vi) No Leasehold Mortgagee, nor any owner of the leasehold estate whose interest shall have been acquired by, through, or under any Leasehold Mortgage or whose interest shall have been derived immediately from any holder thereof, shall become personally liable under the provisions of this Agreement unless and until such time as the Leasehold Mortgagee or such owner elects to assume any rights of OCTA hereunder. Upon any permitted assignment of this Agreement, including the Lease, by a Leasehold Mortgagee or any party whose interest shall have been derived immediately therefrom, the assignor shall be relieved of any further liability which may accrue hereunder from and after the date of such assignment, provided that the assignee shall execute and deliver to Caltrans a recordable instrument of assumption wherein such assignee shall assume the rights and obligations of OCTA and agree to perform and observe all provisions of this Agreement as applicable to OCTA.

(vii) If the holders of more than one such Leasehold Mortgage shall provide written notice to Caltrans of Leasehold Mortgagee's intent to cure a default of OCTA, Caltrans shall accept such notice and cure from the holder whose Leasehold Mortgage was the earliest to be recorded.

(viii) The rights granted herein to Leasehold Mortgagees shall be enforceable by such Leasehold Mortgagees. In the event any action or proceeding is brought to enforce or interpret the provisions hereof or to seek damages arising under this Agreement or performance hereunder, or to declare the rights of the Parties hereto or of such Leasehold Mortgagees, the prevailing party (including such Leasehold Mortgagees, if prevailing) shall be entitled to costs and expenses actually and reasonably incurred (including reasonable attorneys' fees).

(c) Cooperation. Caltrans and OCTA shall cooperate by including in this Agreement, by suitable amendment from time to time, any provision which may reasonably be requested by any proposed lender for the purpose of implementing the lender and Leasehold Mortgagee protection provisions contained in this Agreement and allowing such lender reasonable means to protect and preserve its lien (including the lien of the Leasehold Mortgage) on the occurrence of a default under the terms of this Agreement. Caltrans and OCTA each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the term or any payments due under this Agreement nor otherwise in any other material respect adversely affect any rights of Caltrans or OCTA under this Agreement.

19.6 Dispute resolution.

(a) OCTA and Caltrans shall attempt to resolve all disputes. In the case of a dispute and prior to the exercise of any judicial remedies for a breach of this Agreement, the following procedure shall govern:

(i) Representatives of Caltrans and OCTA shall attempt to resolve the dispute within fifteen (15) Days, or such longer period as agreed on by the Parties.

(ii) If the representatives of Caltrans and OCTA are unable to resolve the dispute, the matter shall be referred to the District Director of Caltrans and to the OCTA Chief Executive Officer. The foregoing officers of the Parties shall attempt to resolve the dispute within fifteen (15) Days, or such longer period as agreed on by the Parties.

(iii) If the District Director of Caltrans and the OCTA Chief Executive Officer are unable to resolve the dispute, and if the disputed amount claimed by a Party does not exceed \$500,000 and, in the aggregate, unresolved disputes do not exceed \$5,000,000, either Party may demand that the dispute be submitted to binding arbitration. The amounts specified in the foregoing sentence shall be subject to annual adjustment, commencing as of the first day on which the Toll Facility is placed into toll operations, in an amount equal to the percentage increase in the Index as of the effective date hereof.

(iv) If the dispute does not meet the specifications above, the Parties may agree to submit the dispute to arbitration or other form of alternative dispute resolution, or either Party may seek any other legal remedies available.

(b) Available remedies to the Parties shall include, without limitation, (i) injunctive relief and other equitable remedies, (ii) specific performance, (iii) termination, in whole

or in part, of any obligation on the part of the prevailing Party to reimburse the losing Party for the disputed work at issue conducted by the losing Party, (iv) the right of the prevailing Party to recover monies paid to the losing Party as reimbursement for the disputed work at issue, or portions thereof, conducted by the losing Party, and (v) the right of the prevailing Party to reimbursement for costs incurred in conducting or completing work ordered by the losing Party.

20. **Transfer Back to State.**

20.1 Transfer of Property to Caltrans at End of Term. At the end of the term of this Agreement, including any extension thereof, all property granted via the lease provisions above, as well as all personal property owned by OCTA and which is related to the Toll Facility, ETC Facilities, ETC Equipment, ETC System, including the signs, gantries, other tolling equipment, traffic control devices and video surveillance and enforcement equipment, and other similar equipment utilized for the operation of the Toll Facility, excluding any computer software or hardware for which a license may be required, shall automatically become the property of Caltrans. Caltrans may, but is not obligated to, assume the rights and obligations of OCTA with respect to personal property, ETC Equipment and ETC Systems which are not owned by OCTA, but which are subject to a lease or other financing arrangement with a third party. OCTA shall take all reasonable steps to allow for the substitution of Caltrans for OCTA with respect to any such lease or arrangement.

20.2 Condition of Toll Facility at End of Term. The Toll Facility shall be returned to Caltrans in a condition that meets the Handback Requirements identified in Exhibit "C" attached hereto and incorporated herein by reference.

20.3 Transfer of Obligations for Toll Facility to Caltrans. At the end of the term of this Agreement, including any extension terms, and to the extent the Handback Requirements identified in Exhibit "C" have been met, all maintenance and other obligations of OCTA shall become the responsibility of Caltrans, other than, unless otherwise agreed upon by the Parties, any then-existing financing obligations of OCTA to third parties that relate to the Toll Facility.

20.4 Vendor Contracts. Caltrans may, but is not obligated to, assume the role of OCTA with respect to any third party vendor contracts relating to the maintenance or operation of the Toll Facility. OCTA agrees to take all reasonable steps to allow for the substitution of Caltrans for OCTA with respect to any third party vendor contracts.

20.5 Punch List. The Parties agree that a punch list, to include all outstanding maintenance and repair obligations of OCTA related to the Toll Facility, shall be developed by the Parties one (1) year prior to transfer of the Toll Facility to Caltrans. OCTA shall complete all agreed upon items on the punch list prior to the end of the term of this Agreement.

20.6 Transfer of Records at End of Term. At the end of the term of this Agreement, OCTA shall transfer to Caltrans all records pertaining to material maintenance, operations, unresolved complaints, safety and modifications of the Toll Facility generated within five (5) years prior to termination of this Agreement and maintained by OCTA.

21. **Other Miscellaneous Standard Provisions.**

21.1 Approvals.

(a) Caltrans' Approvals. Whenever Caltrans' comment, approval or consent is required under this Agreement, such comment, approval or consent shall not be unreasonably withheld or delayed and, unless otherwise expressly provided herein, Caltrans' consent or approval shall be deemed given if Caltrans has not responded to OCTA's request therefor within twenty-one (21) Days (or such other time period specified in this Agreement) after such request is received, or for Major Modifications, within a reasonable period of time, not to exceed the timeframe set forth by law for the encroachment permit process.

(b) OCTA Approvals. Whenever OCTA's comment, approval or consent is required under this Agreement, such comment, approval or consent shall not be unreasonably withheld or delayed and, unless otherwise expressly provided herein, OCTA's consent or approval shall be deemed given if OCTA has not responded to Caltrans's request therefor within twenty-one (21) Days (or such other time period specified in this Agreement) after such request is received, provided that such time may be extended by mutual agreement.

21.2 Assignment of Agreement.

(a) Except as provided in clause (c) below, any proposed assignment of this Agreement to a private entity shall require Caltrans' approval, in its sole discretion. Any proposed assignment shall require that notice shall be given to Caltrans three (3) months prior to the effective date of said assignment. Any potential assignee shall immediately upon request provide information reasonably required by Caltrans to determine whether said potential assignee can meet the obligations of this Agreement. OCTA may assign its right, title and interest in and to toll revenues without Caltrans' approval. This paragraph is not intended to and shall not limit the rights of any Leasehold Mortgagee as set forth in Section 18.5 of this Agreement.

(b) Any proposed assignment of this Agreement to a public entity shall require that notice shall be given to Caltrans three (3) months prior to the effective date of said assignment. Such notice shall include provision to Caltrans of evidence that the proposed assignee has the demonstrated financial ability to meet its obligations under this Agreement. Caltrans shall approve such assignment within fifteen business (15) days of receiving notice from OCTA, unless it reasonably determines that the proposed assignee cannot meet the obligations of this Agreement. This paragraph is not intended to and shall not limit the rights of any Leasehold Mortgagee as set forth in Section 18.5 of this Agreement. Any potential assignee shall immediately upon request provide information reasonably required by Caltrans to determine whether said potential assignee can meet the obligations of this Agreement.

(c) OCTA may, without the consent of Caltrans, assign, pledge, mortgage or otherwise encumber its respective interests in this Agreement including, without limitation, the Lease and any other related agreements, and/or any rights emanating therefrom, in order to secure financing or refinancing for the Toll Facility provided that OCTA retains responsibility for fulfilling the material obligations herein. Any amendment to the terms of this Agreement required as a result of a proposed refinancing, including, but not limited to, defeasance of existing bonds and issuance of new bonds, shall be subject to Caltrans' approval which shall not be unreasonably withheld or delayed.

(d) Following any permitted assignment of this Agreement, OCTA shall be relieved of any further liability which may accrue hereunder from and after the date of such assignment, provided that the assignee shall execute and deliver to Caltrans a recordable instrument of assumption wherein such assignee shall assume the rights and obligations of OCTA and agree to perform and observe all provisions of this Agreement.

22. **Subcontracting.** OCTA may, in its sole discretion and in compliance with all applicable legal requirements, enter into subcontracts with third party contractors or consultants for performance of any of its obligations hereunder. Such rights of OCTA include the right of OCTA to subcontract for operation and/or maintenance of Toll Facility and, except as expressly set forth herein, for performance of any other obligations of OCTA under this Agreement.

23. **Covenant to Cooperate.** The Parties agree to take all reasonable steps within the confines of existing laws, regulations or policy, for the effective implementation, operation and maintenance of the Toll Facility. While understanding the Parties cannot control the actions of the public or the ultimate users of the State Highway System nor can they control nature or acts of God, the Parties expressly agree to take all reasonable and necessary steps to avoid or minimize the effect of operational conflicts between the Toll Facility and the General Purpose Lanes. Such reasonable and necessary steps shall include, but not be limited to, maintenance by Caltrans, in good condition and repair, that portion of the General Purpose Lanes providing ingress to and egress from the Toll Facility.

24. **Designation of Representatives.** Caltrans shall designate a Caltrans representative to represent Caltrans and OCTA shall designate an OCTA representative to represent OCTA on matters related to this Agreement. All communications between the two agencies shall be channeled through the designated representatives.

25. **Notice.** Any notice provided pursuant to or required by this Agreement shall be in writing and shall be deemed sufficiently provided when sent by certified mail, return receipt requested, to the Parties at the following addresses:

OCTA:

Orange County Transportation Authority
600 South Main Street
Orange, CA 92868
Attn: Darrell Johnson, CEO

CALTRANS:

California Department of Transportation
District 12
1750 East Fourth Street
Santa Ana, CA 92705

Attn: District Director

With a copy to:

Woodruff, Spradlin & Smart

555 Anton Blvd

Suite 1200

Costa Mesa, CA 92626

Attn: James Donich, General Counsel

With a copy to:

Department of Transportation Legal Division

4050 Taylor Street

M.S. – 130

San Diego, CA 92110

Attn: Deputy Chief Counsel

Any notice so given shall be considered received by the other Party three (3) days after deposit in the U.S. Mail, first class postage prepaid, addressed to the Party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

26. **Force Majeure.** The failure of performance by either Party (except for payment obligations) hereunder shall not be deemed to be a default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, railroad, or suppliers; acts of the other Party; acts or failure to act of any other public or governmental agency or entity (other than that acts or failure to act of the Parties); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform or relief from default. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by mutual agreement between the Parties.

27. **Bankruptcy; Estate of the Debtor.** Upon the filing, petition or application for relief of the Bankruptcy Court, OCTA agrees and stipulates that the Toll Facility, excluding any toll plazas, gantries and equipment cabinets; conduit, fiber, cameras, readers, signage and supporting or related computerized communications systems; and other toll related toll operations equipment and systems, are integrated elements of the State Highway System. OCTA further acknowledges that its interest in the Toll Facility, other than the excluded equipment and systems referenced in the foregoing sentence, are possessory rights derived from this Agreement including, without limitation, the Lease. OCTA agrees and acknowledges that the integrated elements of the State Highway System as noted above are also an integral element of the national federal aid highway system whose continued and efficient operation strongly implies the public's interest in travelling safety and the inter-regional transportation of goods and services.

28. **Access for Maintenance or Operations Purposes.** Access to any portion of the Toll Facility by Caltrans and to the General Purpose Lanes by OCTA for maintenance and/or operations purposes of either Party shall be through notice and coordination with the other Party.

29. **Airspace Reserved.** Airspace over or under any portion of the Toll Facility is hereby expressly reserved to the Caltrans, with the exception of toll collection equipment, gantries and toll enforcement equipment.

30. **Liens.** OCTA agrees that under no circumstance shall OCTA allow any lien to attach to any portion of the General Purpose Lanes or to any portion of the Toll Facility arising out of or related to the actions of OCTA and/or any of its contractors, whether constructed, completed or accepted. To the extent any lien is recorded or asserted in violation of the foregoing, OCTA agrees to promptly act to remove or satisfy said lien. Satisfaction or removal may be by payment, procurement of bond or otherwise.

31. **Amendment, Repeal or Supersession.** References to statutes shall be deemed to incorporate any future amendment or supersession of said statutes. If said statute has been repealed and if no amendment or supersession has been promulgated or effected, or if the effect of amendment or supersession is materially different from the predecessor statute then the Parties agree to meet and confer and amend the Agreement as warranted. The Parties agree to meet and confer with respect to any applicable amendment or modification of any Caltrans manual or policy upon notice to OCTA from Caltrans of such amendment or modification.

32. **Agreement is Contractual in Nature and Not Mere Implementation of Statute.** The Parties agree this Agreement and its terms are contractual in nature and not the mere implementation of otherwise applicable statutes or authorities.

33. **No Partnership or Joint Venture.** In no event shall this Agreement be construed as establishing a partnership or joint venture or similar relationship between the Parties.

34. **Amendments.** This Agreement may be amended at any time by the mutual consent of the Parties; however, no amendments or other modifications of this Agreement shall be binding unless executed in writing by both Parties hereto, or their respective successors or assigns.

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

36. **Captions.** The captions included in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement or any provision hereof, or in any way affect the interpretation of this Agreement.

37. **Interpretation.** The Parties acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and that each Party has been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which

provides that ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Agreement.

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

39. **Governing Law.** This Agreement shall be governed by the laws of the State of California. Venue shall be in the California Superior Court for Orange County.

40. **Third Party Beneficiaries.** There are no third party beneficiaries of this Agreement, and this Agreement is not intended, and shall not be construed, to be for the benefit of, or be enforceable by, any other person or entity whatsoever.

41. **Entire Agreement.** This Agreement, the attached exhibits and any other documents specifically referenced and incorporated herein constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all prior verbal or written agreements and understandings between the Parties with respect to the matters addressed in this Agreement.

42. **Memorandum of Agreement / Further Assurances.** OCTA and Caltrans agree to execute and record a memorandum of this Agreement, in the form attached hereto as Exhibit "D", against the Leased Property. The Parties further agree to execute any additional instruments as may be reasonably necessary to carry out the purposes and intent of this Agreement and to fulfill their respective obligations hereunder.


43. **Time of the Essence.** Time is of the essence in the performance of this Agreement.

Signatures on following page

SIGNATURE PAGE TO
CALTRANS/OCTA TOLL OPERATING AGREEMENT
(INCLUDING REAL PROPERTY LEASE)
INTERSTATE 405 EXPRESS LANES IN ORANGE COUNTY
District Agreement No. 12-753
OCTA Agreement No. C-6-1431

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION


ORANGE COUNTY
TRANSPORTATION AUTHORITY

By: 
Ryan Chamberlain
District Director,
Department of Transportation, District 12

By: 
Darrell Johnson
Chief Executive Officer

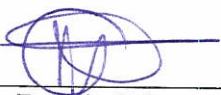
APPROVED AS TO FORM AND
PROCEDURE:

APPROVED AS TO FORM:

By: 
Glenn B. Mueller
Assistant Chief Counsel


James M. Donich
General Counsel

CERTIFICATION AS TO FUNDS:

By: 
Name: Darwin Salmos

Title: HQ Accounting

Exhibit "A"
General Description of Toll Facility

The 405 Express Lanes Toll Facility is presented in the "Toll Facility Map" and includes:

- Two high occupancy toll lanes in each direction in the median of I-405, extending approximately 14 miles in length from SR-73 in Costa Mesa to I-605 at the Orange/Los Angeles County line.
- Direct connector from the median of SR-73 to the median of I-405.
- Direct connector from the median of SR-22 to the median of I-405.
- Direct connector from the median of I-605 to the median of I-405.

Toll Facility Map

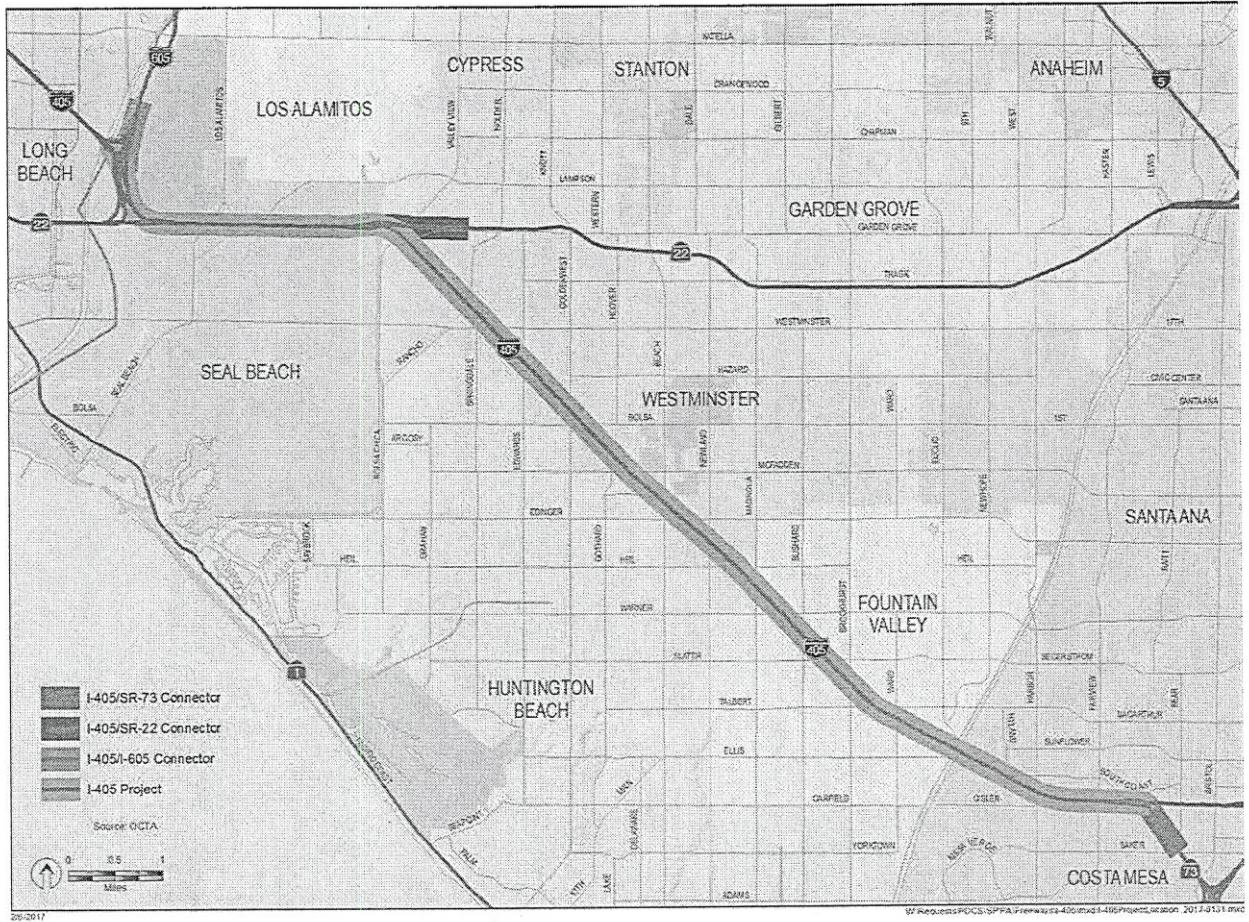
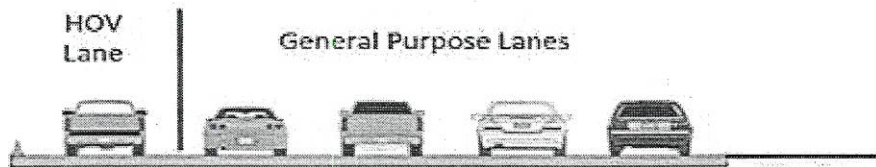
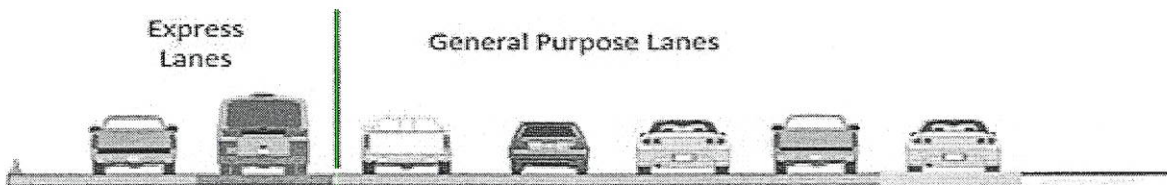


Exhibit A-2

Typical Cross Section



Existing



405 Project

Adds One GP Lanes
405 Express Lane Facility: Adds one lane adjacent to the carpool lane. Both lanes will be managed together as the 405 Express Facility

Exhibit A-3

Exhibit "B"
Legal Description of Leased Property – Toll Facility

To be inserted prior to opening of 405 Express Lanes

Exhibit "C"

Handback Requirements

1.1 Residual Life Methodology

OCTA shall prepare and submit to Caltrans a Residual Life Methodology (RLM), no later than 60 months before the end of Term. The inspection requirements and Residual Life Methodology requirements identified in the Handback Residual Life Requirements, Table 1-1 are minimum requirements. This submittal shall contain the evaluation and calculation criteria to be adopted for the calculation of the Residual Life at the Handback of all Elements of the Project. The scope of any Residual Life inspection or testing shall be included, together with a list of independent, professional, licensed, and Caltrans certified organization to be used by OCTA for pavement Residual Life testing. Inspections shall provide a continuous or near-continuous record of Residual Life in each lane. Where the inspection method does not provide a continuous record of Residual Life, the number of valid measurements in each Performance Section shall be sufficient to give a statistically valid result.

Inspections shall be repeatable to an agreed level of accuracy and inspection contracts shall include an agreed proportion of inspections to verify accuracy.

Inspections shall include ride quality, skid resistance < value not listed in table, faulting, and cracking.

RLM shall be capable of calculation of Residual Life for each 0.1 mile Performance Section.

For a nominal 10 year Residual Life at Handback, 85% of Performance Sections shall have a Residual Life exceeding 10 years, and no Performance Section shall have a calculated Residual Life of less than 5 years.

1.2 Residual Life Inspections

Residual Life Inspections and testing shall be performed with appropriate coverage such that the results are representative of the whole operations and maintenance (O&M) Limits within the Project in accordance with the Handback Residual Life Requirements in Table 1-1. All Residual Life Inspections and testing shall be performed under the oversight of a licensed registered Engineer for respective discipline. The responsible Engineer shall certify each Residual Life Inspection and test results. Caltrans shall be given the opportunity to witness any of the inspections and/or tests and shall be provided with a minimum of 14 calendar days' notice prior to the performance of any such inspections or tests. OCTA shall deliver to Caltrans, within 30 calendar days after it is created, the output data arising from any testing and any interpretation thereof made by the testing organization.

If OCTA fails to undertake inspections within the relevant time periods described below, Caltrans shall be entitled to undertake or arrange the relevant inspections itself, following 30 calendar days written notice to OCTA.

1.3 Residual Life Inspection Report

A Residual Life Inspection Report shall be developed for each of the specified Residual Life Inspections. The Residual Life Inspection Report shall provide a record of the asset conditions of all Elements and components of the Project in accordance with Table 1-1. For each Element, it shall provide the following information: Residual Life Inspection Report shall be collated by Residual Life Elements in accordance with Table 1-1.

- A. Report shall provide description and location of Element.
- B. Element location shall be identified by global positioning system (GPS) coordinates. For non-fixed point Elements provide GPS coordinates for beginning and end section limits.
- C. Provide current Element condition and rating in accordance with respective inspection and testing methodology.
- D. Provide an assessment of its current Residual Life.
- E. Provide photographs of each Element, including individual component and specific section being evaluated to support the assessment of current asset condition.
- F. Provide calculation of Residual Life at Handback for all pavement sections.

1.4 Initial Residual Life Inspection

OCTA shall carry out the Initial Residual Life Inspection in accordance with Table 1-1, to identify and establish the asset condition of all pavement components of the Project and verify the extent of the required Rehabilitation Work before the end of Term.

The Initial Residual Life Inspection shall be carried out between 59 and 57 months before the end of the Term. OCTA shall perform the Initial Residual Life Inspection of all identified Elements as set forth in Table 1-1. The test methods used for the Residual Life Inspections shall be the same methodology as the ones used by Caltrans at the time of the inspection.

1.5 Remaining Useful Life at Handback

Minor/low severity age-related non-structural weathering of concrete structures consisting of minor scaling and/or non-structural low severity hairline cracks shall not be evaluated and included as part of the handback requirements. Table 1-1 contains a list of pavement handback requirements.

Table 1-1- Handback Residual Life Requirements

Description	Residual Life at Handback (Yrs)	Useful Life at Handback (Yrs)	Inspection Requirements	Residual Life Methodology (RLM) Requirement
Pavement (rigid)	-	10 (>85)	<p>Inspections shall provide a continuous or near-continuous record of Residual Life in each lane. Where the inspection method does not provide a continuous record of Residual Life, the number of valid measurements in each Pavement Performance Section shall be sufficient to give a statistically valid result.</p> <p>Inspections shall be repeatable to an agreed level of accuracy and inspection contracts shall include an agreed proportion of inspections to verify accuracy.</p> <p>Inspections shall include automated condition distress survey, ride quality, skid resistance, and faulting.</p>	<p>RLM shall be capable of calculation of Residual Life for each 0.1 mile Pavement Performance Section. For a nominal 10 year Residual Life at Handback, 85% of Pavement Performance Sections shall have a Residual Life exceeding 10 years, and no Pavement Performance Section shall have a calculated Residual Life of less than 5 years. The Residual Life Methodology for road pavement shall take into account the thickness and joint load transfer efficiency. At the end of the O&M Period, the structural capacity of each lane of the Mainline roadway shall be such that to carry projected 10 year loading without requiring rehabilitation. The following requirements shall be met at the time of handback:</p> <ul style="list-style-type: none"> • Average IRI/mile < 120 in/mile • Transverse unsealed random cracking >0.25" wide for <5% of slab • Longitudinal unsealed random cracking >0.25" wide for <5% of slabs • Corner breaks with >0.5" drop off < 5% of slabs • Average joint faulting < 0.1 inch • Average skid number >30

Exhibit "D"

Form of Memorandum of Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Orange County Transportation Authority
P.O. Box 14184
Orange, CA 92863-1584
Attention: Clerk of the Board

Exempt from Recording fees per Government Code § 27383

(Space above for Recorder's use)

**MEMORANDUM OF AGREEMENT
(INCLUDING REAL PROPERTY LEASE)
INTERSTATE 405 EXPRESS LANES IN ORANGE COUNTY**

THIS MEMORANDUM OF AGREEMENT (INCLUDING REAL PROPERTY LEASE) INTERSTATE 405 EXPRESS LANES IN ORANGE COUNTY ("Memorandum of Agreement") is made and entered into on _____, 201__ by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "Caltrans," and the ORANGE COUNTY TRANSPORTATION AUTHORITY, referred to herein as "OCTA." Caltrans and OCTA are sometimes referred to herein individually as "Party", and collectively as the "Parties".

This Memorandum of Agreement is made in reference to that certain Caltrans/OCTA Toll Operating Agreement (Including Real Property Lease) Interstate 405 Express Lanes in Orange County ("TOA") made and entered into by and between the Parties on _____, 201__.


Pursuant to the TOA, Caltrans agreed to lease to OCTA that certain freeway right of way legally described in Exhibit "A", attached hereto and incorporated herein by reference, for a term of forty years, commencing as of the first day on which the full Toll Facility (as defined in the TOA) opens for public use and toll operations, assuming said facility is built. All of the terms and conditions of the TOA are made part of this Memorandum of Agreement as though fully set forth herein.

The Parties shall record a lease commencement date certification setting forth the actual commencement date of the lease described herein, provided that if no such document is recorded, the lease commencement date shall be deemed to be the actual date the full Toll Facility opens for public use and toll operations.

Signatures on following page

**SIGNATURE PAGE
TO
MEMORANDUM OF AGREEMENT
(INCLUDING REAL PROPERTY LEASE)
INTERSTATE 405 EXPRESS LANES IN ORANGE COUNTY**

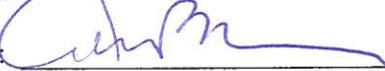
State of California Department of Transportation:

By:  _____ *

Ryan Chamberlain
District Director,
California Department of Transportation, District 12

Date: March 3, 2017

Approved as to legal form:

By:  _____

Glenn B. Mueller
Assistant Chief Counsel

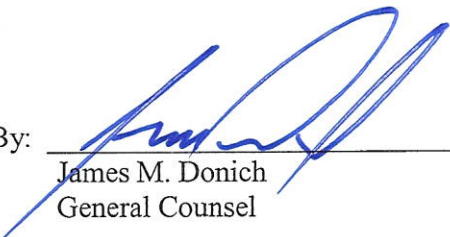
Orange County Transportation Authority:

By:  _____ *

Darrell Johnson
Chief Executive Officer

Date: 3/6/17

Approved as to legal form:

By:  _____

James M. Donich
General Counsel

* Signatures must be notarized.

EXHIBIT "1"
TO
MEMORANDUM OF AGREEMENT
(INCLUDING REAL PROPERTY LEASE)
INTERSTATE 405 EXPRESS LANES IN ORANGE COUNTY

Description of Caltrans right of way subject to lease under the Toll Operating Agreement
(to be inserted prior to opening of 405 Express Lanes)

[Attached behind this page]

NOTARY ACKNOWLEDGMENT

(California All-Purpose Acknowledgment)

[insert new notary form]

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Orange)

On March 3, 2017 before me, Erika Irizarry, Notary Public
(insert name and title of the officer)

personally appeared Ryan Chamberlain
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Erika Irizarry (Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

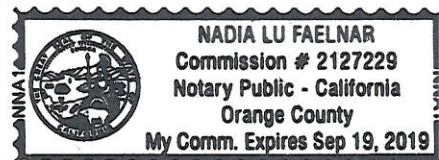
State of California
County of Orange)

On March 6, 2017 before me, Nadia Lu Faelnar, Notary Public
(insert name and title of the officer)

personally appeared ----- Darrell Eugene Johnson -----,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~
subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in
his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the
person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *Nadia Lu Faelnar* (Seal)