

**AMENDMENT NO. 3
TO 91 EXPRESS LANES
RCTC- OCTA FACILITY AGREEMENT
("ROFA")**

This Amendment No. 3 to 91 Express Lanes RCTC-OCTA Facility Agreement (Identified as RCTC Agreement No. 16-31-025-00 and OCTA Agreement No. C-5-3828) ("Amendment No. 3") is made and entered into this _____ day of _____, 2018 by and between the Riverside County Transportation Commission ("RCTC") and the Orange County Transportation Authority ("OCTA"). RCTC and OCTA are sometimes referred to herein individually as "Party", and collectively as the "Parties".

Recitals

A. The Parties previously entered into that certain Cooperative Agreement for State Route 91 Express Lanes and Corridor Improvements, dated December 16, 2011 ("Cooperative Agreement"), which, among other things, anticipated the sharing of certain joint operating costs incurred in conjunction with the coordinated operation of the OCTA 91 Express Lanes and the RCTC 91 Express Lanes.

B. The Parties previously entered into that certain RCTC-OCTA Facility Agreement ("ROFA"), dated November 4, 2015, for implementation of certain portions of the Cooperative Agreement pertaining to the lease, expansion, and joint use of the Toll Related Facilities. The ROFA sets forth the rights and obligations of the Parties related to the lease, expansion, and joint use of the Toll Operations Center, as that term is defined in the ROFA. Section 5 of the ROFA addresses the payment of rent and other costs for the Toll Operations Center. Section 8 of the ROFA contemplated that the Parties would enter into subsequent amendments to the ROFA address the terms for implementation of the Cooperative Agreement with respect to expansion, lease and joint use of the Customer Service Center and payment for Third Party Vendor Agreements, as those terms are defined in the ROFA.

C. Pursuant to Section 8, the Parties previously entered into that Amendment No. 1 to the ROFA, dated October 26, 2016, which added Exhibit "B" entitled "ROFA Addendum for CSC Build-Out" to address the build-out of the Customer Service Center and CSC lease payments. Section 4 of Exhibit "B" addresses payment of Rent for the Customer Service Center.

D. Pursuant to Section 8, the Parties previously entered into that Amendment No. 2 to the ROFA, dated April 11, 2017, which added Addendum 1 entitled "ROFA Addendum for Funding and Payment of Certain Joint Operating Costs" (i) to identify certain third party vendor agreements entered into by OCTA or RCTC, respectively, related to operation of the 91 Express Lanes ("Third Party Vendor Agreements"), (ii) to identify certain purchases administered by one Party and to be jointly funded by the other Party, (iii) to provide for the allocation of funding by each Party to reimburse the other Party for its share of costs incurred under such Third Party Vendor Agreements and for such purchases, and (iv) for OCTA to allocate funding to reimburse RCTC for payment of certain future costs related to third party contracts and purchases

administered by Cofiroute, USA LLC ("Cofiroute") and not funded under that certain three party operating agreement entered into by OCTA, RCTC and Cofiroute, dated as of May 24, 2013, as amended ("ORCOA"). Addendum No. 1 as added by Amendment No. 2 to the ROFA only addresses the funding and payment of joint operating costs and third party contract costs incurred through June 30, 2018.

E. The Parties now desire to enter into this Amendment No. 3 in order to update Addendum No. 1 to set forth terms pertaining to the allocation of funding and payment by each Party for costs incurred by the other Party under Third Party Vendor Agreements and for Rent associated with the Toll Operations Center and Customer Service Center, and for certain costs incurred by RCTC for third party contracts and purchases administered by Cofiroute for operation of the 91 Express Lanes, and not funded under the ORCOA, for the period from July 1, 2018 through June 30, 2019.

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

1. **Amendment.** Effective July 1, 2018, ROFA Addendum 1 entitled "ROFA Addendum for Funding and Payment of Certain Joint Operating Costs" is hereby replaced in its entirety with the Addendum No. 1 attached hereto, which is incorporated herein by reference, setting forth terms pertaining to the allocation of funding and payment by each Party for costs incurred by the other Party under Third Party Vendor Agreements and for Rent associated with the Toll Operations Center and Customer Service Center, and for certain costs incurred by RCTC for third party contracts and purchases administered by Cofiroute for operation of the 91 Express Lanes, and not funded under the ORCOA, for the period from July 1, 2018 through June 30, 2019.

2. **Continuing Effect of Agreement.** Except as amended by this Amendment No. 3, all provisions of the ROFA, as previously amended, shall remain unchanged and in full force and effect. Except as otherwise expressly stated, the incorporation of costs pertaining to Rent pertaining to the Toll Operations Center and the Customer Service Center into Addendum No. 1 is not intended to amend or supersede other applicable provisions of the ROFA, as previously amended, pertaining to the rights and obligations of the Parties with respect to payment of such costs.

3. **Counterparts.** This Amendment No. 3 may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

Addendum 1

ROFA Addendum for Funding and Payment of Certain Joint Operating Costs

This ROFA Addendum for Funding and Payment of Certain Joint Operating Costs (hereafter "Addendum") sets forth the respective rights and obligations of RCTC and OCTA, respectively, pertaining to the payment and reimbursement of certain costs incurred by the other Party under the identified Third Party Vendor Agreements and of certain purchases made by one Party to be jointly funded by the other Party, and to the allocation of funding by OCTA to reimburse RCTC for payment of certain third party contract costs and purchases administered by Cofiroute and not funded under the ORCOA. For budgeting and funding allocation purposes only, this Addendum No. 1 also incorporates the estimated costs for Rent under the TOC Lease and the CSC Lease to be shared by the Parties pursuant to Section 5 of the ROFA and Section 4 of Exhibit "B" to the ROFA, respectively.

1. **Defined Terms.** Capitalized terms used in this Addendum, including in the recitals to Amendment No. 3, and not otherwise defined herein shall have the meanings set forth in the Cooperative Agreement.

2. **Funding and Payment for Certain Joint Operating Costs.**

The Parties agree that there are certain joint operating costs for the Toll Related Facilities, as identified in Section 2.8.5 of the Cooperative Agreement, that will be incurred by one Party on behalf of the other Party, and by Cofiroute for the benefit of both Parties. Each Party agrees to reimburse the other Party for its share of the joint operating costs incurred from July 1, 2018 through June 30, 2019 (the "Current Fiscal Year") according to the Percentage Cost Split as follows:

A. **RCTC Payments to OCTA for Third Party Vendor Agreements or Purchases and for Leases Administered by OCTA.** RCTC hereby allocates \$1,861,250 for its share of joint operating costs incurred by OCTA during the Current Fiscal Year. The initial list of Third Party Vendor Agreements or purchases to be administered by OCTA, and jointly funded by RCTC, for the Current Fiscal Year is included in Exhibit "A" attached to this Addendum and incorporated herein by reference. OCTA agrees to obtain RCTC approval of any new or additional Third Party Vendor Agreements or purchases not listed in Exhibit "A", and subject to cost sharing as set forth herein. Additions and changes to Exhibit "A" may be approved in writing by RCTC's Executive Director, or designee, without an amendment to this Addendum provided that the total costs to be shared by RCTC do not exceed the amount set forth in this paragraph. OCTA shall invoice RCTC monthly for the joint operating costs identified in Exhibit "A", and RCTC shall reimburse all approved costs within 30 days of receipt of an invoice from OCTA. For budgeting and funding allocation purposes only, Exhibit "A" includes RCTC's estimated proportionate share of costs for Rent for the Current Fiscal Year under the TOC Lease and the CSC Lease. The Parties acknowledge and agree that this estimate is subject to change based on extensions of the CSC Lease, changes in the amount of estimated CAM Expenses, and other unforeseen expenses, and that RCTC's

obligations for payment of its proportionate share of Rent and related late fees under the TOC Lease and the CSC Lease shall remain subject to Section 5 of the ROFA and Section 4 of Exhibit "B" to the ROFA, respectively.

B. OCTA Payments to RCTC for Third Party Vendor Agreements or Purchases Administered by RCTC. OCTA hereby allocates \$907,750 for its share of joint operating costs incurred by RCTC during the Current Fiscal Year. The initial list of Third Party Vendor Agreements or purchases to be administered by RCTC, and jointly funded by OCTA, for the Current Fiscal Year is included in Exhibit "B" attached to this Addendum and incorporated herein by reference. RCTC agrees to obtain OCTA approval of any new or additional Third Party Vendor Agreements or purchases not listed in Exhibit "B", and subject to cost sharing as set forth herein. Additions and changes to Exhibit "B" may be approved in writing by OCTA's Chief Executive Officer, or designee, without an amendment to this Addendum provided that the total costs to be shared by OCTA do not exceed the amount set forth in this paragraph. RCTC shall invoice OCTA monthly for the joint operating costs identified in Exhibit "B", and OCTA shall reimburse all approved costs within 30 days of receipt of an invoice from RCTC.

C. OCTA Reimbursement to RCTC for Third Party Contracts and Purchases Up to \$50,000 Initiated by Cofiroute in the name of the 91 Express Lanes and Initially Paid by RCTC. OCTA hereby allocates \$1,171,000 for its share of costs for third party contracts and purchases up to \$50,000 made in the name of the 91 Express Lanes, initiated by Cofiroute and not funded under the ORCOA, for the Current Fiscal Year. The initial list of such third party contracts and purchases to be initiated by Cofiroute in the name of the 91 Express Lanes and jointly funded by the Parties for the Current Fiscal Year is included in Exhibit "C" attached to this Addendum and incorporated herein by reference. RCTC and OCTA shall each approve, in advance, any procurements to be made by Cofiroute and jointly funded in accordance with this paragraph. Additions and changes to Exhibit "C" may be approved in writing by RCTC's Executive Director and OCTA's Chief Executive Officer, or their designees, without an amendment to this Addendum. RCTC shall pay the full invoiced amount directly to the third party contractor or vendor for approved jointly funded procurements as described herein, and shall invoice OCTA monthly for OCTA's share of such costs, which share shall be based on the Percentage Cost Split. OCTA shall reimburse RCTC for all approved costs within 30 days of receipt of an invoice.

- 2. Annual Cost Allocation.** The Parties agree to establish the annual fiscal year amounts for the funding and payment of joint operating costs as described herein by January 15 of each year.
- 3. Processing of Funding and Payment of Joint Operating Costs.** The Parties agree to work together to establish administrative procedures for the processing of joint operating costs as described in this Addendum.

[Signatures on following page]

**SIGNATURES TO
AMENDMENT NO. 3 TO
91 EXPRESS LANES RCTC-OCTA FACILITY AGREEMENT ("ROFA")
BETWEEN RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AND
ORANGE COUNTY TRANSPORTATION AUTHORITY**

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

By: _____

Its: _____

**ORANGE COUNTY
TRANSPORTATION
AUTHORITY**

By: _____

Its: _____

APPROVED AS TO FORM:
BEST BEST & KRIEGER LLP

By: _____
Counsel to the Riverside
County Transportation Commission

APPROVED AS TO FORM:
WOODRUFF, SPRADLIN & SMART,
APC

By: _____
General Counsel to Orange
County Transportation
Authority

EXHIBIT A

CONTRACTS/PURCHASES ADMINISTERED BY OCTA

OCTA Administered Costs July 1, 2018 to June 30, 2019

Description	Total Shared Costs	Shared Amount (RCTC Share)
Trademark Counsel	6,000	3,000
Customer Newsletter and Annual Report	30,000	15,000
Credit Card Processing Fee	1,500,000	750,000
Toll Road Property Insurance	250,000	125,000
Armor Car Services	10,000	5,000
91 Express Lanes Telecommunications Expense	50,000	25,000
Printing of Customer Notification Materials	50,000	25,000
Bank Service Charge	25,000	12,500
Transponders	130,000	65,000
Telephone Software/Hardware Maintenance	32,500	16,250
Other Miscellaneous Expenses	5,000	2,500
Marketing	200,000	100,000
SR-91 Implementation Plan	70,000	35,000
Lease ¹	530,000	265,000
Toll Operations Consulting Services	620,000	310,000
PC Workstations/Hardware	100,000	50,000
Roadway Closures	30,000	30,000
Collection Services	54,000	27,000
Total	3,692,500	1,861,250

¹ Represents estimated Rent under TOC Lease through June 30, 2019 and estimated Rent under the CSC Lease through March 31, 2019. This estimate is subject to change based on extension of the CSC Lease, changes in the amount of estimated CAM Expenses, and other unforeseen expenses. Section 5 of the ROFA governs RCTC's obligations for payment of its proportionate share of Rent and related late fees under the TOC Lease. Section 4 of Exhibit "B" to the ROFA governs RCTC's obligations for payment of its proportionate share of Rent and related late fees under the CSC Lease.

EXHIBIT B

CONTRACTS/PURCHASES ADMINISTERED BY RCTC

**RCTC Administered Costs
July 1, 2018 to June 30, 2019**

Description	Total Shared Costs	Shared Amount (OCTA Share)
Traffic Operations Center System Maintenance	120,000	60,000
Variable Message Signs Support and Maintenance	34,000	17,000
Toll Operations Consulting Services	545,000	272,500
Transponders	840,000	420,000
Software	200,000	100,000
Utilities	10,000	5,000
Equipment Maintenance	6,500	3,250
Roadway Closures	30,000	30,000
Total	1,785,500	907,750

EXHIBIT C

CONTRACTS/PURCHASES ADMINISTERED BY COFIROUTE

Cofiroute Administered Costs July 1, 2018 to June 30, 2019

Description	Total Shared Costs	Shared Amount
Roadway Repair Materials	5,000	2,500
Utilities	24,000	12,000
Office Supplies and Equipment	30,000	15,000
Postage Fees	10,000	5,000
PC Workstations/Hardware	65,000	32,500
Software	40,000	20,000
Business Expenses	6,000	3,000
Other Miscellaneous Expenses	5,000	2,500
Network Evaluation/PCI (Payment Card Industry) Compliance	35,000	17,500
91 Express Lanes Telecommunications Expense	7,000	3,500
Printing of Customer Notification Materials	18,000	9,000
Credit Card Processing Fees	150,000	75,000
System Maintenance and Support	150,000	75,000
Equipment Maintenance Services	150,000	75,000
Computer Hardware/Software	170,000	85,000
Collection Services	52,000	26,000
Tools and Equipment	20,000	10,000
6C Transition	1,405,000	702,500
Total	2,342,000	1,171,000