



Orange County Transportation Authority

Executive Committee Agenda Monday, October 7, 2024 at 9:00 a.m.

Board Room, 550 South Main Street, Orange, California

Committee Members

Tam T. Nguyen, Chair
Doug Chaffee, Vice Chair
Michael Hennessey, Finance & Administration, Chair
Fred Jung, Transit Committee Chair
Donald P. Wagner, Legislative & Communications, Chair

Teleconference Location:

Fullerton City Hall
303 W. Commonwealth Ave.
Fullerton, California

Any person with a disability who requires a modification or accommodation in order to participate in this meeting should contact the Orange County Transportation Authority (OCTA) Clerk of the Board's office at (714) 560-5676, no less than two business days prior to this meeting to enable OCTA to make reasonable arrangements to assure accessibility to this meeting.

Agenda Descriptions

Agenda descriptions are intended to give members of the public a general summary of items of business to be transacted or discussed. The posting of the recommended actions does not indicate what action will be taken. The Committee may take any action which it deems to be appropriate on the agenda item and is not limited in any way by the notice of the recommended action.

Public Availability of Agenda Materials

All documents relative to the items referenced in this agenda are available for public inspection at www.octa.net or through the Clerk of the Board's office at the OCTA Headquarters, 600 South Main Street, Orange, California.

Meeting Access and Public Comments on Agenda Items

Members of the public can either attend in-person or listen to audio live streaming of the Board and Committee meetings by clicking this link: <https://octa.legistar.com/Calendar.aspx>

EXECUTIVE COMMITTEE MEETING AGENDA

In-Person Comment

Members of the public may attend in-person and address the Board regarding any item within the subject matter jurisdiction of the Orange County Transportation Authority. Please complete a speaker's card and submit it to the Clerk of the Board and notify the Clerk regarding the agenda item number on which you wish to speak. Speakers will be recognized by the Chair at the time of the agenda item is to be considered by the Board. Comments will be limited to three minutes. The Brown Act prohibits the Board from either discussing or taking action on any non-agendized items.

Written Comment

Written public comments may also be submitted by emailing them to ClerkOffice@octa.net, and must be sent by 5:00 p.m. the day prior to the meeting. If you wish to comment on a specific agenda item, please identify the item number in your email. All public comments that are timely received will be part of the public record and distributed to the Board. Public comments will be made available to the public upon request.

Call to Order

Roll Call

Pledge of Allegiance

Director Wagner

Closed Session

There are no Closed Session items scheduled.

Special Calendar

There are no Special Calendar matters.

Consent Calendar (Items 1 and 2)

All items on the Consent Calendar are to be approved in one motion unless a Committee Member or a member of the public requests separate action or discussion on a specific item.

1. Approval of Minutes

Clerk of the Board

Recommendation(s)

Approve the minutes of the August 29, 2024 Executive Committee meeting.

Attachments:

[Minutes](#)

EXECUTIVE COMMITTEE MEETING AGENDA

2. Agreement for Security System Service and Maintenance

Matt Ankley/Jennifer L. Bergener

Overview

On June 4, 2024, the Orange County Transportation Authority released a request for proposals for security systems service and maintenance. Proposals were received in accordance with the Orange County Transportation Authority's procurement procedures for professional and technical services. Board of Directors' approval is requested to execute an agreement for security system service and maintenance.

Recommendation(s)

- A. Approve the selection of Convergent Technologies LLC as the firm to provide service and maintenance of the Orange County Transportation Authority's security system.
- B. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-4-2293 between the Orange County Transportation Authority and Convergent Technologies LLC, in the amount of \$480,454, for a three-year initial term with two, one-year option terms, to provide service and maintenance of the Orange County Transportation Authority's security system.

Attachments:

[Staff Report](#)

[Attachment A](#)

[Attachment B](#)

[Attachment C](#)

Regular Calendar

3. OC Streetcar Passenger Safety and Security

Matt Ankley/Jennifer L. Bergener

Overview

The Orange County Transportation Authority is responsible for the operations and maintenance of the OC Streetcar. A significant component of the operations and maintenance will be the passenger safety and security. Utilizing industry best practices and examples of similar systems, staff has developed a passenger safety and security framework tailored to the specific needs of the OC Streetcar. Board of Director's approval is requested to further develop a transit ambassador program and negotiate an amendment to the current contract with the Orange County Sheriff's Department.

Recommendation(s)

- A. Direct staff to return with a request for proposals to implement security trained ambassadors for the OC Streetcar.
- B. Direct staff to return with an amendment to the contract with the Orange County Sheriff's Department to provide Transit Police Services on the OC Streetcar system.

EXECUTIVE COMMITTEE MEETING AGENDA

Attachments:

[Staff Report](#)

[Presentation](#)

4. Measure M2 Next 10 Delivery Plan: Market Conditions Key Indicators Analysis and Forecast

Francesca Ching/Kia Mortazavi

Overview

At the direction of the Board of Directors, the Orange County Transportation Authority monitors construction market conditions. Annually, a report on Market Conditions Key Indicators Analysis and Forecast is presented to the Board of Directors to provide insight into potential project delivery cost drivers that could affect the Measure M2 Next 10 Delivery Plan. The last effort was presented to the Board of Directors on October 9, 2023. An updated forecast has been prepared and a presentation on the results of this effort is provided.

Recommendation(s)

Continue to monitor market conditions, key indicators and provide updates to the Board of Directors as appropriate.

Attachments:

[Staff Report](#)

[Attachment A](#)

[Attachment B](#)

[Presentation](#)

5. Measure M2 Ten-Year Review Framework

Francesca Ching/Kia Mortazavi

Overview

Ordinance No. 3 includes a provision to conduct a comprehensive review of the project and program elements of the Renewed Measure M Transportation Investment Plan at least every ten years. The results of the first ten-year review were presented to the Board of Directors on October 12, 2015. Efforts for the next review have been initiated. A draft framework and schedule are provided for the Board of Directors' consideration.

Recommendation(s)

Direct staff to proceed with the Measure M2 ten-year review framework as presented.

Attachments:

[Staff Report](#)

[Attachment A](#)

[Presentation](#)

EXECUTIVE COMMITTEE MEETING AGENDA

6. 405 Express Lanes Expenditure Plan Requirement

Kirk Avila

Overview

In late 2016, the Orange County Transportation Authority Board of Directors awarded a design-build contract for the Interstate 405 Improvement Project. In mid-2017, a full Notice to Proceed was issued commencing all design and construction activities. With the Interstate 405 Improvement Project substantially completed and the 405 Express Lanes component in operations mode, the Orange County Transportation Authority has responsibilities of fulfilling the obligations and requirements of the funding and management agreements and state statutes. One key component required is the development of a 405 Express Lanes Expenditure Plan.

Recommendation(s)

Direct staff to develop principles to guide the establishment of a 405 Express Lanes Excess Toll Revenue Policy and Expenditure Plan and return to the Board of Directors for consideration and approval.

Attachments:

[Staff Report](#)

[Attachment A](#)

[Attachment B](#)

[Presentation](#)

Discussion Items

7. Public Comments

8. Chief Executive Officer's Report

9. Committee Members' Reports

10. Adjournment

The next regularly scheduled meeting of this Committee will be held:

9:00 a.m. on Monday, November 4, 2024

OCTA Headquarters

Board Room

550 South Main Street

Orange, California



Committee Members Present

Tam T. Nguyen, Chair
Doug Chaffee, Vice Chair
Michael Hennessey
Fred Jung
Donald P. Wagner

Staff Present

Darrell E. Johnson, Chief Executive Officer
Jennifer L. Bergener, Deputy Chief Executive Officer
Gina Ramirez, Assistant Clerk of the Board
Allison Cheshire, Clerk of the Board Specialist, Senior
James Donich, General Counsel
OCTA Staff

Committee Members Absent

Andrew Do

Call to Order

The August 29, 2024, Executive Committee regular meeting was called to order by Chair Nguyen at 9:00 a.m.

Closed Session

There were no Closed Session items scheduled.

Special Calendar

There were no Special Calendar matters.

Consent Calendar (Items 1 through 4)

1. Approval of Minutes

A motion was made by Director Hennessey, seconded by Director Wagner, and declared passed by those present to approve the minutes of the July 1, 2024 Executive Committee meeting.

2. Fourth Quarter Fiscal Year 2023-24 and Planned Fiscal Year 2024-25 Capital Action Plan and Performance Metrics

A motion was made by Director Hennessey, seconded by Director Wagner, and declared passed by those present to receive and file as an information item.

3. 2024 Title VI Plan Triennial Report

Chair Nguyen pulled this item for comments.

A motion was made by Director Hennessey, seconded by Director Wagner, and declared passed by those present to review, approve, and direct staff to submit the 2024 Title VI Plan Triennial Report to the Federal Transit Administration's Regional Office of Civil Rights on or before October 1, 2024.



4. Measure M2 Next 10 Delivery Plan: Market Conditions Key Indicators Analysis and Forecast

A motion was made by Director Hennessey, seconded by Director Wagner, and declared passed by those present to continue to monitor market conditions, key indicators and provide updates to the Board of Directors as appropriate.

Regular Calendar

There were no Regular Calendar matters.

Discussion Items

5. Measure M2 Workshop

Kia Mortazavi, Executive Director of Planning, Francesca Ching, Section Manager, Measure M2, and Andrew Oftelie, Chief Financial Officer, provided a workshop on this item.

6. Public Comments

There were no public comments.

7. Chief Executive Officer's Report

Darrell E. Johnson, Chief Executive Officer, reported on the following:

Labor Day

- Please note that OCTA's administrative offices will be closed on Monday. However, buses will operate on a Sunday/Holiday schedule.
- He also took a moment to recognize and thank OCTA's coach operators, maintenance, and operations staff, who will work through the weekend to ensure our buses keep running for those who depend on OCTA.

8. Committee Members' Reports

There were no Committee Members' reports.



9. Adjournment

The meeting adjourned at 9:50 a.m.

The next regularly scheduled meeting of this Committee will be held:

9:00 a.m. on Monday, October 7, 2024

OCTA Headquarters Board Room

550 South Main Street Orange, California


ATTEST:

Gina Ramirez
Assistant Clerk of the Board



October 7, 2024

To: Executive Committee

From: Darrell E. Johnson, Chief Executive Officer 

Subject: Agreement for Security System Service and Maintenance

Overview

On June 4, 2024, the Orange County Transportation Authority released a request for proposals for security systems service and maintenance. Proposals were received in accordance with the Orange County Transportation Authority's procurement procedures for professional and technical services. Board of Directors' approval is requested to execute an agreement for security system service and maintenance.

Recommendations

- A. Approve the selection of Convergent Technologies LLC as the firm to provide service and maintenance of the Orange County Transportation Authority's security system.
- B. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-4-2293 between the Orange County Transportation Authority and Convergent Technologies LLC, in the amount of \$480,454, for a three-year initial term with two, one-year option terms, to provide service and maintenance of the Orange County Transportation Authority's security system.

Discussion

The Orange County Transportation Authority (OCTA) uses contracted professional and technical services to provide maintenance and repair services, which includes preventative maintenance for OCTA's security systems. This contracted service is important to ensure OCTA maintains and operates all security equipment at full capacity and set to manufacturers' optimal settings. Additionally, this contracted service ensures that OCTA resolves functionality and operability challenges in a timely manner without compromising required levels of security.

OCTA's Security & Emergency Preparedness (SEP) Department requires specialized expertise to support the service, repair, and maintenance of its current Access Control System (ACS) and Video Management System (VMS). Currently, OCTA uses Lenel to operate the ACS and Milestone to operate the VMS, with an ongoing project to transition to Genetec, which fully-integrates the ACS and VMS into a single, cohesive system that provides more features and opportunities for future expansion as new OCTA facilities come online. Ensuring proper installation and upkeep of these systems is critical to maintaining security across OCTA facilities.

While OCTA can anticipate and plan for preventative maintenance services, the majority of service requests are unexpected, such as unplanned maintenance and repairs related to door lock solenoids, addressing pin/latch misalignments, replacing access card readers, and periodic repairs of the VMS. Other unplanned services requests also include addressing power challenges, replacing failed batteries and supply boards, and installing and repairing cameras.

The current contract for security system service and maintenance is set to expire on October 31, 2024. The continuation of these services is important to ensure optimal operability of OCTA's security systems.

Procurement Approach

The procurement was handled in accordance with OCTA Board of Directors' (Board)-approved procedures for professional and technical services. Various factors are considered in the award for professional and technical services. Award is recommended to the firm offering the most comprehensive overall proposal considering such factors as prior experience with similar projects, staffing and project organization, work plan, as well as cost and price.

On June 4, 2024, Request for Proposals (RFP) 4-2293 was issued electronically on CAMM NET. The project was advertised in a newspaper of general circulation on June 4 and June 10, 2024. A pre-proposal conference was held on June 11, 2024, with four attendees representing two firms. Two addenda were issued to handle administrative issues related to the RFP, make available the pre-proposal conference registration sheet and presentation, as well as to respond to written questions.

On July 2, 2024, OCTA received two proposals. An evaluation committee consisting of OCTA staff from the Contracts Administration and Materials Management, SEP, Risk Management, Operations Support, and Information Systems departments met to review all the proposals received.

The proposals were evaluated based on the following evaluation criteria and weightings:

- Qualifications of the Firm 25 percent
- Staffing and Project Organization 20 percent
- Work Plan 30 percent
- Cost and Price 25 percent

Several factors were considered in developing the evaluation criteria weightings. Qualifications of the firm were weighted at 25 percent as the firm had to demonstrate experience in service, repair, maintenance, and installation of an ACS and VMS. Staffing and project organization was weighted at 20 percent as the proposed project team had to demonstrate the expertise and adequate resources to handle scope of work-related installs, upgrades, and updates. Work plan was weighted at 30 percent as the firms had to demonstrate their ability to meet the requirements specified in the scope of work and project schedules. Cost and price was weighted at 25 percent to ensure that OCTA receives value for the services provided.

On July 16, 2024, the evaluation committee reviewed the proposals and interviewed both firms as listed below in alphabetical order based on the evaluation criteria:

Firm and Location

ADT Commercial LLC (ADT)
Headquarters: Boca Raton, Florida
Project Office: Orange, California

Convergint Technologies LLC (Convergint)
Headquarters: La Palma, California
Project Office: La Palma, California

On July 24, 2024, the evaluation committee conducted interviews with both firms. The interview consisted of a presentation by each firm to demonstrate the firms' understanding of OCTA's requirements. The firms' project managers and key team members had an opportunity to present each teams' qualifications and respond to the evaluation committee's questions. Questions were related to assessment and inspection of the security systems, quality control measures, and processes for managing multiple projects and service calls, as well as specific clarification questions related to each firm's proposal.

At the conclusion of the interviews, a request for a best and final offer (BAFO) was sent to both firms to seek additional clarifications related to proposed key personnel and final pricing. After considering responses to questions asked during the interviews, as well as information provided in the BAFO, the evaluation committee reviewed the preliminary ranking and made adjustments to individual scores. However, Convergent remained the higher-ranked firm with the higher overall score.

Based on the evaluation of the written proposals, the firm's qualifications, the proposed pricing, as well as the information obtained from the interviews and BAFO, the evaluation committee recommends Convergent for consideration of the award to provide security system service and maintenance for OCTA. The following is a brief summary of the proposal evaluation results.

Qualifications of the Firm

Convergent, founded in 2001, demonstrated relevant history of implementing advanced security systems and installations for public sector and government agencies, including Los Angeles World Airports (LAWA), Port of Los Angeles, and the Southern California Regional Rail Authority (Metrolink). Additionally, the firm currently serves as OCTA's security systems service provider and demonstrated a strong understanding of OCTA's existing infrastructure, including video surveillance, access control, and intercom systems. Convergent's proposal highlighted its use of key technologies such as Lenel and Milestone, which are currently in use by OCTA. Additionally, the firm demonstrated familiarity with the future systems, Genetec and Nedap, which OCTA is transitioning towards. Convergent provided the required proof of business, occupational, and trade licenses and certifications and is an authorized value-added reseller (VAR) for Lenel and Milestone security systems. The firm operates a local office in the City of La Palma, enabling them to provide timely support and quick response times. During the interview, the Convergent team further detailed their relevant experience. The firm received positive feedback from its references.

ADT, originally founded in 1874, demonstrated extensive experience with security systems and installations for clients of comparable size to OCTA, including major projects for Allergan Corp., NBC Universal Campus, First American Financial Corporation, and Verizon. ADT provided the required business, occupational, and trade licenses and certifications necessary to perform security system services and is an authorized VAR for Lenel and Milestone security systems. The firm operates a local office in the City of Orange allowing for quick response times to OCTA's needs. During its interview, ADT confirmed prior transportation experience, as well as experience with Genetec

and Nedap systems, reinforcing its capability to handle projects of this nature. The firm received positive feedback from its references.

Staffing and Project Organization

Convergint proposed a well-structured team with extensive, relevant experience. The team included personnel who have previously worked on OCTA projects. Convergint's organizational structure is clearly defined with roles and responsibilities that align with project requirements. The firm emphasized staff's familiarity with OCTA systems, drawing from their experience in maintaining and upgrading existing security infrastructure. The proposed project team's expertise in transportation and transit security was also highlighted, particularly through their previous work with LAWA, Long Beach Airport, and Metrolink, where they managed security operations and implemented system-wide security enhancements. During its interview, Convergint further elaborated on the availability of its staff and the experience of its team members with security systems as required in the scope of work.

ADT presented a well-structured team with clear roles and responsibilities, as illustrated in its organizational chart. The firm's resumes for key personnel highlighted their certifications and experience in managing security systems for public sector clients and transportation agencies such as the Los Angeles County Metropolitan Transportation Authority, Long Beach Transit, and the University of Southern California. The team demonstrated strong project organization and experience across key areas of security system management. During its interview, ADT discussed the availability of its team and its capacity to handle the specific requirements of OCTA's security systems.

Work Plan

Convergint presented a detailed and comprehensive work plan that demonstrated a clear understanding of OCTA's requirements. The plan included a proactive approach to preventative maintenance, service, and installation tasks, with a focus on minimizing downtime and ensuring system reliability. Convergint's work plan included detailed project management and administrative processes, as well as a quality assurance and quality control plan, preventative maintenance checklists, safety protocols, and a detailed plan for each maintenance task for every system. Additionally, Convergint described the use of a portal, iCare, for efficient management and communication and the ability for customers to track individual installation project activity, in real-time, including the latest progress updates from the project team. During the interview, Convergint provided additional details on the work plan activities, including the personnel responsible, and outlined the approach to annual preventative

maintenance. The firm also outlined specific activities to be performed as part of its quarterly preventative maintenance in response to the BAFO clarification, demonstrating its ability to meet OCTA's scope of work requirements.

ADT provided a work plan that demonstrated a general understanding of the scope of work objectives. The work plan outlined the project management and administrative processes necessary for effectively managing the security systems, including detailed procedures for repair and maintenance. ADT also provided a strong quality control plan that listed specific safety requirements. During its interview, ADT discussed its ability to meet OCTA's specific security system needs, emphasizing the availability of its team to handle project demands. In response to the BAFO clarification, ADT provided additional details on the tasks associated with quarterly preventative maintenance to ensure alignment with OCTA's scope of work needs.

Cost and Price

Pricing scores were based on a formula, which assigned the higher score to the firm with the lower estimated total cost, considering both the total weighted average hourly rate per service call and the total weighted recurring preventative maintenance cost. Convergent proposed the lower overall total cost, with hourly rates that were competitive with the OCTA project manager's independent cost estimate and a lower recurring preventative maintenance, and therefore deemed fair and reasonable.

Procurement Summary

Based on the evaluation of written proposals, the firms' qualifications, and the information obtained from the interviews and BAFOs, the evaluation committee recommends the selection of Convergent as the top-ranked firm to provide service and maintenance of OCTA's security system. Convergent delivered a thorough and comprehensive proposal and an interview that was responsive to all the requirements of the RFP.

Fiscal Impact

The project was approved in OCTA's Fiscal Year 2024-25 Budget, Chief Executive Office, account nos. 1316-7611-A5310-OJ0, 1316-7611-A5310-OJ1, 1316-7611-A5310-OJ2, 1316-7611-A5310-OJ3, 1316-7612-A5310-OJ1, 1316-7612-A5310-OJ3, 1316-7611-A5310-0HW, 1316-7611-A5310-0ZK, 0035-7611-OC100-OJ1, 0035-7611-OC100-OJ3, 0035-7612-OC100-OJ1, 0035-7612-OC100-OJ3, and 1290-7662-A0001-OTC, and is funded through local funds.

Summary

Staff recommends the Board of Directors authorize the Chief Executive Officer to negotiate and execute Agreement No. C-4-2293 between the Orange County Transportation Authority and Convergent Technologies LLC, in the amount of \$480,454, for a three-year initial term with two, one-year option terms, to provide security system service and maintenance.

Attachments

- A. Review of Proposals, RFP 4-2293 Security System Service and Maintenance
- B. Proposal Evaluation Criteria Matrix, RFP 4-2293 Security System Service and Maintenance
- C. Contract History for the Past Two Years, RFP 4-2293: Security System Service and Maintenance

Prepared by:



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Approved by:



Jennifer L. Bergener
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Pia Veasapen
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Review of Proposals
RFP 4-2293 Security System Service and Maintenance
Presented to Executive Committee - October 7, 2024

2 proposals were received, 2 firms were interviewed, 1 firm is being recommended.

Overall Ranking	Proposal Score	Firm & Location	Sub-Contractors	Evaluation Committee Comments	Initial Term's Total Average Costs
1	91	Convergint Technologies LLC La Palma, California	None	Higher-ranked firm overall. Strong experience in security system integration and maintenance for public sector clients including transit and transportation clients. Familiarity with OCTA's existing and planned systems, including Lenel, Milestone, Genetec, and Nedap. Presented a comprehensive work plan covering both quarterly and annual preventative maintenance. Detailed their quality assurance and quality control plans, including maintenance checklists and safety protocols. Provided additional details during the interview on specific maintenance tasks and strategies. Proposed lower estimated total cost. Positive references.	Total Average Hourly Rate for Normal Business Hours: \$170 Total Average for Quarterly Preventative Maintenance: \$14,945 Total Average for Annual Preventative Maintenance: \$59,778
2	77	ADT Commercial LLC Orange, California	None	Experience includes similar projects with public sector clients and security system management. Project team has experience with transportation and transit security projects. Work plan aligned with the scope of work, focusing on quarterly preventative maintenance tasks. Clarified extended service plan during best and final offer response, addressing additional requirements. Proposed thorough project management and administrative processes. Addressed minor repairs and system adjustments during regular maintenance schedules. Highlighted the use of detailed quality control measures, including safety protocols. Proposed higher estimated total cost. Positive references.	Total Average Hourly Rate for Normal Business Hours: \$170 Total Average for Quarterly Preventative Maintenance: \$38,513 Total Average for Annual Preventative Maintenance: \$154,050

Evaluation Panel:

Internal:

Contracts Administration and Materials Management (1)
Security and Emergency Preparedness (1)
Risk Management (1)
Operations Support (1)
Information Systems (1)

Proposal Criteria

Qualifications of the Firm
Staffing and Project Organization
Work Plan
Cost and Price

Weight Factors

25%
20%
30%
25%

PROPOSAL EVALUATION CRITERIA MATRIX
RFP 4-2293 SECURITY SYSTEM SERVICE AND MAINTENANCE

Convergent Technologies LLC							
Evaluator Number	1	2	3	4	5	Weights	Overall Score
Qualifications of Firm	4.5	4.5	4.5	4.5	4.5	5.0	22.5
Staffing/Project Organization	4.0	4.0	4.0	4.0	4.0	4.0	16.0
Work Plan	4.5	4.5	4.5	4.5	4.5	6.0	27.0
Cost and Price	5.0	5.0	5.0	5.0	5.0	5.0	25.0
Overall Score	90.5	90.5	90.5	90.5	90.5		91
ADT Commercial LLC							
Evaluator Number	1	2	3	4	5	Weights	Overall Score
Qualifications of Firm	4.0	4.0	4.0	4.0	4.0	5.0	20.0
Staffing/Project Organization	4.0	4.0	4.0	4.0	4.0	4.0	16.0
Work Plan	4.0	4.0	4.0	4.0	4.0	6.0	24.0
Cost and Price	3.4	3.4	3.4	3.4	3.4	5.0	17.0
Overall Score	77.0	77.0	77.0	77.0	77.0		77

CONTRACT HISTORY FOR THE PAST TWO YEARS


RFP 4-2293: Security System Service and Maintenance

Prime and Subconsultants	Contract No.	Description	Contract Start Date	Contract End Date	Subconsultant Amount	Total Contract Amount
ADT Commercial LLC						
Contract Type: Firm-Fixed	A23063	Access Control Badges	January 19, 2023	March 31, 2023		\$ 17,025
Subconsultants:						
None						
Contract Type: Firm-Fixed	C-2-2230	Fire Alarm Controls Panels Replacement	June 22, 2022	October 25, 2024		\$ 521,641
Subconsultants:						
None						
Contract Type: Time-and-Expense	C-2-2710	Fire Sprinkler and Alarms System Service, Maintenance and Repairs	March 13, 2024	October 31, 2025		\$ 240,000
Subconsultants:						
None						
Total					\$	778,666
Convergint Technologies LLC						
Contract Type: Time-and-Expense	C-2-2893	Security System Services and Maintenance	January 31, 2023	October 31, 2024		\$ 700,613
Subconsultants:						
None						
Total					\$	700,613



October 7, 2024

To: Executive Committee

From: Darrell E. Johnson, Chief Executive Officer 

Subject: OC Streetcar Passenger Safety and Security

Overview

The Orange County Transportation Authority is responsible for the operations and maintenance of the OC Streetcar. A significant component of the operations and maintenance will be the passenger safety and security. Utilizing industry best practices and examples of similar systems, staff has developed a passenger safety and security framework tailored to the specific needs of the OC Streetcar. Board of Director's approval is requested to further develop a transit ambassador program and negotiate an amendment to the current contract with the Orange County Sheriff's Department.

Recommendations

- A. Direct staff to return with a request for proposals to implement security trained ambassadors for the OC Streetcar.
- B. Direct staff to return with an amendment to the contract with the Orange County Sheriff's Department to provide Transit Police Services on the OC Streetcar system.

Background

The OC Streetcar will be a first of its kind transit system in Orange County providing significant benefit to the communities served and enhancing the ease of use for transportation riders by providing greater and more frequent connectivity to both OC Bus and rail. The OC Streetcar will operate along a 4.1-mile route through the cities of Santa Ana and Garden Grove, traversing an exclusive right-of-way and public streets. Six trains with a capacity of 210 passengers each will operate seven days a week. The 16 stations on the alignment are in residential, business, and industrial communities, each having unique passenger safety and security considerations.

Pre-revenue service for the OC Streetcar is scheduled to begin in 2025, and certain components of security staffing must be in place by the first testing and energizing of the Overhead Catenary System (OCS), making it necessary to advance the passenger safety and security plan to meet these timelines. Staff has performed extensive outreach and investigation into passenger safety and security models used by similar systems and has developed a passenger safety and security plan that utilizes a hybrid approach utilizing both security trained transit ambassadors and sworn law enforcement.

Discussion

OCTA is committed, and has an obligation, to provide the safe, secure, and orderly operation of the OC Streetcar. To determine the recommended approach to achieve this commitment, staff evaluated multiple factors including existing crime trends in the area, jurisdictional input, ridership, community acceptance of law enforcement personnel, cost, availability, responsiveness of local/county law enforcement personnel, and the operational footprint spanning two city jurisdictions. A hybrid model that utilizes both security trained transit ambassadors and sworn law enforcement is a balanced approach that most appropriately meets the passenger safety and security needs of the OC Streetcar.

Transit Ambassadors

The ambassador program would provide a field-deployed professional uniformed, unarmed presence with the primary intent to provide customer service throughout the OC Streetcar system, including re-enforcement of the Customer Code of Conduct, while also serving as a deterrent to criminal activity. Personnel will, among other things, provide customers with wayfinding, fare, and other information about the OC Streetcar and OC Bus systems, observe and report criminal activity, and help prevent trespassing on OC Streetcar properties. Four teams of two Ambassadors are proposed, with two teams working days and two teams working nights. To support and manage these teams, two ambassador supervisors would be present, one for the day shift and one for the night shift. Staff would be present each day of the week.

Ambassador personnel would be pre-screened for experience, professionalism, and strong customer service skills. Selected personnel will already have the basic security officer training which the California Bureau of Security and Investigative Services requires as well as cardiopulmonary resuscitation, automatic external defibrillation, and fire extinguisher training. It is desired to hire bilingual individuals to fill these roles. Personnel would receive an additional 40 hours of training specific to rail transportation, including, but not limited to, topics such as rail equipment familiarization, collision reporting, evacuations, passenger train emergency preparedness, OCTA's customer service policies and procedures, and OCTA's mission, vision, and values.

Staff has reviewed the options of directly hiring versus contracting for the security trained ambassadors and is recommending securing these services through a contract. This recommendation is based on ensuring that OCTA has maximum flexibility in the scaling of the program to meet the needs of the passenger safety and security plan. Additionally, it is a more cost-effective option than direct hire and places liability on the contractor for performance of the work. Using known fully burdened rates of an existing security contract, this program is estimated to cost about \$1.6 million for the first year and is anticipated to grow approximately five to seven percent per year thereafter. This estimate includes the required one-time purchase of portable radios and supporting equipment which is estimated to cost approximately \$45,000. The request for proposals would clearly identify all training and performance standards to ensure that OCTA is able to strictly enforce its expectations for administration of the program.

Sworn Law Enforcement

OCTA has built a successful passenger safety and security model on OC Bus through its long-standing partnership with the County of Orange, Orange County Sheriff's Department (OCSD). Since 1993, OCSD has been providing Transit Police Services (TPS) to OCTA's patrons, employees, and properties. To realize efficiencies to be gained by utilizing the same public safety and security provider across OCTA's modes of service, staff is recommending amending the scope of services with OCSD TPS to include the OC Streetcar.

A dedicated team of six Deputy Sheriff's II and one sergeant would have the primary responsibility of patrolling and responding to issues on the OC Streetcar alignment but would have a secondary responsibility to assist with calls for service on the adjacent bus system, should they arise. Conversely, TPS personnel assigned to patrol/respond to the bus system could support the OC Streetcar deputies. Expanding the TPS contract in this manner would also provide other departmental assets, such as the Community Oriented Policing Team, investigations, and K-9 teams to the OC Streetcar operation. TPS would partner with local law enforcement for responses on the alignment to ensure the appropriate level of response. Adding the proposed seven staff to TPS is estimated to cost \$2.3 million for the first year; this includes labor, training, and annual equipment fees. Startup equipment costs include radios, vehicles, and outfitting estimated at \$222,658.

Next Steps

Pending Board direction, staff will return to the Board for approval to release a request for proposals for security trained ambassadors and to execute a contract amendment with OCSD TPS.

Summary

Staff is seeking Board direction on the proposed public safety and security model for the OC Streetcar.

Attachment


None.

Prepared by:



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Approved by:



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OC Streetcar Passenger Safety and Security

OC Streetcar Passenger Safety & Security Staffing

- Combination of security trained “Transit Ambassadors” and sworn law enforcement
- Ambassadors provide day-to-day customer service and unarmed crime deterrent presence, reinforcing OCTA rider codes of conduct and policies similar to coach operators
- Law enforcement provides routine patrol and visible presence on the system, as well as response to crimes and emergencies
- The OC Streetcar Passenger Safety and Security program must be responsive to the operating environment and community needs to ensure sustainable ridership

Flexible Coverage Model

Ambassadors

- Face-to-face presence with riders
- Visible deterrent to potential crimes
- Work in teams for safety
- First responders for emergencies on the system

TPS

- Responsive for issues / crimes
- Direct interaction with local law enforcement
- Utilizes departmental resources for intermodal security protection
- Builds on the well-established, successful model used on OC Bus

Proposed Ambassadors Staffing

Ambassadors

- Four teams of two
 - Two teams on days, two on nights
- Two supervisors
 - One on days, one on nights
- Ambassador program cost estimate
 - \$1.6 million

Desired Qualifications

- State Bureau of Security and Investigative Services certification
- First Aid / CPR / AED
- Conflict resolution / de-escalation skills
- Ability to remain calm under pressure
- Bilingual
- Strong customer service-oriented attitude

Desired Training (est. 80 hours)

- OC Streetcar operations overview and familiarization
- Rail equipment familiarization
- TPS interoperability
- Collision reporting
- Evacuations
- Railroad workplace safety
- Passenger train emergency preparedness
- OCTA mission, vision, values
- OCTA and SEP organizational structure and procedures
- OCTA communications procedures and protocols
- OCTA customer service policies and procedures
- Special events
- Others as needed

SEP – Security and Emergency Preparedness Department

TPS OC Streetcar Team Cost Estimates

TPS

- One Sergeant
- Six Deputies
 - Three teams of two
- TPS cost estimate
 - \$2.5 million

Program Timing

- **Immediately**

- Begin RFP for private security contractor services
- Begin full development of OC Streetcar ambassador training program / requirements

- **Intermediate (three to eight months)**

- Develop ambassador program POST orders (how staff will perform their roles)
- Secure contract with prevailing firm in RFP process

- **Long Term (seven to 18 months)**


- Deploy personnel and commence operations
- Review activities, identify challenges, and make adjustments to program
- Continue to gather and report program data and statistics

RFP – Request for Proposals



October 7, 2024

To: Executive Committee

From: Darrell E. Johnson, Chief Executive Officer 

Subject: Measure M2 Next 10 Delivery Plan: Market Conditions Key Indicators Analysis and Forecast

Overview

At the direction of the Board of Directors, the Orange County Transportation Authority monitors construction market conditions. Annually, a report on Market Conditions Key Indicators Analysis and Forecast is presented to the Board of Directors to provide insight into potential project delivery cost drivers that could affect the Measure M2 Next 10 Delivery Plan. The last effort was presented to the Board of Directors on October 9, 2023. An updated forecast has been prepared and a presentation on the results of this effort is provided.

Recommendation

Continue to monitor market conditions, key indicators and provide updates to the Board of Directors as appropriate.

Background

On November 7, 2006, Orange County voters approved the Renewed Measure M (M2) Transportation Investment Plan (Plan) for a one-half-cent sales tax for transportation improvements for a period of 30 years through 2041. The Orange County Transportation Authority (OCTA) Board of Directors (Board) continues to advance the implementation of M2 commitments through the adoption of delivery plans. The delivery plans are designed to validate OCTA's ability to deliver the M2 Plan consistent with commitments to voters, outline a near-term work plan to promote effectiveness and efficiency, establish a common understanding among M2 stakeholders, set a baseline upon which future changes are measured, and provide the basis for the preparation of OCTA's annual budgets for capital projects.

In 2016, the Board directed staff to acquire better insight into the construction market outlook. The intent was to provide an analysis of trends for near-term construction market conditions in tandem with the annual sales tax revenue update to assist with prudent project delivery decisions.

OCTA retained the Orange County Business Council (OCBC), led by Dr. Wallace Walrod, Chief Economic Advisor to OCBC, and Dr. Marlon Boarnet, Professor and Director of the METRANS Transportation Consortium at the University of Southern California to provide this analysis.

The results of the initial analysis were presented to the Board in September 2017. The report identified several near-term cost indicators that could impact the construction market and, by extension, M2 project delivery. These included the pace of transportation construction programs in the neighboring counties (resulting in the strained supply of materials and construction labor), construction wage pressures, sustained low statewide unemployment, and residential construction demand. Overall, OCBC's analysis identified a strong potential that OCTA could experience an increasing cost environment in the near term.

Following this presentation, the Board directed staff to continue to work with OCBC to monitor and track the indicators and provide the Board with updates to cost risk factors for project delivery. In response, OCBC spent early 2018 analyzing trends and creating an Infrastructure Construction Cost Pressure Index (ICCPi) model. On September 10, 2018, OCBC presented the ICCPi model, and forecasts for 2018, 2019, and 2020 cost fluctuation ranges, to the Board.

Discussion

OCBC continues to monitor trends in material costs, labor costs, and general economic conditions through a contract with OCTA. Relevant data for each model component is analyzed to determine a range of potential cost impacts to update the forecast biannually. The fall 2024 update provides a three-year forecast through 2027. Attachment A summarizes the fall 2024 forecast and includes prior forecasts for reference. The full report on the ICCPi model update is included in Attachment B.

The ICCPi model is a forecasting tool, with scores indicating a forecast of fluctuations in public construction costs expressed in ranges. Index scores of two and three indicate somewhat low to normal inflationary environments in the range of one to six percent. Conversely, a score of four is a high inflation environment in the range of six to 11 percent. Extreme index values of zero and five correspond to the unusual conditions observed in Orange County immediately before and during the Great Recession and the high-cost inflation environment that occurred in the building boom years of the early 2000s and most recently in 2021 and 2022.

Using the ICCPI model, OCBC forecasts a score of three in 2025, which represents a potential cost fluctuation range of two to six percent. The forecast for 2026 and 2027 drops to a score of two, which represents a potential cost fluctuation of one to two percent.

OCBC Orange County Transportation ICCPI Score, 2025-2027		
Year	Index Score	Range of Cost Fluctuation
2025	3	2% - 6%
2026	2	1% - 2%
2027	2	1% - 2%

The fall update anticipates a continued decline of inflationary pressures from the market conditions forecasted in spring 2024. The recent pattern for three key components of the construction cost pressure reflects decline of building permits, a slight increase in California unemployment rates, and an increase in construction wages. As for material costs, Portland Cement Concrete structure decreased significantly, while Portland Cement Concrete pavement, structural steel, and aggregate base saw large increases. Increases in material costs and labor wages combined with rising statewide unemployment and declining building permits indicate that the macroeconomy is showing signs of softening.

As in prior forecasts, OCBC indicates that OCTA will also need to be aware and ready to respond to cost pressures that cannot be modeled. Examples of such risks include:

- Large downward revisions to labor market data may impact Federal Reserve policy decisions,
- High consumer debt despite the rise in wages which could impact future spending, and
- General political and economic uncertainty both domestically and internationally.

Overall, OCBC's analysis identifies a tempering of inflationary pressures from 2025 through 2027. OCTA's Project Controls department monitors and adjusts project cost escalation assumptions according to market trends. Project Controls' cost estimating process uses historical information, as well as current trends in the market, and follows a consistent and defined process. Looking back at the last 20 years, OCTA's cost estimates have included a three percent escalation, which, on average during this timeframe, provided the appropriate escalation to deliver projects successfully. Currently, using 3.5 to five percent for construction escalation, as well as incorporating contingency based on the project phase and complexity, is staff's preferred approach to cost estimating. Given the continued market fluctuations in recent years, staff recommends continuing this effort to monitor key indicators to inform OCTA's delivery plans.

Summary

OCBC has prepared an update on construction market conditions to help OCTA with M2 project delivery planning. The update considers fluctuations in material costs, labor costs, and general economic conditions and trends. The Market Conditions Key Indicators Analysis and Forecast conclude that OCTA may experience a tempering of economic conditions from 2025 through 2027.

Attachments

- A. Orange County Business Council, Orange County Transportation ICCPI Score, Fall 2018 through Fall 2024 Forecasts
- B. Orange County Business Council, Orange County Transportation Infrastructure Construction Cost Pressure Index, Fall 2024, Prepared for the Orange County Transportation Authority

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Approved by:



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**Orange County Business Council
Orange County Transportation ICCPI Score
Fall 2018 through Fall 2024 Forecasts**

Orange County Business Council Orange County Transportation ICCPI Score													
Year	Fall 2018	Spring 2019	Fall 2019	Spring 2020	Fall 2020	Spring 2021	Fall 2021	Spring 2022	Fall 2022	Spring 2023	Fall 2023	Spring 2024	Fall 2024
2018	4												
2019	3	4											
2020	3	3	3	3	0								
2021		3	3	2	1	1	5						
2022			3	2	1	2	4	5	5				
2023					3	4	4	4	4	4	3		
2024							4	4	4	4	3	2	2
2025									2	3	2	3	3
2026											2	2	2
2027													2

Range of Cost Fluctuations by Index Score			
Index Score	Low	Midpoint	High
0	-17%	-9.5%	-2%
1	-2%	-0.5%	1%
2	1%	1.5%	2%
3	2%	4%	6%
4	6%	8.5%	11%
5	11%	25.5%	40%

**Orange County Business Council
Orange County Transportation Infrastructure Construction
Cost Pressure Index
Fall 2024
Prepared for the Orange County Transportation Authority**

OCBC Research Team

Dr. Wallace Walrod – Chief Economic Advisor, Orange County Business Council
Dr. Marlon Boarnet – Professor and Director of the METRANS Transportation Consortium, University of Southern California

Background and Purpose

As a supplementary examination to the Next 10 Delivery Plan: Market Conditions Forecast and Risk Analysis study delivered by Orange County Business Council (OCBC) in September 2017, the Orange County Transportation Authority (OCTA) Board of Directors (Board) requested further study and exploration of potential cost fluctuations beyond existing cost analysis from the California Department of Transportation's (Caltrans) Construction Cost Index (CCI) and internal OCTA analysis. The OCTA Board requested an ongoing analysis of construction cost factors, with periodic updates. In response, the OCBC team developed the Orange County Transportation Infrastructure Construction Cost Pressure Index (ICCPI), which is updated every six months.

To develop the cost pressure index, the OCBC team analyzed annual trends in material costs, labor costs and general economic conditions to determine a range of potential cost increases with a time horizon that is typically three years into the future. The index updates begin by collecting relevant market data and indicators and then performing data analytics on to assess current cost pressure and forecast future cost pressure. In doing so, and providing these findings to OCTA's Board, more accurate budgets can be determined reducing the potential risk of cost pressure and project delivery slowdowns due to financial constraints. This September 2024 memo updates the March 2024 forecast of the Orange County Transportation ICCPI and provides annual cost pressure index forecasts for the remainder of 2024 and for 2025, 2026, and 2027.

Findings and Discussion

The most recent available input data were gathered to update the index. That includes second quarter 2024 data for the following index components: California's unemployment rate, California building permits, Caltrans index data on infrastructure construction materials costs as well as fourth quarter 2023 data on Orange County and Southern California construction industry wages. 2024 values for building permits and unemployment rates were estimated from changes from second quarter 2023 to second quarter 2024 and construction wages for 2023 from fourth quarter 2022 to fourth quarter 2023.

Orange County Business Council
Orange County Transportation Infrastructure Construction
Cost Pressure Index
Fall 2024
Prepared for the Orange County Transportation Authority

Following the July 30-31 meeting of the Federal Reserve where rates were left unchanged, markets fully expect a September rate cut as the rate of inflation continues to show a decline and labor markets have continued to soften. Labor market concerns have been climbing especially with the recent revision to Bureau of Labor Statistics data which showed 818,000 fewer jobs added between March 2023 and March 2024 than previously estimated. In California, according to the California Employment Development Department as of July 2024, the non-seasonally adjusted unemployment rate has climbed to 5.8 percent well above the national rate of 4.5 percent and up from 4.8 percent in July 2023 as well as up from 5.3 percent measured in June 2024.¹ Despite the recent increase in wages, household debt continues to hit new highs, with credit card debt increasing 5.8 percent or by \$27 billion over the past year to \$1.14 trillion indicating consumer spending may begin to slow.² While economic and political uncertainty remain domestically, continued instability abroad from the Russia-Ukraine conflict and widening conflicts in the Middle East could further hamper economic growth and progress.

In the March 2024 update, the OCTA Construction Cost Pressure Index measured a reading of 2 for 2024 (annualized cost changes between 1 and 2 percent), followed by an index of 3 in 2025 (annualized cost changes between 2 and 6 percent) and then falling back to an index of 2 in 2026. Six months prior to that, the year-ago September 2023 Construction Cost Pressure Index predicted a construction cost change environment in 2023 of 3 (2 to 6 percent annualized increase) remaining steady at 3 in 2024 before declining to a 2 in 2025 (1 to 2 percent annual rate of change) and staying at a 2 through 2026.

The new estimate for September 2024 sees the index for 2024 dropping to a value of 2 for the remainder of the year, before climbing to 3 in 2025, and dropping to an index of 2 in 2026 and remaining steady at an index of 2 for 2027. At this point, the input components for the index show cross-currents. The macroeconomic conditions in California show signs of softening, with slowing building permits and a rising unemployment rate. At the same time, the most recent data on construction materials costs and wages show increases.

Comparisons of the 5 most recent Orange County Transportation ICCPI estimates are reflected in Table 1. The index values correspond to ranges of forecast annual infrastructure construction cost increases, as shown in Table 2.

¹ [https://labormarketinfo.edd.ca.gov/file/lfmonth/oran\\$pds.pdf](https://labormarketinfo.edd.ca.gov/file/lfmonth/oran$pds.pdf)

² <https://www.newyorkfed.org/microeconomics/hhdc>

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Table 1: September 2024 Update to Three-Year Orange County Transportation ICCPI, with comparison to March 2024, September 2023, March 2023, and September 2022 Index Estimates

Year	Index (September 2024) with Annual Cost Increase Range	Index (March 2024) with Annual Cost Increase Range	Index (September 2023) with Annual Cost Increase Range	Index (March 2023) with Annual Cost Increase Range	Index (September 2022) with Annual Cost Increase Range
2022	Not Estimated	Not Estimated	Not Estimated	Not Estimated	5 (11% to 40%)
2023	Not Estimated	Not Estimated	3 (2% to 6%)	4 (6% to 11%)	4 (6% to 11%)
2024	2 (1% to 2%)	2 (1% to 2%)	3 (2% to 6%)	4 (6% to 11%)	4 (6% to 11%)
2025	3 (2% to 6%)	3 (2% to 6%)	2 (1% to 2%)	3 (2% to 6%)	2 (1% to 2%)
2026	2 (1% to 2%)	2 (1% to 2%)	2 (1% to 2%)	Not Estimated	Not Estimated
2027	2 (1% to 2%)	Not Estimated	Not Estimated	Not Estimated	Not Estimated

Forecasting Method

OCBC used a series of regression analyses and forward-looking projections to create the ICCPI. The ICCPI provides a ranking from 0 to 5, with each rank corresponding to a range of percent changes in overall construction costs. These ranges are built to be forecasting tools, with scores indicating public construction forecast cost increase. Values of 2 and 3 indicate somewhat normal inflationary environments. A value of 4 is a high inflation environment. A value of 1 is a low inflation/deflationary environment. Values of 0 and 5 correspond to the most extreme conditions observed in Orange County over the past three decades, and hence the ranges for those values are wide due to the unusual nature of the highly deflationary environment that occurred immediately prior to and during the Great Recession and the high-cost inflation environment that occurred in the building boom years of the early 2000s and most recently in 2021 and 2022.

Table 2 highlights each ICCPI ranking and the proposed range of cost fluctuations which have been provided on a low, midpoint, and high scale.

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Orange County Transportation Infrastructure Construction
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Table 2: OCBC Orange County ICCPI Index Values and Corresponding Forecast Annual Cost Increase Range

Index Value	Projected Annual Cost Increase, Low	Projected Annual Cost Increase, Midpoint	Projected Annual Cost Increase, High
0	-17%	-9.5%	-2%
1	-2%	-0.5%	1%
2	1%	1.5%	2%
3	2%	4%	6%
4	6%	8.5%	11%
5	11%	25.5%	40%

Methodology

To determine the Transportation ICCPI, the OCBC team started by aggregating several datasets, measures, and indicators on an annual basis as far back as 1972.

The index was built with the following key data inputs:

- California's unemployment rate
- Building permits in California
- Selected construction materials costs for California, from Caltrans
- Orange County Construction Labor Costs

The OCBC team examined how the various measures and indicators of construction costs varied with changes and recent past trends in construction inflation. Using statistical analyses, the research team has built a forecasting model that projects forward cost increases and predicted cost increases are grouped into the categorical ranges shown in Table 2.

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Recent Data Trends

Table 3 shows the recent pattern for three key components of the construction cost pressure index. While building permits in California declined from 2018 to 2020, they jumped by 12.6 percent in 2021, and by 0.2 percent in 2022 before falling 7.1 percent to 111,221 in 2023. Using estimates based on the change in permits from 2nd quarter 2023 to 2nd quarter 2024, building permits are expected to fall by 15.6 percent to 93,888 in 2024. This forecasted decline can be attributed to the high interest rate environment which has served to cut housing demand due to affordability concerns. Based on the change in average unemployment rates from the 2nd quarter of 2023 to 2nd quarter of 2024, California's unemployment rate is expected to total 5.3 percent in 2024, 0.5 percentage points higher than in 2023. Construction salaries in Orange County, estimated from 4th quarter 2022 to 4th quarter 2023, are expected to register a 6.5 percent increase, totaling \$94,003.

Table 3: Infrastructure Cost Correlates, Annual Percentage Changes, 2016-2024

Year	California Building Permits	% Change Year-on-Year	California Unemployment Rate	% Change Year-on-Year	OC Construction Labor Costs (Average Annual Wage)	% Change Year-on-Year
2016	102,350	4.2%	5.5%	-11.6%	\$67,179	3.8%
2017	114,780	12.1%	4.8%	-12.9%	\$71,474	6.4%
2018	113,502	-1.1%	4.2%	-12.0%	\$74,669	4.5%
2019	110,197	-2.9%	4.1%	-3.4%	\$77,288	3.5%
2020	106,075	-3.7%	10.3%	153%	\$81,460	5.4%
2021	119,436	12.6%	7.3%	-28.9%	\$84,170	3.3%
2022	119,667	0.2%	4.2%	-42.4%	\$88,265	4.9%
2023	111,221	-7.1%	4.8%	13.4%	\$94,003**	6.5%
2024*	93,888	-15.6%	5.3%	11.4%		

* Estimated from second quarter change, 2023 to 2024, converted to annualized estimate

**Estimated from fourth quarter change, 2022 to 2023, converted to annualized estimate

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The appendix shows annual changes in materials costs in recent years. The 2024 values are estimated using the percent change from Q2 2023 to Q2 2024, and hence represent an estimate that will be revised in the next 6-month update when additional data for later in 2024 becomes available. As of Q2 2024, some material costs have seen a sharp rise, with rates converted to an annual basis: PCC Pavement increased by 182.1 percent, Structural Steel by 99.3 percent, and Aggregate Base 97.6 percent. As of Q2 2024 (annualized) PCC Structure costs down 54.8 percent and Steel Bar is down 4.5 percent. With the cost of materials and labor showing recent increases combined with rising statewide unemployment and declining building permits, the macroeconomy is showing signs of softening.

Appendix: Changes in Infrastructure Materials Costs 2016-2024 (all values are percent year-on-year changes, 2024 values forecast from second quarter changes, 2023 to 2024)

Year	Aggregate	PCC Pavement	PCC Structure	Steel Structure	Steel Bar
2016	9.4%	8.6%	7.7%	26.3%	35.0%
2017	24.2%	106.8%	26.8%	-50.1%	-20.1%
2018	18.9%	25.9%	17.2%	-58.8%	9.4%
2019	4.6%	-11.1%	-4.2%	0.8%	53.4%
2020	14.9%	-20.5%	10.0%	-9.3%	-36.2%
2021	-27.5%	-19.8%	23.5%	5.0%	6.6%
2022	47.6%	60.5%	-3.1%	37.9%	28.8%
2023	8.4%	7.4%	52.3%	22.9%	-5.9%
2024*	97.6%	182.1%	-54.8%	99.3%	-4.5%

*The annual 2024 change in value represents the change between second quarter 2023 and second quarter 2024.

Orange County Transportation Infrastructure Construction Cost Pressure Index, Fall 2024

Orange County Business Council

September 2024

Orange County Transportation Infrastructure Construction Cost Pressure Index Model Components

- Economic Trends – State-level building permits and unemployment rate (Census and California Employment Development Department (EDD));
- Material Costs – Construction Aggregate, PCC Pavement, PCC Structural Concrete, Structural Steel and Bar Steel (Caltrans).
- Labor Costs – Localized construction wages of NAICS defined sectors provided by Bureau of Labor Statistics (BLS).
- Economic Conditions – Tight economy in 2002-2005 and slack economy in 2007-2011.

Forecast and Range of Orange County Transportation Infrastructure Cost Increases by Index Value

- 2024 - Forecasted Index Value: 2
- 2025 - Forecasted Index Value: 3
- 2026 - Forecasted Index Value: 2
- 2027 - Forecasted Index Value: 2

Range of Cost Fluctuations by Index Score			
Index	Low	Medium	High
0	-17%	-9.5%	-2%
1	-2%	-0.5%	1%
2	1%	1.5%	2%
3	2%	4%	6%
4	6%	8.5%	11%
5	11%	25.5%	40%

Cautious Optimism in the Face of Uncertainty

- Cost inputs (labor, materials) are rising while the macroeconomy is showing signs of softening;
- Going forward, labor costs may soften as national and state labor markets continue to weaken;
- Expected September rate cut to provide boost to housing demand;
- CCI rebounds from Q4 2023 drop, up 9.5 percent over last 12 months;
- Cost of Aggregate Base, PCC Pavement, and Structural Steel rise in 2024, PCC Structure and Bar Steel declines.

Year-over-Year Changes in California Building Permits, California Unemployment Rate and Orange County Construction Labor Costs, 2017-2024

Year	California Building Permits	% change year-on-year	California Unemployment Rate	% change year-on-year	OC Construction Labor Costs (avg. annual wage)	% change year-on-year
2017	114,780	12.1%	4.8%	-12.9%	\$71,474	6.4%
2018	113,502	-1.1%	4.2%	-12.0%	\$74,669	4.5%
2019	110,197	-2.9%	4.1%	-3.4%	\$77,289	3.5%
2020	106,075	-3.7%	10.3%	153%	\$81,460	5.4%
2021	119,436	12.6%	7.3%	-28.9%	\$84,170	3.3%
2022	119,667	0.2%	4.2%	-42.4%	\$88,265	4.9%
2023	111,221	-7.1%	4.8%	13.3%	\$94,003	6.5%
2024*	93,888	-15.6%	5.3%	11.4%		

*2024 values projected from year-on-year changes in quarterly data, 2nd quarter 2023 to 2nd quarter 2024.

** 2023 values projected from year-on-year changes in quarterly data, 4th quarter 2022 to 4th quarter 2023.

OCBC Infrastructure Construction Cost Forecast

- Systematic Risks – Russia-Ukraine War, Israel-Gaza Conflict, AI, Real Estate, Consumer Debt
 - Russia-Ukraine War continues; Israel-Gaza conflict potentially spreading in Middle-East.
 - Some office properties continue to see large price cuts; select housing markets showing weakness.

OCBC OC Transportation Infrastructure Construction Cost Index Score, 2024-2027

Year	Index Score	Range of Cost Fluctuation
2024	2	1% to 2%
2025	3	2% to 6%
2026	2	1% to 2%
2027	2	1% to 2%

- Idiosyncratic Risks – not predictable and therefore not in model
 - Additional large downward revisions to labor market data may impact Fed policy decisions.
 - Despite rise in wages, consumer debt reaches new highs potentially impacting future spending.
 - Domestic and international instability due to political and economic uncertainty.

Questions



October 7, 2024

To: Executive Committee
From: Darrell E. Johnson, Chief Executive Officer
Subject: Measure M2 Ten-Year Review Framework

Overview

Ordinance No. 3 includes a provision to conduct a comprehensive review of the project and program elements of the Renewed Measure M Transportation Investment Plan at least every ten years. The results of the first ten-year review were presented to the Board of Directors on October 12, 2015. Efforts for the next review have been initiated. A draft framework and schedule are provided for the Board of Directors' consideration.

Recommendation

Direct staff to proceed with the Measure M2 ten-year review framework as presented.

Background

On November 7, 2006, Orange County voters approved the Renewed Measure M (M2) Transportation Investment Plan (Plan). Effective in 2011, the Plan provides a 30-year program of investments across a broad range of transportation and environmental initiatives and a governing ordinance, Ordinance No. 3 (M2 Ordinance), that defines the requirements for implementing the Plan. The M2 Ordinance designates the Orange County Transportation Authority (OCTA) as the responsible agency for administering the Plan and ensuring that OCTA's contract with the voters is followed. The M2 Ordinance also charges OCTA to provide for a number of transparency measures and safeguards to uphold the public's trust in OCTA.

OCTA is committed to fulfilling the promises made to secure voter approval of M2. This means not only completing the projects described in the Plan, but adhering to numerous specific requirements and high standards of quality called for in the measure as identified in the M2 Ordinance. One such requirement is a provision to conduct a comprehensive review at least every ten years of all project and program elements included in the Plan. The Plan summary page is included as Attachment A.

This requirement is found within Section 11 of the M2 Ordinance:

TEN-YEAR COMPREHENSIVE PROGRAM REVIEW - At least every ten years the Authority shall conduct a comprehensive review of all projects and programs implemented under the Plan to evaluate the performance of the overall program and may revise the Plan to improve its performance. The review shall include consideration of changes to local, state and federal transportation plans and policies; changes in land use, travel and growth projections; changes in project cost estimates and revenue projections; right-of-way constraints and other project constraints; level of public support for the Plan; and the progress of the Authority and jurisdictions in implementing the Plan. The Authority may amend the Plan based on its comprehensive review, subject to the requirements of Section 12.

Although M2 sales tax revenue collection began on April 1, 2011, following the M2 approval, early mobilization efforts were initiated through the Board of Directors' (Board) adoption of the Early Action Plan in 2007. As such, the first ten-year period was assumed to have begun on November 8, 2006; the results of the first M2 ten-year review were presented to the Board on October 12, 2015.

The review highlighted substantial progress in delivering the Plan as promised to the voters and continued public support for M2 as approved. No major external changes were identified that would require changes to the Plan. However, in reviewing the financial capacity of the Plan, a need to shift funds between programs within the transit category to address shortfalls and ensure the commitments to the voters could be upheld was identified. In addition to receiving the M2 ten-year review on October 12, 2015, the Board also directed staff to initiate an amendment to address the shortfalls. On October 26, 2015, the Board determined that the intent of the Metrolink Gateways Program (Project T) had been fulfilled through the construction of the Anaheim Regional Transportation Intermodal Center and directed staff to proceed with amending the M2 Ordinance and Plan to reallocate the remaining Project T funds to High-Frequency Metrolink Service (Project R) and the Fare Stabilization Program (Project U). On December 14, 2015, the Board approved the amendment.

Discussion

Nearly ten years have passed since the initial review. The M2 Program Management Office (PMO) is leading the ten-year review, with participation from other OCTA divisions. Based on the language in the M2 Ordinance, staff developed the following five objectives to ensure all elements are analyzed as required by Section 11:

1. Research and identify external policy and/or regulatory changes at the local, state, and federal level, as well as changes in land use, travel, and growth projections that require consideration.
2. Evaluate current project and program cost estimates and the financial capacity of the sales tax revenue through 2041 to confirm Plan delivery.
3. Review M2 program and project elements to determine if there are performance issues or constraints to attain the promised delivery.
4. Assess public and stakeholder support for the Plan.
5. Identify OCTA's and local jurisdictions' progress in implementing the Plan.

Approach

Staff has initiated the second ten-year review effort and anticipates to complete the review in late 2025. The timing of this review occurs near the M2 halfway mark, although OCTA has made significant headway in delivering some of the larger-scale program elements such as a number of major freeway improvement projects. The timing of this review allows for analyses of successes as well as lessons learned from the delivery of projects and programs that have been active since 2011, with some dating back to 2006.

Since M2 was voter-approved and major changes to the Plan require voter approval, it was determined that an initial quantitative survey of Orange County likely voters would allow staff to gain insight into voter awareness of M2 and their current transportation priorities. The results, presented to the Board on July 8, 2024, shared that overall, likely voters' transportation priorities still align with the Plan. Extensive outreach will also be conducted to engage key stakeholders and audiences, including OCTA committees, government officials, community and business leaders, transportation professionals, multicultural leaders, and the general public.

The PMO will facilitate this comprehensive effort with the help of OCTA division representatives to review, conduct research, and provide input into the process to fulfill the review objectives.

Updates on the review progress will be included in the regular M2 Quarterly Reports, in addition to specific staff reports on the review at key milestone points. The overall timeline anticipates completion of the review in late 2025. An overview of the schedule is shown below:

2024	
January – June	<ul style="list-style-type: none">• Drafted objectives, approach, and schedule• Initiated analysis of current project and program progress, issues, risks, and opportunities• Prepared scopes of work and procured necessary consultants/vendors

July	<ul style="list-style-type: none"> Presented initial likely voters' quantitative survey results to the Board
August - December	<ul style="list-style-type: none"> Conducted M2 Workshop with the Board Present ten-year review framework to the Board Prepare ten-year review messages and materials for communication Develop outreach plan
2025	
January – June	<ul style="list-style-type: none"> Conduct outreach and seek public feedback <ul style="list-style-type: none"> Quantitative public opinion survey Online survey Meetings with key stakeholders Brief and engage the OCTA Taxpayer Oversight Committee, Citizens Advisory Committee, and Technical Advisory Committee Conduct focus groups Conduct an elected officials roundtable
July – August	<ul style="list-style-type: none"> Complete analysis and draft ten-year review Report
September	<ul style="list-style-type: none"> Present general public quantitative survey results to the Board Prepare staff report and final ten-year review report for the Board
October	<ul style="list-style-type: none"> Present ten-year review report and recommendations to the Board

Final Product

At the conclusion of the review, a final report will be provided. The final report will include a comprehensive review of all projects and programs implemented under the Plan, as well as identify the performance of the overall program. The final report will consider changes to local, state, and federal transportation plans and policies, changes in land use, travel and growth projections, changes in project cost estimates and revenue projections, right-of-way constraints, and other project constraints, level of public support for the Plan, and the progress of OCTA and local jurisdictions in implementing the Plan. If during the review issues are identified, recommendations for revisions to the Plan will be made to the Board as needed.

Summary

A comprehensive ten-year review will be conducted as required by the M2 Ordinance. The PMO will lead the ten-year review with participation from OCTA divisions. A final report will be brought to the Board in late 2025.

Attachment

A. Measure M Investment Summary

Prepared by:



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Measure M2 Program Management Office
(714) 560-5625

Approved by:



Kia Mortazavi
Executive Director, Planning
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Measure M Investment Summary

LOCATION		PROJECTS	COSTS 2005 estimates in millions	
Freeway Projects (in millions)				\$4,871.1
I-5	Santa Ana Freeway Interchange Improvements	A	\$470.0	
I-5	Santa Ana/San Diego Freeway Improvements	B C D	1,185.2	
SR-22	Garden Grove Freeway Access Improvements	E	120.0	
SR-55	Costa Mesa Freeway Improvements	F	366.0	
SR-57	Orange Freeway Improvements	G	258.7	
SR-91	Riverside Freeway Improvements	H I J	908.7*	
I-405	San Diego Freeway Improvements	K L	1,392.5*	
I-605	Freeway Access Improvements	M	20.0	
All	Freeway Service Patrol	N	150.0	
Streets & Roads Projects (in millions)				\$3,625.0
	Regional Capacity Program	O	\$1,132.8	
	Regional Traffic Signal Synchronization Program	P	453.1	
	Local Fair Share Program	Q	2,039.1	
Transit Projects (in millions)				\$2,832.0
	High Frequency Metrolink Service	R	\$1,129.8*	
	Transit Extensions to Metrolink	S	1,000.0	
	Metrolink Gateways	T	57.9*	
	Expand Mobility Choices for Seniors and Persons with Disabilities	U	392.8*	
	Community Based Transit/Circulators	V	226.5	
	Safe Transit Stops	W	25.0	
Environmental Cleanup (in millions)				\$237.2
	Clean Up Highway and Street Runoff that Pollutes Beaches	X	\$237.2	
Taxpayer Safeguards and Audits (in millions)				\$296.6
	Collect Sales Taxes (State charges required by law)		\$178.0	
	Oversight and Annual Audits		118.6	
Total (2005 dollars in millions)				\$11,861.9

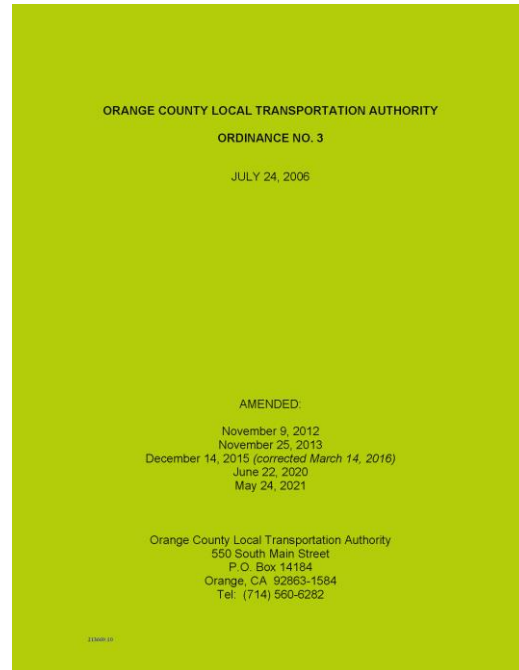
*Asterisk notes project estimates that have been amended since 2006.



Measure M2 Ten-Year Review Framework

Promise to Voters

Implementing Ordinance



M2 Ordinance:
Attachment A – Renewed Measure M (M2)
Transportation Investment Plan (Plan)
Attachment B – Allocation of Net Revenues
Attachment C – Taxpayer Oversight Committee

Funding Strategy



ENVIRONMENTAL

- A total of 5% of OC Go Freeway Program funds is allocated to the Freeway Environmental Mitigation Program
- A total of 2% of the overall OC Go Program funds is allocated to the Environmental Cleanup Program

1.5% - California Department of Tax and Fee Administration
1% - Administrative Costs

\$14 Billion Expenditure Plan

MEASURE M M2 Projects and Programs		
Freeway Projects		
I-5	Santa Ana Freeway Interchange Improvements	A
I-5	Santa Ana/San Diego Freeway Improvements	B C D
SR-22	Garden Grove Freeway Access Improvements	E
SR-55	Costa Mesa Freeway Improvements	F
SR-57	Orange Freeway Improvements	G
SR-91	Riverside Freeway Improvements	H I J
I-405	San Diego Freeway Improvements	K L
I-605	Freeway Access Improvements	M
All	Freeway Service Patrol	N
Streets & Roads Projects		
	Regional Capacity Program	O
	Regional Traffic Signal Synchronization Program	P
	Local Fair Share Program	Q
Transit Projects		
	High Frequency Metrolink Service	R
	Transit Extensions to Metrolink	S
	Metrolink Gateways	T
	Expand Mobility Choices for Seniors and Persons with Disabilities	U
	Community Based Transit/Circulators	V
	Safe Transit Stops	W
Environmental Cleanup		
	Clean Up Highway and Street Runoff that Pollutes Beaches	X
Taxpayer Safeguards and Audits		
	Collect Sales Taxes (State charges required by law)	
	Oversight and Annual Audits	

M2 – Measure M2/ I-5 – Interstate 5 / SR-22 – State Route 22 / SR-55 – State Route 55 / SR-57 – State Route 57 / SR-91 – State Route 91 / I-405 Interstate 405 / I-605 – Interstate 605

TEN-YEAR COMPREHENSIVE PROGRAM REVIEW

“At least every ten years the Authority shall conduct a **comprehensive review** of all projects and programs implemented under the Plan to **evaluate the performance** of the overall program and may revise the Plan to improve its performance...”

First Ten-Year Review (2015)

- First ten-year review covered 2006-2015
 - Outreach confirmed continued public support for the Plan and progress in delivering promises
 - Analysis identified a need for a funding shift between transit programs
- Board approved an amendment to the M2 Ordinance and Plan in December 2015
 - Closed out completed rail gateways project and transferred balance to Fare Stabilization Program and Metrolink operations



Renewed Measure M Comprehensive Ten-Year Review

Presented to the Board of Directors on
October 12, 2015



Objectives



Research and identify changes in external policy and/or regulation as well as in land use, travel, and growth projections



Evaluate current project and program cost estimates and the financial capacity through 2041



Review Plan to determine if there are performance issues or constraints



Assess public and stakeholder support for the Plan and OCTA's approach



Identify OCTA's and local jurisdictions' progress in implementing the Plan

Approach

- Analyze progress and performance of the Plan
- Evaluate financial capacity to deliver the Plan
- Consider changes in external factors and public policies
- Conduct outreach to seek stakeholder and local agency input
- Present updates via regular M2 Quarterly Reports and specific reports at key milestones



Key Milestone Timeline	Timeline
Mobilized Ten-Year Review efforts – defined objectives, developed approach and identified data needs	January – June 2024
Presented quantitative survey results to the Board	July 2024
Conducted M2 Workshop with the Board; Present Ten-Year Review framework to the Board; Develop outreach plan and materials	August – December 2024
Conduct outreach and seek public feedback	January – August 2025
Complete analysis, prepare report and recommendations	July – September 2025
Present the Ten-Year Review Report and recommendations to the Board	October 2025



October 7, 2024

To: Executive Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: 405 Express Lanes Expenditure Plan Requirement

Overview

In late 2016, the Orange County Transportation Authority Board of Directors awarded a design-build contract for the Interstate 405 Improvement Project. In mid-2017, a full Notice to Proceed was issued commencing all design and construction activities. With the Interstate 405 Improvement Project substantially completed and the 405 Express Lanes component in operations mode, the Orange County Transportation Authority has responsibilities of fulfilling the obligations and requirements of the funding and management agreements and state statutes. One key component required is the development of a 405 Express Lanes Expenditure Plan.

Recommendation

Direct staff to develop principles to guide the establishment of a 405 Express Lanes Excess Toll Revenue Policy and Expenditure Plan and return to the Board of Directors for consideration and approval.

Background

The Orange County Transportation Authority (OCTA), in cooperation with the California Department of Transportation (Caltrans) and the cities of Costa Mesa, Fountain Valley, Huntington Beach, Seal Beach, and Westminster, implemented the Interstate 405 (I-405) Improvement Project between State Route 73 (SR-73) and Interstate 605 (I-605) (Project). The Project added one general purpose lane in each direction from Euclid Street to I-605, consistent with Measure M2 (M2) Project K, and added an additional lane in each direction that combines with the existing high-occupancy vehicle (HOV) lane to provide dual express lanes in each direction of I-405 from SR-73 to I-605, otherwise known as the 405 Express Lanes. The addition of Express Lanes to the M2-funded general purpose lanes was requested by Caltrans as the owner of the I-405 and freeway system. The 405 Express Lanes commenced operations on December 1, 2023.

In order to operate the 405 Express Lanes, OCTA needed statutory authority for tolling. The California Transportation Commission (CTC) granted tolling authority to OCTA under the provisions of AB 194 (Chapter 687, Statutes of 2015) in May 2016. AB 194 required that OCTA enter into a toll operating agreement with Caltrans that addressed all matters related to the design, construction, maintenance, and operation of the toll facility. Consistent with this requirement, a toll operating agreement was developed for the 405 Express Lanes, in cooperation with Caltrans, and approved by the OCTA Board of Directors (Board) in November 2016.

OCTA explored various options for funding the implementation of the 405 Express Lanes as a separate component of the Project but would also include M2 funding for the general purpose lane. A federal loan with the United States Department of Transportation's Build America Bureau provided the most flexibility and lowest cost of borrowing. OCTA entered into a Transportation Infrastructure Finance and Innovation Act (TIFIA) loan in July 2017, at a fixed interest rate of 2.91 percent for 30 years. The original TIFIA loan was subsequently refinanced in September 2021 at a lower 1.95 percent interest rate. The TIFIA loan will be paid back with toll revenues.

These arrangements, which include the statutory requirements of AB 194, the toll operating agreement with Caltrans, and the TIFIA loan agreement, detail the operating responsibilities that OCTA has for maintaining the 405 Express Lanes.

Discussion

To move the 405 Express Lanes project forward, the provisions of AB 194 required OCTA to submit an application to the CTC, conduct a public hearing near the I-405 corridor, enter into an agreement with the California Highway Patrol (CHP) for law enforcement matters, enter into a toll operating agreement with Caltrans, and to use the revenues from the facility in the corridor where the revenue was generated pursuant to an expenditure plan. AB 194 is included as Attachment A.

In April 2016, OCTA submitted an application to CTC seeking approval to develop and operate the 405 Express Lanes in accordance with AB 194 and the CTC's toll facility guidelines. Also, that same month, OCTA held a hearing in the City of Costa Mesa, to receive public comments on the 405 Express Lanes and the application. The CTC found that OCTA's application met the criteria identified and complied with the requirements contained in AB 194. In May 2016, the CTC approved OCTA's application to develop and operate high-occupancy toll lanes, thereby granting tolling authority. In March 2017, OCTA entered into a toll operating agreement with Caltrans, and in October 2023, OCTA entered into an agreement with CHP to provide enforcement services on the 405 Express Lanes.

Toll Operating Agreement with Caltrans

The 405 Express Lanes is operated and maintained by OCTA based on a toll operating agreement executed with Caltrans in 2017. The operating agreement is for a 40-year lease term starting on December 1, 2023, and ending on December 1, 2063. The agreement is included as Attachment B. Some of the key provisions of the agreement include:

- OCTA has a 40-year lease to operate the express lanes as a congestion managed facility.
- OCTA collects toll revenues and sets toll policy using congestion management pricing while providing carpool and clean air vehicle incentives.
- OCTA operates, maintains, and funds related costs with toll revenues.
- OCTA is responsible for the maintenance of the 405 Express Lanes and for developing plans for the facility.
- OCTA sets priority for the use of excess toll revenues.
- OCTA, in partnership with Caltrans, shall develop and annually update an Expenditure Plan for potential excess toll revenue. Caltrans will have an opportunity to review and comment on the Expenditure Plan. The OCTA Board will be the approving body of the Expenditure Plan.
- At the end of the lease term, all 405 Express Lanes property, equipment, and systems shall be transferred back to Caltrans and become the property of Caltrans.

In May 2016, the OCTA Board adopted an initial toll policy which included provisions for HOV2, HOV3+, inherently low-emission vehicles, congestion management pricing, and violation processing. The toll policy was subsequently updated and approved by the Board in July 2023. OCTA hired Kapsch TrafficCom in February 2018 to provide the lane-system equipment that reads transponders, license plate images, and sends the information to the back-office system for processing. In addition, in November 2021, OCTA hired WSP USA Services, Inc. and Quarterhill Inc. to provide customer service center operations and back-office system software solutions, respectively. In November 2023, OCTA submitted facility plans to Caltrans for incident management and maintenance for the 405 Express Lanes. For freeway maintenance services, OCTA entered into an agreement with Caltrans in January 2024. The services under this agreement will commence once final acceptance is achieved for the Project which is anticipated in late 2024.

TIFIA Loan Agreement

To fund the capital infrastructure costs associated with the 405 Express Lanes, OCTA executed a TIFIA loan agreement with the federal government in July 2017. The TIFIA loan was for an amount not to exceed \$628.93 million and has a final maturity date that is no later than 35 years following the Substantial

Completion Date (December 1, 2058). The TIFIA loan includes the following key provisions:

- The loan is payable solely from the net revenues resulting from OCTA's approved toll policy from congestion management pricing from the 405 Express Lanes. All toll revenue funds will flow through a third-party trustee selected by OCTA.
- The loan will have a senior lien on 405 Express Lanes net revenues.
- Interest during construction accrues until five years after substantial completion and full payment of principal and interest is payable ten years after substantial completion.
- The loan agreement requires a beginning and an annual minimum projection of 1.35 times debt service coverage ratio.
- Various reserve funds are required by the loan that will be funded by toll revenues and held at the trustee.
- Annual net revenues are to be deposited into a Distribution Lock-Up Fund that will keep excess net toll revenues until five years after substantial completion. After five years, 50 percent of the funds in the Distribution Lock-Up Fund must be used to repay the TIFIA loan, and the balance will be released to OCTA for future projects pursuant to an expenditure plan.

In 2017, OCTA hired US Bank as trustee bank for the 405 Express Lanes. With the opening of the 405 Express Lanes in December 2023, OCTA has been remitting toll revenues to US Bank for the payment of operating expenses and the funding of the required reserves. Excess monthly toll revenues are held in the Distribution Lock-Up Fund.

Expenditure Plan Requirement

The provisions of AB 194 and the toll operating agreement with Caltrans require the development of an expenditure plan for anticipated excess toll revenues. Based on the toll operating agreement, excess toll revenues are beyond the expenditure needs for the 405 Express Lanes operation and maintenance, debt service payments, enforcement, repair and rehabilitation, reserves, and administration. Access to excess toll revenues is subject to the creation of an expenditure plan, developed in cooperation with Caltrans and approved by the Board. The expenditure plan must be in place five years before the availability of excess toll revenues, as required by the toll operating agreement with Caltrans. Based on prior projections, excess toll revenues could be available starting in 2029. OCTA is updating the traffic and revenue forecast to determine estimated revenues for the 405 Express Lanes. This data will be available in early 2025 and will be input into OCTA's cash flow model to determine when excess toll revenues will be available.

Another factor in the determination of when excess toll revenues are available and ready for use under an expenditure plan is driven by the TIFIA loan. The TIFIA loan agreement stipulates that for the first five years after opening day, excess toll revenues must be held at the trustee in a Distribution Lock-Up Fund and cannot be used by OCTA. After the five years, assuming OCTA's compliance with loan terms, 50 percent of the accumulated balance in the Distribution Lock-Up Fund and future excess toll revenues must go towards repaying the TIFIA loan, with the remainder available for OCTA's use. Once the loan is fully repaid, OCTA can utilize all surplus toll revenues until the end of tolling authority on December 1, 2063.

Given these expenditure plan requirements and TIFIA loan restrictions, OCTA will need to develop an expenditure plan for using excess toll revenues. Before developing the required expenditure plan, certain key policy principles should be considered to guide the eventual plan. Staff expects to present the high-level principles for the development of an expenditure plan over the next month.

405 Express Lanes Performance-to-Date

Since opening day in December 2023, the 405 Express Lanes has been processing transactions and providing free-flow travel to customers using the facility. There have been approximately 38.1 million transactions, which translates into 10.1 million trips since July 31, 2024. These transactions and trips have generated approximately \$20.2 million in total revenues which have been transferred to OCTA's trustee bank. Over 10,500 405 Express Lanes accounts have been opened and most of the transactions on the facility have been from interoperability partner accounts. The 405 Express Lanes is performing as expected and closely matching the previous forecasts.

Summary

The 405 Express Lanes commenced operations on December 1, 2023. Now that the facility is in operations mode, the Orange County Transportation Authority has responsibilities of fulfilling the obligations of the various agreements in place and statutory requirements. One key component required is the development of a 405 Express Lanes Expenditure Plan.

Attachments

- A. Assembly Bill No. 194
- B. Caltrans/OCTA Toll Operating Agreement

Prepared by:



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Express Lanes Programs
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Assembly Bill No. 194

CHAPTER 687

An act to amend Section 149.7 of, and to add Section 149.12 to, the Streets and Highways Code, relating to transportation, and making an appropriation therefor.

[Approved by Governor October 9, 2015. Filed with
Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 194, Frazier. High-occupancy toll lanes.

Existing law provides that the Department of Transportation has full possession and control of the state highway system. Existing law authorizes the department to construct exclusive or preferential lanes for buses only or for buses and other high-occupancy vehicles.

Existing law authorizes a regional transportation agency, as defined, in cooperation with the department to apply to the California Transportation Commission to develop and operate high-occupancy toll (HOT) lanes, including administration and operation of a value-pricing program and exclusive or preferential lane facilities for public transit, consistent with established standards, requirements, and limitations that apply to specified facilities. Existing law requires the commission to conduct at least one public hearing in northern California and one in southern California for each eligible application submitted by the regional transportation agency. Existing law limits the number of approved facilities to not more than 4, 2 in northern California and 2 in southern California, and provides that no applications may be approved on or after January 1, 2012.

This bill would authorize a regional transportation agency or the department to apply to the commission to develop and operate HOT lanes or other toll facilities, as specified, and would delete the January 1, 2012, deadline for HOT lane applications and remove the existing limitation on the number of facilities that may be approved. The bill would include the Santa Clara Valley Transportation Authority within the definition of regional transportation authority for these purposes. The bill would delete the requirement that the facilities be consistent with the established standards, requirements, and limitations that apply to specified facilities and would instead require the commission to establish eligibility criteria set forth in guidelines for the development and operation of the facilities and provide for the review and approval by the commission of each proposed toll facility pursuant to those eligibility criteria. The bill would require toll facilities approved by the commission on or after January 1, 2016, to be subject to specified minimum requirements, including those relating to toll facility revenues. The bill would authorize a regional transportation agency or the

state, as applicable, to issue bonds, refunding bonds, or bond anticipation notes backed by revenues generated from the facilities. The bill would delete the requirement that the commission conduct at least one public hearing in northern California and one in southern California for each eligible application and would instead require the commission to conduct at least one public hearing at or near the proposed toll facility. The bill would require a regional transportation agency that applies to the commission to reimburse the commission for all of the commission's costs and expenses incurred in processing the application and to enter into specified agreements with the department and the Department of the California Highway Patrol. Before submitting an application to the commission, the bill would require a regional transportation agency to consult with every local transportation authority and every congestion management agency whose jurisdiction includes the facility that the regional transportation agency proposes to develop and operate pursuant to the above-described provisions. The bill would require the regional transportation agency to give a local transportation authority or congestion management agency, as specified, the option of entering into agreements, as needed, for project development, engineering, financial studies, and environmental documentation for each construction project or segment, and would authorize the local transportation authority or congestion management agency to be the lead agency for those construction projects or segments. The bill would provide that these provisions do not authorize or prohibit the conversion of any existing nontoll or nonuser-fee lanes into tolled or user-fee lanes, except that a high-occupancy vehicle lane may be converted into a HOT lane pursuant to its provisions.

This bill would create the Highway Toll Account in the State Transportation Fund for the management of funds received by the Department of Transportation for toll facilities operated by the department under the bill. The bill would continuously appropriate to the department the portion of revenues designated and necessary for the payment of debt service for those facilities.

This bill would become operative only if AB 914 is enacted and takes effect on or before January 1, 2016.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The development, improvement, expansion, and maintenance of an efficient, safe, and well-maintained system of roads, highways, and other transportation facilities is essential to the economic well-being and high quality of life of the people of this state.

(b) High-occupancy toll lanes, express lanes, and toll roads provide an opportunity to more effectively manage state highways in order to increase passenger throughput and to reduce delays for freight shipments and travelers, especially those traveling by carpool, vanpool, or bus.

(c) Highway tolling should be employed for the purpose of optimizing the performance of the transportation system on a transportation corridor and should not be employed strictly as a revenue generating facility.

SEC. 2. Section 149.7 of the Streets and Highways Code is amended to read:

149.7. (a) Notwithstanding Sections 149 and 30800, a regional transportation agency, as defined in subdivision (k), or the department may apply to the commission to develop and operate high-occupancy toll lanes or other toll facilities, including the administration and operation of a value pricing program and exclusive or preferential lane facilities for public transit or freight.

(b) Each application for the development and operation of the toll facilities described in subdivision (a) shall be subject to review and approval by the commission pursuant to eligibility criteria set forth in guidelines established by the commission. Prior to approving an application, the commission shall conduct at least one public hearing at or near the proposed toll facility for the purpose of receiving public comment. Upon approval of an application, the regional transportation agency or the department may develop and operate the toll facility proposed in the application.

(c) The eligibility criteria set forth in the guidelines established by the commission pursuant to subdivision (b) shall include, at a minimum, all of the following:

(1) A demonstration that the proposed toll facility will improve the corridor's performance by, for example, increasing passenger throughput or reducing delays for freight shipments and travelers, especially those traveling by carpool, vanpool, and transit.

(2) A requirement that the proposed toll facility is contained in the constrained portion of a conforming regional transportation plan prepared pursuant to Section 65080 of the Government Code.

(3) Evidence of cooperation between the applicable regional transportation agency and the department.

(4) A discussion of how the proposed toll facility meets the requirements of this section.

(5) A requirement that a project initiation document has been completed for the proposed toll facility.

(6) A demonstration that a complete funding plan has been prepared.

(d) A regional transportation agency that applies to the commission to develop and operate toll facilities pursuant to this section shall reimburse the commission for all of the commission's costs and expenses incurred in processing the application.

(e) Toll facilities approved by the commission on or after January 1, 2016, pursuant to this section, shall be subject to the following minimum requirements:

(1) A regional transportation agency sponsoring a toll facility shall enter into an agreement with the Department of the California Highway Patrol that addresses all law enforcement matters related to the toll facility and an agreement with the department that addresses all matters related to design,

construction, maintenance, and operation of the toll facility, including, but not limited to, liability, financing, repair, rehabilitation, and reconstruction.

(2) A regional transportation agency sponsoring a toll facility shall be responsible for reimbursing the department and the Department of the California Highway Patrol for their costs related to the toll facility pursuant to an agreement between the agency and the department and an agreement between the agency and the Department of the California Highway Patrol.

(3) The sponsoring agency shall be responsible for establishing, collecting, and administering tolls, and may include discounts and premiums for the use of the toll facility.

(4) The revenue generated from the operation of the toll facility shall be available to the sponsoring agency for the direct expenses related to the following:

(A) Debt issued to construct, repair, rehabilitate, or reconstruct any portion of the toll facility, payment of debt service, and satisfaction of other covenants and obligations related to indebtedness of the toll facility.

(B) The development, maintenance, repair, rehabilitation, improvement, reconstruction, administration, and operation of the toll facility, including toll collection and enforcement.

(C) Reserves for the purposes specified in subparagraphs (A) and (B).

(5) All remaining revenue generated by the toll facility shall be used in the corridor from which the revenue was generated pursuant to an expenditure plan developed by the sponsoring agency, as follows:

(A) (i) For a toll facility sponsored by a regional transportation agency, the regional transportation agency shall develop the expenditure plan in consultation with the department.

(ii) For a toll facility sponsored by the department, the department shall develop the expenditure plan in consultation with the applicable regional transportation agency.

(B) (i) For a toll facility sponsored by a regional transportation agency, the governing board of the regional transportation agency shall review and approve the expenditure plan and any updates.

(ii) For a toll facility sponsored by the department, the commission shall review and approve the expenditure plan and any updates.

(6) The sponsoring agency's administrative expenses related to operation of a toll facility shall not exceed 3 percent of the toll revenues.

(f) For any project under this section involving the conversion of an existing high-occupancy vehicle lane to a high-occupancy toll lane, the sponsoring agency shall demonstrate that the project will, at a minimum, result in expanded efficiency of the corridor in terms of travel time reliability, passenger throughput, or other efficiency benefit.

(g) This section shall not prevent the construction of facilities that compete with a toll facility approved by the commission pursuant to this section, and the sponsoring agency shall not be entitled to compensation for the adverse effects on toll revenue due to those competing facilities.

(h) A sponsoring agency that develops or operates a toll facility pursuant to this section shall provide any information or data requested by the

commission or the Legislative Analyst. The commission, in cooperation with the Legislative Analyst, shall annually prepare a summary report on the progress of the development and operation of any toll facilities authorized pursuant to this section. The commission may submit this report as a section in its annual report to the Legislature required pursuant to Section 14535 of the Government Code.

(i) (1) A regional transportation agency may issue bonds, refunding bonds, or bond anticipation notes, at any time, to finance construction of, and construction-related expenditures for, a toll facility approved pursuant to this section, and construction and construction-related expenditures that are included in the expenditure plan adopted pursuant to paragraph (5) of subdivision (e), payable from the revenues generated from the toll facility. The bonds, refunding bonds, and bond anticipation notes shall bear such interest rates and other features and terms as the regional transportation agency shall approve and may be sold by the regional transportation agency at public or private sale.

(2) A bond, refunding bond, or bond anticipation note issued pursuant to this subdivision shall contain on its face a statement to the following effect:

“Neither the full faith and credit nor the taxing power of the State of California is pledged to the payment of principal of, or the interest on, this instrument.”

(3) Bonds, refunding bonds, and bond anticipation notes issued pursuant to this subdivision are legal investments for all trust funds, the funds of all insurance companies, banks, trust companies, executors, administrators, trustees, and other fiduciaries.

(4) Interest earned on any bonds, refunding bonds, and bond anticipation notes issued pursuant to this subdivision shall at all times be free from state personal income tax and corporate income tax.

(5) (A) For a toll facility operated by the department, the California Infrastructure and Economic Development Bank or the Treasurer may issue bonds, refunding bonds, or bond anticipation notes, at any time, to finance development, construction, or reconstruction of, and construction-related expenditures for, a toll facility approved pursuant to this section and construction and construction-related expenditures that are included in the expenditure plan adopted pursuant to paragraph (5) of subdivision (e), payable solely from the toll revenue and ancillary revenues generated from the toll facility.

(B) This subdivision shall be deemed to provide all necessary state law authority for purposes of Section 63024.5 of the Government Code.

(j) (1) Before submitting an application pursuant to subdivision (a), a regional transportation agency shall consult with every local transportation authority designated pursuant to Division 12.5 (commencing with Section 131000) or Division 19 (commencing with Section 180000) of the Public Utilities Code and every congestion management agency whose jurisdiction

includes the toll facility that the regional transportation agency proposes to develop and operate.

(2) A regional transportation agency shall give a local transportation authority or congestion management agency described in paragraph (1) the option to enter into agreements, as needed, for project development, engineering, financial studies, and environmental documentation for each construction project or segment that is part of the toll facility. The local transportation authority or congestion management agency may be the lead agency for these construction projects or segments.

(k) Notwithstanding Section 143, for purposes of this section, “regional transportation agency” means any of the following:

(1) A transportation planning agency described in Section 29532 or 29532.1 of the Government Code.

(2) A county transportation commission established under Section 130050, 130050.1, or 130050.2 of the Public Utilities Code.

(3) Any other local or regional transportation entity that is designated by statute as a regional transportation agency.

(4) A joint exercise of powers authority established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, with the consent of a transportation planning agency or a county transportation commission for the jurisdiction in which the transportation project will be developed.

(5) The Santa Clara Valley Transportation Authority established pursuant to Part 12 (commencing with Section 100000) of Division 10 of the Public Utilities Code.

(l) A regional transportation agency or the department may require any vehicle accessing a toll facility authorized under this section to have an electronic toll collection transponder or other electronic device for enforcement or tolling purposes.

(m) Nothing in this section shall authorize or prohibit the conversion of any existing nontoll or nonuser-fee lanes into tolled or user-fee lanes, except that a high-occupancy vehicle lane may be converted into a high-occupancy toll lane.

(n) Nothing in this section shall apply to, modify, limit, or otherwise restrict the authority of any joint powers authority described in Section 66484.3 of the Government Code to establish or collect tolls or otherwise operate any toll facility or modify or expand a toll facility.

SEC. 3. Section 149.12 is added to the Streets and Highways Code, to read:

149.12. The Highway Toll Account is hereby created in the State Transportation Fund for the management of funds received by the department for toll facilities authorized pursuant to Section 149.7 and operated by the department. Notwithstanding Section 13340 of the Government Code, moneys in the Highway Toll Account designated and necessary for the payment of any debt service associated with a toll facility project shall be continuously appropriated, without regard to fiscal year, to the department for the purposes described in subparagraph (A) of paragraph (4) of

subdivision (e) of Section 149.7. All other moneys deposited in the Highway Toll Account that are derived from premium and accrued interest on bonds sold pursuant to Section 149.7 shall be reserved in the account and shall be available for expenditure, upon appropriation by the Legislature, as specified in subdivision (e) of Section 149.7. Pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, the cost of bond issuance shall be paid out of the bond proceeds, including premium, if any.

SEC. 4. This act shall become operative only if Assembly Bill 914 of the 2015–16 Regular Session is enacted and takes effect on or before January 1, 2016.

12-ORA-405 PM 9.3/24.2
12-ORA-22 PM R0.5/R0.7 / 12-ORA-22 PM R0.7/R3.8
EA: 0H100, ID 12 0000 0180
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

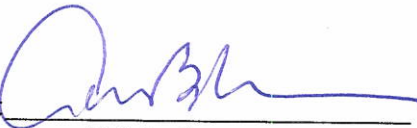
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

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

ORANGE COUNTY
TRANSPORTATION AUTHORITY

By: 
Darrell Johnson
Chief Executive Officer

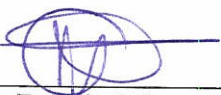
APPROVED AS TO FORM AND
PROCEDURE:

By: 
Glenn B. Mueller
Assistant Chief Counsel

APPROVED AS TO FORM:


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

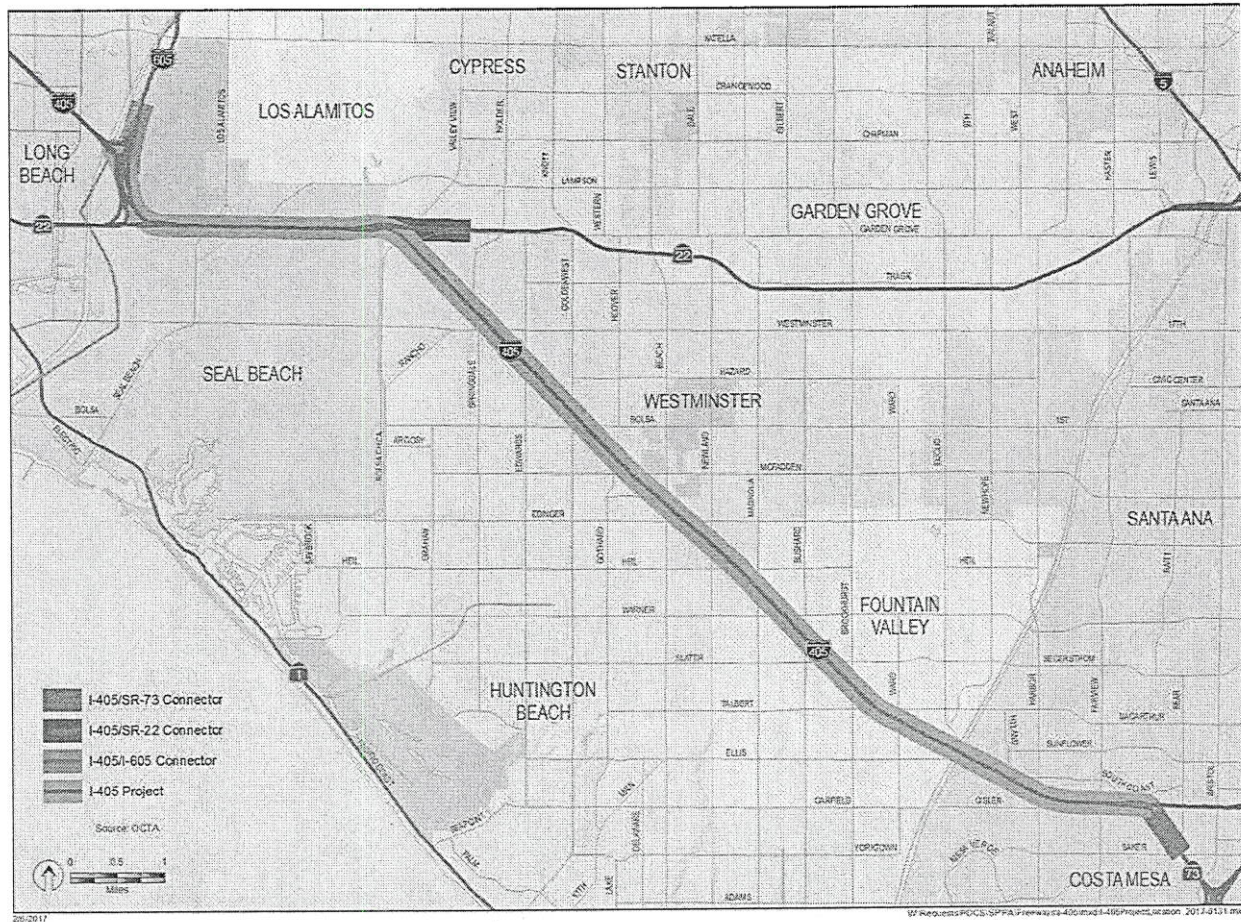
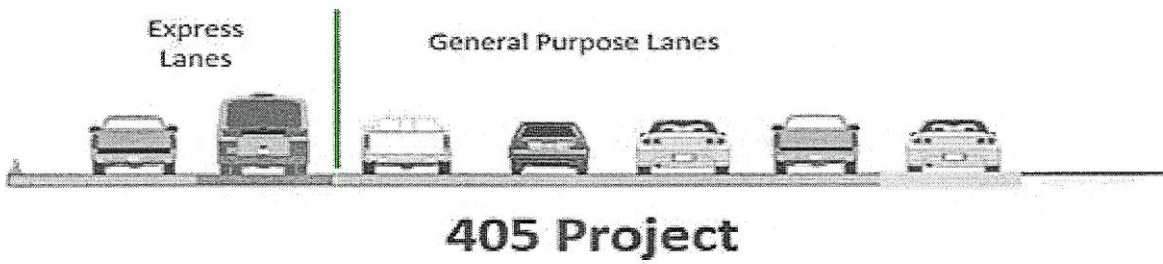
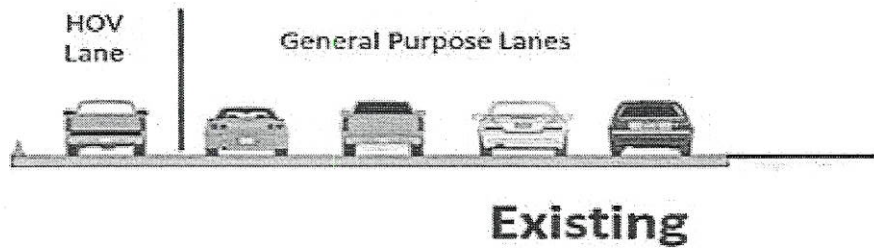


Exhibit A-2

Typical Cross Section



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**

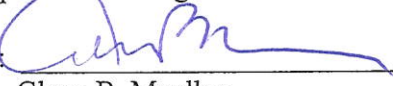
State of California Department of Transportation:

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

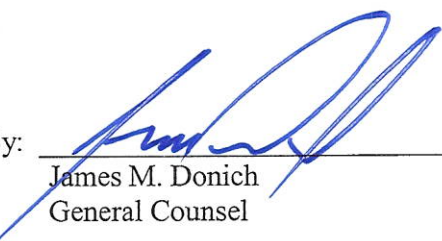
Orange County Transportation Authority:

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

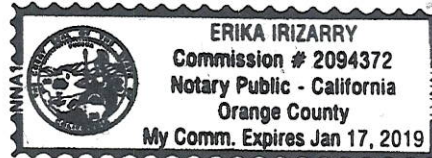
County of Orange)

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.

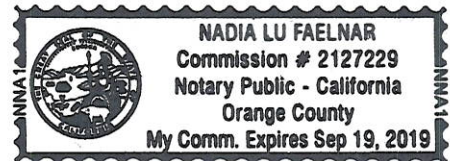
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Nadia Lu Faelnar

(Seal)





405 Express Lanes Expenditure Plan Requirement

Background

Milestone	Completion Date
Environmental clearance	May 2015
California Transportation Commission (CTC) grants tolling authority to OCTA	May 2016
OCTA Board of Directors awards design-build contract to OC 405 Partners	November 2016
Toll operating agreement executed with the California Department of Transportation (Caltrans)	March 2017
Transportation Infrastructure Finance and Innovation Act (TIFIA) loan executed	July 2017
OCTA selects US Bank as trustee for the 405 Express Lanes	July 2017
Construction began	March 2018
Updated Toll Policy approved and opening day toll rate schedules developed	July 2023
Substantial completion / Opening of the 405 Express Lanes	December 2023

Requirements for Operating 405 Express Lanes

- Tolling Authority
 - Requires CTC Approval
 - Approved in May 2016
- Toll Operating Agreement with Caltrans
 - Board of Directors ' approval in November 2016 and executed in 2017
- Funding for the Interstate 405 Improvement Project, including the 405 Express Lanes
 - Federal, state, and local funding (Measure M2)
 - TIFIA loan executed in July 2017 for funding of the 405 Express Lanes

Tolling Authority

- CTC grants tolling authority under the provisions of AB 194
- Some of the key requirements include:
 - Submit application to CTC
 - Hold public hearing near Interstate 405 corridor
 - Enter into an agreement with California Highway Patrol for enforcement
 - Enter into an agreement with Caltrans that addresses all matters related to design, construction, maintenance, and operations of the toll facility
 - Development of an expenditure plan, in consultation with Caltrans, and approved by the OCTA Board of Directors

Tolling Authority Update

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Toll Operating Agreement with Caltrans

- 40-year lease
- OCTA sets toll policy and pricing while providing carpool and clean air vehicle incentives
- OCTA operates, maintain, and funds costs with toll revenues
- OCTA responsible for maintenance of the 405 Express Lanes
- OCTA, in partnership with Caltrans, develops and annually updates an expenditure plan for potential excess toll revenues

Toll Operating Agreement with Caltrans Update

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Funding – TIFIA Loan

- TIFIA loan secured by toll revenues
- All toll revenues flow through a trustee
- Interest accrues until five years after substantial completion
- Full payment of principal and interest is payable ten years after substantial completion
- Various reserve funds are required by the loan
- Excess toll revenues are deposited into a Distribution Lock-Up Fund at the trustee during first five years after substantial completion

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405 Express Lanes Expenditure Plan

- Development required by AB 194 legislation
- Included in the Toll Operating Agreement with Caltrans
- Established five years before excess toll revenues
- OCTA develops expenditure plan in partnership/consultation with Caltrans
- Requires OCTA Board of Directors approval and annual updates

405 Express Lanes Operational Update

- Transactions, trips, and revenues continue to grow
- Call center activities have increased with violations and additional traffic volumes
- Recently implemented toll adjustments
- Carpools comprise approximately 25 percent of total traffic, and Thursdays are the heaviest traveled day of the week



Next Steps

- Direct staff to develop principles and proposed framework for a 405 Express Lanes expenditure plan
- Update traffic and revenue forecast and cash flow models to determine timing of excess toll revenues
- Develop expenditure plan and define corridor for use of excess toll revenues
- Return to the Board of Directors for approval